

Satish Chander Vs. C.B.i.

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Court : Delhi

Decided On : Sep-30-2011

Judge : Rajiv Shakdher, J.

Acts : [Prevention of Corruption Act, 1988](#) - Sections 27, 13(1)(d), 7; Indian Penal Code (IPC), 1870 (IPC) - Sections 167, 192, 193, 196, 465, 466, 471

Appeal No. : Crl. A. No. 129/2003

Appellant : Satish Chander

Respondent : C.B.i.

Advocate for Def. : Ms. Sonia Mathur; Mr Sushil Kr. Dubey, Advs.

Advocate for Pet/Ap. : Mr. S. Chandra; Mr. Manoj Bansal, Advs.

Judgement :

1. The appellant who is the accused in the instant case has preferred an appeal under section 27 of the [Prevention of Corruption Act, 1988](#) (hereinafter referred to as P.C. Act) read with section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) against the judgment dated 10.02.2003 and the sentence dated 13.02.2003 passed by the Special Judge, Delhi wherein the accused has been convicted under sections 7 and 13(1)(d) of the P.C. Act and accordingly, directed to undergo rigorous imprisonment for a period of three years on each count. In addition, a fine of Rs.5,000/- has been imposed on each count.

The sentence of imprisonment is to run concurrently while the other part pertaining to payment of fine is to run sequentially. In the event of default in payment of fine, the accused will be required to undergo further rigorous imprisonment of four months on each count. The fine has already been paid by the accused. A receipt of deposit dated 13.02.2003 evidencing the same has been filed.

2. The substratum of the charge as against the accused, who is a police officer, is of having demanded and accepted illegal gratification from, one Dalbir Singh (PW-4), i.e., the complainant. The case set up by the prosecution against the accused is briefly as follows :-

2.1 The complainant (PW-4), who was at the relevant time was dealing in stone chips, used in construction of roads; had been for a long period of time accessing the same from Rangpuri Hills, located in the outskirts of Delhi. The stone chips were transported by the complainant (PW-4) from Rangpuri Hills to his customers, directly in trucks, engaged by him.

2.2 The accused at the relevant time was deployed as a Sub Inspector at the Vasant Kunj Police Station and by virtue of his engagement was in-charge of the aforementioned area. The accused on becoming aware of the complainants business, approached the complainant (PW-4) in the beginning of March, 1995 for a bribe payable on a monthly basis, in order to enable him to carry on his business unimpeded. The demand for illegal gratification was repeated by the accused on 09.03.1995 when he approached the complainant (PW-4). On the said date, the accused while allegedly demanding a sum of Rs.10,000/- p.m also conveyed to the complainant (PW4) that if for any reason the complainant (PW-4) was not able to pay the said sum in one shot, he could pay the same in three instalments. It is alleged that the accused prevailed upon the complainant (PW-4) to reach him a sum of Rs.3,000/- at the Vasant Kunj Police Station, in the evening of that very day i.e., 09.03.1995.

2.3 The complainant, (PW-4) being harassed by the coercive approach of the accused, lodged a written complaint with the Superintendent of Police, Anti Corruption Branch, New Delhi on that very day at about 2.30 p.m. in the afternoon.

2.4 Based on the aforesaid complaint (Ex. PW4/A), a case was registered. A trap team was constituted headed by Mr. R.K. Chadha (PW-6) i.e., the Trap Laying Officer (in short, TLO). Apart from the personnel of the CBI, the trap team consisted of two independent witnesses, namely Mr. Shardha Nand (PW-1) and Mr. Varinder Singh Daggarr (PW-5); both being employees of Food Corporation of India (in short, FCI). Mr. Shardha Nand (PW-1) was employed as a Stenographer, while Mr. Varinder Singh Daggarr (PW-5) was employed as a Messenger.

2.5 On the constitution of the team, the complainant (PW-4) was introduced to the members of the team, in particular, to the two independent witnesses, Mr. Shardha Nand (PW-1) and Mr. Varinder Singh Daggarr (PW-5). For the benefit of the independent witnesses and other members of the team, pre-trap proceedings were conducted. At these proceedings (after the complaint (Ex.PW4/A) was shown to the members of the trap team), the manner of execution of the trap was explained to them. A demonstration was given, inter alia, with regard to the reaction of phenolphthalein powder with sodium carbonate solution. It was explained that on the phenolphthalein powder coming in contact with the colourless solution of sodium carbonate, the same would turn pink. Accordingly, the team members were explained the relevance of smearing the graft money with phenolphthalein powder. Thus, thirty (30) Government currency (G.C.) notes of a denomination of Rs.100/- each, handed over by the complainant (PW-4), were smeared with phenolphthalein powder. The complainant (PW-4) was asked to hand over the said sum of money to the accused only on a specific demand being made by him. The used solution of sodium carbonate was discarded. The numbers of the thirty (30) GC notes of a denomination of Rs.100/- each were noted on a separate piece of paper marked Annexure A (Ex.PW1/A). A Handing Over Memo (Ex.PW1/B) was also prepared in which the pre-trap proceedings held in the CBI office were detailed out in extenso. The Handing Over Memo (Ex.PW1/B) was signed by each member of the trap team including the two independent witnesses, Mr. Shardha Nand (PW-1) and Mr. Varinder Singh Daggarr (PW-5). Thereafter, the complainant (PW-4) kept the phenolphthalein coated G.C. notes amounting to Rs.3,000/- in the left pocket of his shirt. The trap team left the CBI office at about 6.40 p.m., only to reach the Vasant Kunj Police Station at about 7.35 p.m. The complainant (PW-4), and PW-1, who had been asked to act as a

shadow witness and instructed to give a signal to other members of the trap- team (positioned in and around the police station) on the trap being executed, went into the room where the accused was supposed to be available. 2.6 At about 8.05 p.m., PW-1 gave a pre-arranged signal to the other members of the trap team. Upon receiving the signal, the other members of the trap team rushed into the room of the accused. The accused was apprehended by PW-6 (i.e., the TLO) by his wrists and confronted with the allegation that he had demanded and accepted a bribe of Rs.3,000/- from the complainant. Evidently, the accused being perplexed, kept quiet. Since the complainant (PW-4) and PW-1 (i.e., the shadow witness) corroborated the demand and acceptance of the bribe as also narrated the conversation that took place between the complainant (PW-4) and the accused, a search of the accused was ordered by PW-6 (i.e., the TLO). Mr. Varinder Singh Daggar (PW-5) carried out the search and consequently, recovered the tainted money from the right side pocket of the windcheater, which was worn by the accused at that point in time. The numbers on the GC notes were tallied with those recorded in Annexure A (Ex. PW1/A), which was generated at the time of the pre-trap proceedings. It is alleged that both set of numbers tallied. Since the complainant (PW-4) and PW-1 had informed other members of the trap team that the accused on demanding the bribe had received the tainted GC notes in his right hand and kept the same, in the right side pocket of the windcheater, both the right hand of the accused as well as inner lining of the right side pocket of the windcheater were dipped in two separate solutions of sodium carbonate. Both the solutions turned pink. The hand wash as well as the wash pertaining to the windcheater was preserved and sealed with the CBI seal. The signatures of the two independent witnesses were also inscribed on the labels affixed on the outside of the said bottles. As to what transpired in the said trap proceedings was recorded in the Recovery Memo (Ex.PW-4/B). The said Recovery Memo was signed by members of the trap team and the Station House Officer (in short, SHO) of the Vasant Vihar Police Station, who evidently was present at that point in time. Thereafter, the seals were handed over to Mr. Varinder Singh Daggar (PW-5).

2.7 A formal investigation was carried out in the matter whereupon, inter alia evidence was gathered that the business which was carried out by the complainant (PW-4) fell within the jurisdiction of the accused. Based on the

evidence gathered during the investigation and at the time of execution of the trap, a request was made to the concerned authorities for grant of sanction to prosecute the accused. The competent authority i.e., Mr. U.N.B. Rao, Dy. Commissioner of Police (PW- 3), granted the sanction vide order dated 22.07.1995 (Ex.PW3/A). 2.8 Accordingly, a charge-sheet was filed against the accused. By an order dated 06.02.1997, the accused was charged on three counts. Since the accused pleaded "not guilty" to the charges framed against him and claimed trial, the case was put to trial.

2.9 It is pertinent to note that during the course of the trial, the accused had made an application under section 340 of the Code against the CBI officials including PW6 (i.e., the TLO) for having committed offences under sections 167, 192, 193, 196, 465, 466 and 471 of the Indian Penal Code, 1870 (in short, IPC). This application was not disposed of immediately and was therefore, dealt with by the trial court at the stage of final hearing. The reason I am adverting to this application, is on account of the fact that arguments were made on behalf of the accused based on the said application which, I propose to deal with in the latter part of my judgment.

3. At the trial, the prosecution examined seven (7) witnesses. On the other hand, the accused apart from making a statement under section 313 of the Code, examined eight (8) witnesses in his defence.

SUBMISSIONS OF COUNSELS

4. On behalf of the accused arguments were addressed by Mr. S. Chandra, Advocate assisted by Mr. Manoj Bansal, Advocate while on behalf of the State/CBI, Ms. Sonia Mathur advanced submissions.

4.1 Mr. Chandra impugned the case of the prosecution on the ground that a false case had been foisted on the accused, and in order to demonstrate the same, he made the following submissions:-

4.2 the prosecution in order to bring home the conviction against the accused had to, apart from other aspects, clearly demonstrate demand and acceptance of bribe

by the accused. In the instant case, the only evidence produced by the prosecution of demand and acceptance of bribe is in the form of the testimony of the complainant (PW-4). The shadow witness i.e., PW-1 has not testified that the accused had demanded and thereafter, accepted the bribe in his presence. Therefore, the testimony of the complainant (PW-4) is crucial to the prosecutions case. According to the learned counsel, the testimony of the complainant (PW-4) could not be relied upon as he was an untrustworthy witness for the following reasons :-

(a). he was carrying on unlawful business of excavating stone chips from the Rangpuri Hills which was banned under the orders of the court; (b). the complainant (PW-4)s sister-in-law (and later on his wife) had been issued notices in this connection by the Collector of Mines, Delhi; (c). criminal case being: FIR No.129/1990 dated 08.05.1990 under section 308 read with section 34 of the Indian Penal Code, 1860 (in short, IPC) had been lodged against the complainant (PW-4);

4.3 In addition to the above, Mr. Chandra submitted that the complainant (PW- 4) had alleged in his complaint (Ex.PW4/A) that a week before the date of the incident i.e., 09.03.1995, the accused had met him and told him that since his business was doing well, and, therefore, in order to ensure, that no hurdles are placed in the functioning of his business, he should pay him a bribe. It was contended that firstly, the complainant (PW-4), could not specify the date and time when such demand was made, and secondly, in the cross-examination, the complainant (PW-4) had specifically deposed that he neither conducted any mining nor did he have in his possession, a stone crusher, located in Delhi, in the period in issue i.e., in 1995. The contradiction according to the learned counsel ought to destroy the credibility of the witness. It was submitted that thus the question of the accused approaching the complainant (PW-4) and seeking a bribe was completely unbelievable.

