

(2009) 05 DEL CK 0513
In the Delhi High Court
Case No : Criminal App. 461 of 2007

Ram Chander

APPELLANT

Vs

State (Govt. of NCT of Delhi)

RESPONDENT

Date of Decision : 04-05-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 342, 428
Evidence Act, 1872 — Section 101, 32, 33
Penal Code, 1860 (IPC) — Section 120B, 161, 165, 302, 34
Prevention of Corruption Act, 1947 — Section 5(1), 5(2)
Prevention of Corruption Act, 1988 — Section 11, 12, 13, 13(1), 13(2)

Citation : (2009) CriLJ 4058 : (2009) 5 RCR(Criminal) 880

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : Sunil Kumar and Atul Kumar, for the Appellant; Navin Sharma, APP, for the Respondent

Judgement

Mool Chand Garg, J.—This order shall dispose of the aforesaid criminal appeal preferred by the appellant who was sent for trial in case FIR No. 20/1999 registered at P.S. Anti Corruption Branch Delhi, under Sections 7/13 of the Prevention of Corruption Act, 1988 (hereinafter referred to as the Act) on the complaint of Sh. Balwinder Singh. In the complaint Ex. PW5/A it was alleged, that the appellant while being posted as Resident Medical Officer in the Jail Hospital of Jail No. 3 of the Central Jail, Tihar, later posted as Resident Medical Officer w.e.f. 21.06.1999, demanded bribe from the complainant who was in judicial custody and was undergoing treatment in the Jail Hospital as an Indoor patient, on the threats of discharging him from jail hospital, unless and until the said complainant paid a sum of Rs. 10,000/- to the appellant and Rs. 5,000/- to one Dr. Krishan Kumar. Consequently, on 25.06.1999, the complainant met the Jail Superintendent Sh. Yashpal Garg PW-5, to whom he is stated to have given the aforesaid complaint.

2. On receipt of the complaint, Sh. Yashpal Garg, (PW5) discussed the matter

with Addl. Director General (Prison)(hereinafter referred to as "ADG(P)" Sh. Ajay Aggarwal, who then discussed the matter with Additional Commissioner of Police (Anti Corruption) who deputed Inspector Niranjana Singh (PW10) of Anti Corruption Branch, to get in touch with ADG (P). At that stage, the complaint was also handed over by the Jail Superintendent to Inspector Niranjana Singh beside informing him that, Balwinder Singh will go to Tis Hazari Courts on 29.06.1999, which was the next date in his case.

3. On 29.6.1999 Balwinder Singh came to Tis Hazari Courts Lock Up, where Inspector Niranjana Singh met him and made enquiries about his complaint. Mrs. Pramjeet Kaur, (PW8) the wife of the complainant also met Balwinder Singh in Tis Hazari Courts Lock UP on the same day when she was asked by the complainant to arrange Rs. 15,000/- for handing over the said amount to Jail Superintendent. The Complainant is stated to have given another communication to the Jail Superintendent on 30.6.99 informing him, that his wife would be bringing the money at the gate of Central Jail No. 3 on 01.07.1999. This fact was also informed by PW-5 to PW10. Paramjit Kaur after arranging the money handed over the same to PW-5 on 1.7.1999 through a messenger sent by PW5.

4. Inspector Niranjana Singh then organized a raiding party consisting of Panch Witness P. Sudhir Babu (PW7), Inspector Y.S. Negi (PW11), SI S.N. Pandey, Ct. Ram Chander, SI Dal Chand under the supervision of ACP Satyender Nath (PW12). The raiding party reached the office of Sh.Yashpal Garg Superintendent Tihar Jail No. 3 where complainant Balwinder (Ex. PW10/A) was also called. The statement of the complainant Balwinder Singh Ex.PW10/A was then recorded in presence of Panch Witness who attested the same. The complainant, at that time also produced 30 GC notes each of Rs. 500/- denomination before the raid officer given to him by Jail Superintendent after receiving it from PW8, who recorded number of these 30 GC notes in the pre-raid report and applied phenolphthalein powder on those notes. He also asked the panch witness to touch these notes and to dip his fingers in a colourless solution due to which the colourless solution turned pink. By giving this demonstration, he told the complainant to hand over the GC notes when demanded by Dr. Ram Chander. The complainant was instructed to remain close with the panch witness and to have conversation in such a manner that the panch witness could hear the same. Panch Witness and Balwinder were directed to give a signal after the transaction was over by rubbing head with hand. All these proceedings were recorded in the post-raid report which is Ex. PW10/B.

5. It is also the case of the prosecution that PW-7, Sh. Sudhir Babu the Panch witness then went to the hospital alongwith the complainant and positioned himself in the corridor of the hospital outside the office of the appellant while complainant went to meet Dr. Ram Chander. After 2/3 minutes, he came out and gave signal indicating the completion of the transaction and then panch witness gave the predetermined signal to the raid officer. It is then the raid officer along with other members entered the room of the accused and were informed by the

complainant that Dr. Ram Chander had accepted Rs. 10,000/- from him as the bribe money. The accused was seen by the raid officer having the GC notes in his right hand who tried to keep the bribe amount in the drawer of his table and at that moment the appellant was apprehended and 20 GC notes each of Rs. 500/- recovered from the right hand of the accused. The panch witness tallied the numbers of the recovered GC notes with the numbers recorded in the pre-raid report and the numbers of these recovered GC notes were found to be the same. He prepared Post Raid report Ex.PW10/B. Those notes were then taken into possession vide memo Ex.PW7/A. The raid officer took the wash of right hand of the accused in colorless sodium carbonate solution due to which the solution turned pink which was transferred into two clean bottles and the said bottles were sealed and labeled as RHW-I and RHW-II and seized vide seizure memo Ex.PW-7/B and PW-7/C a rukka was prepared vide exhibit PW10/B and on that basis FIR Ex.PW10/E was registered. Since, the raid qua Dr. Krishan Kumar failed and the said amount of Rs. 5,000/- vide EX.PW7/C was then deposited by the complainant in the Jail. Thereafter, Inspector Y.S. Negi, the Investigating Officer was called at the spot and he was handed over one carbon copy of the raid report, sealed exhibits, seizure memos etc. The I.O. also prepared the site plan, collected the photocopy of the treatment record of the complainant and the bio-data of the accused along with his posting order. I.O. also took in possession the complaint EX.PW 5/A dated 25.6.99 as well as the intimation dated 30.6.1999. The exhibits were given to ACP Satender Nath for safe custody. The sealed bottles and the recovered money etc. were deposited in Malkhana.

6. After completing investigation Challan was filed after obtaining sanction from the competent authority for prosecuting the appellant u/s 7 and 13 of the Prevention of Corruption Act of which cognizance was taken by the Special Judge. After the charges were framed against the appellant u/s 7 and 13(2) read with Section 13(1)(d) of the P.C. Act. The prosecution led evidence and examined 12 witnesses to prove their case.

