

(2007) 05 DEL CK 0002

In the Delhi High Court

Case No : Criminal Appeal No. 106 of 1984

State		APPELLANT
	Vs	
P.K. Jain and Another		RESPONDENT

Date of Decision : 28-05-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 107, 109, 161, 34
Prevention of Corruption Act, 1988 — Section 5(1), 5(2), 6

Citation : (2007) CriLJ 4137 : (2008) 1 RCR(Criminal) 107

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Richa Kapoor, for the Appellant; Prashant Jain and Umesh Sinha for Respondent No. 1 and Sidharthra Luthra and Madhav Khurana, for the Respondent

Judgement

Shiv Narayan Dhingra, J.—This appeal has been preferred by the State against the judgment dated 24.10.1983 whereby both the accused persons were acquitted by learned Special Judge, Delhi, of the charges u/s 161/34 IPC, u/s 5(2) read with Section 5(i)(d) of Prevention of Corruption Act, read with Section 34 of IPC.

2. The facts relevant for the purpose of deciding this appeal are that one Dev Raj Sahni (complainant) was Managing Director of the Company M/s Sahni Sons Private Limited at 4/14A, Asaf Ali Road, New Delhi. His two sons Rakesh Sahni and Rajesh Sahni were running business in the name of Sahni Sons Manufacturing Company, at 3482, Netaji Subhash Marg, Delhi. His sons were getting the cabins and wooden partition made in their office through a carpenter on 15.6.1980 when accused P.K. Jain, Junior Engineer of City Zone, MCD approached them in the office at about 2 p.m and told them that the wood work and partition being done in the office was contrary to law, since they had no permission. He was told by Rakesh Sahni that no permission was required for getting old partition renovated. Mr. Jain told Mr. Rakesh Sahni to see him in his office on 16.6.80 with his father. This advice of Mr. Jain was ignored by Mr.

Rakesh and his father as they considered that they were not doing something illegal. However, on next day, four five persons from city zone, MCD along with three constables came to their office and asked carpenters to stop the work. While leaving the office they took away implements of the carpenters. Sons of the complainant narrated entire event to him. Consequently, complainant along with his son Rajesh Sahni went to MCD office at Minto Road and met Mr. Lal Singh Paul, accused, who was zonal engineer at that time and reported Mr. Jain's conduct to him. Mr. Paul told the complainant to see Mr. Jain again. However, complainant could not find Mr. Jain on that date and again came to MCD Office on 17.6.80 to meet Mr. Jain. He talked to Mr. Jain and Mr. Jain told him that cabin and wooden partition were without sanction and he would get a case registered against them with the police. Accused deputed some members of the staff to go to the office of sons of the complainant to see and verify if work was still going on there. He asked the complainant to come to the office of zonal engineer (Building) where zonal engineer would be present and matter would be settled in his presence. Accused Mr Jain again visited 3482, Netaji Subhash Marg and found that no work was in progress. Some tools of the carpenters were lying in the almirah, which he took away with him. Complainant along with his son went to MCD office at 2 p.m. where accused Mr. Jain and Mr. Paul were present. Accused Jain informed the complainant that he had already talked to accused Mr. Paul and in case complainant was ready to pay a sum of Rs. 5000/- as bribe, then matter regarding unauthorized partition would be closed and the tools and implements would be returned. This was told in presence of Mr. Paul. Complainant told Mr. Jain that the amount of Rs. 5000/- was too high, whereupon Mr. Paul retorted that this was not a big amount and asked Mr. Jain to report a case against them to teach them a lesson and he left the office. Accused Mr. Jain told complainant that he would have remaining talks at complainant's Asaf Ali Road Office. He accompanied complainant and his son to 4/14A, Asaf Ali Road office where he settled the matter in Rs. 3000/-. He was told by the complainant, who was unwilling to pay bribe that he was not having this much amount, he would be able to arrange by next date and he should come next date i.e. 18.6.80 to receive the money. The accused told them that he would come to collect the amount at Asaf Ali Road office between 10 AM - 12 noon. The complainant, on next date at about 8.40 a.m. went to the Anti Corruption Branch and lodged a complaint about the demand of bribe by Mr. Jain and his boss Mr. Paul. Statement of the complainant Ex. PA was recorded by Inspector Kewal Krishan, PW-16 and preparation to conduct a raid was made. Mr. Hardayal Singh, Deputy Education Officer, PW-10, and Mr. M.L. Suri, inspector Food & Supply Department, PW-9, were associated as Panch witnesses in this raid. Complainant supplied 30 currency notes of Rs. 100/- each to inspector Kewal Krishan. Numbers of these notes were noted down and notes were treated with phenolphthalein powder and demonstration was given to the panch witnesses and the complainant as to how when treated notes are touched, a part of phenolphthalein sticks on the hands and when hands are dipped into colourless solution of sodium carbonate, solution turns pink. After making preparation and