4.4 To drive home the aforesaid submission, the learned counsel for the accused also referred to Ex.DW2/C being FIR No.79/1995 dated 08/09.03.1995, which was marked to the accused alongwith one constable Mr. Jaiveer Singh (DW-8) vide DD

No.8A on 09.03.1995 at 09.30 a.m. This exhibit was referred to, by the learned counsel for the accused, to demonstrate that on the date of the incident i.e., 09.03.1995, the accused was away investigating the said case alongwith DW-8 and therefore, would have had no occasion to meet the complainant (PW-4), in the earlier part of the day, as is alleged in the complaint (Ex.PW4/A), to seek a bribe by the complainant. In this regard, reliance was also placed on the testimony of DW-8 to demonstrate that both, the accused and DW-8, were away on investigation from 8.30 a.m/9.00 a.m. till 1.30 p.m. on the date of the incident i.e., 09.03.1995.

4.5 Apart from the above, Mr. Chandra sought to demonstrate what he termed as fabrication of documents by the CBI by adverting to the discrepancies in the following evidence placed on record by the prosecution.

(i). First, the complaint (Ex.PW4/A). It was submitted that the date in the complaint (Ex.PW4/A) [noted as 9/3] at point B above the signatures of the TLO (PW-6) had clearly been altered. It was submitted that this complaint was written at the behest of PW-6 and was thus ante-dated;

(ii). the FIR (Ex.PW6/A) dated 09.03.1995; did not curiously, indicate the time of occurrence of the incident;

(iii). the carbon copy of the recovery memo (Ex.PW4/DA) handed over to the accused bears the signatures of all members of the trap-team in the form of carbon prints save and except those of PW-1, which is appended in original on the first, second and the fourth page. Similarly, it also bears in original signatures of Mr.R.K. Rohtas on all five pages of the memo and that of PW-4 on fourth page. It is submitted that if the carbon copy of the Recovery Memo (Ex.PW4/DA) is compared with the original Recovery Memo (Ex. PW4/B), it would be evident that a fabrication of the documents has been committed by the trap-team. (iv). a perusal of the Personal Search Memo (Ex.PW1/E) would show that the last line to the effect "....while he was in uniform which was later changed to Mufti" was inserted at a later point in time, that is, after the signatures on the same had been appended by the TLO as also Inspector R.S. Tokas, of the CBI; (v). the Handing Over Memo (Ex PW1/B) and Annexure A (Ex.PW1/A), in which, the numbers of

the treated GC notes were recorded, according to the statement made by one of the members of the trap-team (i.e., Inspector A.G.L. Kaul under section 161 of the Code), bore his signatures. A perusal of the said document would however show that the aforementioned exhibits (Ex.PW1/B and PW1/A), which were evidently generated during the pre-trap proceedings, do not bear the signatures of Inspector A.G.L. Kaul. It was submitted that therefore, the documents which were finally filed in court were either forged, or those which were signed by Inspector A.G.L. Kaul were either withheld by the Investigating Agency, or that, Inspector A.G.L. Kaul was not present both during the pre-trap proceedings and at the time when the trap was executed;

(vi). the CFSL report (Ex.PW2/A) was suspect in as much as the two sealed bottles evidently containing the right hand wash of the accused (marked as RWH), and the other which contained the wash of the inner lining of the right side pocket of the windcheater (marked as WRP) worn by the accused at the time of the execution of the trap were received by Mr. S.K. Chhabra, Sr. Scientific Officer in the CFSL laboratory, on 14.08.1995, with the seal of V.S.B., SSO, CFSL, Delhi. It was submitted that the said seal was that of Mr. V.S. Bisaria, an officer of the CFSL, who had examined the contents of the said bottles, and thereafter, sealed the same. It was submitted that it was the case of the prosecution that the said sealed bottles had been sent to CFSL on 16.03.1995, and the fact that these bottles had been opened and resealed before it reached PW-2, had made the report suspect. This was specially so, since the prosecution chose not to examine Mr. V.S. Bisaria. Furthermore, the delay in analysing the contents of the said sealed bottles was fatal to the case of the prosecution.

4.6 Apart from the above, it was also argued that even though a perusal of the original Recovery Memo (Ex.PW4/B) would demonstrate that ten (10) persons had participated in the execution of the trap; curiously, four (4) persons who were part of the trap team had not been examined by the prosecution. This apart, the carbon copy of the Recovery Memo (Ex.PW4/DA) bore signatures of the eight (8) persons.

4.7 Mr. Chandra, the learned counsel for the accused lay great stress on the reply filed by the State/CBI to the application filed by the accused under section 340 of the Code. It was submitted that in the reply, PW-6 (i.e., TLO) had admitted that only some of the members of the trap team had signed the Recovery Memo (Ex.PW4/B); though in his deposition before the trial court, he had concealed this fact.

4.8 Mr. Chandra argued vehemently that the trial court had overlooked the fact, to the prejudice of the accused, that the prosecution attempted to prove the demand and acceptance of the bribe based on the sole testimony of the complainant (PW-4) whose antecedents were far from credible; and vitally, had failed to take into account the testimony of PW-1 (i.e., the shadow witness) who had denied that the accused had demanded and accepted the treated GC notes in his presence as also the testimony of SI Raj Singh (DW-7) who had also stated to the same effect, which is, that the accused had not demanded or accepted money in his presence. This, coupled with the fact that since DW-7 had protested against the false accusation and implication of the accused, he was manhandled and beaten up by the members of the trap team. In this regard, the learned counsel placed reliance both on the testimony of DW-7 as well as on the copy of the M.L.C. Register (Ex.DW1/A) of SI Raj Singh.

4.9 The learned counsel submitted that this was a case where an honest police officer had been inveigled in a case at the behest of the complainant (PW-4) who bore a malice against the said officer as he was an impediment in the complainant (PW-4) and his family carrying on with their illegal business. The trial court, according to the learned counsel, had overlooked : vital pieces of evidence; material contradictions in the testimony of witnesses, and also, the obvious fabrication of documents by the Investigating Agency. It was submitted that in view of such vital gaps in the prosecutions case, and given the quality of evidence produced by the prosecution, the trial court could not have come to the conclusion, as it did, that the prosecution had been able to establish its case beyond a reasonable doubt.

5. In support of his submissions, the learned counsel for the accused placed reliance on the following judgments :-

(i). Smt. Meena v. The State of Maharashtra, 2000(2) ACR 1143(SC); (ii). Satpaul v. Delhi Administration, Crl. A. No.137/1971, decided on 30.09.1975, AIR 1976 SC 294; (iii). Gulam Mahmood A. Malek v. State of Gujarat, Crl. A. No.47/1975 decided on 10.06.1980 AIR 1980 SC 1558; (iv). Abdul Rehman and Ors. v. The State of Bihar, Crl. A. No.585/1984 decided on 13.05.1991; (v). Balbir Singh v. D.N. Kadian, AIR 1986 SC 345; (vi). Roshan Lal Saini v. CBI, Crl. A. No.809/2005 decided on 08.10.2010; (vii). Chander Bhan v. State (CBI), Crl. A. No.300/1977 decided on 04.05.1998; and (viii). State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede, VI (2009) SLT 439.

6. As against this, Ms. Mathur who appeared for the State/CBI largely relied upon the judgment of the trial court. Ms. Sonia in her submissions contended that both the initial demand as well as the subsequent demand and acceptance of bribe by the accused had been proved by the complainant (PW-4). The learned counsel submitted that the complainant (PW-4) was a credible witness; and merely because a complaint had been lodged against him, five years prior to the date of incident, could not result in the credibility of the said witness being affected. 6.1 In support of the said submission, it was contended that the attempt of the defence, in trying to portray that the complainant carried an ill-will against the accused on account of the fact that cases had been registered against the sister-in-law/wife and the father of the complainant, ought not to weigh with the court in view of the fact that firstly; the complainant was not involved in any of these proceedings. Secondly, even if it is assumed that because other family members were involved, the complainant (PW-4) was affected, his ire should have been directed against the said authorities i.e., the Collector of Mines, Delhi who had initiated the proceedings. And lastly, the said proceeding pertained to a period much prior to the date of the incident.

6.2 The learned counsel submitted that the argument of the defence that because the business carried on by the complainant (PW-4) was not legal, and since, the accused tried to apply the law to him, he bore a grudge against him, would, as a

matter of fact, cut against the accused, in as much as, because, the complainant (PW-4) was not carrying on a legitimate business, as portrayed by the defence, it would necessarily have in the circumstances, given leverage to the accused to demand a bribe from the complainant (PW4).

6.3 It was submitted by the learned counsel that the business carried on by the complainant (PW-4) fell within the jurisdiction of Vasant Kunj Police Station where the accused was deployed. Therefore, the argument advanced on behalf of the defence that it was the accused who wanted the complainant (PW-4) to adhere to the law ought not to cut any ice with the court as, no complaint was lodged by the accused qua the illegal business carried on by the complainant (PW-4) during the relevant period.