7. PW1 Sh. R. Mohan Kumar who accorded sanction for prosecuting the appellant on the basis of a report received from Anti Corruption Branch has proved Sanction order EX.PW1/A. He has deposed that he granted the sanction after perusing the documents of this case received from Anti Corruption Branch and after satisfying himself and applying his mind to these documents. PW2 Ct. Mahender Singh proved the deposit of 20 GC notes each of Rs. 500/- denomination and two sealed bottles Mark RHW-II and LHW-II vide EX.PW4/A in the malkhana. He also appeared as PW-4. PW3 is Sh. Brijesh Tiwari, Male Nurse, Central Jail Tihar who handed over the treatment file of Balwinder Singh to the Investigating Officer vide memo Ex.PW-3/A. PW5, Sh. Yashpal Garg, Superintendent Tihar Jail No. 3 has proved the complaint given to him by Balwinder Singh and the subsequent communication as Ex.PW5/A and Ex.PW5/B as well as the other circumstances leading to the laying down of the trap recovery of money and arrest of the appellant in this case. PW6 HC Surender Singh proved the deposit of the sealed bottles, containing remnants of the

washes received from FSL after chemical analysis, in the malkhana P.S. Civil Lines. PW7 Sh. P. Sudhir Babu the panch witness deposed about the recording of the report Ex.PW10/A. He also witnessed the pre-raid, raid and post-raid proceedings. PW8 Paramjit Kaur the wife of the complainant deposed about her conversation with her husband on 29.6.99 and about the arranging of money and handing it over to PW-5. PW9 Sh. M.S. Meena, Superintendent Jail No. 3 proved that he took charge on 2.7.1999 from Sh. Yashpal Garg. PW10 is the raid officer Inspector Niranjana Singh and has deposed the entire story of the prosecution. PW11 Inspector Y.S. Negi is the investigating officer of the case and PW12 is ACP Satender Nath.

8. The incriminating evidence was put to the accused for his explanation u/s 313 Cr. P.C. Accused admitted that in June/July 1999 he was posted as RMO in hospital of Jail No. 3 while Sh. Yashpal Garg was the Superintendent of Jail No. 3. He also admitted that the complainant Balwinder Singh was admitted in the Jail Hospital and used to be taken to RML and Pant Hospital as he was a heart patient and Sr. Resident Doctors Dr. Bir Singh and Dr. Krishan Kumar in the jail Hospital of Jail No. 3 were attending him.

9. According to the appellant, he was implicated falsely due to a conspiracy between Yashpal Garg, complainant and Addl. Director General (Prison) Sh. Ajay Aggarwal but has not been able to substantiate his defence. He denied the prosecution case and stated that he never accepted any money from the complainant. He also stated that nothing was recovered from his hand and that the money was lifted from the floor of the room and his table. He also stated that wash of his hands was not taken at the spot but all the proceedings were conducted in the AC Branch. He stated that sanction for his prosecution was granted without application of mind. He also stated that a board consisting of four members admitted Balwinder in the jail, and only the board was competent to discharge him from the hospital. He also stated that Balwinder remained admitted in the Jail hospital throughout his detention period. He stated that earlier he was SMO and as a part of conspiracy he was promoted to the post of RMO though he was not willing. He also stated that complainant was a man of bad character and after his release from the jail he was murdered in Gurgaon. He stated that he neither admitted the complainant in jail hospital nor ever examined him and so there was no occasion for him to demand the bribe as alleged.

10. In defence, appellant also examined two witnesses, namely, DW1 Dr. Amitabh Bhasin, RMO, Central Jail Tihar who proved the order No. F-5/RMO/CJH/99/2445-55 dated 14.06.1999 issued by Dr. S.P. Barua, the then RMO Central Jail Hospital, Tihar, as Ex. DW-1/A and DW2 Dr. S.P. Barua Dy. Medical Superintendent, DDU Hospital who proved that earlier he was posted as RMO in the hospital of Tihar Jail No. 3. He also deposed that the post of RMO is the administrative post and RMO does not attend patients. He deposed that Sr. Medical Officer, Sr. Resident Doctor and Jr. Resident Doctors are competent to

admit or discharge the patients and RMO is not to admit or discharge any patient. He proved the order Ex.DW-1/A was issued by him.

11. The learned Special Judge, however, convicted the appellant u/s 7, 13(2) read with Section 13(1)(d) of the P.C. Act and sentenced him to undergo RI for 4 years and to pay a fine of Rs. 20,000/- in default to undergo RI for 1 years u/s 7 of the P.C. Act and to RI for 5 years and to pay fine of Rs. 30,000/- in default to undergo RI for 1 ? years u/s 13(2) PC Act read with Section 13(1)(d) of the P.C. Act. Both the sentences of imprisonment had to run concurrently.

12. According to the appellant, the judgment of the Special Judge is unsustainable in law as the essential ingredients of the offence u/s 7 and 13 were not made out. It is submitted that;

(i) There is no evidence of any previous demand or any demand at the time when complainant visited the appellant. And as such circumstances alone cannot be relied upon to bring home the charge of accepting the bribe also for the following reasons:

a) The complainant is dead.

b) PW5 says that the complaint was neither written nor signed in his presence. The letter dated 30.6.09 was also not written in his presence. No one has proved the contents of complaint, Ex. PW5/A.

c) The complaint was never put to the wife Paramjit Kaur PW-8 to prove the veracity of the complaint or to prove the handwriting of the Complainant.

d) PW10 says that the complaint was given to him on the same day, i.e., 25.6.99 whereas PW5 says that he only spoke to him on phone.

e) That there are; i) No DD entry of complaint; ii) No handing over memo of complaint; iii) NO entry in the Register of Tihar Jail about the visit of PW10; and iv) ADG(P) in whose presence complaint was allegedly handed over has not been examined.

f) The complaint dated 25.6.1999 is totally vague and does not say how/when demand was made.

g) Letter dated 30.06.09 does not talk of any demand. It talks about the visit of the complainant's wife to Tis Hazari, but his wife PW8 says she went to Tihar Jail on 29.6.1999 and contradicts herself.

h) PW10 Niranjana Singh who is alleged to have talked/discussed the matter with complainant on 29.6.1999 did not make any record of the same.

i) There is material contradiction about the handing over of the case property. PW8 says that on 1.7.99 she informed PW5 to send someone, and she handed over Rs. 15,000/- to the said person outside the jail. She could not tell the details of the persons, her sister who had accompanied her was not examined. The tenants from whom she had collected money were also not examined. She

did not make any entry in the Mulakat Register. PW5 says Rs. 15,000/- handed over by the lady at the direction of the complainant to us.

ii) There is also no evidence of acceptance of bribe money inasmuch as:

a) Insp. Y.S. Negi who was a member of the raiding party and was made the I.O. has stated that complainant was instructed to remain close to Panch witness and have conversation in such a manner that Panch Witness could hear. But the complainant told panch witness to stay outside near window. Complainant stays in the accused's chamber for only 2/3 minutes then on coming out gave signal to Panch witness. Panch witness says he neither heard nor saw anything. The evidence of Raid Officer about acceptance of bribe is only hearsay.

b) PW10, the Raid officer says that he recovered money from the right hand of accused. The Panch Witness says that currency was on the table and the floor and categorically contradicts the evidence of the Raid Officer.

c) Inspector Y.S. Negi was a member of the raiding party who was also made the I.O. This is against the principles of justice and he falls in the category of interested witness who could not be relied upon. Thus, when demand and acceptance is not proved no presumption can arise. One cannot raise a presumption to prove acceptance.

(iii) Regarding statement u/s 313 Cr.P.C. the observation of the Court that it provides a missing link in the chain of circumstances on the basis of the alleged false denial by the accused in his statement u/s 313 Cr.P.C. is illegal.

(iv) It is submitted that falsity of defence cannot take the place of proof of fact, which the prosecution has to establish in order to convict the accused. A false plea may be considered as an additional circumstance, if the other circumstances proved and establishes the guilt of the accused. In this regard reliance has been placed upon a judgment delivered in the case of Tanviben Pankaj Kumar Divetia Vs. State of Gujarat, . It is stated that there is no question of any false denial. It is only when there is a proved fact that false denial may provide an additional circumstance. Here the fact regarding acceptance/recovery is not a proved fact. The accused has never proved/shown having a 'consenting mind' for the alleged bribe.

