
(2010) 03 DEL CK 0156
In the Delhi High Court
Case No : Criminal Appeal No. 67 of 2005

Madan Lal

APPELLANT

Vs

The State N.C.T. of Delhi

RESPONDENT

Date of Decision : 22-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 20, 7

Citation : (2010) 03 DEL CK 0156

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : N.K. Sharma, for the Appellant; Jaideep Malik, APP, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—This is an appeal against the judgment dated 16th December 2004 and Order on Sentence dated 24th December 2004 whereby the appellant was convicted u/s 7 and 13(2) of Prevention of Corruption Act read with Section 13(1) (d) thereof and was sentenced to undergo R.I. for one year and to pay fine of Rs. 5,000/- on each count or to undergo R.I. for two months in default of payment of fine.

2. On 13th December 1988, the complainant Surender Pal Singh came to the office of Anti Corruption Branch and made a complaint of demand of bribe by the appellant Madan Lal. He alleged that House No. 4583, Gali Natthan Singh, Pahari Dheeraj, Delhi owned by his father Sh. Harpal Singh had been let out to a tenant Mani Ram Gupta, who vacated the same on 28th May 1988. He claimed that Mani Ram Gupta had stopped his business in March 1986. He further stated that electricity meter installed in that house had been removed and all the dues of DESU had been paid. Since they wanted a new power and light meter in that house, he went to DESU office, Motia Khan, to make enquiry in this regard. The appellant, who was Head Clerk in DESU office, met him and told him that since

lesser electricity was consumed by Mani Ram Gupta between 1982-1988, another bill on average basis will be prepared for the period since 1982, which will come to about Rs. 15,000/- and he will have to pay that amount. When the complainant said that his was a huge amount, the appellant offered to prepare a bill of about Rs. 1500/- and told the complainant that for this purpose, he will have to pay Rs. 800/- to him as bribe. The complainant conveyed acceptance of his demand to the appellant and then went to the office of Anti Corruption Branch along with the money, seeking proper action, against the appellant. The statement of the complainant was recorded in the presence of Panch Witness Jagdish Singh, LDC in Ward XVIII of Sales Tax Office. The number of eight currency notes in the denomination of Rs. 100/- produced by the complainant were noted in the Raid Report and those currency notes were treated with Phenolphthalein Powder. Demonstration was also given to the complainant and the Panch Witness by making them touch the currency notes treated with Phenolphthalein Powder, from his hand and then taking wash of his hand in Sodium Carbonate, which changed its colour and became pink. It was explained to the complainant and the Panch Witness that if anyone touches the currency notes treated with Phenolphthalein Powder or keeps them in his pocket, his hand or pocket, as the case may be, would become pink when washed with Sodium Carbonate solution. The currency notes treated with Phenolphthalein Powder were then handed over to the complainant, who kept them the left pocket of his shirt, which was empty at that time. He was asked to strike the deal and talk in such a manner that the Panch Witness was able to hear the conversation. The Panch Witness was asked to give signal by putting his hand on his head, after the bribe money was accepted. Thereafter, all the persons cleaned their hands and the glass used for giving demonstration was also cleaned. At about 1.30 PM, the Investigating Officer, along with the complainant, Panch Witness and other members of the raiding party reached DESU office, Motia Khan, Paharganj. At about 1.35 PM, the complainant informed him that the appellant was playing chess and had asked him to come after 2 PM. At about 2.10 PM, the complainant and Panch Witness again went to room No. 208, where the appellant used to be on duty. At about 2.15 PM, Panch Witness Jagdish Singh came out of room No. 208 and gave a pre-decided signal, whereupon the raiding party entered room No. 208 and challenged the appellant, asking him as to whether he had taken Rs. 800/- as bribe from the complainant Surender Pal Singh. The appellant became nervous and started apologizing for his mistake. The complainant informed the Investigating Officer that the appellant had kept the money in the right side inner pocket of his coat from his left hand. The offer of the Investigating Officer to search him was declined by the appellant. The Investigating Officer then recovered eight currency notes in the denomination of Rs. 800/- from the inner right side pocket of his coat and tallied their numbers with the numbers noted in the Raid Report and found that they tallied with each other. The currency notes were then seized. On taking wash of the left hand of the appellant in Sodium Carbonate solution, its colour turned pink. That solution was poured into two separate bottles, which were duly sealed, signed and labeled and then seized.

The appellant was then made to take off his coat and wash of the inner right pocket of the coat was then taken in Sodium Carbonate solution, after reversing the coat. The solution turned pink. That solution was also poured into two separate bottles, which were duly sealed, signed and labeled. The coat of the appellant was also seized after it had been duly sealed. The specimen impression of the seal was then taken and got signed from the witness and the seal was handed over to the Panch Witness. The complainant told the Investigating Officer that as soon as he entered the room along with the Panch Witness, the appellant told him that he had done his work and had prepared the bills in the name of Mani Ram. Two bills were delivered by the appellant to the complainant, which the complainant handed over to the Investigating Officer and were seized by him. The Panch Witness Jagdish Singh also corroborated the statement made by the complainant to the Investigating Officer.