6.4 The learned counsel submitted that in so far as the assertion of the defence to the effect that because the accused was assigned investigation of another case, and was thus, unavailable between 9.30 a.m. to 1.30 p.m. on the date of the incident, was repelled by the trial court, by adverting to the evidence in this regard which, clearly demonstrated that it was the complainants assertion that the accused alone, had visited him, in the morning of 09.03.1995, and therefore, it was not a case where any contradiction could be found as regards the testimony of the complainant in this regard since, it could not be established that the accused could not have visited the complainant prior to his proceeding with the investigation in the other case. The learned counsel submitted that in any event, there was no suggestion put to the complainant (PW-4) as to whether the accused had visited complainant before or after 09.30 a.m. It was thus contended that an alibi, if any, available to the accused should have been adverted to, by the accused, in the very first instance when a statement was made by him under section 313 of the Code. No such aspect was referred to by the accused of being away on investigation in another case on the date of the incident i.e., 09.03.1995. Therefore, this aspect would not come to the aid of the accused. In any event, the burden of proving his alibi as per section 106 of the Evidence Act, 1872 (in short the „Evidence Act) was on the accused, which he had been unable to discharge.

6.5 Ms. Mathur also submitted that, in the instant case, recovery of the tainted money had also been proved. In this regard, she relied upon the testimony of PW-1 and PW-6 i.e., TLO amongst others. She submitted that the recovery memo (Ex.PW4/B) had been signed by not only the complainant (PW-4), but also by two independent witnesses PW-1 and PW-5. This apart, the Recovery Memo also bore the signatures of the SHO (PW-7). Ms. Mathur submitted that CFSL report had been proved by PW-2. PW-2 in his testimony had adverted to the fact that the analysis of the right hand wash [marked RHW], and the inner lining of the right side pocket of the windcheater (marked WRP) worn by the accused showed positive results of presence of phenolphthalein and sodium carbonate.

6.6 As regards, the alleged fabrication of the documents, Ms. Mathur submitted that the absence of signature of Mr. A.G.L. Kaul on the handing over memo (Ex.PW1/B), who was part of the trap team, would not derail the case of the prosecution as both independent witnesses PW-1 and PW-5, had admitted their signatures on the handing over memo (Ex.PW1/B). The fact that Mr. A.G.L. Kaul had submitted in his statement under section 161 of the Code that he had signed the handing over memo (Ex.PW1/B) may have been a case of lapse of memory as the statement had been made three (3) months after the raid had been conducted.

6.7 Similarly, in so far as the overwriting of date on the complaint (Ex.PW4/A) is concerned, Ms. Mathur pointed out that a perusal of the said exhibit would show that the signatures of other members of the trap team were also appended on it including that of the complainant (PW-4) alongwith the date, which was clearly noted as 09.03.1995.

6.8 The argument of the defence that the Investigating Agency had not filed before the trial court, the actual recovery memo (Ex.PW4/B) was met by Ms. Mathur by submitting that, the scuffle, which ensued the entrapment of the accused may have resulted in a situation where signatures of certain members of the trap team were left out and hence, on the carbon copy supplied to the accused, signatures of some of the members are found to have been made in original. She submitted that in any event not only the original recovery memo (Ex.PW4/B) bore the signatures of the accused but even the contents of the original recovery memo (Ex.PW4/B) and that of the carbon copy of the recovery memo (Ex.PW4/DA) matched word for word. It was the learned counsels submission that in any event discrepancies, if

any, in the two documents could only be termed as a mere irregularity and not an illegality, and hence would not vitiate the result of the investigation. The argument that the personal search memo (Ex.PW1/E), had been tampered with, was also repelled by taking recourse to the submission that a mere perusal of the said exhibit would show that there was no such tampering as alleged. It was submitted that in any event the personal search memo (Ex.PW1/E) also bears the signature of the accused; a fact which is not in dispute. 6.9 Ms. Mathur submitted that even though the accused had filed an application under section 340 of the Code, on 01.10.2002, in the midst of trial; to which, a reply had been filed by the State/ CBI; no steps were taken by the accused to press the application till final arguments were heard by the trial court.

7. Ms. Mathur submitted that in this case motive was present and had been proved by the prosecution. There was demand and acceptance, which was also proved by the prosecution. The recovery of the tainted money was also backed by adequate and credible evidence and hence, the conviction of the accused ought to be sustained by this court.

7.1 In support of her submissions, Ms. Mathur relied upon the following judgments :-

(i). Ram Chander v. State (Govt. of NCT of Delhi) 2009 CrL. L..J. 4058; (ii). Vinod Kumar Garg v. State 156 (2009) DLT 603; (iii). Pramod Kumar Sharma v. State 82 (1999) DLT 679; (iv). State through CBI v. Satvir Singh 176 (2011) DLT 556; (v). Mehkar Singh v. CBI [CrL. A. No.746/2002 decided on 23.05.2011; and (vi). Darshan Lal v. State [CrL.A. No.73/2001 decided on 31.07.2009]

8. I have heard the learned counsel for the parties and perused the evidence on record. Broadly, the challenge to the trial courts judgment, amongst others, is based on the ground that the prosecution has failed to prove the demand and acceptance of bribe by the accused. The fact that the prosecution has only the testimony of the complainant (PW4) to prove its case in this regard, is, according to the defence, a weak piece of evidence in view of the untrustworthiness of the said witness. The other ground of challenge is, as noticed hereinabove, to the alleged fabrication of the documentary evidence by the investigating agency which

have been used to demonstrate the recovery of the tainted money from the accused.

9. Therefore, let me first deal with what the complainant (PW4) had to say amongst other aspects on the demand and acceptance of the bribe by the accused in his deposition before the court and whether his testimony ought to be accepted by the court.

EVIDENCE

9.1 The complainant (PW4) in his examination in chief deposed that during the relevant period he resided in the village located in Rangpuri, and that, he was in the business of supplying stones. The village fell within the jurisdiction of police station Vasant Kunj of which the accused was incharge. The accused had evidently met the complainant (PW4) both at the house of the complainant (PW4) as well as at his work site. During interaction of the accused with the complainant (PW4), it was conveyed by the accused that in the event he wanted to ensure smooth functioning of his business without impediment, he would have to pay a monthly gratification of Rs 10,000/- as otherwise he would impound the complainant (PW4)s trucks carrying stones. Since, the complainant (PW4) refused to pay the bribe demanded by the accused, he met him, after a gap of two days, when the same threat was extended to the complainant (PW4). The accused evidently met the complainant (PW4), once again, on 09.03.1995. On this date again a demand of Rs 10,000/- was made by the accused. This meeting evidently took place at the village of the complainant. Since the complainant informed the accused that he did not have in his possession the entire amount the accused asked him to pay a sum of Rs 3000/- by the evening, and that, the said sum of Rs 3000/- should be brought to the police station. As the complainant (PW4) did not wish to pay the bribe, he approached the office of the CBI where he was met by the Superintendent of Police (in short „SP), CBI. A written complaint (Ex. PW4/A) was lodged, based on which a trap team was constituted headed by the Rajesh Kumar Chhadha (PW6). The trap team, amongst others, comprised of two independent witnesses PW1 and PW5. The complaint (PW4/A) was shown to the members of the trap team. The members went through the complaint, and

thereafter, put questions to the complainant (PW4) to ascertain the genuineness of its contents. The manner in which a trap is executed, was explained to the members of the trap team. The numbers of the thirty (30) GC notes of a denomination of Rs 100 each, brought by the complainant (PW4), were recorded on a separate piece of paper (Ex. PW1/A). The complainant (PW4) identified his signatures at point „B on Ex. PW1/A. The members of the trap team were given a demonstration with the help of PW5 as to why the GC notes were treated with phenolphthalein powder and how on the phenolphthalein powder coming in contact with colourless sodium carbonate solution it would turn pink in colour. After the demonstration was over, the used solution was discarded. The complainant (PW4) thereafter put the powder coated notes in the left pocket of his shirt. The complainant (PW4) was specifically asked to hand over the powder treated GC notes amounting to Rs 3000/- to the accused only when demanded by the accused. PW1 was asked to remain in close proximity. On the transaction being executed PW1, was asked to signal its execution to the other members of the trap team. The events as they transpired at the said pre-trap proceedings were recorded in the handing over memo (Ex. PW1/B). The complainant (PW4) identified his signatures appended on all pages of the said handing over memo (Ex. PW1/B) at point „B. The complainant (PW4) also identified his signatures appended at point „A of the complaint. He further went on to depose that the complaint was written by him. The witness went on to depose to the effect that, after the events, as they had transpired, were recorded in the handing over memo (Ex. PW1/B), the members of the trap team subjected each other to a search to ensure that they left the CBI office for execution of the trap, only with their identity cards in their possession. Furthermore, the complainant (PW4) testified to the effect that the members of the trap team proceeded to the police station after they had washed their hands, and the investigating officer had prepared a bag consisting of glass-tumblers, empty bottles and sealing material etc. The trap team left the CBI office according to the complainant at about 6.40 p.m., and reached the police station at about 7.30 p.m. On reaching the police station the complainant (PW4) alongwith PW1 proceeded to the room of the accused. On seeing the accused, the complainant exchanged greetings with the accused. The accused invited the complainant (PW4), into the room whereupon, the complainant

(PW4) informed the accused that he had, as discussed, brought Rs 3000/- with him to which the accused replied as to what about the balance money. The complainant (PW4), evidently told accused that he would pay the balance money within six to seven days. The complainant (PW4) thereafter, inquired as to whether he would be troubled henceforth; to which, the accused replied that in so far as he was concerned there would be no impediment. The complainant (PW4) thereafter, specifically adverted to the fact that the accused accepted the money with his right hand and kept the same in the right pocket of his windcheater, and that, the treated GC notes were handed over only on the demand of the accused. The complainant (PW4) went on to depose that on the acceptance of the treated GC notes the accused, PW1 stepped out of the said room and gave the pre- arranged signal to the other members of the trap team. On receiving the signal, the other members of the trap team converged to the room where the transaction had taken place. Two members of the trap team caught the accused by his wrist even while they disclosed their identity. The accused was confronted with the fact that he had demanded and accepted bribe of Rs 3000 from the complainant. The accused, however, did not respond, though confronted. PW1, in the meanwhile, informed other members of the trap team that the accused had demanded and accepted the bribe money. The complainant (PW4), also adverted to the fact that recovery of the bribe money was made perhaps by PW5. He went on to allude to the fact that thereafter a wash of the right hand of the accused, as also that of the inner lining of the windcheater, worn by the accused were taken in two separate bottles; both solutions turned pink. The said bottles were thereafter wrapped and sealed. The complainant (PW4), appended his signatures on the labels affixed on the said bottles. The complainant (PW4) specifically adverted to the fact that the seal, which was put on the bottles, was that of CBI, and also that, the two independent witnesses had appended their signatures on the labels put on the seal. The complainant (PW4) also testified that the GC notes recovered from the accused were compared with the details recorded in Annexure „A (Ex. PW1/A). A comparison revealed that the numbers tallied. The complainant (PW4) also revealed that the comparison of the numbers of the GC notes with those noted in Annexure „A (Ex. PW1/A) was carried out by PW1 and PW5. The complainant (PW4) went on to testify that the events as they transpired during the execution of