(v) It is also stated that the question/circumstances put forward to the accused were not proper. The questions have been so formulated/made complex as if to supplement the prosecution. The circumstance put forward to the accused omits, what panch witness said, 'that the currency notes were recovered from the table and the floor?'. He was not afforded any opportunity to explain the same. The petitioner has referred to Q.No. 13 and Q. No. 15/16 in this regard and submits that these questions are so mixed up that the accused is perplexed. Reliance has been made on Hari Ram Vs. State, .

(vi) It is further submitted that the accused had put forward a case of conspiracy involving the ADG(P) [ref. Q.Nos.3, 8, 31]. It is submitted that the defence was

probable because; (a) there are contradictions regarding handing over complaint on 25.6.1999, (b) there are also the contradictions regarding who was handed over money; And also because the ADG Prisons has not been examined as a witness besides that there is Categorical statement of the appellant that cash was not recovered from his right-hand which is corroborated by the statement of the Panch Witness. Two DWs examined in rebuttal says that accused was not attending on the complaint and that he had no authority to admit or discharge patients. Thus it is submitted that the trial Judge has failed to consider that the explanation offered by the accused was probable. He has relied upon judgment delivered in 1979 SC 1455, as well as the following judgments i.e.

(A) Statement u/s 313 Cr. P.C. falsely recorded.

i) Tanviben Pankaj Kumar Divetia Vs. State of Gujarat,

(B) Material contradictions in statements

i) Suraj Mal Vs. State (Delhi Administration),

(C) The trial Court failed to consider the explanation offered by the accused.

i) Man Singh Vs. Delhi Administration,

ii) Hari Ram Vs. State,

(D) Prior demand to be proved by evidence

i) Tryambak Lilaji Binnar Vs. State of Maharashtra,

(E) Demand to be proved by person from whom it is made

i) Ram Swaroop Rathore v. State of M.P. (paras 12-16)

13. The learned APP besides the written synopsis filed by him has also relied upon the following judgments in support of his submissions opposing the stand of appellant:

i) Kishan Chand Mangal v. State of Rajasthan AIR 1992 SC 1511 (paras 11, 20)

14. I have given my thoughtful consideration to the submissions made by the parties including their written submissions and have also gone through the LCR and the judgments cited by both the sides.

15. At the outset, I may observe that insofar as the plea taken by the appellant that the sanction order has not been proved in accordance with law, I find that the sanction order has been proved by the sanctioning authority himself by appearing as PW-1, who has categorically deposed that he granted the sanction after going through the papers produced before him. Once the sanctioning authority has been produced in the Court unless there is anything brought on record which may vitiate the sanction order, the sanction order has to be taken as proved. In this regard reference can also be made to a judgment delivered by the Hon'ble Supreme Court in the case of R. Sundararajan Vs. State by D.S.P.,

SPE, CBI, Chennai, , wherein it was held:

12. There is no dispute that the sanction order was passed by the competent authority.

13. Dr. A. Chelliah, learned Counsel for the appellant, however, submitted that the sanction order was vitiated as there was no material on which it could have been passed. We do not agree.

14. In this connection, it may be mentioned that we cannot look into the adequacy or inadequacy of the material before the sanctioning authority and we cannot sit as a Court of appeal over the sanction order. The order granting sanction shows that all the available materials were placed before the sanctioning authority who considered the same at great details. Only because some of the said materials could not be proved, the same by itself, in our opinion, would not vitiate the order of sanction. In fact in this case there was abundant material before the sanctioning authority, and hence we do not agree that the sanction order was in any way vitiated.

There is no merit in this appeal. Hence it is dismissed.

16. Now coming to the other issues, at the outset, I may refer to a judgment of the Madhya Pradesh High Court also relied upon by the appellant, delivered in Ram Swaroop Rathore Vs. State of M.P., , where it has been held:

12. For the purposes of proving a case under Sections 7 and 13 of the Prevention of Corruption Act the prosecution is obliged to prove that there was demand of money which was not legal or in other words that the public servant was demanding illegal gratification in respect of an official act and he in fact received or obtained the money as an illegal gratification, by corrupt or illegal means or by abusing his position as a public servant, or while holding office as a public servant only then a person can be convicted. The recovery de hors the demand would not be sufficient to convict the accused.

17. In the aforesaid case reliance was also made on a judgment of the Apex court delivered in Suraj Mal Vs. State (Delhi Administration), . In the said case while appreciating the provisions of Section 5(1)(d) of the Prevention of Corruption Act, 1947, the Apex Court observed, that in a case of bribery mere recovery of money de hors from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence regarding demand is not reliable. In the light of the aforesaid, the observation made by the Madhya Pradesh High Court in Ram Swaroop Rathore (Supra) in paragraphs 14 to 16 becomes relevant, which is reproduced hereunder:

14. Undisputedly the complaint Ex. P.14 was made by C. Bhattacharya. The said C. Bhattacharya has not been examined by the prosecution. The learned trial Court has observed that number of the summons were issued for C. Bhattacharya to secure his attendance but every time the Court was informed that his whereabouts were not known. Similarly reports about Som Shekhar were

received that he had gone to Dubai. Similarly for witness Ramesh Dhage, the Court was informed that the witness Ramesh Dhage was not traceable. The learned trial Court without appreciating the provisions of law that in absence of the examination of the original complainant - the first information report which is a former statement of the first informant does not stand proved. The person who received the report can only prove that such report was submitted before him but he would not be legally entitled to prove the contents of the documents or the correctness of the statements made in the said report. In my opinion, the Court was not justified in observing that in absence of the examination of the complainant if the facts prove that an offence was committed then the Court is competent to convict the accused for an offence under the Indian Penal Code, therefore, in a case like present accused could be convicted. The said principle may be right in some cases where others can prove commission of offence but in a case where the prosecution is required to prove the fact of demand and acceptance of the money then the demand can only be proved by the person from whom it was made. True it is that the other witnesses have said that in presence of them C. Bhattacharya stated that the accused was demanding Rs. 700/- but the statement made by C. Bhattacharya that the accused demanded the money could only be proved by C. Bhattacharya. The person who received the information either on the basis of the written report or from C. Bhattacharya cannot say that the information supplied to him was true or correct. The fact of demand can only be proved by the person from whom it was made....

15. It is trite to say that the complaint or the first information report cannot be used as substantive evidence of the truth of the facts stated therein. The statements can only be used to show that the evidence of those witnesses given in the Court was false. The said statement cannot establish that what was stated out of the Court in the said complaint or in the first information report was true. In the matter of Suresh Kumar Shrivastava Vs. State of M.P., the Court found that as the complainant Phalwan Singh and other witness Kalyan Singh turned hostile there was no evidence in support of the prosecution story that accused Suresh Kumar demanded a sum of Rs. 200/-. In the case in hand, there is no evidence to prove that the accused demanded the illegal gratification. True it is that the recovery was made from the accused but the fact still remains that the prosecution has failed to prove that any demand was made by the accused.

16. In absence of positive, cogent and clinching evidence about the demand, it would not be possible to hold that the accused made a demand and in furtherance of the demand obtained the money from the complainant.