3. The prosecution examined 15 witnesses in support of its case. One witness was examined in defence.

4. The complainant came in the witness box as PW-6 and stated that they had applied to DESU office at Motia Khan for installation of power and light meter at house No. 4582, Gali Natthan Singh, Pahari Dheeraj, which was owned by his father. He further stated that Mani Ram Gupta, a tenant in that house had vacated the house and paid all the dues of DESU. He further stated that when he went to enquire about the connection, he was told that their file was with the appellant Madan Lal, who used to sit in room No. 208 of DESU office, Motia Khan. When he met the appellant, he told him that since Mani Ram had been consuming less electricity from 1982-1988, a bill on average basis will have to be prepared and they will have to pay about Rs. 15,000/-. When he told the appellant that they cannot pay that much amount, he told him that he can prepare a bill for Rs. 1500/- but, for doing that Rs. 800/- will have to be paid as bribe. The appellant wanted payment of the bribe money by the evening of 13th December 1988. He further said that he went to the office of Anti Corruption Branch, lodged the complaint Ex.PW-6/A and gave eight currency notes in the denomination of Rs. 100/- to them. A demonstration was given to them by touching the hand of Panch Witness with the treated notes and washing it in a colourless solution prepared from another powder. The Solution turned pink. They were told that the hand of anyone, who touches those notes, will turn the solution pink if the hand was washed in the solution. The currency notes were then given back to him and were kept by him in the left side pocket of his shirt. The Panch Witness was asked to watch the transaction, overhear their talks and give signal by putting his hand over his head, after the money was accepted by the accused as bribe. He further stated that when he, along with the Panch Witness, went to room No. 208, the appellant was found playing chess outside the office room and asked him to come after sometime. When he again went to room No. 208 after sometime, along with the Panch Witness, the appellant told him that he had done his work and asked him to give the money. The appellant also gave two bills to him. According to the complainant, he then took out the

money and gave the same to the appellant, who kept the money in the inside pocket of his coat. The Panch Witness then went outside the room and gave the signal, whereupon the raiding party came inside the room. The Inspector disclosed his identity to the appellant and challenged him saying that he had accepted Rs. 800/- as bribe from the complainant. The appellant became nervous. The currency notes were then recovered by the Inspector and their numbers were tallied with the pre Raid Report and were found to be the same. The hand of the accused was washed in colourless solution, which turned pink. It was the same hand with which the appellant had accepted the money. The currency notes Ex.P- 1 to P-8 as well as the bottles, in which the solution was transferred, were seized. The pocket of the coat of the appellant was also washed and as a result, the solution turned pink. The coat of the appellant as well as the bills, which he had given to the complainant, were also seized.

5. The Panch Witness Jagdish Singh came in the witness box as PW-4 and corroborated the deposition of the complainant. He stated that on 13th December 1988, he was present in the office of Anti Corruption Branch being on duty there on that day. He further stated that the complainant Surender Pal Singh came to Anti Corruption Branch and his statement was recorded and read over to him in his presence. The complainant signed the statement and produced eight currency notes, numbers of which were noted down by the Inspector. The notes were then treated with some powder, which he was made to touch. His hand was then washed in the solution of Sodium Carbonate, which turned pink. He further stated that when he along with the complainant went to room No. 208. Nobody was available there and they were informed that the appellant had gone for lunch. After lunch hour, they again went to room No. 208, where the appellant was found sitting. On enquiry made by the complainant, the appellant told him that his work had been done. The complainant then took out money from the pocket of his shirt and handed over the same to the appellant, who accepted those notes with his left hand and kept the money in the right side inner pocket of his coat, which he was wearing at that time. The then gave pre arranged signal, whereupon the raiding party came inside and took possession of the bills lying in the drawer of the table of the appellant. In his examination in-chief, the Panch Witness stated that the appellant was then brought to the office of Anti Corruption Branch in Tiz Hazari, where the money was recovered from the pocket of his coat and wash of the left hand of the appellant as well as that of the pocket of his coat was taken in solution which turned red. However, during cross-examination by the learned Addl. PP, he stated that the tainted notes were recovered from the spot and washes were taken on the spot and not in the office of Anti Corruption Branch.

6. PW-9 Rameshwar Das is an officer of Delhi Vidyut Board, who has stated that the electricity bills Ex.P-15 and P-16 were prepared in their office He has also proved the application Ex. PW-6/H submitted by the brother of the appellant namely Bijender Pal Singh for electric connection. PW-10 Sh. Anand Sarup, who was working as Superintendent in the office of Assistant Finance Office of DESU

has proved the bills Ex.PW" 10/A and PW-10/B but, has admitted that these bills do not bear signature of Superintendent and AFO and incomplete bills cannot be given to the consumer. PW-13 Sh. K.L. Maurya was the Account Superintendent in DESU and the appellant Madan Lal was working under him. He stated that calculations on the back side of the bill Ex.P-16 are in the hand of the appellant Madan Lal. The second copy of the bill Ex.P-16, according to the witness, also bears the signature of the appellant Madan Lal.