the trap were recorded in the recovery memo (Ex. PW4/B), and that the said exhibit bore his signatures, on all pages of the said memo, at point „A. The complainant (PW4) further testified that a personal search of the accused was carried out and a memo (Ex. PW1/E) was prepared. The complainant (PW4) made a specific reference to the fact that a quarrel had broke out between the members of the trap team and the police personnel stationed at police station, Vasant Kunj. The SHO (PW7) of the police station was called to the room. Information with regard to event was also passed on to senior police personnel as well. The complainant (PW4) accepted the fact that the currency notes and jacket, which the accused was wearing on the day of the incident were also seized. 9.2 In the cross-examination, the complainant (PW4) accepted the fact that he had been carrying on his business for a period of ten years without a licence. The complainant (PW4) clarified that he did not excavate the stones in the Rangpuri hills, and that, he was in the business of selling stones. The complainant (PW4) testified that DSIDC was the head lessor and thus engaged in excavating stones in the Rangpuri Hills, which were then purchased by him and sold further to his customers; and that for this purpose, no licence was required. The complainant (PW4) also alluded to the fact that he did not have a permanent place of work, and that, his business was conducted, based on the indents received from his customers. On receipt of such indents, the complaint (PW4) would deliver the stones at the site of his customers. The complainant (PW4) adverted to the fact that while he did not maintain receipt books, he did maintain accounts and was an income tax payee since 1983. The complainant (PW4), however, accepted the fact that his deceased brother was involved in the business of excavating stones in the Rangpuri Hills. He also accepted the fact that his deceased brother was a sub- contractor of DSIDC, and that, he had obtained a licence in that regard from DSIDC, in 1979. The complainant (PW4), however, professed ignorance as to whether his brothers licence was valid between 10.10.1975 to June, 1980. He deposed that his brother had died in 1981. The complainant (PW4) alluded to the fact that Smt. Nirmala Devi, the then wife of his deceased brother, continued with the business started by his brother. The complainant (PW4) also accepted the fact that said Nirmala Devi had filed a suit for permanent injunction against DSIDC, to restrain DSIDC from dispossessing her from her place of business located within the revenue estate of

Rangpuri Hill. The complainant (PW4) also accepted the fact that he neither had a stone crusher in Delhi in 1995 nor a place of business in Delhi. The complainant (PW4) did accept the fact that as and when he purchased stones from the DSIDC, he would be given a receipt. To a specific question that he had stated in his complaint that he would supply stones to his customers after he had excavated the same from Rangpuri Hill; the complainant denied having said so in his complaint, and reiterated that he did not mine the stone. The complainant (PW4) also denied the fact that he was looking after the business of excavation of stones commenced by his deceased brother. The complainant (PW4) accepted the fact that some villagers had filed a suit for permanent injunction in the Delhi High Court against him, Nirmala Devi and his father and that in those proceedings a restraint order had been obtained qua excavation of stone from the Rangpuri Hills. The complainant (PW4) also accepted the fact that his sister-in-law was living with him as his wife. The complainant (PW4) deposed that he would not be in a position to identify the signatures of Nirmala Devi. The complainant (PW4) also displayed lack of knowledge as to whether Nirmala Devi had made complaints against the accused to his superiors with regard to unnecessary harassment and blackmailing resorted to by the accused prior to the date of trap. The complainant (PW4) further testified to the effect that even though his father resided in the same house as his, he had a separate key and maintained a separate mess. The complainant, however, denied any knowledge of the fact that the accused had summoned his father to the police station on 20.12.1994 and had interrogated him vis-a-vis his business of excavating stones without a valid license, an aspect which was entered in the daily diary bearing entry no. 20A, on 20.12.1994, at police station Vasant Kunj. The complainant (PW4) also displayed lack of knowledge with regard to whether the accused had reported the incident of illegal mining by his father and Nirmala Devi, to his superiors. The complainant specifically asserted to the effect that no report had been made by the accused as against him prior to the date of the raid. The complainant (PW4) also denied having any knowledge as to whether Nirmala Devi had filed a contempt petition against the then SDM and inspector mining, as also against sub-inspector Bharat Singh deployed at police station Vasant Kunj at the relevant time, and the fact that, the said petition was dismissed. The complainant (PW4) further denied having

knowledge of the fact that the inspector mines had filed a complaint in court of the Metropolitan Magistrate, Delhi against illegal mining carried out by Nirmala Devi. The complainant (PW4), however, accepted the fact that in 1990 a criminal case under Section 308 of the Indian Penal Code, 1860 (in short „IPC) was registered against him. He, however, refuted a suggestion that proceedings under Section 107/150 of the Code were initiated against him. In his deposition, the complainant (PW4) gave the registration number of the three trucks used by him in carrying on business and asserted that, till 1995 his trucks had not been challaned. The complainant (PW4) refuted the suggestion that he had no business of his own and that he was, as a matter of fact, carrying on only the business of his deceased brother, on behalf of Nirmala Devi. As regards the aspect of demand of bribe, the complainant (PW4) testified that the accused had met him for the first time in the last week of February or beginning of March, 1995, at the complainants house. The complainant went on to say that the second visit by the accused was also made in the morning at the complainants house at which time the accused was alone. The complainant (PW4) testified to the effect that the accused had demanded money from him; a fact which was not disclosed by him either to Nirmala Devi or his father, and nor was the said fact reported to any of the superiors of the accused. 9.3 As regards the day of the incident, the complainant (PW4) testified that the accused had visited his house alone in the early hours of the morning. On this visit the accused once again demanded money, a fact which was not disclosed by him to either Nirmala Devi or his father. The complainant (PW4) refuted the suggestion that the sum of Rs 3000, which was used in laying the trap was made available by him to the CBI personally. The complainant (PW4) asserted that the said sum was available on his person. In response to the question as to who had written out the handing over memo (Ex. PW1/4), and whether a carbon copy of the same was made; the complainant (PW4) denied having any knowledge as regards the same. The complainant (PW4), however, refuted the suggestion that no pre-trap proceedings were held in the office of the CBI or that the handing over memo (Ex. PW1/B) was drawn at a later point in time. The complainant (PW4) refuted the suggestion that he had a partner in business who resided at Vasant Vihar or, that the R.K. Chhadha, SP CBI, was a tenant in the house of his partner. The complainant (PW4) adverted to the effect that his

knowledge about the address of the CBI office emanated from newspapers or advertisements. The complainant (PW4) asserted that on the visit to the office of CBI, he had not made any entry at the reception or obtained a gate pass. The complainant (PW4) also testified to the effect that he had carried a written complaint (Ex. PW1/A) to the CBI office. The complainant denied that there was over-writing of the date (9/3) recorded beneath the signatures of SP, CBI appended on the complaint (Ex. PW4/A). The complainant (PW4) refuted the suggestion that he had written out the complaint on the say so of the SP, CBI prior to the date of incident, i.e., 09.03.1995. The complainant (PW4) also refuted the suggestion made to him that the complaint was false, and that he had got it instituted as he bore a grudge against the accused for taking action against him and the members of his family. The complainant (PW4) also adverted to the effect that he had left the CBI office at about 6.40 p.m. and reached the police station Vasant Kunt around 7.30 p.m. The complainant (PW4) also adverted broadly to the locational setting of various rooms in the Vasant Kunj police station. He specifically adverted to the fact that the accused was sitting in one of the I.Os rooms which was located opposite to the SHOs room. The complainant (PW4) also gave a general description of the room where the accused was sitting. He testified that the room where the accused was sitting had two tables in it alongwith four chairs. The complainant, however, refuted the suggestion that when he alongwith PW1 entered the room there were two or three persons sitting across the table at which the accused was sitting and that, the accused was interrogating the said persons at that point in time. The complainant (PW4) also refuted the suggestion that S.I., Raj Singh (DW7) was present in room. The complainant (PW4) adverted to the effect that the accused made no inquiries as to the identity of PW1. More specifically the complainant (PW4) denied the suggestion that he shook hands with the accused on entering the room. The complainant (PW4) asserted that he greeted the accused and sat opposite to where the accused was sitting. The suggestion that the accused had stepped outside his office was also denied by the complainant (PW4). The complainant (PW4) asserted that at that point in time, the accused was wearing a jacket. The complainant (PW4) refuted the suggestion that he had not demanded the money or that he had not handed over the money to the accused. The complainant (PW4) also refuted the

suggestion that the accused had not kept the money on it being handed over to him the same in his windcheater. The complainant (PW4) also deposed to the effect that upon the members of the raid team entering the room, where the accused was present, he was held by his wrist and, the treated GC notes were recovered by PW5 from the pocket of the accused. The complainant (PW4), however, accepted the fact that there was a scuffle between SI Raj Singh (DW7) and the officials of the CBI as, DW7 had protested against the apprehension of the accused. The complainant (PW4) testified that on SI Raj Singh (DW-7) attempted to run away, on becoming aware that persons with whom he had entered into an altercation were CBI officials; which is when he was over-powered. The complainant (PW4), however, denied knowledge as regards SI Raj Singh (DW-7) being manhandled or having sustained injuries, for which, he was evidently medically examined at Sardarjang Hospital. The complainant (PW4), however, refuted the suggestion that the accused was manhandled. To a suggestion as to whether SI Raj Singh (DW7) had been tested for alcohol and that the test, was negative - the complainant (PW4) displayed his lack of knowledge with regard to this aspect. The complainant (PW4) while accepting the fact that PW5 had dipped the right hand of the accused in the solution stated that the bottle containing right hand wash was white in colour. The complainant (PW4) though accepted the fact that the recovery memo (Ex. PW4/DA) bore his signatures.

9.4 The complaint (Ex. PW4/A), in brief, sets out the factum of the demand being made by the accused, both before the date of incident, as well as on the date of the incident. It refers to the fact that on the date of the incident, the accused visited the complainant to demand illegal gratification from him amounting to Rs 10,000/- on a monthly basis and on the complainant (PW4) expressing his inability to pay the bribe, the accused, appears to have suggested that the same be paid in three instalments beginning with a sum of Rs 3000. The complaint adverts to the fact that the accused had asked him to reach the sum of Rs 3000 to the accused in the evening, on the date of the incident, and that, the balance sum could be paid by him at a later point in time.