18. The appellant has also assailed the approach of the Special Judge who has drawn a presumption u/s 20 of the P.C. Act by relying upon a judgment delivered by the Apex Court in the case of Tanviben Pankaj Kumar Divetia Vs. State of Gujarat, wherein it has been held:

44. The Court has drawn adverse inference against the accused for making false statement as recorded u/s 313 of the Code of Criminal Procedure. In view of our

findings, it cannot be held that the accused made false statements. Even if it is assumed that the accused had made false statements when examined u/s 313 of the Code of Criminal Procedure, the law is well settled that the falsity of the defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed.

However in that case the apex court also observed that,? A false plea may be considered as an additional circumstance if other circumstances proved and established point out the guilt of the accused. In this connection, reference may be made to the decision of this Court in Shankarlal Gyarasilal Dixit Vs. State of Maharashtra, .

19. Some other portion of the judgment delivered in the case of Suraj Mal (supra) is also relevant, which is reproduced hereunder; - 2. The defence of the appellant was that he was falsely implicated and nothing was recovered from him nor did he make any demand for bribe. The Special Judge on the basis of the evidence led before the Court held that the evidence was extremely shaky and unconvincing and was not sufficient to convict Ram Narain but nevertheless the trial court convicted the appellant on that very evidence. In upholding the conviction of the appellant the High Court completely overlooked the fact that the very evidence on which the conviction of the appellant was based, had been rejected with respect to the same transaction and thus if one integral part of the story given by witnesses was not believable, then the entire case failed. In other words, the position was that while P.Ws. 6, 8 and 9 were disbelieved both in regard to the factum of payment of the bribe and the recovery of the money, regarding Ram Narain, the very same witnesses were believed so far as the appellant was concerned. It is well settled that where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses. For these reasons, therefore, when the Special Judge disbelieved the evidence of P.Ws. 6, 8 and 9 in regard to the complicity of Ram Narain, it was not open to him to have convicted the appellant on the same evidence with respect to the appellant, which suffered from same infirmities for which the said evidence was disbelieved regarding the complicity of Ram Narain. If the witnesses drew no distinction in the examination-in-chief regarding acceptance of bribe by Ram Narain and by the appellant and the witnesses were to be disbelieved with respect to one, they could not be believed with respect to the other. In other words, the evidence of witnesses against Ram Narain and the appellant was inseparable and indivisible. Moreover, there is an additional circumstance which throws a serious doubt on the complicity of the appellant Suraj Mal. Although, in his statement at p. 71 of the paper-book, the complainant has clearly stated that all the three accused including the appellant had met him and demanded bribe of Rs. 2,000, the appellant having demanded Rs. 100, yet in the report which he lodged before Mr. Katoch, there is no mention of the fact that the appellant at any time demanded any bribe at all. Even the

presence of the appellant at the time when the demand was made by Devender Singh has not been mentioned, in this document. This report, undoubtedly contains reference to a demand having been made by the S.H.O. Devender Singh on behalf of the appellant, but there is no statement in this report that any demand was made by Suraj Mal directly from the complainant. If, in fact, the appellant would have demanded bribe from the complainant just on the previous evening, it is not understandable why this fact was not mentioned in the report which the complainant submitted to the D.S.P. Katoch and which is the F.I.R. Constituting the evidence. We have perused the statements of P.Ws. 6, 8 and 9 and we find that while in the examination-in-chief they have tried to implicate all the three accused persons equally without any distinction, in their cross-examination, they have tried to save Ram Narain and made out a different story so far as Ram Narain is concerned and have even gone to the extent of stating that he did not demand any money and that he refused to accept the money which was offered to him. In this state of the evidence, we feel that the High Court was not right in convicting the appellant. Mr. Lalit appearing for the State vehemently submitted that whatever be the nature of the evidence in the case, it is an established fact that money had been recovered from the bush-shirt of the appellant and that by itself is sufficient for the conviction of the accused. In our opinion, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. Moreover, the appellant in his statement u/s 342 has denied the recovery of the money and has stated that he had been falsely implicated. The High Court was wrong in holding that the appellant had admitted either the payment of money or recovery of the same as this fact is specifically denied by the appellant in his statement u/s 342 Cr. P. C. Thus mere recovery by itself cannot prove the charge of the prosecution against the appellant, in the absence of any evidence to prove payment of bribe or to show that the appellant voluntarily accepted the money. For these reasons, therefore, we are satisfied that the prosecution has not been able to prove the case against the appellant beyond reasonable doubt. We, therefore, allow the appeal, set aside the conviction and sentences passed against the appellant. The appellant will now be discharged from his bail bonds.

20. The learned Additional Public Prosecutor has also contended that the submissions made by the appellant are not tenable as the circumstantial evidence available on record, proves that the appellant did make a demand of bribe under the threats of discharge of the complainant from the jail hospital, where he was admittedly being treated an indoor patient. The circumstances also shows that PW8 had brought the money of which numbers were recorded in the pre-raid proceedings, which notes were also treated with the phenolphthalein powder and those very notes were recovered from the appellant after the raid. The hands of the appellant also turned pink when treated with the sodium carbonate solution. The statement of PW-5, Shri Yashpal Garg proves that not only the complaint was given to him alleging demand of bribe, but the same was

also endorsed by him to the other senior officers and ultimately to the Anti Corruption Branch, Inspector Shri Niranjana Singh. Insofar as the acceptance of the demand is concerned, it is contended that once the money has been recovered from the appellant, it was for the appellant to explain as to why did he receive the tainted money and how did it reach to him and even if it was scattered on the floor and on his table but no cogent explanation has been given by the appellant rather he has given false explanation which permits drawing of an adverse inference against him. It is thus contended that presumption was rightly drawn u/s 20 of the Act. In this regard, he also referred to paragraph 11 of the judgment reported in Kishan Chand Mangal Vs. State of Rajasthan, , which reads as under:

11. It was next contended that once Rajendra Dutt is not available for evidence there is no evidence as to the demand of bribe on Nov. 20, 1974, and it is not open to the Court to spell out the demand from the contents of Ext. P-12. It is undoubtedly true that Rajendra Dutt was dead before the commencement of trial. It is equally true that the F.I.R. lodged by him on Nov. 22, 1974, cannot be used as substantive evidence nor the contents of the report can be said to furnish testimony against the appellant. Such an F. I. R. would not be covered by any of the clauses of Section 32 and 33 of the Evidence Act and would not be admissible as substantive evidence. The question still remains whether there is any evidence of demand of bribe on Nov. 20, 1974, in this case. A fact may be proved either by direct testimony or by circumstantial evidence. If the appellant did not visit the Factory of Rajendra Dutt on Nov. 20, 1974, and made no overtures demanding the bribe, on what rational hypothesis can one explain the visit of Rajendra Dutt to the office of Dy. S.P., A. C. D. on Nov. 22, 1974; his producing currency notes worth Rs. 150/-; a superior officer like the Dy. S.P., A. C. D., making all arrangements for the trap and the raiding party going to the house of the accused on Nov. 22, 1974. The visit of Rajendra Dutt followed by the raiding party at the house of the accused on November 22, 1974, is admitted. Coupled with this, the fact that Keshar Mal, P. W. 2 in his evidence stated that after Rajendra Dutt entered the room in which appellant was sitting, Rajendra Dutt on entering the room asked the appellant, "Hallo, how do you do". He further stated that the appellant replied, "I am sick and suffering from cold". He deposed that thereafter the appellant asked, "Have you brought the money", whereupon complainant Rajendra Dutt replied, "Yes, I have brought the money". He further stated that thereafter Rajendra Dutt took out the amount of currency notes from his diary and give the same to the appellant who took the amount and kept it under the pillow on the cot. If there was no prior demand the subsequent events remain unexplained as also the demand as deposed to by P. W. 2 Keshar Mal. But Mr. Anthony urged that this part of the evidence of Keshar Mal cannot be accepted because he has not stated this fact in his statement recorded in the course of investigation. Simultaneously it was pointed out that the other motbir Ram Babu is totally silent in his evidence about this conversation between the appellant and the complainant. Undoubtedly, the

omission in the police statement of Keshar Mal and non-mentioning all these facts by the motbir would raise some doubt in the mind of the Court about this conversation but as pointed out earlier there are tell-tale circumstances which do indicate that there must have been a demand and, therefore, these circumstances as hereinbefore set out will render support to the statement of Keshar Mal that the demand at the time of visit of Rajendra Dutt must be pursuant to earlier demand by the appellant. Therefore, it is not proper to say that there is no evidence of the demand of bribe as on Nov. 20, 1974.