7. PW- 15 ACP Abhey Ram is the Investigating Officer of this case, who recorded the complaint Ex.PW-6/A and laid the trap. He also corroborated the deposition of the complainant and stated that after entering room No. 208 on seeing the signal given by Panch Witness, he challenged the appellant, after disclosing his identity, searched the coat, which he was wearing and recovered currency notes Ex.P- 1 to P-8 from the inner right side pocket of his coat. According to him, he also took wash of the left hand and right side inner pocket of the coat of the appellant and the solution then turned pink. He also seized two electricity bills Ex.P-15 and P-16 from the complainant Surender Pal Singh.

8. In his statement u/s 313 of Cr.P.C., the appellant admitted that on 13th December 1988, he was on duty in room No. 208 in DESU office, Motia Khan at about 2.15 PM. He denied the complainant having met him and he having demanded bribe from him. He denied that the complainant met him in his office on 13th December 1988. He denied accepting bribe from the complainant and delivering the bills Ex.P-15 and P-16 to him. He denied the recovery of currency notes from the pocket of his coat as also the wash of his hand and the pocket of his coat. According to him, on 13th December 1988, he had hung his coat on the back of his chair while going to toilet. He came back after about 15 minutes and wore his coat. He was informed by some colleague that during his absence, some friend of his came to meet him and was enquiring about him while standing near to his seat. He further stated that after sometime 3-4 persons came inside his room, brought him outside the office and took him to the office of Anti Corruption Branch in vehicle where he was asked to take off his coat. DW- 1 Daya Ram was working as LDC in DESU office, Motia Khan. He has stated that on 13th December 1988, the appellant Madan Lal had gone to toilet after hanging his coat on the chair. In the meantime, one person came to the office and wanted to meet Madan Lal, claiming him to be his friend. That person put something in the inner pocket of the coat of Madan Lal. He claimed that he had objected to that person putting something in the pocket of the coat of Madan Lal, but, that person immediately went outside office. Madan Lal, on return from the toilet, wore his coat. In the meantime, 3-4 persons came inside, took Madan Lal with them and made him sit in a government vehicle parked outside the office, claiming that they were from Anti Corruption Branch.

9. Pointing out the contradictions/discrepancies noted below, it was contended by the learned Counsel for the appellant that in view of these contradictions and discrepancies, it will not be safe to rely upon the testimony of the complainant

and the Panch Witness.

(a) According to the Panch Witness Jagdish Singh, the appellant was not present in his office when they went there and some other person informed them that he had gone for lunch, whereas according to the complainant, the appellant was present there playing chess and had asked him to come after lunch.

(b) The Panch Witness does not say that when they met the appellant in his office, he asked the complainant for the money whereas according to the complainant, the appellant told him that he had done his work and asked him to give the money.

(c) According to the Panch Witness, the statement of the complainant in the office of Anti Corruption Branch was not recorded in his presence, whereas according to the complainant, the Panch Witness was present in the office of Anti Corruption Branch when he made the complaint.

(d) According to the complainant, the two bills prepared by the appellant were given to him by the appellant and he handed them over to the IO whereas according to the Panch Witness, the bills were seized by the IO from the table of the appellant.

10. It was also contended by the learned Counsel for the appellant that since the bills prepared by the appellant were not signed by his superior officers, the amount of bills could not have been deposited in the office of DESU without signatures of those officers, and hence it was not likely that the appellant would have given those bills to the complainant.

11. I find that in the cross-examination of PW-4, Jagdish Singh, a specific suggestion was given to him that the appellant was playing chess inside his office when they first visited the office during lunch hour. By giving this suggestion, the appellant himself has admitted that he was present in his office during lunch hour and was playing chess there as stated by the complainant. Therefore, the contradiction in the testimony of complainant on one hand and the Panch Witness on the other hand, on this aspect becomes immaterial. Even otherwise, it is unrealistic to expect an uninterested witness to recollect with an absolute precision and accuracy, all the details of the event witnessed by him years before he is questioned in respect of those details.

12. As regards seizure of electricity bills, a perusal of the seizure memo Ex.PW-6/G, which has been signed by the complainant as a witness shows that the original bills Ex.P- 15 and Ex.P-16 were handed over by the complainant to the Investigating Officer, and were seized. Another seizure memo, Ex.PW-4/X, which bears signature of the Panch Witness Jagdish Singh shows that the carbon copies of the bills Ex.P? 15 & Ex.P-16, which were lying on the table of the appellant, were seized vide this memo. The carbon copies of the bills are Ex.PW-10/A & Ex.PW-10/B. Therefore, the complainant is right in saying that the appellant had delivered two bills to him and he had handed over those bills to the Investigating

Officer. The complainant is referring to the original bills Ex.P- 15 and Ex.P-16. The Panch Witness is also right in saying that the two bills lying on the table of the appellant were seized by the Investigating Officer. He obviously is referring to the carbon copies Ex.PW-10/A & Ex.PW-10/B, which were seized from the table of the appellant. Therefore, there seems no contradiction in the testimony of the complainant and the Panch Witness Jagdish Singh on this aspect of the case.