demonstration, the raiding party along with panch witnesses reached office of the complainant where Mr. Jain was to come. Panch witness Mr. Suri was given instructions to remain near the complainant and to watch the transaction of taking of bribe by accused Mr. Jain and to give pre assigned signal to the raiding party. Panch witness was also to hear the talks. The raiding party arrived at the office of the complainant at 10.10 a.m. The complainant and panch witness, Mr. Suri took position in the office while other panch witness took a seat on the sofa in the show-room. The other persons of the raiding party took suitable position. Accused Mr. Jain came to the office of the complainant at 12 noon and in presence of the panch witnesses, he demanded settled amount of Rs. 3000/- which was handed over to him in the form of tainted currency notes by the complainant in presence of panch witness. After taking bribe money, Mr. Jain kept the same in front right side of his pocket. The pre-assigned signal was given by panch witness to the raiding party and raid was conducted. Inspector Kewal Krishan disclosed his identity to the accused and asked whether he had accepted Rs. 3000/- by way of bribe. Accused Mr. Jain got frightened and admitted the acceptance of the bribe and told that bribe money was in the right side pocket of his pant. Bribe money was recovered. The numbers of the notes were tallied with the numbers mentioned in the raid report. They were the same notes. The said notes, P-3 to P-32, were taken into possession vide memo Ex. P-7/A. The right hand of Mr. Jain was washed in the colourless solution of sodium carbonate which turned pink. His pant was also taken off. The inner lining of the right front pocket of the pant of the accused Mr. Jain was then washed in the colourless solution of sodium carbonate. The solution likewise turned pink. Solutions were transferred in separate clean bottles and sealed. The post raid memos were prepared on the spot and inspector Kewal Krishan sent a rukka to the police station for registration of FIR. FIR was recorded and the further investigation was handed over to inspector Balraj Nanda, PW-19. Balraj Nanda, went to the office of zonal engineer where from implements and tools of carpenters engaged by the complainant's sons were recovered vide memo Ex. PW-9/C. Accused Mr. Paul, however, was arrested on 16.7.80.

3. After completion of the investigation, challan was filed in the Court and both the accused persons were tried. Prosecution examined 19 witnesses including complainant, his sons, two panch witnesses and three investigation officers.

4. It was argued before learned Special Judge that there was no sanction for the prosecution of accused persons as far as charge of demanding of Rs. 5000/- was concerned and Therefore accused persons cannot be prosecuted under Prevention of Corruption Act and u/s 161 IPC. Learned Special Judge observed that the bar, envisaged by Section 6 of Prevention of Corruption Act has not been lifted in the instant case. Therefore, none of the accused persons can be tried and prosecuted for the alleged demand of Rs. 5000/-. This observation of learned Special Judge is contrary to the record and contrary to evidence on the trial Court file. It is surprising that the learned Special Judge in para 4 of the judgment himself observed that sanction order was passed by the Commissioner,

MCD and was Ex. PW-4/A and thereafter in para 11 of the judgment, observed that there was no sanction in respect of the demand of Rs. 5000/-.

5. As far as accused Mr. Jain is concerned, he was caught red handed with bribe. He was removed from the service by the MCD before the start of the trial and this fact is clear from Ex. PW-4/B, a letter written by Director of Vigilance MCD to the Commissioner. In this letter it is clearly written that Mr. Jain, Junior Engineer, was terminated from the services as per rules and he was no more an employee of the corporation and no sanction was required to prosecute him. Thus, trial court's observation that Mr. Jain could not be prosecuted without sanction is without any basis.