21. Thus it is apparent that merely because the complainant has not been examined, the complaint filed by the complainant cannot be ignored. Even in the case of V.P. Kumaravelu Vs. The Bar Council of India, New Delhi and others, delivered u/s 4(1) of the Prevention of Corruption Act as existed in the earlier statute and which is similar to Section 20 the present Act, the following observations have been made:

8. Section 4(1) of the Prevention of Corruption Act reads:

Where in any trial of any offence punishable u/s 161 or Section 165 of the Indian Penal Code (or of an offence referred in clause (a) or clause (b) of Section (1) of Section 5 of this Act is punishable under sub-section thereof). It is proved that an accused person has accepted or obtained or has agreed to accept or attempt to obtain for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person it shall be presumed unless the contrary is proved that he accepted or obtain, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said Section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

From a reading of the above provision it is clear that its operation, in terms, is confined to a trial of an offence punishable u/s 161 or Section 165. Penal Code or under clause (a) or (b) of Section 5(1) read with sub-section (2) of that section of the Act. If at such a trial, the prosecution proves that the accused has accepted or obtained gratification other than legal remuneration, the trial court has to presume the existence of the further fact in support of the prosecution case, viz, that the gratification was accepted or obtained by the accused as a motive or reward such as mentioned in Section 161. Penal Code. The presumption however, is not absolute. It is rebuttable the accused can prove the contrary. The quantum and the nature of proof required to displace this presumption may vary according to the circumstances of each case. Such proof may partake the shape of defence evidence led by the accused, or it may consist of circumstances appearing in the prosecution evidence itself, as a result of cross examination or otherwise. But the degree and the character of the burden of proof which section 4(1) casts on an accused person to rebut the presumption raised thereunder, cannot be equated with the degree and character of proof which u/s 101, Evidence Act rests on the prosecution. While the mere plausibility

of an explanation given by the accused in his examination u/s 342 Cr. P.C. may not be enough, the burden on him to negate the presumption may stand discharged, if the effect of the material brought on the record in its totality renders the existence of the fact presumed, improbable. In other words, the accused may rebut the presumption by showing a mere preponderance of probability in his favour, it is not necessary for him to establish his case beyond a reasonable doubt. 9. Another aspect of the matter which has to be borne in mind is that the sole purpose of the presumption u/s 4(1) is to relieve the prosecution of the burden of proving a fact which is an essential ingredient of the offences u/s 5(1)(2) of the Prevention of Corruption Act and Section 161, Penal Code. The presumption therefore can be used in furtherance of the prosecution case and not in derogation of it. If the story set up by the prosecution inherently militates against or is inconsistent with the fact presumed the presumption will be rendered sterile from its very inception. If out of judicial courtesy it cannot be rejected out of hand as still-born.

22. Section 20 of the present Act is also reproduced hereunder:

20. Presumption where public servant accepts gratification other than legal remuneration.

(1) Where, in any trial of an offence punishable u/s 7 or Section 11 or Clause (a) or Clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain from himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may, without consideration or for a consideration which he knows to be inadequate. (2) Where in any trial of an offence punishable u/s 12 or under Clause (b) of Section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or the valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate. (3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.

23. Thus the legal position which emerges regarding appreciation of evidence in a trap case can be summarized as under:

(i) To succeed in such a case, the prosecution is obliged to prove the previous demand of bribe, its acceptance and the recovery of tainted money; (ii) The

demand can be proved by the testimony of the complainant as well from the complaint made by him if proved in accordance with law; (iii) However if the Complainant is unable to appear for whatever reason such as his death, the demand can be also proved by way of circumstantial evidence; (iv) A presumption as to the demand of bribe can also be drawn if the tainted money i.e. the money tendered as bribe money is recovered from the possession of the accused, which presumption of course is rebuttable; (v) However, if the explanation given by the accused about the recovery of such money is false, it may be taken as an adverse circumstance against the accused; (vi) If the accused gives some defence that can be scrutinized by the test of preponderance of probability while the prosecution must prove its case beyond reasonable doubt; and (vii) However if the explanation given is false it may be used adversely against the accused and may strengthen the presumption u/s 20 of the Act.

24. The evidence led by the prosecution thus can be scrutinized in the light of the aforesaid principles, by also taking note of the following facts:

(a) The Complainant Balwinder Singh is no more and has not come in the witness box. (b) The complainant was a jail inmate at the relevant time and was being treated as an indoor patient for several years. (c) The appellant was earlier working as SMO in the said Jail and later was promoted as RMO. (d). PW-5 was posted as Jail Superintendent in the said Jail at the relevant time. (e) The defence put forward by the appellant has not been substantiated by him as the two defence witnesses examined by the appellant have not said anything about any enmity between the appellant and the Jail Superintendent or ADG (P). (f) Appellant admits that the bribe money was recovered from his room on the date of laying down the trap. He has failed to give any plausible explanation of the said amount having been found from his office. (g) The CFSL report proves that the hand wash of both the hands of the appellant had turned pink on being dipped in the sodium carbonate solution on the date of the raid. (h) The money recovered comprises of the same GC Notes which were given to the Complainant for being offered to the appellant as is borne out from the pre-raid and post-raid proceedings Ex.PW10/A, B and C.

25. At this juncture, I may also take note of the reply given by the appellant of three questions put to him while recording his statement u/s 313 Cr. P.C., which have also been referred by the appellant. These questions and answers are reproduced hereunder:

Q3. Yashpal Garg discussed the subject matter of the complaint of Balwinder with Addl. D.G. Prison and then Addl. D.G. Prison talked to Addl. Commissioner of Police AC Branch and consequent t this discussion Inspector Niranjana Singh met Yashpal Garg in June 1999 and Mr.Garg told him about the allegation of demand of bribe by you and Dr. Krishan Kumar. What have you to say? A. I do not know. However it was a conspiracy between Yashpal Garg, complainant and Addl. Director General Prison Ajay Aggarwal and because of this conspiracy I was

implicated falsely. Q8. On 1.7.99 at about 11:15 AM Paramjit Kaur went to Tihar Jail No. 3 met Jail Superintendent and handed over Rs. 15000/- to him which were comprising 30 GC notes each of Rs. 500/- denomination in an envelope and handed over to the official who had been sent by Superintendent Jail. What have you to say?