13. A perusal of Ex.PW-6/B, which is the endorsement on the FIR lodged by the complainant Surender Pal Singh and which bears signatures of the complainant as well as the Panch Witness Jagdish Singh shows that the statement of the complainant in the office of ACB was recorded in the presence of Panch Witness Jagdish Singh. This document being a contemporaneous record having been prepared at the time statement of the complainant was recorded in the office of ACB, there is absolutely no reason to disbelieve the version given by the complainant which also stands corroborated by the IO ACP Abhay Ram, who has specifically stated that the statement of the complainant was recorded in the presence of the Panch Witness Jagdish Singh. Even according to the Panch Witness Jagdish Singh, the statement of complainant was read over to the complainant in his presence and was signed by him after admitting the same to be correct. The deposition of the Panch Witness Jagdish Singh to the extent that the statement of the complainant was not recorded in his presence but was only read over to him can be safely attributed to imperfect recollection of an event which took place as many as 15 years before he was cross-examined in the trial court on 24th July, 2003.

14. The Courts need to appreciate that the mind of a human being is not like the memory of a computer or a tape recorder where events can be fed and stored for all times to come and later on retrieved verbatim, without any variation. Since a human being is not a machine, some variations on issues which do not form core part of the incident witnessed by him are bound to occur, particularly when the witness is examined after a considerable time. Such minor contradictions far from destroying the credibility and reliability of the witness, would rather show that he is a truthful and natural witness and that is why those variations are present in his testimony. The core part of the testimony of the complainant and Panch Witness was the acceptance of money by the appellant from the complainant and recovery of that money from the pocket of his coat. There is absolutely no contradiction in the testimony of complainant and Panch Witness on these core parts of their testimony.

15. There is no contradiction as such in the testimony of the Panch Witness Jagdish Singh on one hand and that of the complainant on the other hand, on the question as to whether the appellant had demanded money from the complainant on 13th December, 1988, or not. The Panch Witness Jagdish Singh does not say that no money was demanded in his presence, he does not refer to any such demand in his deposition during trial. The omission of the Panch Witness Jagdish Singh to refer to the demand of money cannot be said to be

material considering the considerable delay between the date of raid and the date on which the Panch Witness Jagdish Singh was examined in the court. In any case, even if it is presumed that the appellant did not specifically demand money from the complainant on 13th December, 1988 that would make no difference to the outcome of the case, once it is proved that the appellant had accepted gratification other than legal remuneration from the appellant as a motive or reward for preparing a bill on the pretext that though he was required to pay Rs. 15,000/- on account of less electricity consumed by Mani Ram, he would be made to pay only Rs. 1,500/- to Delhi Vidyut Board, if he paid Rs. 800/- to the appellant.

16. I find no merit in the contention that since the bills prepared by the appellant were not signed by the superior officers, there could have been no occasion for the appellant to deliver those bills to the complainant. As noted earlier, according to PW-13 K.L. Maurya, calculations on the back side of the bill Ex.P-15 are in the hand of the appellant Madan Lal. The second copy of the bill Ex.P-16, according to this witness, also bears the signatures of the appellant Madan Lal at point "A". Since the complainant came to the appellant, asked for the work which the appellant had promised to do for him and paid the agreed amount, the appellant could not have withheld the bills with him. While accepting money from the complainant, the appellant did not know that he was going to be trapped and he must be conscious that if he does not give bills to the complainant, he would not part with the money promised by him or would seek to take it back. That precisely must be the reason why the appellant delivered the bills Ex.P15 and Ex.P-16 to the complainant, despite the fact that they had, by that time, not been signed by his superior officers. The appellant knew it quite well that in the event of the complainant not being allowed to deposit the amount of the bills, on account of the bill not being signed by a competent person, the complainant was bound to come back to him and at that time he would get the bills signed by the competent officer. What is material is that there was an application Ex.PW-6/H submitted by Brijender Pal Singh, brother of the applicant, seeking electricity connection and the appellant actually prepared the bills Ex. P-15 and Ex. P- 16 in the name of Mani Ram, who was a tenant in the property in which connection was sought by Brijender Pal Singh. The appellant not only asked for money from the complainant on the ground that as against Rs. 15,000/ - which would otherwise be payable on account of less electricity consumed by Mani Ram, he would prepare a bill for about Rs. 1,500/- and pursuant thereto, he actually prepared bills for about Rs. 1,500/- and also accepted cash amounting to Rs. 800/ - from the complainant. Even if it is presumed that the bills Ex.P-15 and Ex.P-16 were not delivered by the appellant to the complainant and were only prepared by him and were lying on the table that would be of no consequence in case the other allegations against the appellant stand duly proved. 17. This is not in dispute that eight currency note Ex.P-1 to Ex.P-8 were seized by the Investigating Officer from the coat of the appellant. This is appellant's own case, as disclosed in the deposition of DW- 1, that these currency notes were kept by

