* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
\+ CRL.A. 289/2001

Judgment reserved on :01.09.2020
Date of decision :15.09.2021

RAM NARESH TIWARI ….. Appellant

Through: Mr.SandeepSethi, Sr. Advocate
withMr.Atif Shamim, Advocate

Versus

C.B.I. ….Respondent

Through: Mr.Mridul Jain, SPP for CBI.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The appellant, vide the present appeal assails the impugned judgment dated 25.04.2001 and the impugned order on sentence dated 26.04.2001 of the Court of the Learned Special Judge, Tis Hazari Courts, Delhi in relation to RC No. 47(A)/96-DLI whereby the appellant was convicted for offences punishable under Sections 7 & 13(2) read with Sections 13 (1)(d) of the Prevention of Corruption Act, 1988 and Section 186/201 read with Section 224/332/353 of the Indian Penal Code, 1860.

2. Vide the impugned order on sentence dated 26.04.2001, the appellant was sentenced as under:-

"7. For the offence punishable u/s 7 of the P.C. Act, sentence prescribed by Law is " imprisonment which shall not be less than six months but which may extend to five years" and fine also. I am, therefore, of the view that if convict is sentenced to simple imprisonment for two years and fine of Rs.2,000/- or in default simple imprisonment for two months, it shall serve the ends of Justice. I sentence him accordingly, for the said offence.

8. Offence u/s 13(2) r/w Section 13(1)(d) is " punishable with imprisonment for a term which shall not be less than one year, but which may extend to seven years" and also with fine. I, accordingly, sentence the convict Ram Naresh Tiwari for this offence to undergo simple imprisonment for three years and also to pay a fine of Rs.5,000/- or in default, he shall further undergo SI for three months.

9. Offence u/s 201 is punishable "with imprisonment of the description provided for the offence, for a term which may extend to one fourth part of the longest term of the imprisonment provided for the offence, or with fine or with both", if the offence is punishable with less than ten years of imprisonment. And, Section 511 provides that "where no express provision is made by this code, for the punishment of such attempt", punishment shall be "imprisonment of any description provided for the offence, for a term which may extend to one half of the imprisonment of the largest term provided for the offences, with some fine as provided for the offence or with both."

10. Thus in the instant case, convict can be sentenced to imprisonment to the maximum term of 7 by (4 into 2) i.e., 10 & 1/2 months only, besides, the fine. Hence, I sentence him to undergo SI for three months and to pay a fine of Rs.500/-or in

default SI for 10 days only for the offence punishable u/s 201 r/w 511 IPC.

11. For the offence u/s 332, he is sentenced to undergo SI for one year and a fine of Rs.1500/- or in default SI for one month and for offence u/s 224, he shall undergo SI for six months and fine of Rs.1000/- and in default SI for 20 days.

12. It is further directed that all the substantive sentences shall run concurrently and the convict shall be entitled to the benefit of set off for any period undergone in custody by him during investigation or trial of this case."

3. Vide order dated 23.05.2001 when the present appeal was admitted Crl.M. No. 911/2001, an application under Section 389 of the Cr.P.C., 1973, for suspension of sentence with it having been submitted on behalf of the appellant that the fine had already been deposited and grant of bail was disposed of with directions to the effect that, the sentence awarded to the appellant was suspended on submission of the personal bond in the sum of Rs.15,000/- with one surety in the like amount to the satisfaction of the Trial Court.

4. The prosecution version is put forth through the charge sheet dated 29.08.1996 to the effect that the appellant herein whilst being posted and functioning as a public servant in the capacity of an Asst.Sub Inspector, No. 2979/D, Police Post Shanti Nagar, New Delhi falling under the jurisdiction of Police Station Keshav Puram, Delhi had abused his official position as such public servant and had demanded a sum of Rs.10,000/- as a bribe from Sh. Sunil Kumar Aggarwal S/o Sh. Shyam Lal Aggarwal against whom the appellant herein was looking into a complaint lodged by Sh. Bal Krishan

Aggarwal on 04.06.1996 in relation to the disappearance of his daughter Alka Aggarwal with it having been alleged that the appellant herein accepted a sum of Rs.5000/- from Sh. Sunil Kumar Aggarwal as a reward for not initiating any action against him.