A. It is also incorrect. The bribe money was arranged by the Jail Authorities.

Q.31 Do you want to say anything else? A. I am innocent. I never demanded or accepted any bribe from the complainant and there was no occasion for the same. I did not admit him in the jail hospital nor examined him. He was admitted by the Board consisting of four members and the board was competent to discharge the complainant from the hospital. I was not competent to discharge him from the hospital. Since the time he was admitted in the jail he remained in the hospital throughout. I was SMO in Tihar Jail No. 3 as a part of conspiracy I was promoted to the post of RMO inspite of my unwillingness because a separate chamber is provided to RMO and SMOs are required to sit in their respective jail dispensaries. The complainant is a bad character and after his release from the jail he was murdered by his opponents and I was falsely implicated in this case. I tender the copy of the FIR, copy of my promotion letter and copy of my charge as a part of my explanation for consideration by the court which are collectively mark X. None of these answers have been substantiated.

26. The Id. Special Judge accepted the case of the prosecution, relying upon the testimony of PW-5 the Jail Superintendent, PW-7 Shri Sudhir Babu the Panch witness, PW-8 Smt. Paramjit Kaur and PW-10 Inspector Niranjan Singh the raid officer besides the report of FSL as well as by drawing an adverse influence against the appellant for the reasons as specified in para 29 and 30 of the judgment, which are reproduced hereunder:

29. The discrepancy pointed out by the defence counsel in the testimony of the raid officer and the panch witness regarding the position of the bribe amount shows that the discrepancy crept in due to the missing link because the bribe amount could find place on the table of the accused and on the floor of his room only when the accused had after handling the bribe amount by both of his hands and thrown the bribe amount on seeing the members of the raiding team in his room. The settled law is that it is not for the Courts to supply the missing links. However, the Apex Court in a Judgment reported as *Geetha v. State of Karnataka* : 2000 1 AD (S.C.) 344 has held that false denial by the accused u/s 313 Cr. P.C. assumes importance as it would supply a missing link in the chain of circumstances. In another Judgment reported as *Swapan Patra v. State of West Bengal*, (1999) 9 SCC 242 the Apex Court held that it is a well settled principle that in a case of circumstantial evidence when the accused offers an explanation and that explanation is found to be untrue then the same offers an additional link in the chain of circumstances to complete the chain. In the present case accused had denied the presence of the bribe amount in his hand. This denial by the accused is untrue in view of the FSL result Ex. PW-11/C. There is no explanation

of the accused as to how both of his hands got tainted with phenolphthalein. By relying upon the Judgments of the Apex Court referred in this para, I hold that the false denial by the accused supplies the missing link in the chain of the circumstances in this case. I, therefore, hold that it stands established beyond reasonable doubt that the accused was found in possession of the bribe amount. In my considered view this discussion also meets the contention of the Ld. Defence Counsel that recovery of bribe amount is of no consequence if demand of bribe is not proved.

30. When it stands established that accused was found in possession of the bribe amount then it was for him to explain the possession of the bribe amount. He could explain the possession of the bribe amount either through his explanation u/s 313 Cr. P.C. or by leading evidence in defence. In his statement u/s 313 Cr. P.C. accused has stated that he never demanded or accepted any bribe from the complainant. As observed in the foregoing paragraphs this explanation of the accused has been found to be untrue as the wash of his right hand and left hand clearly prove that he consciously handled the phenolphthalein treated GC notes. Accused also stated that he was falsely implicated due to conspiracy between ADG (Prison), Jail Superintendent Yashpal Garg and the complainant but this alleged conspiracy does not stand proved even by preponderance of the possibility as discussed in the foregoing paragraph numbers 14,15,16 & 17 of this judgment. In my considered view the accused has failed to explain the possession of the bribe amount through his statement u/s 313 Cr. P.C. The evidence led by the accused in his defence also does not explain the possession of the bribe amount as DW1 Dr. Amitabh Bhasin and DW2 Dr. S.P. Barua did not depose about this fact. I, therefore, hold that accused has failed to explain the possession of the bribe amount. Under these facts and circumstances proved on record and by relying upon the judgments of Apex Court reported as *State of Madhya Pradesh v. Awadh Kishore Gupta and Ors.* : 2003 10 AD (SC) 170 and *State of Andhra Pradesh v. C. Uma Maheshwara Rao and Anr.* : 2004 5 AD (SC) 176, I hold that this Court can presume u/s 20(1) P.C. Act that the accused demanded gratification of Rs. 10,000/- from complainant as a motive or reward which was a gratification other than legal remuneration for keeping the complainant as admitted patient in the hospital of Tihar Jail No. 3 and for not discharging him from the hospital in exercise of his official functions and so the offence u/s 7 of the P.C. Act stands established against the accused beyond reasonable doubt. For the foregoing discussion I further hold that accused obtained a pecuniary advantage of Rs. 10,000/- from the complainant Balwinder Singh by misusing his position as a public servant and this was a gratification other than legal remuneration as reward for keeping the complainant as admitted patient in the hospital of Tihar Jail No. 3 and for not discharging him from the hospital and he thereby committed the criminal misconduct as defined by Section 13(1)(d) P.C. Act which is punishable u/s 13(2) P.C. Act and so in my considered view the offence u/s 13(2) read with Section 13(1)(d) P.C. Act also stands established beyond reasonable doubt. In view of the foregoing findings I convict

accused Dr. Ram Chander u/s 7 & 13(2) read with Section 13(1)(d) P.C. Act.

27. It has been rightly observed by the trial court that the genesis of a trap case lies in the previous demand of bribe by the accused from the complainant which becomes the basis of laying a trap by the Investigating Agency. Then it is for the Investigating Agency to again prove the demand at the time when the trap was laid and thereafter the question of acceptance and recovery of bribe money also is required to be proved beyond reasonable doubt.

28. I would analyse the evidence which has come on record to appreciate, as to whether the statements of PW 5, 7, 8 and 10 coupled with three documents, that is, Ex.PW5/A, Ex.PW5/B and Ex.PW10/A makes out a case of previous demand or not. 27. PW-5 Yash Pal Garg, was admittedly the Jail Superintendent of Jail No. 3, where the complainant Balwinder Singh was undergoing treatment in the Jail Hospital while in judicial custody and where the appellant Ram Chander was earlier working as SMO and at the relevant time was working as RMO. This witness had interaction with Balwinder Singh, the complainant, his wife PW-8 Smt.Paramjit Kaur as well as with PW-10 Inspector Niranjn Singh, who appeared as raid officer.

29. According to the prosecution, the complaint given by the complainant was handed over by this witness to Inspector Niranjn Singh who on that basis laid a trap after recording pre-raid proceedings vide Ex.PW10/A. It was thereafter the trap was laid down and money was recovered from the appellant which is the basis of registration of FIR in this case.

30. About his interaction with the complainant, PW-5 has deposed that the complaint Ex.PW5/A was handed over by the complainant to him on 25.6.99 and he made the following endorsement on it:

Top Secret. The accused appeared before me while he was going to hospital. The matter discussed with ADG (P) personally who informed Addl. C.P. Anti Corruption for further N/G.

31. Ex.PW5/A with endorsement is reproduced hereunder:

To, The Jail Superintendent Jail No. 3 Sir, I am confined in Jail No. 3 due to some involvement in a murder case from Police Station Janagkpuri. I am heart patient for the last 8/10 years. I have taken treatment from various hospitals and still suffering from hear problem. I am admitted in Jail Hospital Jail No. 3. Dr. Ram Chander is demanding Rs. 10,000/- and Dr. Krishan Kumar who is known as K.K. is demanding Rs. 5000/- Both are regularly harassing me and are competing to bring/arrays bribe money. Not only me Doctor's are harassing and demanding bribe other persons. I am making this complaint against them and I want that both should be taken to task for demanding bribe and harassing me to discharge from the hospital. Kindly action may be taken against both the doctors. P. Sudhir Babu 1.7.99 Top Secret dated 25.6.1999 The accused appeared before me sd While he was going to hospital (Balwinder Pal Singh) The matter discussed with

ADG(P) JAIL NO. 3 Personally who informed Add. C.P. Tihar Anti Corruption for further N/a. -sd Yash Pal Garg 25.6.99

32. This endorsement also bears the signatures of PW-7 P. Sudhir Babu dated 1.7.1999, which substantiates the existence of this document at the time of raid. On the aforesaid point, PW-5 has not been cross-examined by the appellant.