an outsider in the pocket of his coat. Therefore, recovery of currency notes from the coat of the appellant is not disputed and the defence is that the appellant himself did not accept these notes from the complainant and they were secretly kept in his pocket by the complainant, at the time the appellant had gone to toilet, leaving his coat hanging on his chair. Once the appellant admits recovery of currency notes from his coat, it was for him to satisfy the court that these notes were kept in his pocket by the complainant. In *M. Narsinga Rao Vs. State of Andhra Pradesh*, the Deputy Superintendent of Police told the court that on the complainant approaching him, he smeared the currency notes with Phenolphthalein Powder. The case of the prosecution was that the appellant before the Supreme Court had accepted those currency notes from the complainant. During trial, neither the complainant nor the Panch Witness supported the prosecution. The Deputy Superintendent of Police who conducted the raid told the court that when the appellant was caught red handed with those currency notes, he never demurred to him that those notes were received by him. The defence taken by the appellant during trial was that the currency notes were stuffed into his pocket. The Supreme Court in these circumstance felt that the story of stuffing of currency notes into the pocket of the appellant had been concocted by him after a period of four years when he faced trial in the court. In the present case also there is no evidence that when the currency notes were taken out from the pocket of the coat of the appellant he claimed that these currency notes had been kept by some one in his pocket. DW-1 Daya Ram is a colleague of the appellant, who claims that one gentleman was seen by him putting something in inner pocket of the coat of the appellant. It is per se unbelievable that any outsider would dare to put currency notes in the pocket of the coat of an official of Delhi Vidyut Board, in his office, during office hours, in the presence of his colleagues. In the natural course of human conduct, if any outsider makes such an attempt, other officials present in the office would never allow him to do so, unless that person is previously known to them as a friend or relative of the person in whose pocket something is being kept by him. The natural reaction of the colleagues of the appellant in such circumstances would be to ask that gentleman not to touch the coat of the appellant in his absence and to wait for his return from the toilet.

18. Presuming that the appellant was not present in his office and had gone to toilet as claimed by DW- 1, there was no way the complainant could have known that the appellant would go to toilet leaving his coat hanging on his chair. Since the complainant could not have pre-planned to stuff currency notes in the pocket of his coat, it cannot be believed that when the complainant went to the office of the appellant, did not find him present on his seat and found the coat of the appellant hanging on his chair, he, there and then, planned to stuff the currency notes smeared with Phenolphthalein Powder in the pocket of his coat. This is not the way human minds function. The mandate of the Investigating Officer to the complaint was to offer the treated currency notes to the appellant and the Punch Witness Jagdish Singh was deputed to accompany him at the time of handing

over of currency notes to the appellant. Therefore, there was no reasonable possibility of the complainant having stuffed currency notes in the pocket of the coat of the appellant and certainly had that been the case the Panch Witness would not have corroborated the deposition of the complainant and would have said that the currency notes were in fact stuffed by the complainant in the pocket of the coat of the appellant.

19. It was pointed out by the learned Counsel for the appellant that during cross-examination of DW- 1, no specific suggestion was given to him that an outsider had not put something in the inner pocket of the coat of the appellant, which was hanging on his chair. I find that though no specific suggestion, as formulated by the learned Counsel for the appellant, was given to the witness, it was suggested to him that he had not seen any such incident, as stated by him. The only meaning, which can be given to this suggestion, is that no outsider had kept anything in the coat of the appellant, as stated by the witness. In any case, the case set-up by the prosecution and the evidence produced by it cannot be discarded merely because the learned APP cross-examining the witness did not give a specific suggestion to the witness controverting the narration given by him. The very case of the prosecution is that the appellant had accepted eight currency notes in the denomination of Rs. 100/- from the complainant Surender Pal Singh in the presence of Panch Witness Jagdish Singh. The complainant, as well as the Panch Witness, have specifically stated that the appellant had accepted the currency notes smeared with phenolphthalein powder from the complainant. Therefore, it cannot be said that by not giving a particular specific suggestion to DW- 1, the prosecution had admitted the statement made by him. When the prosecution is initiated, setting up a particular case and witnesses are produced by the prosecution to prove the case set-up by it, it cannot be said that omission to give a specific suggestion on the part of the prosecutor by itself would amount the admission of the defence which is contrary to the case set up by the prosecution. No such admission on the part of the prosecution can be inferred in the teeth of the specific allegations in the chargesheet and in the statements, recorded u/s 161 of Cr.P.C.

20. The learned Counsel for the appellant has referred to the decision of a Division Bench of this Court in Rakesh Kumar v. State 163 (2009) DLT 658 (DB) where this Court, referring to the decision of Supreme Court in State of U.P. v. Nahar Singh AIR 1988 SC 1328 and Rajinder Pershad (dead) by L.rs. Vs. Smt. Darshana Devi, , observed that where the witness is not cross-examined on any relevant aspect, the correctness of the statement, made by the witness, cannot be disputed. I could not find a case titled as State of U.P. v. Nahar Singh reported in AIR 1988 SC 1382. However, in State of U.P. Vs. Anil Singh, , it was contended before the Supreme Court that it was impossible for the witness to prepare an exhaustive report and lodge the same before the police by 9.15 pm when the murder itself took place between 7.00 pm to 8.00 pm on that day. The Supreme Court, noticing that PW- 1 was not specifically cross-examined on this matter, was of the view that the Court cannot presume something adverse to the witness