9.5 As against this both the independent witnesses PW1 and PW5 turned hostile, which is when, the trial court granted a permission to the public prosecutor to

cross-examine them. Importantly, even though PW1 broadly affirmed the events as were adverted to by the complainant (PW4), prior to the execution of the trap; he significantly denied the fact that the accused had demanded or accepted the bribe. It is important to note that PW1 not only affirmed his signatures on the handing over memo (Ex. PW1/B) but also the fact that treated GC notes were recovered by PW5 at the instance of R.K. Chadha (PW6) from the right pocket of the windcheater worn by the accused. PW1, further alluded to the fact that the numbers of the treated GC notes were compared by him and PW5 with exhibit PW1/A, as also, the fact that, on the right hand fingers of the accused being dipped in a solution, the same turned pink. The fact that the said pink solution was transferred into clean empty bottles whereupon, CBI seal was affixed on it, after labels had been put on the outside of the bottle on which signatures had been appended by both him as well as PW5; was also affirmed by him. The PW1, further accepted the fact that the said container was marked as RHW. Similarly, in respect of the wash pertaining to the inner lining of the right side jacket of the windcheater, PW1 testified that the same turned pink on the solution coming in contact with it. The fact that the said pink solution was once again transferred into the clean empty bottles, and thereafter, wrapped and sealed with a CBI seal and labelled as WRP; was affirmed by the witness. PW1, further went on to say that both, he as well as PW5, had appended their signatures on the cloth wrapper as well as the labels affixed to the said bottles. PW1 also testified that both he as well as PW5 had signed on the inner lining of the right side pocket of the windcheater as well as on the rough site plan (Ex. PW1/D), which was prepared at the spot. PW1, identified his signatures on Ex. PW1/D at point „A. PW1, also adverted to the fact that a personal search of the accused was conducted both in his and PW5s presence, and that exhibit PW1/E (i.e., personal search memo) bore his signatures at point „A. PW1, further alluded to the fact that the accused had also signed the personal search memo (Ex. PW1/E) in his presence at point „B. PW1, also testified to the fact that the recovery memo wherein the post-raid proceedings were recorded was prepared at the spot where the trap was executed, and that, it bore his signatures on all five pages at point „B. PW1, however, denied that a scuffle occurred during the raid proceedings. PW1 instead testified that he was informed by the complainant (PW4), that a scuffle had taken place after money

had been accepted by the accused. PW1, went on to say that the SHO (PW7) was present during the post-trap proceedings, who was informed about the untoward behaviour of his officers with the CBI personnel. This information, according to PW1, was also relayed to the superior authorities telephonically. PW1, identified both the GC notes as well as the windcheater worn by the accused on the date of the incident. PW1, also identified his signatures on the bottles containing the right hand wash (Ex. P/32), which according to him contained solution which was „mildly milky. Similarly, he identified the wash pertaining to the right hand pocket of the windcheater and that it bore his signature, which was taken, at the time, when the trap was executed. PW1, was shown the cloth wrappers with which the bottles containing the wash had been wrapped in. The witness identified his signatures on both wrappers, i.e., Ex. P/34 and P/35.

9.6 In the cross-examination by the counsel for the accused PW1 stayed the course in so far as the recovery of the money from the accused was concerned. PW1, also re-affirmed the fact that the hand wash of the accused was taken at the very spot where the trap was executed. To a question, put to PW1, as to whether he had joined as an independent witness of other such like traps executed by the CBI; the witness replied in the affirmative. PW1, however, adverted to the effect that he had joined the said traps on the specific directions of his superiors. PW1, however, refuted the suggestion that he was a stock witness of the CBI, and that, he had attempted to conceal this fact. PW1 also testified to the effect that both the recovery memo (Ex. PW4/B) and its carbon copy (Ex. PW4/DA) were prepared at one go, and the fact that, he had signed the recovery memo. He also refuted the suggestion that the recovery memo was not prepared in his presence, or that, it was signed by him at a later point in time.

9.7 On the other hand though PW5 in his examination-in-chief testified that he had joined the raid alongwith PW1, at the request of the CBI made to his manager. He, however, denied the suggestion that any pre-trap proceedings were conducted in their presence. He asserted that they were made to sign papers, and that, no pre-trap proceedings were conducted in the CBI office. While he accepted the fact that the trap team had proceeded to the Vasant Kunj police station, he testified that they had reached the police station at 9.00 p.m. As regards the demand and

acceptance of the bribe by the accused and as to what transpired at the post-trap proceedings; the testimony of PW5 was contrary to the case set up by the prosecution. PW5 also denied the fact that he had recovered the treated GC notes from the windcheater of the accused as also the fact that a wash both of the right hand as well as of the right side pocket of the windcheater worn by the accused was taken at the spot. PW5, however, accepted his signatures on the site plan (Ex. PW1/D), the personal search memo (Ex. PW1/E), recovery memo (Ex. PW4/B) and the labels affixed on the bottles in the office of the CBI. PW5, however, submitted that signatures on these documents were obtained the day after the trap was executed.

9.8 Sh. K.S. Chhabra (PW2) proved the CFSL report (Ex. PW2/A). PW2, testified that on 14.08.1995 he had received two sealed bottles which contained light pink colour solutions marked RHW and WRPW for chemical analysis. He testified that bottles were bearing the seal of VSB-SSO, CFSL-Delhi. He also deposed to the effect that the said seal belonged to one Sh. V.S. Bisaria, Senior Scientific Officer, who had been placed under suspension. PW2, deposed that a analysis of the contents of the two bottles, i.e., the samples, he found that the they tested positive for presence of phenolphthalein and sodium carbonate; a fact that he had recorded in his report (Ex. PW2/A), which bore his signatures. In the cross-examination PW2 accepted the fact that he had received the aforementioned two bottles alongwith a worksheet prepared by the assistant of Sh. V.S. Bisaria. He refuted the suggestion that either an acid was added to the contents of the said bottle or that it was common practice to do so.

9.9 Sh. U.N.B. Rao (PW3) testified that he had accorded sanction for the prosecution of the accused after he had perused the investigation report of the CBI, relevant statements of the witnesses recorded under Section 161 of the Code and other documents. PW3 also identified the accused in court. He refuted the suggestion that he had mechanically sanctioned the prosecution of the accused.

10. Sh. Rajeev Chadha (PW6), in his capacity as the TLO, testified with respect to both, the pre and post- trap proceedings. The testimony of PW6 broadly was in line with what the complainant had stated with respect to pre and post-trap

proceedings. PW6 proved the handing over memo (Ex. PW1/B) and Annexure „A (Ex. PW1/A) in which the numbers of the GC notes produced by the complainant (PW4) were recorded. PW6 also deposed with respect to the events as they transpired after he and his team had received a pre-arranged signal from PW1 as regards the execution of the trap, in the following words:

"At about 8.05 p.m. pre-appointed signal was received from the shadow witness and I alongwith the other team members including independent witnesses rushed inside the room of Satish Chander, SI, inside the P.S. The complainant and shadow witness were already present there inside the room alongwith SI Satish Chander whose identity was later on disclosed. Sh. A.G.L. Kaul and D.M. Sharma, inspector of CBI caught hold of left hand and right hand wrists of the accused, who is present in court. (rightly identified). After disclosing my identity, I challenged the accused that he had demanded and accepted Rs 3000/- from complainant Dalbir Singh on which accused became perplexed. The shadow witness also confirmed the demand and acceptance of bribe money of Rs 3000/- by the accused from Dalbir Singh. Shadow witness also confirmed that the accused Satish Chander accepted the bribe by his right hand and kept the same in the right side pocket of his windsheeter worn by him. On my direction independent witness, Varinder Singh Dagar searched the accused and took out GC notes of Rs 3000/- from the right side pocket of windsheeter. The other witness alongwith Varinder Singh Dagar compared the Nos. of GC notes with the Nos. already recorded in the annexure Ex. PW1/A."

10.1 PW6 also adverted to the effect that a wash of the right-hand fingers of the accused, as well as, the inner lining of the windcheater was taken, which turned pink in colour. PW6, also affirmed that a personal search of the accused was conducted. PW6 identified his signatures on the personal search memo (Ex. PW1/E) at point „D, on the recovery memo (Ex. PW4/B) on all pages at point „E. PW6, specifically adverted to the effect that the signatures of the accused were obtained at point „B as well as those of independent witnesses (i.e., PW1 an PW5) and other members of the trap team. PW6, also identified his signatures at point „B on the site plan (Ex. PW1/D), which he stated was prepared on his directions by one Sh. A.K. Kapur.

10.2 In the cross-examination the witness (PW-6) remained true to his testimony made in examination-in-chief. More specifically, to a suggestion that the date on the complaint (Ex. PW4/A) had been over-written, PW6 responded by stating that he did not think so, and that in all probability the ink from the pen used may have over-flown.

10.3 With respect to scoring out of information contained in the space provided in the FIR for filling up time of occurrence of the incident, a suggestion was made to PW6, to which the witness responded as follows: "In CBI, FIR is recorded/ typed by head clerk on loose sheets of printed proformas. I had seen the formal FIR. I observed some cutting over some words against columns date, and time of occurrence in the FIR."

10.4 As regards the suggestion with regard to the absence of signatures in the original recovery memo and the carbon copy supplied to the accused, PW6 testified as follows:

"During raid proceedings I had prepared recovery memo and other memos in the case by carbon process. I had prepared 3 copies of each memo. Recovery memo was written by Sh. Raj Singh, SI on my dictation. I have seen carbon copy Ex. WP4/DA. Ex. PW4/DA is the incomplete carbon copy of the recovery memo. It may be that Ex. PW4/DA was supplied to the accused during his custody. Recovery memo Ex. PW4/B bears my signatures on its all 5 sheets. Carbon copy Ex. PW4/DA does not bear my signature on any of its sheets. Insp. A.G.L. Kaul was the member of the raid party. He had apprehended the accused alongwith Insp D.M. Sharma. Recovery memo Ex. PW4/B bears signatures of Insp. A.G. Kaul at point B on all sheets. It is wrong to suggest that recovery memo does not bear the signatures of Insp. A.G.L. Kaul. I have seen carbon copy, it is badly faded one so I cannot say if it does bear signature of V.S. Daggar on its 1st and 2nd page. It is correct that signatures in the carbon copy of recovery memo of Insp. R.S. Tokas are with original ink. I cannot say if there are signatures of witness Sharda nand on 1st and 4th page of recovery memo (carbon copy) are with original ink. During the period the investigation remained with me, I did not record statement of SI Raj Singh. I do not recollect if V.S. Daggar had offered his search to the

accused before taking his search. Insp. Lehmer took the handwash and windsheeter pocket wash on the spot. I had not recorded statement of Insp. Lehmer in this regard. Some members from the subordinate staff did sealing work but I do not recollect his name. he had not signed the recovery memo. It is wrong to suggest that the post raid proceedings were held at the spot and that recovery memo was fabricated subsequently."