6. Ex. PW-4/A is the sanction granted by Mr. P.P. Srivastava, Commissioner, in respect of Mr. Paul. It has been specifically mentioned in sanction order that it was alleged that accused Mr. Lal Singh Paul was a public servant and in discharge of his duty, as a public servant, by abusing his official capacity, on 17.6.80, demanded and on or about 18.6.80 obtained and accepted a sum of Rs. 3000/- as illegal gratification. It is also specifically mentioned that after carefully examining police file and judicial file, sanction was accorded for the prosecution of Mr. L.S. Paul for the act of demanding and accepting illegal gratification from Mr. Dev Raj Sahni through Mr. P.K. Jain, J.E., working under him. The observation of learned Special Judge that none of the accused persons could be tried and prosecuted for alleged demand of Rs. 5000/- is thus contrary to the facts. No sanction was required in case of Mr. Jain and a sanction was there in respect of Mr. L.S. Paul for demanding bribe through Mr. Jain. Although the sanction was accorded for making a demand of bribe of Rs. 3000/- and the charge framed was for making a demand for Rs. 5000/-. In fact, the charge should have been for a demand of bribe of Rs. 3000/- instead of Rs. 5000/- since the bribe was negotiated and brought down to Rs. 3000/-. The sanction was for Rs. 3000/- which accused demanded and accepted. In any case no sanction was required in case of Mr. Jain and in case of Mr. Paul, the sanction was there for demand of Rs. 3000/-. The evidence produced in the case was also in respect of demand of Rs. 3000/- (after negotiations). The accused could not have been let off on hyper technical approach. If sanction was for bribe demand of Rs. 3000 and evidence was also there, even if the charge was for demand of Rs. 5000/-, the accused could not have been let off for want of sanction.

7. Learned Special Judge observed that he was not prepared to rely on the statement of the complainant and his son since both were interested witnesses and they had motive to depose in favor of prosecution and against the accused. It was unsafe to put reliance on their statements in absence of any independent witnesses. Learned Special Judge went on to observe that the status of the complainant was that of an accomplice and it was unsafe to place reliance on the statement of complainant unless his statement was corroborated in material particulars. He observed that Court will presume that accomplice is unworthy of credit unless corroborated in material particulars.

8. I consider that the observations of learned Special Judge are not only contrary to law but observations are bound to encourage corruption in the country.

9. An accomplice is a person who has concurred in the commission of an offence, meaning thereby a partner in the crime and associate in the crime. When the witness sustains such a relation to the criminal act that he could be jointly indicted with the accused, he is an accomplice. In *Jagarnath v. 1942 Avadh 221*, court said that the word accomplice means a guilty associate or partner in crime or who in some way or other was connected with the offence in question. Same view was taken by the Court in *Ramaswami Goude v. Emperor 27 Madras 271*. In *State of Vindhya Pradesh v. Shiv Bahadur Singh 1952 CR.L.J. 561*, the court observed as under:

There is at one end the unblushing giver, who pays the bribe and gets an advantage, and subsequently gives evidence for some ulterior purpose. He is an accomplice of the darkest kind. At the other extreme is the person who, from the very beginning has no intention of giving a bribe, but makes a show of doing it, so as to bring the dishonest public servant to book; such a man far from being an accomplice is a good citizen, to be respected and encouraged. Between the two, there are many gradations of accomplice-hood, and consequent legal infamy, and need for more or less corroboration. There is the giver, who goes half way with the intention of paying, but for some reasons beyond his control thinks it wise or safe to report to the authorities and becomes a witness. He is only a less infamous accomplice than the extreme type. Another who changes his mind without external pressure, is still technically an accomplice, but not as unreliable as the two other types. Then there is the decoy or the spy, who with no intention to pay the bribe makes himself the instrument of the authorities in tracking the dishonest public servant. The professional spy or decoy, doing this for pecuniary or other advantages though not an accomplice is suspect all the same and requires corroboration. If on the other hand, the decoy is not acting for gain, but being himself the victim of the demand helps the authorities spontaneously from a sense of citizen's duty, he is reliable and respectable witness.

In the *State v. Meenaketan Patnaik 1952 Cr.L.J. 1393*, the court observed as under:

From Section 109, illus. (a) and Section 161, illus. (a) of the Penal Code, it is clear that mere offer of money or illegal gratification to a public servant would not amount to an offence of abetment of bribery unless that offer is made as a reward for showing that person some favor in the exercise of the official functions of the public servant. That is to say, there must be the necessary criminal intention on the part of the offerer. In the case of a trap witness engaged for the purpose of decoying a public official by offering him marked currency notes, this essential criminal intention is wanting. When considering whether the giver of a bribe is guilty of abetment the definition of abetment given in Section 107, Indian Penal Code must be construed along with illustration (a) to Section 109. The questions as to whether a spy or decoy witness is to be

branded as an accomplice depends on the criminality of the acts done by him, and the nature of the offence for the detection of which he was employed. A person engaged by the police to give marked currency notes to a public officer with a view to detect the offence of bribery is not an accomplice, because he lacks the necessary criminal intention. Nor does the C.I.D. Inspector become an abettor by his conduct in laying out the trap and executing the same.