unless his attention was specifically drawn to. This judgment is of no help to the appellant since this is not a case of drawing an adverse inference against a witness without drawing his attention to the circumstance on account of which, an inference adverse to the witness is sought to be raised. In the case of Rajinder Prasad (supra), the postman, who was examined as PW-2, had made endorsement of refusal on the envelope given to him for delivery. The contention before the Court was that the postman was on leave on those days and, therefore, there can be no refusal and consequently, no service of notice. Rejecting the contention, the Court noted that it was not suggested to the witness that he was not on duty during the period in question and the endorsement "refused" on the envelope was incorrect. The Court was of the view that in the absence of cross-examination of the postman on this crucial aspect, his statement in examination-in-chief had rightly been relied upon. The Court went on to observe that "there is an age old rule that if you dispute the correctness of the statement of a witness, you must give him opportunity to explain his statement by drawing his attention to that part of it which is objected to as untrue, otherwise you cannot impeach his credit." In the present case, considering the suggestion given to DW- 1 that he had not witnessed the incident, as stated by him, coupled with the positive case set up by the prosecution, which stands substantiated from the deposition of PW-4 and PW-6, it cannot be said that the prosecution had not claimed his deposition to be untrue

21. The principle of law, to be followed by the Courts in this regard, is that if a party intends to dispute the testimony of a witness, it needs to put such questions to him in cross- examination as would disclose that the party, against whom his deposition is directed, does not intend to accept his evidence and allow it to remain unchallenged. If the testimony of a witness is sought to be challenged, an opportunity needs to be given to the witness to explain, by putting appropriate questions to him, the circumstances which would indicate that his deposition in the Court ought not to be believed or would suggest that he was not a reliable witness. Unless this is done, it is not permissible to use those circumstances for the purpose of assailing the testimony of the witness. The witness needs to be given an opportunity, while he is in the witness box, to give such explanation, as may be open to him, in respect of fact and circumstances sought to be used against him, and it is not just and fair to use a circumstance against a witness or for the purpose of assailing his testimony, without first drawing his attention to those circumstances and giving him an opportunity to explain them. But, in the present case, the prosecution is not seeking to discredit the testimony of DW- 1 by using a circumstance, which was not put to him, while he was in the witness box. In fact, according to the complainant, when he went to the room of the appellant after lunch, the other two clerks were not present on their seat and during cross-examination of DW- 1, a specific suggestion was given to him that he had not seen any such incident, as stated by him, meaning thereby, that he was not present at the time the incident in question took place.

22. Another important aspect in this regard is that no complaint was, at any time, made by the appellant to a senior police officer, alleging therein that the complainant Surender Pal Singh or some other outsider had secretly kept money in his pocket in his absence. Admittedly, no such written complaint was lodged by the appellant or by DW- 1 to their superior officers. Though DW- 1 claims that he had informed the Executive Engineer, the appellant has not produced the Executive Engineer in the witness box and admittedly no report to him was made in writing. More importantly, even during cross-examination of the complainant no suggestion was given to him that he had secretly put the currency notes in the pocket of the coat of the appellant in his absence. The version that an outsider had kept currency notes in the pocket of the appellant has come to surface for the first time in the deposition of DW- 1 Daya Ram who was examined about 16 years after recovery of money from the coat of the appellant. In fact, even during cross-examination of IO of this case PW- 15 ACP Abhay Ram, no suggestion was given to him that at the time of recovery of currency notes either the appellant or any of his colleagues had claimed that an outsider had kept that money in the pocket of the coat of the appellant in his absence. No suggestion was given to him that DW- 1 Daya Ram was present at the time of recovery of currency notes from the pocket of the coat of the appellant. If the defence of the appellant was that either the complainant or some other person had kept the treated currency notes in the pocket of his coat, in his absence, he ought to have at least suggested so to the complainant, Panch Witness and the IO. Bringing out a defence of this nature, for the first time, by producing a witness in defence, is nothing but an after thought. Therefore, the defence taken by the appellant does not inspire confidence and cannot be believed. Once it is found that the above referred defence taken by the appellant is high improbable and does not stand substantiated, there seems to be no escape from the conclusion that the appellant had accepted the currency notes Ex.P-1 to Ex.P-8 from the complainant Shri Surender Pal Singh in the presence of Panch Witness Shri Jagdish Singh.