10.5 PW6 also testified that he had sent the bottles containing the hand wash and right pocket wash of the windcheater worn by the accused to CFSL on 16.03.1995. The suggestion made to the witness that he had in fact deposited the bottle with CFSL on 14.08.1995, was refuted by him.

10.6 Insp. Surinder Kumar Sharma (PW7), who was the SHO of the Vasant Kunj police station, testified as follows: He deposed that on 09.03.1995 at about 8.00 p.m. he had heard a noise outside his office. On stepping outside his office he saw that some men had apprehended the accused. On making inquiries he was informed by PW6 that the accused had demanded and accepted bribe of Rs 3000 from the complainant (PW4). PW7 testified that PW6 had directed him to remain present during the conduct of post-trap processes. PW7 testified that hand wash of the right pocket wash of the windcheater worn by the accused was taken in his presence. He further deposed that the solution turned pink in colour, and that thereafter, the bottles were sealed. PW7 also adverted to the effect that one of the persons present recovered the money, and that the recovery memo (Ex. PW4/B) was prepared in his presence, and it, bore his signatures at point „D on all five pages. PW7 also testified that the CBI personnel had taken into possession an attested copy of DD entry no. 14-A dated 09.03.1995 (Ex. PW7/B) which bore his signatures at point „A. PW7 submitted that his subordinate divisional officers including the accused had been reporting to him about the illegal excavation being carried out by the complainant (PW4) and his family in the Rangpuri Hills. PW7 further adverted to the effect that while he did not recollect as to whether the accused and SI Raj Singh (DW7) shared a room, he did find that there was a scuffle between DW7 and some officials of the CBI, when he came out of his office on hearing noises. PW7 testified that DW7 had received injuries in the scuffle and that he was taken to Safdarjung Hospital for medical treatment. PW7 went on to

say that DW7 did not protest against the apprehension of the accused in his presence. He, however, denied that he recorded any statement of DW7 with respect to the incident whereby DW7 had sustained injuries. He also denied that he had not ordered registration of any case on account of injuries sustained by DW7. PW7 also testified that he entered the scene after the recovery had been made and that the accused was brought to his room for completion of further proceedings. Importantly, PW7 testified that the hand wash and pocket wash were taken in his presence and no powder was mixed when the washes were taken.

10.7 Constable Sunil Kumar (DW1), who at the relevant time was posted as duty constable in Safdarjung hospital proved the medico legal examination register of march, 1995. DW1 testified that as per entry no. 26944, DW7 was brought to the hospital by one SI J.B. Singh, ACB, CBI and, SI Bharat Singh posted at police station Vasant Kunj. According to the witness, DW7 was examined by the doctor at about 9.45 p.m. In the cross-examination the witness stated that he did not know under what circumstances DW7 had sustained injuries.

10.8 Constable Deep Chand (DW2) proved the daily diary register of December, 1994, which contained the entry No. 20(A) (Ex. DW2/A) dated 20.12.1994. DW2 also brought the FIR register of 1990, which contained the FIR No. 129/90 dated 08.05.1990 (Ex. DW2/B). DW2 testified that as per the said FIR a case was registered against the complainant (PW4) under Sections 308 and 34 of the IPC. DW2 also proved the FIR register of March, 1995 which, contained FIR No. 79/95 (Ex. DW2/C). The witness testified that the said case was registered under Section 379 of IPC, and that the accused alongwith another constable by the name of Jaiveer, were assigned the investigation of the case.

10.9 Bhaskar Tiwari (DW3) proved the fact that in a case registered as RC No. 109(A)/95-DLI CBI vs Mahesh Mehto, PW1 was cited as a prosecution witness.

11. Sh. Ramesh Tiwari (DW4), testified that in July, 1988 he was posted as Addl. Distt. Magistrate & Collector, Mines and Quarries, Govt. of Delhi and that, he had issued a notice dated 04.07.1988 (Ex. DW4/A) to Smt. Nirmala Devi.

11.1 Sh. H.K. Maan (DW5) proved the notice (Ex. DW5/A) dated 08.12.1994 issued by the collector of mines.

11.2 Sh. V.P. Soni (DW6), Mining Engineer of DSIDC, testified that DSIC had a permit for excavation of stones from Rangpuri Hills till April, 1985. According to DW6 this permit was surrendered. He went on to say that thereafter, no fresh permit was granted to DSIDC. The witness deposed that since, in 1995, DSIDC did not have a permit for carrying out excavation of stones from Rangpuri Hills, it did not sell stones to any private person in that period.

11.3 Sh. Raj Singh (DW7) testified that in March, 1995 he was posted in police station Vasant Kunj. He further deposed that he used to share a room with the accused in the police station, and that on the date of the incident, i.e., 09.03.1995 he was with the accused at about 7.15/7.30 p.m. DW7 further testified that the accused was also available in the room at that time along with two or three other persons, with whom the accused had been dealing with in connection with a case involving a fatal accident. DW7 further stated that at about 8.30 p.m., the accused stepped out of his room to see off those very persons with whom he had been interacting with him in the aforementioned case, and that it was when the accused returned from the main gate did he notice that the accused was being apprehended by some persons in plain clothes. DW7 submitted that he proceeded to the site where the fracas was taking place and that on reaching the spot he questioned the said persons, which is when, he was manhandled and beaten. DW7 further adverted to the effect that both he and the accused were made to sit in a vehicle and brought to the Sardarjung Hospital; and since the accused had sustained surficial injuries he was given medical aid but no MLC was prepared; but that in his case he was treated, and a MLC was prepared. DW7 stated that he alongwith accused was taken to the CBI office and made to sit in separate rooms, and he was released only late at night. The witness went on to say that on 09.03.1995, the accused was present with him between 7.00 p.m. to 9.00 p.m., and that during this period the accused had neither demanded nor accepted any money from any person. DW7 also deposed to the effect that neither any recovery was made from the accused nor were any documents prepared by the CBI officials in the police station. DW7 also adverted that he knew the complainant, his father, as well as, his wife, and that they had been carrying on mining illegally in the Rangpuri Hills. As per DW7 the family had made complaints against him and two other officials who had objected to their activity, including one, SI Bharat Singh.

DW7 also stated that a complaint against Bharat Singh was filed in 1994 and that a contempt petition was also filed against him, which, according to DW7, was ultimately dismissed.

11.4 Constable Jaiveer Singh (DW8) testified that on 09.03.2005 he was posted on an emergency duty between 8.00 a.m. to 8.00 p.m. alongwith the accused. He further testified that between 8.30 a.m. and 9.00 a.m. a complaint was lodged regarding theft of a car by the concerned duty officer. That case was registered vide FIR No. 79/95, and assigned to DW8 alongwith the accused. Both the accused and DW8 left the police station to investigate the case and returned only at about 1.30 p.m. The witness in this respect proved DD entry no. 8/A dated 09.03.1995 (Ex. DW8/A). DW8 also testified that on 09.03.1995 between 8.00 a.m. to 1.30 p.m. the accused was with him and during this period he had not demanded money from any person. DW8 also adverted to the illegal mining carried out in the Rangpuri Hill by the complainant, his father and Nirmala Devi.

ANALYSIS OF THE EVIDENCE

12. Before I proceed further let me briefly analyse the evidence. The complainant (PW4) in his testimony accepts the fact that he had been carrying on business of supplying stones, for which purpose, he engaged his own trucks for a period of 10 years. He also accepted the fact that he had no permanent place of business, and that he was dependent on the indents raised on him by his customers. Despite suggestions, the complainant (PW4) denied that he was in the business of excavating stones from Rangpuri Hills. It was apparent from suggestions put to the accused that during the relevant period a licence was necessary for excavating stones. PW4, however, did seem ambivalent as to whether his deceased brother, who carried on the business of excavating stones from Rangpuri Hills had a valid licence at the relevant point in time.

13. The fact that his sister-in-law, i.e., the wife of the deceased brother was living with him as his wife did come through but as to when this change in relationship took place is not decipherable from the evidence. At the highest what could be said in favour of the defence was that the complainant (PW4) was managing the deceased brothers business and, therefore, notices issued to the sister-in-law/ his

wife were affecting the complainants (PW4) interest. The father was also perhaps helping in this business. The business being conducted, if one were to assume without a licence, would in fact be, an ideal set of circumstances for a an ill intentioned person to leverage the circumstances to his advantage.

14. The question is did the accused do so. The circumstances spoken of, provides the first link in the chain. It is only if the other links tie up can the accused be held guilty.

15. The second link in the chain of circumstances, is the fact that, though the accused insisted that it was he who wanted to put a stop to the illegal mining activity of the complainant (PW4), no complaint whatsoever was lodged by him against the complainant (PW4). The nearest that the accused came to was in making a DD No. 20(A) dated 20.12.1994 (Ex. DW2/A) against the father of the accused.

16. The complainant (PW-4) in his testimony asserted that in the previous ten (10) years his trucks had not been challaned even once. Though his evidence does seem to suggest that notices were sent to Nirmala Devi, these were, if at all sent by Collector of Mines. The complainant or his familys ire should ordinarily have been directed towards the Collector of Mines. In my view the instigation, if any was not of a nature or proportion which would have propelled the complainant (PW4) to first think through an elaborate plan and then gather the necessary wherewithal to execute such a plan to entrap a uniformed personnel, such as, the accused in a false case of accepting illegal gratification. A conception of such a plan would involve inclusion and cooperation of senior officers of the CBI. The fact that the complainant (PW-4) had not known the SP CBI prior to the institution of the complaint (PW-4) became quite clear when, a suggestion made to him that the SP CBI was a tenant of his business partner, was roundly denied by him.