33. Another communication dated 30.6.1999 was also handed over by the complainant to this witness, who again made an endorsement on the said complaint. The signatures of PW-7 P. Sudhir Babu dated 1.7.1999 are also there on this document. This document Ex.PW5/B reads as under:

To, The Jail Superintendent Jail No. 3 Sir, With reference to my complaint against Dr. Ram Chander and Dr. K. K. dated 25.6.88 it is submitted that yesterday when I want to be produce before DCP my wife contacted me at Tis Hazari lock up. I have discussed with my wife. She will bring the money which will be given at Jail Gate on 1.7.99 at about 10 to 11 AM. It is requested that my money may be received from my wife on my behalf. The money/this amount will be used for giving to Dr. Ram Chander and Krishan Kumar. It is requested that it should be ensure that I get back my money after completion of the work. Thanking you, Dated 30-6-99 -sdP. Sudhir Babu 1.7.1999 Top Secret Discussed with Adg(P). -sd Complaint will be handed over (Balwinder Pal Singh) To Anti Corruption Branch - sd Yash Pal Garg 30.6.1999.

34. Even on this aspect of the matter, there is no cross-examination of PW-5.

35. According to the appellant, PW-5 admitted in his cross-examination that the complaint Ex.PW5/A had already been written by Balwinder Singh before producing the same to him and that he was not aware as to who wrote the same for Balwinder Singh. However, in the cross-examination, no suggestion was given to this witness that the said complaint had been fabricated by PW-5. Similarly, with respect to second communication dated 30.6.1999 Ex.PW5/B I do not find that there is any cross-examination that such complaint was not given to him by the complainant.

36. PW-5 also deposed that he had a talk about the complaints given by the complainant with Inspector Niranjana Singh (PW-10) in the last week of June, 1999 when he also narrated the allegations of Balwinder Singh to him and that he also sent a message to Inspector Niranjana Singh that the complainant would be sent to Tis Hazari Courts Lock Up on 29.6.1999 where he can have a talk with Balwinder Singh. Even on this aspect there is no cross-examination of PW-5 by the appellant. He also deposed that after the receipt of the sum of Rs. 15,000/- through PW-8, Parmajit Kaur, he handed over the same to Inspector Niranjana Singh when he came inside jail along with panch witness, PW-7 at about 12.30 PM on 1.7.1999 in his office where Balwinder Singh, the complainant was also called inside the room and his statement was recorded by Inspector Niranjana Singh in the presence of panch witness and phenolphthalein powder was applied by Niranjana Singh on the GC notes produced by Balwinder Singh to him. Right

hand of the panch witness was got touched and dipped into the solution of sodium carbonate which turned pink. Necessary demonstration/instructions were also given by Inspector to the complainant as well as panch witness. The phenolphthalein treated G.C. notes were returned back to Balwinder Singh who kept the same in left as well as right side pocket of Kurta. Thereafter, the member of the raiding party i.e. Inspector Niranjana Singh, complainant and panch witness went inside the jail for doing the trap. After completion of the raid around 2.30 PM Inspector Niranjana Singh returned back the amount of Rs. 5000/-, phenolphthalein treated GC notes, which this witness deposited with the account of the prisoner maintained in the jail. The details of the returned GC notes is also prepared which is Ex.PW5/C signed by this witness at Point A.

37. The entire discussion of PW-5 with Inspector Niranjana Singh stands corroborated by the statement of PW-10 and gives credence to his deposition, including the question of receiving complaint from the complainant and handing over the same to Inspector Niranjana Singh before the raid was conducted.

38. It will also be appropriate to take note of statement of PW-10 about the execution of document Ex.PW10/A which is a statement of the complainant, Balwinder Singh recorded by PW-10 and bears his signatures as also the signatures of PW-7. In this regard, PW-10 has stated that, "The statement of Balwinder Singh Ex.PW10/A was recorded by me, the same was read over to him in the presence of panch witness. Balwinder put his signatures at point A and panch witness at point B and I signed at point C. I also recorded pre raid proceedings Ex.PW10/B after the demonstration and briefing of the complainant as well as panch witness which were also signed by complainant at point A, panch witness at point B respectively."

39. The document Ex.PW10/A is reproduced hereunder: Bayan Ajane Shri Balwinder Pal Singh S/o Shri Nalha Singh R/o D-117, Fateh Nagar, Delhi Umar 43 kareeb. Bayan kiya hain ki mein pata uprokt ka rehne wala hoon aur mukadama number 1241/98 u/s 302/120B/34 IPC P.S.Janak PUri, Delhi mein Special Staff ne giraftan kiya tha. 3.3.99 se Central Jail No. 3 Tihar mein bandh hoon. Main lagbhag 7/8 saal se dil ki bimari (heart patient) se pidit hoon. Mene apna ilaaj Natonal Heart Institute, Ganga Ram aadi hospital me jail aane se pehle apna treatment karata raha hoon. Isi bimari is wajah se mein dinank 3.3.99 jail mein daakhil hone wale din hi jail ke haspatal meian daakhil ho gaya tha. Mein 15/20 din jail ke haspatal mein daakhil raha phir discharge ho gaya. Meri tabiyat jyada kharab ho gayee. Mujhe DDU Hospital ke CCU ward mein daakhil kiya gaya. Lagbhag 10 din mein waha daakhil raha uske baad jail aa gaya. DDU hospital ne Pant Hospital ke liye refer kiya aur mera Pant Hospital se ilaaj chal raha hain aur DDU hospital se aane ke baad Regular Jail No. 3 ke hospital mein hoon. Meri 19.6.99 ko Pant Hospital mein angiography honi thi lekin nahi ho saki. Dr. Ram Chander jo RMO hain. Dr.Krishna Kumar jinhe K.K. kehte hain mujhe lagatar pareshan kar rahe hain ki tujhe haspatal se discharge kara denge warna 10000/- rupaya D.r. Ram Chander ko aur 5000/- rupaya Dr.Krishan Kumar (K.K.) ko dena

hoga. Yeh doctor log mujhse pehle bhi paise lein chuke hain. Meine inki shikayat jail superintendent ko kar di thi aur meine jail Superintendent sahib se is babat ki Dr.Ram Chander va Dr. K.K. 10000/- va 5000/- rupye apne apne liye bataur rishwat maang rahe hain. 1.7.99 aaj ka din dono ko jail ke andar aspatal mein Ram Chander ko 10000/- rupye va Dr.K.K. ko 5000/- rupye jo inhone bataur rishwat manga hain maine jail authorities ke madhyam se 10000/- rupaye jo Dr. Ram Chander ko dene hain va 5000/- rupaye jo Dr.K.K. ko dene hain ka intazaam kar liya hain mein rishwat lene va dend ke khilaf hoon. Meri Dr.Ram Chander va Dr. K.K. @ Krihna Kumar se koi dushmani nahi hain. Karyawahi ki jaye. Bayaan sun liya. -sd-sd-sdBalwinder Pal Singh P.Sudhir Babu Inspector S/o Nalha Singh LDC/Edu Deptt. ACB Jail No. 3, Tihar Jail Old Sectt.