10. I consider that observations of learned A.S.J. branding the complainant in a trap case as accomplice amounts to discrediting the criminal justice system itself and portrays that the criminal justice system cannot respect the witnesses. This country is facing unprecedented rise in corruption. Situation has come to a stage that MCD officials, due to the corrupt practices, have turned the whole city into a slum by allowing all types of unauthorized construction, encroachment, squatting over public land. Engineers of local body who were supposed to check the unauthorized construction and encroachment of the public land, encroachment of roads, encroachment of pavements, turn a blind eye to all this, since their pockets are warmed and palms are greased. Similarly the observation of the trial Court that complainant and his son are interested witnesses and not trust worthy, is unfortunate. In case of a legitimate trap, the persons and police officials taking part in trap, in no sense can be said to be accomplice or un-credit worthy witnesses so that their evidence would require, under law to be corroborated by independent witness. The rule of corroboration is not a rule of law. It is only a rule of prudence and the sole purpose of this rule is to see that innocent persons are not unnecessarily made victim. The rule cannot be allowed to be a shield for corrupt. Moreover, the corroboration need not be by direct oral evidence and can be gathered from circumstantial evidence. The sole evidence of a complainant is sufficient to convict a person, if it is reliable, acceptable and trust worthy. There was a stage under our criminal justice system when the victim of rape was also considered as an accomplice. However, the law rectified itself over the time and gradually it was realized that it was unjust to consider and brand, a victim as an accomplice and seek corroboration of her testimony. Ultimately, Supreme Court laid down that sole testimony of a victim of rape, if trustworthy, was sufficient to convict the accused. In case of bribe giving and taking, normally people do not report the instances of bribe because it suits them to give bribe as they get their illegal works done. Only few persons come forward who either do not believe in giving bribe or who are on the right track or who are fed up by giving bribe. It requires great courage to report a matter to the Anti Corruption Branch in order to get a bribe taker caught red handed. In our judicial system complainant sometime faces more harassment than accused by repeatedly calling to police stations and then to court and when he stands in the witness box all kinds of allegations are made against him and the most unfortunate is that he is termed as an accomplice or an interested witness not worthy of trust. I fail to understand why a witness should not be interested in seeing that the criminal should be punished and the crime of corruption must be curbed. If the witness is interested in seeing that there should be corruption free

society, why Court should disbelieve and discourage him. The witness who reported the demand of bribe so as to trap the culprits cannot be considered as an accomplice or non-trust worthy or interested witness. There is no reason for the court insisting upon an independent corroboration of the complainant's evidence in regard to the demanding of bribe before the trap was laid. When a given complainant first visits a public servant for doing or not doing some task for him, he does not go to him as a trap witness. He goes there in a natural way for a given task. To require him to take a witness with him at that stage would amount to attributing to the complainant a thought and foreknowledge of the fact that the accused would demand bribe. *Rajinder Kumar Sood v. State of Punjab* 1982 Cr. L.J. 1338 The necessity for court to search for independent witness in case of charges for corruption cannot be insisted upon. Such crimes are committed in secrecy and normally bribe are not taken openly (although there are bold public servants who do even that). In case of trap where accused has not been lured and goaded in some form to accept bribe but the accused himself has created a situation so that he gets bribe money or the accused indulges in the harassment of the complainant to compel the complainant to give bribe and the complainant reports the matter, the absence of independent witnesses to support the version of the complainant cannot be a ground to acquit the accused.

11. Surprisingly, in this case, despite there being two independent witnesses who supported prosecution case, the trial Court preferred to disbelieve them holding that they were also interested party.