23. Even otherwise there could have been absolutely no reason for the complainant to implicate the appellant in a false case of bribery taking and going to the extent of stuffing currency notes in the pocket of his coat, in his absence. The appellant does not claim any animosity or ill-will between him and the complainant. No such claim is made by him even in respect of Panch Witness Jagdish Singh, who himself was a public servant and was otherwise on duty in the office of Anti Corruption Branch on the day this raid was conducted. The courts need to appreciate that the citizens in our country are most of the times reluctant even to lodge a complaint of demand of illegal gratification from them. Most of them pay the illegal gratification either with a view to get done something to which they are otherwise not entitled under the Rules or in order to get their matter expedited or with a view not to antagonize the public servant dealing with their matter, lest he puts obstacle in their way by taking a view or recording a note unfavourable to them. When a person takes the step of going to

the Anti Corruption Branch, making a complaint, and getting a trap organized, he knows it very well that it was going to cost him a lot of inconvenience and harassment. Firstly, he has to visit the office of Anti Corruption Branch and pay the bribe money from his pocket. He has to complete a number of formalities in the office of Anti Corruption Branch and then accompany the officials Constituting the raiding party to the place of the accused. He then has to visit the office of the Anti Corruption Branch in connection with the investigation of the case and thereafter he has to attend the court on a number of occasions. While doing all this, the complainant has to necessarily remain away from the work or business in which he is engaged and thereby he sacrifices a lot of his precious time and possibly also the money which he could be earning utilizing that time. He has to withstand a grilling cross- examination at the hands of the defence counsel and also face the animosity of not only the public servant got trapped by him but also of his colleagues, who will be antagonized with him, on account of his getting a colleague of theirs trapped for accepting bribe. A person making complaint against a public servant knows it very well that in the department of the accused, no one may like to deal with him in future and in fact the colleagues of the accused are only likely to put obstacles in the work which he may have in the department. Therefore, most of the time, a person, from whom bribe is demanded, either pays up the money or he simply withdraws, instead of reporting the matter to the Anti Corruption Branch and going to the extent of being member of a raiding party. It is only in extreme cases where a citizen has a strong feeling of having been wronged or where he is so much conscious of his rights that instead of keeping silent or paying money, he wants a bribe seeker to be punished that he goes to the Anti Corruption Branch, make a complaint and then follows that complaint to its logical conclusion. Ordinarily the testimony of the complainant need to be believed unless there are strong and compelling reasons creating serious doubt on the truthfulness of his testimony.

24. In the present case, not only were the currency notes of the complainant smeared with phenolphthalein powder, their numbers were also noted in the memo prepared by Anti- Corruption Branch. Those very currency notes were recovered from the pocket of the coat of the appellant. The pocket of the coat of the appellant turned pink when its wash was taken in the solution of sodium carbonate. This is not the case even of the appellant that these currency notes, smeared with phenolphthalein powder, were not recovered by the appellant from the pocket of his coat, his defence being that some outsider, presumably the complainant, had stuffed those currency notes in the pocket of his coat in his absence. The testimony of the witnesses, including the complainant Surender Pal Singh, Panch Witness Jagdish Singh and Investigating Officer ACP Abhey Ram shows that left hand of the appellant was also washed in the solution of sodium carbonate there and then on the spot and it turned pink on being washed. The fact that the hand of the appellant turned pink on being washed in sodium carbonate solution leaves no reasonable doubt that he had touched those currency notes with his hand. Had the appellant not taken those currency notes

from the complainant, his hand, when washed in sodium carbonate solution, would not have turned pink. This is nowhere the case of the appellant that he had touched these currency notes with his hand at any time before they were seized by the appellants. According to DW-1, Daya Ram, as soon as the appellant came out from the toilet, he told him that one gentleman had come and was claiming to be his friend, whereupon the appellant started putting up his coat and in the meantime, 3-4 persons came inside, caught hold of the appellant and took him outside to sit in a Government vehicle. Nowhere does he say that after coming from the toilet, the appellant had put his hand in the pocket of his coat in order to check whether something had been kept in his pocket, in his absence or not. His version is that when the appellant was putting on his coat, he was caught by the officials of Anti-Corruption Branch and taken outside from the office. In his statement u/s 313 Cr.P.C. also, the appellant does not claim that he had put his hand in the pocket of his coat in order to check whether the visitor had kept something in his pocket or not.

25. In *Hazari Lal Vs. State (Delhi Administration)*, one of the Panch Witnesses was not examined and other one was treated as hostile. The complainant in that case also did not support the prosecution and claimed that it was one Hawaldar and not the appellant who had demanded bribe and that, in fact, the appellant had refused to receive the money when offered by him and had jerked his hand, as a result of which, notes came to be flung across the wall into the neighbouring room from where the notes were recovered by the Inspector. Repelling the contention that acceptance of money by the appellant had not been proved, it was held by the Supreme Court that it is not necessary that the passing of money should be proved by direct evidence and it may also be proved by circumstantial evidence. Since the police officer had testified that the appellant had taken out the currency notes from his pocket and flung them across the wall, the Court held that it could be presumed that he had obtained that money from the complainant.