40. On this point also, there is no cross-examination of this witness.

41. PW-8 Smt. Paramjit Kaur, wife of the complainant, who is also an important witness and supports the statement of PW-5 regarding transfer of money brought by her which was handed over by her to the representative of the Jail Superintendent, who ultimately gave the money to the Jail Superintendent for handing it over to the complainant for the purpose of giving the bribe to the complainant. She has deposed that she met her husband on 29.6.1999, who was admitted in a Jail Hospital. On being informed that Jail Doctor wanted bribe of Rs. 15,000/- otherwise they would discharge her husband from the jail hospital, she arranged Rs. 15,000/- on 1.7.99 and came in Tihar Jail with the said money and informed the Jail Superintendent to send some one to whom she can hand over the aforesaid amount. In her cross-examination by the learned APP, this witness reiterated that she was asked by her husband to bring an amount of Rs. 15,000/- for making the payment of bribe money to the appellant and Dr.Krishan Kumar and she paid that money to Yash Pal Garg, Jail Superintendent, Jail No. 3 on 1.7.1999. In her cross-examination by the appellant, she reiterated that she met her husband in jail hospital on 29.6.1999. No cross-examination has been done of this witness that she has not arranged the money or that she had not taken the money for giving it to Jail Superintendent on 1.7.1999 or that the said money was not handed over to a nominee of the Jail Superintendent or the Jail Superintendent on 1.7.1999 before the raid was conducted. The suggestion given to her that she had not gone to jail on 1.7.1999 had been denied by this witness.

42. The testimony of PW-10 has also been supported by PW-7 P.Sudhir Babu who has stated that on 1.7.99 when he was posted as LDC in Directorate of Education, Old Secretariat, Delhi he was called by Inspector Niranjan Singh in Anti Corruption Branch as a panch witness. Inspector Niranjan Singh told him that a raid was to be conducted in Central Jail No. 3, Tihar where the complainant would meet them who was in judicial custody in some other case. Inspector Niranjan Singh organized a raiding party and they left for Tihar Jail in an official vehicle. At about 12.30 PM they reached at Tihar Central Jail No. 3 and after seeking permission they entered in the jail where Balwinder Singh, who was in custody in some murder case, met them while sitting in the office of Jail No. 3.

In his presence, Balwinder Singh made a statement to Inspector Niranjana Singh stating that he was suffering from heart ailment and he remained admitted in DDU hospital and presently he was under treatment in Pant hospital. He also stated that an angiography was already fixed in Pant Hospital. He further stated that the doctor of the jail was demanding money from him. Thereafter, in his presence, Inspector Niranjana Singh made a demonstration of Rs. 10,000/- which was demanded by the doctor from Balwinder Singh. There were total twenty currency notes of Rs. 500/- each. All the currency notes were smeared with the phenolphthalein powder after noting down the distinct number of each note. Thereafter, the currency notes were touched by him with his right hand and the same were washed in a fluid and the colour of the liquid turned into pink. Inspector Niranjana Singh also gave the instructions to the complainant to keep the aforesaid notes in his right pocket for giving the same to Dr. Ram Chander. He also instructed him to overhear the conversation between the accused and Balwinder Singh. He also gave instructions to Balwinder Singh to give a signal after handing over the bribe money to the accused by rubbing his head with his hands. The statement of Balwinder Singh was recorded by Inspector Niranjana Singh is Mark A bearing his signatures at Point A. He also recorded the pre-raid proceedings Mark B, the same also bears his signatures at Point A. The document which the witness states in which the statement of Balwinder Singh was recorded has been proved by Inspector Niranjana Singh as Ex.PW10/A. A perusal of that document goes to show that the same bears the signatures of Balwinder Singh and P. Sudhir Babu. Again, on this aspect that the statement was recorded and the same was also got signed by this witness or that money was handed over to Inspector Niranjana Singh by Balwinder Singh and Balwinder Singh then treated those notes with phenolphthalein powder, there is absolutely no cross-examination on behalf of the appellant. Rather in his cross-examination also he has reiterated that the statement of the complainant was recorded by PW-10 when Rs. 10,000/- were given to Inspector Niranjana Singh for the purpose of preparing the pre-raid proceedings, there is no suggestion that the document Ex.PW10/A was not prepared in his presence or it was not bearing his signatures or the signatures of the complainant. In view of the deposition made by PW-5 Yash Pal Garg as discussed above and the deposition of PW-8 Paramjit Kaur, PW-10 Inspector Niranjana Singh and PW-7 P. Sudhir Babu, the previous demand made by the appellant from the complainant is proved beyond reasonable doubt.

43. It is a matter of record that about the entry and exit of the raiding party, there is an endorsement in the jail register which shows that six persons entered the jail along with Y.S. Negi and came out on 1.7.1999, which again gives credence to the prosecution story.

44. As far as the acceptance part is concerned, I am in agreement with the learned Counsel for the appellant that no evidence has come on record insofar as the acceptance is concerned inasmuch the complainant is not before us and so far as PW-7 is concerned, admittedly, he had not entered the office of the complainant at the time when the raid was conducted. In his deposition, PW-7

states that, "As per instructions of the complainant I remained standing near the window outside the office of Dr. Ram Chander because the complainant had told me that in my presence doctor would not accept the bribe money. Since I was standing outside I could not hear the conversation between the doctor and the complainant."

45. However, as far as the recovery of bribe money is concerned, it has been proved by PW-7 P. Sudhir Babu, the panch witness, PW-10 Inspector Niranjan Singh, the raid officer as well as by the report of FSL. Since the explanation furnished by the appellant about the recovery of money from him which was in the form of the same GC notes which were given to the complainant for the purpose of handing over the bribe and which were recovered by the raid officer from the hand of the appellant and coupled with the fact that his hand turned pink when dipped in sodium carbonate solution also corroborates that the bribe was handed over to the appellant and it was recovered from him. Moreover, when the defence sought to be pressed in service by the appellant alleging a conspiracy to falsely implicate him in this case by the Jail Superintendent and ADG (P) has not even been substantiated inasmuch as the appellant has neither produced any defence evidence in this regard, nor has stated anything in his statement u/s 313 Cr. P.C. as to what was the conspiracy and as to why such a conspiracy was hatched for falsely implicating him in this case.

46. In these circumstances, while accepting the statement made by the appellant that in this case there was no evidence of acceptance of bribe by the appellant, the judgment of the learned Special Judge which is based upon a presumption drawn because of Section 20 of the Prevention of Corruption Act in view of the demand having been proved by the prosecution and recovery of the money also proved from the appellant, soon after the raid was conducted by the raid officer coupled with the report of FSL and for the reasons stated by the Special Judge in paragraphs 29 and 30 of the impugned judgment as quoted above, I do not find any reason to set aside the judgment of the Special Judge convicting the appellant. Accordingly, it is upheld. 47. However, the sentences awarded to the appellant u/s 7 as well as u/s 13(2) r/w Section 13(1)(d) of the Act are reduced to RI for two years while maintaining the fine as imposed upon the appellant and by conferring the benefit of Section 428 Cr. P.C. to the appellant. It is made clear that subject to payment of fine, the appellant would be released from the jail after he completes the substantive sentence as stated above. 48. With these observations, the appeal stands disposed of. Trial court record be sent back forthwith.