17. The complainants (PW 4) credibility was sought to be impugned because of his involvement in a case registered under Section 308 of the IPC; as is obvious there were no allegation of moral turpitude. The complainant (PW-4), may have been a hot tempered person but that would not necessarily have me believe that he was unreliable witness. The complainant (PW-4), in his testimony, adverts to

demand of bribe being made by the accused both before and on the date of the incident i.e., 09.3.1995. He goes on to depose that on 09.3.1995, when he expressed his inability to pay the accused a monthly bribe of Rs 10,000/- he was told to pay in three installments with a direction that the first installment of Rs 3,000/- be brought to the Police Station that very evening of 09.3.1995. In the evening when the complainant (PW-4) visited the accused at the Police Station, on the complainant (PW-4) informing the accused that he had brought Rs 3,000/- he was asked when would he pay the balance money, to which, the accused replied that he would pay the balance within six to seven days. At this point, the complainant (PW-4) handed over the money which the accused accepted with his right hand and kept the same in the right pocket of his windcheater. In the meanwhile, PW-1 stepped out and signaled to the other members of the trap team. Immediately, thereafter, other members of the trap team converged to the room where, the accused along with the complainant (PW-4) and PW-1 were present. The accused was held by his wrists and confronted with the fact that he had demanded and accepted bribe from the complainant (PW-4). PW-5 was asked to recover the treated G.C. notes; a fact which is adverted to by PW-1 in his testimony.

18. At this point a scuffle broke out. The testimony of the complainant (PW-4) and PW-7 bear this out. The SHO (PW-7) arrived at this point. He was asked by the PW-6 (i.e. the TLO) to witness the post trap proceedings. PW-7 has testified that post trap proceedings were conducted in his presence. PW-7 deposed that the right hand wash and windcheater wash were taken in his presence, and that, the solution turned pink. PW-7 also affirmed the post-trap proceedings and accepted the fact that the recovery memo (Ex.PW4/B) was prepared in his presence. PW-7 has identified his signatures on all pages of the recovery memo (Ex.PW4/B).

19. Having pieced the evidence together, I have no difficulty in coming to the conclusion that the demand of bribe and its acceptance by the accused is proved. The complainant (PW-4s) testimony can be relied upon. The complainant (PW-4) and his family members were placed in a precarious position, a situation which perhaps was of their own making which enabled the accused to press for illegal gratification. The fact that a trap was laid, is proved by the complainant (PW-4), the TLO (PW-6), and more importantly, PW-1. The fact that PW-1 turned hostile

would not completely efface his testimony. PW-1 in his deposition has stated that PW-5 recovered treated G.C. notes from the right side pocket of the windcheater worn by the accused.

20. In the course of arguments, Mr. Chandra learned counsel for the accused had argued that no credence can be given to that part of the PW-1s testimony that recovery was made from the accused by PW-5, as PW-5 himself denied having recovered the money from the accused. In my view had PW-5 been a reliable witness this would have been a circumstance which would have required a closer scrutiny but that is not so is evident from the following:-

20.1 PW-5, even while accepting that he had joined the trap team as an independent witness denied completely both the pre-trap and post trap proceedings as also the statement made to CBI under Section 161 of the Code. PW-5, however, identified his signatures in the site plan (Ex.PW1/D), recovery memo (Ex PW4/B) and the personal search memo (Ex PW1/E). Though PW-5 stated that he was made to sign some papers on the day of the trap and on the day after the trap, he significantly stated that he was not forced to affix signatures on the papers. Importantly, PW-5 did not state in his testimony that papers he signed were blank. A perusal of his testimony leaves no doubt in my mind that witness has been won over and is completely untrustworthy. Therefore, no credence can be given to his testimony that he did not recover the treated G.C. notes from the pocket of the accused.

21. PW-6s (i.e. the TLO) testimony to the effect that after the accused had been apprehended by his wrists by two officers, namely, A.G.L. Kaul and D.M. Sharma and confronted with the fact that he had demanded and accepted bribe from PW-4; and what transpired in the post trap proceedings including the fact that PW-5 at his behest searched the accused and recovered the treated G.C. notes amounting to Rs 3,000/- is completely credible. I have no reason to believe and none has been brought to my notice that the PW-6 (TLO) would falsely implicate a fellow police officer without a basis.

22. The argument of the defence based on the discrepancy pointed out between the original recovery memo (Ex. 4/B) and its carbon copy (Ex. PW4/DA), in so far

as the number of persons, who have signed the two documents and the fact that some of the signatures on the carbon copy are in original, would not vitiate the result of the investigation as in my view this is a mere irregularity when looked in the background circumstances arising in this case. The fact that recovery has been proved by ocular evidence of PW1, the complainant (PW4) and PW6 would in my view be sufficient to establish that the treated GC notes were recovered from the person of the accused. As a matter of fact it is not uncommon for a court to accept even an uncorroborated testimony of the TLO (in the instant case it is PW6) if it is otherwise found to be credible. As stated above, I find the testimony of PW6 both reliable and trustworthy. Therefore, the attempt of the defence to create a doubt vis-à-vis the CFSL report (Ex. PW2/A) would be of no avail. While the procedure of treating the GC notes with phenolphthalein powder is a methodology usually adopted in executing such like traps to provide corroborative evidence, it cannot be said that the execution of the trap cannot be proved otherwise. In this case both the execution of the trap and the recovery has been proved by PW1, the complainant (PW4) and the TLO (PW6). The Supreme Court in the case of State of U.P. vs Zakaulah 1998 SCC (Cr.) 45 has repelled a somewhat similar submission made on behalf of the defence that, since the hand wash had not been sent to the CFSL, the prosecutions case of recovery ought come under a cloud.

23. At this juncture, I may only point out that in so far as the TLO (PW6) is concerned, he in his testimony has clarified two vital aspects regarding the recovery memo (Ex. PW4/B) as well as the CFSL report (Ex. PW2/A). In so far as the recovery memo was concerned the TLO (PW6), stated that he had prepared the recovery memo (Ex. PW4/B), and other memos, pertaining to the case by employing a carbon process. He further testified to the effect that he had prepared three copies of each memo and that the recovery memo was prepared by Raj Singh, SI (this not the same Raj Singh as DW7) on his dictation. The Witness, PW6 went on to state that the carbon copy (Ex. PW4/DA) is an incomplete copy of the recovery memo which may have been supplied to the accused during his custody. A close reading of this part of the testimony seems to indicate that even though PW6 had prepared three copies of each memo what appears to have been produced by the defence as exhibit PW4/DA is an incomplete copy. PW6, in his testimony does not state that this is the same carbon copy which had been

prepared by him. The other point to be noticed is that even the carbon copy of the recovery memo (Ex. PW4/DA), on which reliance is placed by the defence to demonstrate fabrication, there is no allegation that the contents of the recovery memo (Ex. PW4/DA) differ from those which form part of the original recovery memo (Ex. PW4/B). Not only the signatures of the accused, but also those of the SHO (PW7), amongst others, are appended on the original recovery memo (Ex. PW4/B). Therefore (as indicated hereinabove) since there is no denying the fact (as is evident from the testimony of PW4 as also PW7 and PW6) that there was protestation by DW7, when the accused was apprehended by the CBI personnel for having demanded and accepted the bribe from the complainant (PW4), it is quite possible that, in the melee, the said discrepancy got crept in, based on which, a doubt is sought to be created by the defence.

24. The other aspect of PW6s testimony is that he clearly affirmed the fact that the bottles containing the right hand wash and the windcheater worn by the accused were sent to CFSL on 16.03.1995 and not on 14.08.1995 as was sought to be suggested to him. Based on the fact that, when the bottles were sent for examination on 14.08.1995 they bore seal of V.S. Bisaria; the defence had sought to contend that the contents of the bottles were contaminated, since as per prosecutions own case the bottles when sealed bore the CBI seal. On reading of the PW2s testimony it is apparent that the bottles had been sent to V.S. Bisaria Senior Scientific Officer at Delhi, who for some reason had been placed under suspension. The contents of these bottles had been analysed, as is the practice by the assistant of the senior scientific officer, based on which, a report is prepared. It appears that before V.S. Bisaria could prepare the report, he had been suspended and, therefore, the bottles, which have been sealed upon preparation of a work sheet, bore the seal of V.S. Bisaria. As the report had not been prepared, the CFLS bottles had to be sent for a fresh analysis once again, which is how it reached PW2. PW2 adopted the same procedure, whereby his assistant prepared a worksheet (Ex. PW2/DA) under his supervision. Based on the work sheet, a report was prepared by PW2 wherein, he opined that the bottles sent to him tested positive for phenolphthalein and sodium carbonate. In my opinion, a careful perusal of the testimony bears the above quite clearly. In my view, there is no contamination of the contents as suggested by the defence. But even if, as

indicated by me above, it were to be assumed that the sample got contaminated, the fact that recovery of the treated GC notes from the accused has been proved with the help of ocular testimony of PW1, the complainant (PW4) and the TLO (PW6), this aspect would have no impact on the culpability of the accused.

25. The submission of the learned counsel for the defence that the testimony of the complainant (PW4) ought to be disbelieved as the accused on the date of the incident between 8.00 a.m and 1.30 p.m. was in the company of Jaiveer Singh (DW8) and thus could not have demanded the bribe as alleged is answered, on perusing closely the testimony of complainant (PW4). The complainant (PW4) in his testimony quite clearly says that the accused met him on 09.03.1995 and asked for bribe of Rs 10,000/- and when he said he did not have with him the said amount, the accused asked him to pay Rs 3000/- by the evening of 09.03.1995 at the Vasant Kunj police station. In the cross-examination no suggestion was made by the counsel for the accused as to the time when the accused visited him on 09.03.1995. The complainant as a matter of fact quite categorically stated that "...on 09.03.1995 the accused had come to his house early in the morning all alone. There was none with him when the accused had demanded the money...". Therefore, the testimony of the complainant (PW4) cannot be disbelieved on the ground that between 8.00 a.m. and 1.30 p.m. the accused was in the company of DW8. It is quite possible that the accused visited the complaint prior to his reaching the police station.