12. Complainant appeared as PW-7 and deposed on the same lines as was his complaint. He told the Court that he had advised his sons not to go to the office of junior engineer as nothing illegal was being done by them and no permission was required for partition of the office. However, when on next day i.e. on 17.6.80, persons from the office of city zone visited his sons' office along with police officials and took away tools of the carpenters, he went to the corporation office along with his son where accused Mr. Paul met them. He narrated the facts to him. Accused Mr. Paul instructed him to talk to Mr. Jain, who was instrumental in the harassment. On next day i.e. on 17.6.80, he went to the corporation office with his son to meet Mr. Jain. Accused Jain informed the complainant that he had already talked to accused Mr. Paul and in case complainant was ready to pay a sum of Rs. 5000/- as bribe, then the matter regarding unauthorized partition would be closed and tools and implements would be returned. This was told in presence of Mr. Paul. Complainant told Mr. Jain that the amount of Rs. 5000/- was too big, whereupon Mr. Paul retorted that this was not a big amount and asked Mr. Jain to report a case against them to teach them a lesson and he left the office. After performing this role in bribe demand and justifying demand of his junior of Rs. 5000/-. Mr. Paul is not on the scene and Mr. Jain handled the entire matter. He negotiated the amount of bribe with the complainant and agreed to receive only Rs. 3000/-. The evidence of the complainant clearly shows that there was a collusion between Mr. Paul and Mr. Jain and Mr. Jain was acting

at the behest of Mr. Paul. Initial bribe demanded was for Rs. 5000/-, which was reduced to Rs. 3000/-. This testimony of PW-7 is corroborated by his son PW-11 Mr. Rajesh Sahni who had accompanied his father and who testified that when his father went to the office of Mr. Jain, Mr. Jain talked to his father and demanded Rs. 5000/- for the regularization of alleged unauthorized repair being done by him. Mr. Paul was present there. His father told that it was a too heavy an amount on which Mr. Paul retorted that Rs. 5000/- was nothing and gave instructions to Mr. Jain to register a case and left the room. There is further corroboration to this demand by circumstances. The evidence shows that Mr. Jain went to the office of the complainant and negotiated bribe money and brought it down from Rs. 5000/- to Rs. 3000/-. There is, further circumstantial corroboration since Mr. Jain next day again went to office of the complainant to receive this money where he was caught red-handed. Mr. Jain had no business to visit office of complainant since that was not the site of alleged unauthorized internal portion. Thus, there is sufficient corroboration on record to show that the bribe of Rs. 5000/- was demanded. It was negotiated and brought down to Rs. 3000/-. I consider that there was sufficient evidence on record to prove offence u/s 161 IPC about demand of bribe by the accused person initially of Rs. 5000/- negotiated to Rs. 3000/- and there was sanction of prosecution of accused Mr. Paul for this demand. No sanction was necessary in case of Mr. Jain since he had been terminated. Both the accused persons are Therefore held guilty of the offence u/s 161 IPC and they were wrongly acquitted by the trial Court on the ground that there was no sanction in case of accused persons for making this demand.

13. Complainant had testified that next day i.e. on 18.6.80 Mr. Jain came to his office at about 12 noon for receiving bribe as fixed by him on previous day. Mr. Suri, the panch witness, was with complainant. Mr. Jain was holding a diary from which he took out a paper and showed him that he had shown no new construction to have been made by him (complainant). Some construction has been shown to be old one and other portion was shown to have been replaced. This paper was in respect of Darya Ganj office. Mr. Suri was hearing talks while standing nearby. He made a gesture to Mr. Suri to stand at a little distance, so Mr. Suri went near the door about three feet away. Shortly, thereafter, his son Rajesh Sahni reached and informed him that some body from the corporation office had again come. On this but Mr. Jain told not to worry and he should get partition work started after about three to four hours. He demanded amount settled on which complainant took tainted currency notes from his pocket and passed them over to Mr. Jain. Mr. Jain took currency notes in his right hand and put the same in the right side pocket of the pant, on which a settled signal was given by complainant as well as by Mr. Suri. His son also left the place and went out to tell the raiding party. Raiding party on receipt of signal, came to the spot along with other panch witness Mr. Hardayal Singh. Accused was told about identity of raiding party by inspector Kewal Krishan and he was challenged about receiving bribe. Tainted notes were recovered from right side pocket of the pant

of Mr. Jain. Their number tallied with the pre-raid report. Right hand of the accused was dipped in the colour less solution of sodium carbonate which turned pink. Same way pant of Mr. Jain was seized and inner lining of the front right pocket of the pant, where currency notes were kept was dipped into the sodium carbonate solution which also turned pink. This evidence of the complainant was corroborated by witnesses, Mr. Rakesh Sahni, Mr. M.L. Suri (PW-9) panch witness and Mr. Hardayal Singh (PW-10) another panch witness and by the members of the police team involved in the raid. However, trial Court did not believe the testimony of the witnesses on the ground that CFSL report showed that one of the bottle of sodium carbonate solution into which right hand of Mr. Jain was dipped did not give result for phenolphthalein. The trial Court concluded that this showed that the story of the prosecution was false. However, trial Court ignored other part of the CFSL report where reasons for such negative test was given as under:

the coloured phenolphthalein solution has a tendency to gradually fading away with passage of time varying up to several months, its intensity may considerably decrease. On the other hand if the alkaline solution of phenolphthalein was only pink to light pink initially it may almost become colourless after a passage of several weeks to months. Moreover concentration of sodium carbonate should be kept to the minimum (say 0.05N) as higher concentration of alkali would hasten the degradation of phenolphthalein and consequent loss of colour.