26. It has come in the deposition of the complainant that when he met the appellant during the second visit to his room on that day, the appellant told him that he had done his work and asked him to give money. It is also come in his deposition that when he had visited the office of DESU in connection with instalment of electricity connection in their house at that time also, the appellant had demanded Rs. 800/-, as bribe, so as to prepare a bill of Rs. 1500/- as against the amount of Rs. 15000/- which will otherwise has to pay on account of less electricity consumed by Mani Ram from 1982 to 1988. Thus, there was demand of money firstly before the complainant reported the matter to Anti-Corruption Branch and then on the date the money was recovered from the pocket of the coat of the appellant. In the present case, the testimony of the complainant, corroborated by the testimony of Panch Witness, proves that the appellant had accepted these currency notes from the complainant, though such demand need not necessarily be proved by leading direct evidence and can be inferred even from the recovery of money from the accused. According to the

complainant, the appellant had promised to prepare bill for Rs. 1500/- if bribe was paid to him. The bills Ex. P- 15 and P- 16 which admittedly the appellant had prepared are for this very amount. This is yet another circumstance which corroborates the case of the prosecution that the money was demanded and accepted by the appellant pursuant to the assurance given by the appellant to the complainant while demanding bribe from him.

27. Presuming that there was no specific demand, as claimed by the complainant, once it is proved that the currency notes were recovered from the possession of the appellant, the Court is statutorily required by Section 20 of PC Act, 1988 to presume that the appellant had accepted this money as a motive or reward for doing an official act or for showing or for bearing to show, in the exercise of his official functions, favour to the complainant or his brother, who had applied for electricity connection from DESU.

28. In the case of M. Narsinga Rao (supra), the Supreme Court held that it is obligatory for the Court to draw the statutory presumption u/s 20 of Prevention of Corruption Act and, therefore, if it is proved that the accused had accepted or agreed to accept any gratification, the Court must presume that the money was accepted as a motive or reward for doing or bearing to do any official act, etc. Though the presumption u/s 20 of Prevention of Corruption Act is rebuttable, the appellant has not made any such attempt. He does not claim that the currency notes were accepted by him not as a motive or reward, but in some other connection. His claim is that the currency notes were, in fact, never accepted by him and were secretly stuffed by someone in his pocket. The decision in the case of M. Narsinga Rao (supra) was followed by the Supreme Court in B. Noha Vs. State of Kerala and Another, .

29. In Raghubir Singh Vs. State of Haryana, , the appellant, an Assistant Station Master, was found in possession of marked currency notes given to him by a passenger, whose bedding has been detained by them. It was held by the Supreme Court his being caught red-handed was a case of *res ipsa loquitur* as the very things speaks for itself in such circumstances.

30. Even if it is presumed that the actual amount, which was payable on account of less electricity consumed by Mani Ram, was only about Rs. 1500/ - and no favour was actually given by the appellant by preparing bills for that very amount, the offences, alleged to have been committed by the appellant, are still made out, once it is accepted that the appellant had represented to the complaint that he would be doing a favour to him by preparing a bill for Rs. 1500/-, whereas the actual amount payable by Mani Ram comes to about Rs. 15000/-. Accepting gratification other than legal remuneration on the pretext that he would, in exchange thereof, extend a favour to the person from whom gratification is taken to some other person, would be an act coming within the purview of Section 7 of Prevention of Corruption Act, 1988 even if no favour is actually extended by the public servant, accepting the gratification.

31. In *Madhukar Bhaskarrao Joshi Vs. State of Maharashtra*, , the Supreme Court rejected the contention that the presumption could be drawn only on the prosecution, establishing that gratification was paid or accepted by the public servant and not merely from its proving that he was found in possession of the currency notes, smeared with phenolphthalein powder. Rejecting the contention, the Court, *inter alia*, held as under:

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

32. In *Raj Rajendra Singh Seth @ R.R.S. Seth Vs. The State of Jharkhand and Another*, , PW-1 told the accused that he had brought the money as directed by him. The accused, thereupon, asked him to take cut and give the same to him. In these circumstances, the Court held that voluntary and conscious acceptance of money having been proved, there was no further burden cast on the prosecution to prove the demand or motive by a direct evidence. In taking this view, the Court relied upon its earlier judgment in the case of *Madhukar Bhaskarrao Joshi* (*supra*).

33. For the reasons given in the preceding paragraphs, I have no hesitation in holding that the appellant by demanding bribe from the complainant on the pretext that he would prepare a bill of Rs. 1500/- for the less electricity consumed by their tenant Mani Ram during the period 1982-1988, as against the amount of Rs. 15000/-, which they would otherwise have to pay, and then accepting the amount of Rs. 800/- from him committed the offence u/s 7 of Prevention of Corruption Act. The appellant is also guilty of the offence u/s 13(1) (d) of Prevention of Corruption Act since he obtained a pecuniary advantage in the form of cash amounting to Rs. 800/ - for himself by corrupt and illegal means and abusing his position as a public servant. He, therefore, is liable to be punished u/s 13(2) of the Act read with Section 13(1)(d) thereof. The conviction of the appellant is accordingly maintained. As regards sentence, the minimum sentence, prescribed u/s 13(2) of Prevention of Corruption Act being one year and only the minimum sentence having been awarded to the appellant, there is no scope for reduction of the sentence awarded to him.

34. The appeal has no merit and is hereby dismissed. The appellant is directed to surrender forthwith before the trial court to undergo the remaining part of the

sentence awarded to him. If he does not surrender forthwith, the trial court will take appropriate steps to procure his presence and commit him to imprisonment to undergo the remaining sentence. The record of the trial court be sent back forthwith alongwith a copy of this judgment.