26. Mr Chandras argument with regard to over-writing on the complaint (Ex. PW4/A) is in my view completely untenable. A perusal of the complaint (Ex. PW4/A) would show that there is no apparent over-writing of the date which is noted as 9/3; the font is thick as there is an over-flow of the ink. Similarly, the argument of Mr Chandra that the personal search memo (Ex. PW1/E) had been forged as the last line on the said exhibit appears to have inserted at a later point in time, also appears to be without much substance. While the perusal of the document does show that the words "to mufti" in the last line have been added to complete the earlier part of the sentence which reads as follows: "...This personal search of the accused Sir Satish Chander was carried out while he was in uniform, which was later changed to mufti...". There is nothing to show that this was done

after the document had been drawn up. The author of the document may have upon reading the document found it necessary to add last two words to give clarity to the sentence , but there is no indication whatsoever that the entire last line of the document, as suggested by the defence, was inserted after the document had been drawn up and signed by members of the trap team. This document also bears the signatures of the accused.

27. This brings me to the discrepancy pointed out by the learned counsel for the accused in respect of the handing over memo (Ex. PW1/B) and Annexure „A (Ex. PW1/A). It was pointed out that even though one of the members of the trap team Inspector A.G.L. Kaul in his statement made under Section 161 of the Code had stated that the said document bore his signatures, a perusal of the same would show that it did not bear his signatures. The learned counsel had sought to infer from it that either Inspector A.G.L. Kaul was not part of the trap team or that a fabricated handing over memo (Ex. PW1/B) and Annexure „A (Ex. PW1/A) have been prepared and filed in court. In my view, this discrepancy may have occurred on account of the fact that statement under Section 161 of the Code of Inspector A.G.L. Kaul was recorded nearly three (3) months after the raid. It is quite possible that the witness would have been involved in other cases and may have mechanically made the statement without closely scrutinizing the documents. In my view, the argument that the documents, i.e., the handing over memo (Ex. PW1/B) and the annexure „A (Ex. PW1/A) are not genuine is completely belied by the testimony of PW1, the complainant (PW4) and the TLO (PW6). This at the highest could be an irregularity which will not, in my view, given the totality of facts and circumstances obtaining in this case, vitiate the investigation.

28. This brings me to the submission made by Mr Chandra that information pertaining to time of occurrence in the F.I.R. was deliberately scored out. A perusal of the FIR (Ex. PW6/A) shows that what was written against the query: "time of occurrence" was scored out. It is, however, not clear as to whether what was overwritten was the time, if at all. The defence in its suggestion to the TLO (PW6), on this aspect, had received the following response: "...In CBI, FIR is recorded/ typed by head clerk on loose sheets of printed proformas. I had seen the formal FIR. I observed some cutting over some words against column date and

time of occurrence in the FIR...". On perusal of the response it is quite evident that while PW6 did concede that the query dealing with the time of occurrence in the FIR had been scored out, no suggestion had been made to PW6, as to why what was written was scored out. As a matter of fact this aspect, if at all became relevant only after the defence had produced in the Court DW8, who deposed that the accused was with him between 8.00 a.m. to 1.30 p.m. and hence could not have demanded the bribe. Curiously, no suggestion whatsoever was made, as already noticed by me above, to the complainant (PW4) as to the exact time when the accused visited him on 09.03.1995, to demand a bribe. What is even more surprising is that in answer to question no. 6 and 7, put to the accused (while recording his statement under Section 313 of the Code) when he was asked that on 09.03.1995 he had met the complainant (PW4) and asked for Rs 10,000/- and since he did not have the money he had asked the complainant (PW4) to pay Rs 3000/- by the evening of 09.03.1995 at the Vasant Kunj police station - the accused in response did not advert to the fact that on 09.03.1995 he was in the company of DW8, and hence, could not have demanded a bribe. Instead the accused gave a laconic answer that, what was put to him, was "incorrect". Therefore, in my view, nothing much would turn on the absence of the time of occurrence in the FIR (Ex. PW6/A) in the facts and circumstances of the present case. As regards the submission that the original recovery memo (Ex. PW4/B) had been signed by ten persons while the carbon copy of the recovery memo (Ex. PW4/DA) bore signatures of only eight persons, and further that only four persons of the trap team had been examined is a facet which in the background of the ocular evidence on the record qua the recovery would not in the instant case vitiate the investigation. Similarly, the argument of Mr Chandra based on the reply of the TLO (PW6) to the application under Section 340 of the Code filed by the defence, that only some members of the trap team have signed the recovery memo, would not in my view help the cause of the defence.

29. At this juncture I may briefly deal with the cases cited by the defence. Even though one cannot quibble with the principle of law enunciated in the judgments cited by the learned counsel for the appellant. Each of the judgments cited turn on the facts obtaining in the said cases.

30. The first, in the line of cases cited before me, is the judgment in the case of Smt. Meena W/o. Balwant Hemke v. The State of Maharashtra. In this case, the accused, who was a revenue record keeper had been charged with accepting illegal gratification in the sum of Rs.20/- for doing, what was, otherwise an official act of sending the relevant records to the Copying Section for provision of copies of maps and revenue records, etc. applied by the complainant. A perusal of the observations made by the Supreme Court in paragraph 10 would show that the court was persuaded to acquit the accused, inter alia, for the reason that : the treated GC notes was not recovered from the accused but were found lying on a pad placed on a table; the shadow witness had not supported the case of the prosecution, and lastly, the material witnesses had not been examined, which included the second independent witness i.e., a lady constable. 30.1 In Sat Paul v. Delhi Administration briefly the facts were as follows : The accused who was posted as an Assistant Sub Inspector with the Railway Police had confronted the complainant alongwith his associates with pimping, on the railway station. The allegation against the accused was that after manhandling the complainant and his associates, he had agreed to let them off on payment of illegal gratification in the sum of Rs.100/-. Since the complainant had on his person only a part of money, the associates were asked to get the remaining sum so as to obtain release of the complainant. The court after evaluating the evidence came to the conclusion that the credibility of the witnesses which included the complainant and his associates, was suspect. On the other hand, the accused was a Police Officer, who had an unblemished record of outstanding service rendered to the department for nearly 19 years. The court also found fault with the High Court for using the statements of the witnesses recorded during police investigation to seek "assurance" of the case made out by the prosecution.

30.2. Gulam Mahmood A. Malek v. State of Gujarat is also a case in which the complainants credibility was gravely in doubt as he had been named as an accused in at least four cases. Furthermore, his testimony that a demand for bribe, in the sum of Rs.2/- was made on 07.07.1972 while, the complaint was lodged nearly 10 days later, made the court disbelieve the prosecutions story. The court observed that the conviction of accused was based solely on the evidence of the panch witness.

30.3. The aforesaid cases would show that the facts obtaining in the instant case are quite different. As a matter of fact, the complainants (PW-4)s testimony is fully corroborated as discussed above both by PW-1 as well as PW-6 as regards material particulars. Importantly, in Sat Pauls case (supra), the Supreme Court has made pertinent observations with regard to a court accepting the testimony of a prosecution witness who after leave is granted by the court is subjected to cross-examination. The court has in no certain terms observed that the testimony of such a witness is not effaced. It is for the court to consider whether as a result of the cross-examination and contradictions, if any, the testimony of the witness stands discredited or he can still be believed in regard to a part of his testimony. The relevant observations in this regard are extracted hereunder:- "51. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, 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 and contraiction, 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 recor, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as matter of prudence, discard his evidence in toto. 30.4. The aforesaid principle according tome is a complete answer to the argument made on behalf of the appellant that the testimony of PW-1 to the effect that recovery of treated GC notes had been made from the person of the appellant cannot be taken into account, as he had been cross-examined by the prosecution. Having regard PW-1s testimony, I am not persuaded to hold that he stood discredited post his cross-examination.

30.5. The judgment of the Patna High Court in Abdul Rehman and Ors. v. The State of Bihar, Crl. Appeal No.1585/1984 decided on 13.05.1991 was cited to buttress the submission that the time of occurrence had been scored out in the

FIR filed in the instant case. In my view, the said case turned on its own facts as the court found that, there was an interpolation of the dates in the FIR. This finding was backed by the evidence on record of the informant as to the time and date when he had visited the police station for lodging an FIR. In the instant case, there is no such interpolation and as to why the time of occurrence was scored out, no suggestion whatsoever in that regard had been made to the TLO (PW-6). As noticed in the earlier part of my judgment, as a matter of fact no suggestion was made to the complainant (PW-4) as to the time at which the accused had visited the complainant on the date of incident i.e., 09.03.1995.

30.6. The next case i.e., Roshan Lal Saini v. CBI again turned in favour of the accused on the appreciation of evidence by the court. The court came to the conclusion that there were marked contradictions in testimony of the complainant and one of the prosecutions witness. In this case, the shadow witness quite categorically had deposed that he did not witness the transaction of payment of illegal gratification to the accused. According to the court, there was no definite evidence of acceptance of treated GC notes by the accused.

30.7. In Chander Bhan v. State (CBI) the accused was acquitted on the ground that the conviction by the Trial Court was solely on the evidence of the complainant who the court found bore an animus against the accused. In my view, this case does not further the cause of the appellant.

30.8. The last case cited before me i.e., State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede is a case where the State had come up in appeal against the judgment of acquittal recorded in favour of the respondent/accused. In paragraph 15, the court quite categorically noticed the principle that in an appeal arising out of a judgment of acquittal, it is essential to keep in mind the well settled principle of law that in the event two views are possible, the court shall not interfere with the judgment of acquittal. Though, it added a caveat, that in such case based on the material on record, if the court were to come to conclusion that, only one view was possible, which is contrary to the one taken by the judgment in appeal, the said judgment could be interfered with. In this case, the court disbelieved the story set up by the prosecution in the context of the facts obtaining

therein in the said case, which were, that out of the two panch witnesses one, who had witnessed the demand died during the course of the trial before the Special Judge, and the second, panch witness was not a witness to the demand allegedly made by the respondent/accused. The court also disbelieved the case of the prosecution for the reason that several attempts had been made in trapping the respondent/accused. The facts obtaining in this case are, according to me, distinguishable from those obtaining in the instant case.

31. For the reasons given hereinabove, I am of the view that the appeal is without merit and hence, consequently deserves to be dismissed. It is ordered accordingly. Resultantly, the accused shall be taken into custody forthwith. The bail bond will stand cancelled and the surety discharged.

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