14. In the present case phenolphthalein solution was sealed on 18.6.80 and was examined on 14.8.80 i.e. after eight weeks and two days. The above clarification was given by CFSL about such negative results vide Ex. PW-19/E.

15. Each witness of the raiding party had stated that when right hand of Mr. Jain was dipped into the solution of sodium carbonate it turned pink and this solution was sealed. Similarly, when right side of front pocket of the pant of accused was washed with sodium carbonate solution, solution turned pink and was sealed. The quantity of phenolphthalein that came in contact with the right hand must have been very low since currency notes were taken and put into the pocket, in comparison to the phenolphthalein that must have stuck on the inner lining of the pocket since the entire bundle of the notes remained in the pocket for sometime. That explains that why the solution of pant pocket was of dark pink colour when examined and the pink colour solution of hands got degraded. The CFSL report only supports the prosecution case and explains truthfulness of the prosecution case rather throwing doubt on the prosecution case. The trial Court, however, not only ignored the Ex. PW 19/E but also ignored the ocular testimony of all witnesses who testified that Mr. Jain was caught red handed with the money and his right hand when dipped into the solution of sodium carbonate turned it pink. The trial Court believed the story of Mr. Jain that money was thrust into his pant pocket. Strangely, enough money was found in the front right side pocket of Mr. Jain's pant. Generally, there are two kinds of pockets in a

pant. Two open one each on left side and right side and one close pocket on front right side of the pant, which is small pocket and normally used for keeping money. Side pocket are wide enough and somebody can insert hand into it, but the mouth of front side pocket is small and it remain tightly closed with the belt of the pant and it is not easily accessible and nobody can forcibly thrust money into his pocket. All these factors were ignored by the trial Court and the trial Court believed the version of Mr. Jain that money was thrust into his front pocket. I find that the conclusion arrived at by the trial Court is contrary to the logic and contrary to the evidence.

16. Trial Court laid much emphasis on panch witnesses position. Mr. Suri, the panch witness, has categorically stated that when complainant told him to move a little away he went near the door and could see the transaction going on and he gave signal to the raiding party. However, trial Court disbelieved this and believed that panch witness could not see what was happening and it was only when PW-8 went out and informed the raiding party that raiding party came inside. Trial Court, believed that the presence of PW-8 was not natural. PW-8 is other son of the complainant. He deposed that he came to his father's office when accused was already there. He told to accused that some officials of MCD had again come to his office even on that day (when accused has come to receive the bribe). This fact is corroborated by S.B. Singh, PW-5, who in his testimony has stated that on 18.6.80 he was on police action duty and he went to the spot i.e. 3482/11, Darya Ganj at about 11 a.m. It is only after visit of PW-5 to the spot that PW-8 came to his father's office where transaction of bribe was taking place, to inform that again MCD people had come and he became a witness to the transaction. He is Therefore a natural witness.

17. I consider that the trial Court unjustifiably disbelieved the complainant and his sons and the panch witnesses in arriving at a conclusion that bribe was not taken by Mr. P.K. Jain but money was thrust into his pocket. The prosecution proved the offence u/s 5(2) read with Section 5(1)(d) of Prevention of Corruption Act beyond reasonable doubt with cogent and trustworthy evidence.

18. In view of above discussion, I set aside the judgment of learned Special Judge dated 24.10.1983 acquitting the respondents. The prosecution had proved beyond reasonable doubt the commission of offence u/s 161 IPC by both the accused persons and commission of offence u/s 5(2) read with Section 5(1)(d) of Prevention of Corruption Act by Mr. P.K. Jain. I, Therefore, convict both the accused persons u/s 161 IPC and convict accused Mr. P.K. Jain u/s 5(2) read with Section 5(i)(d) of the Prevention of Corruption Act. Accused persons shall be heard on quantum of sentence on 31.5.2007.