5. It is further averred as indicated through the said charge sheet dated 29.08.1996 and sanction order dated 08.08.1996 that Sh. Bal Kishan Aggarwal S/o Sh. Sant Lal had lodged a complaint on 04.06.1996 with the Officer Incharge, Police Post Shanti Nagar alleging that his daughter Alka Aggarwal had disappeared from the house since 28.05.1996 and Sh. Jagdish Jindal and his sons Pawan Jindal and Surender Jindal and others including Sunil Kumar Aggarwal, the complainant of the present case, were involved in her kidnapping. That complaint of Sh. Bal Kishan Aggarwal was marked to the present appellant herein, Shri Ram Naresh Tiwari, then posted as an ASI for further action. The said Sh.Ram Naresh Tiwari, the present appellant herein, in a late night swoop raided the residence/premises of Sh. Jagdish Jindal and brought Sh. Jagdish Jindal and his son Pawan Jindal to the police post on 06.06.1996 and also prepared documents regarding their jamatalashi and further obtained an undertaking from them to attend the police post on 07.06.1996 and then both of them were allowed to go back to their residence by 2 a.m. on 07.06.1996.

6. As per the prosecution version on 07.06.1996 Sh. Surinder Kumar Jindal got married to Ms.Alka Aggarwal at the Arya Samaj Mandir, Anarkali, New Delhi and the complainant informed Sh.Ram Naresh Tiwari, the appellant herein, about the same and told him that

he was no longer interested in the complaint. The said intimation regarding the marriage was also given by Sh. Jagdish Jindal during the course of the meeting with Sh.Ram Naresh Tiwari, the appellant herein on 08.06.1996.

7. As per the prosecution version, however, Sh. Ram Naresh Tiwari, the present appellant herein, telephoned Sh. Sunil Kumar Aggarwal four times at his residence and directed him to contact him at the Police Post Shanti Nagar and on 15.06.1996, Sh. Sunil Kumar Aggarwal along with his friend Sh. Surinder Jindal contacted Sh. Ram Naresh Tiwari, i.e., the appellant herein at the Police Post and also informed him that the matter was over as the marriage had already been solemnized but Sh. Ram Naresh Tiwari, i.e., the appellant herein demanded a bribe of Rs.10,000/- from Sh. Sunil Kumar Aggarwal and on the request of Sh. Sunil Kumar Aggarwal directed him to pay Rs.5,000/- by 4 p.m. of 15.06.1996, failing which the appellant would arrest Sunil Kumar Aggarwal though there was no case registered on the said complaint. The said Sunil Kumar Aggarwal is stated to have not paid the bribe and thus lodged a complaint with the SP/:CBI/:DELHI on 15.06.1996 and requested that necessary legal action be taken against Ram Naresh Tiwari i.e., the appellant herein, for demanding a bribe.

8. As per the prosecution version, the bribe amount of Rs.5000/- was recovered from the cavity between the table top and the drawers and their numbers were tallied and the witnesses confirmed the notes to be the same as mentioned in Annexure A to the handing over memo and that all the washes of the fingers of both hands of the appellant

herein turned pink which showed that the appellant herein had accepted the said bribe amount with his own hands.

9. The prosecution version was further to the effect that after conducting the personal search of the appellant, the appellant was allowed to change his dress and on the pretext of going to the urinal, the appellant herein had fled away from the spot by jumping from the roof but was caught again and brought back to the Police Post immediately. Various other formalities were stated to have been conducted at the spot and were duly incorporated in the recovery memo dated 15.6.1996. Taking all these aspects into account the Dy. Commissioner of Police, North-West District, Delhi stated through the sanction order dated 08.081996 that after being fully satisfied in the facts and circumstances of the case and after examining the facts and the material before him he was of the opinion that a prima facie case for the offences punishable under Section 7 and Sec. 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 186/201 read with Section 511/224/332 and 353 of the IPC, 1860 in relation to the said acts and for taking of cognizance by the Competent Authority was made out.

10. Ex.PW-3/A, the complaint dated 15.06.1996 of Sh. Sunil Kumar Aggarwal S/o Sh. Sham Nath Aggarwal was to the effect that his friend Surinder Jindal and Alka Aggarwal were in love with each other and both left their parental homes on 28.05.1996 of their own accord and that Sh. Bal Krishan Aggarwal, the father of Ms.Alka Aggarwal, had lodged a report to the said Police Post Shanti Nagar in which complaint made by Sh. Bal Krishan Aggarwal, the name of the

complainant herein Sunil Kumar Aggarwal was also mentioned. Sh. Sunil Kumar Aggarwal through this complaint dated 15.06.1996 stated that Sh. Surinder Jindal and Alka Aggarwal married according to Vedic rights at the Arya Samaj Mandir, Anarkali, Delhi on 07.06.1996 and after the marriage the family members of both sides agreed to the marriage and Sh.BalKishan Aggarwal, the father of the bride also informed the police of the same. As per the complaint dated 15.06.1996 (Ex PW-3/A) made by Sh. Sunil Kumar Aggarwal, Mr.Ram Naresh Tiwari, ASI, the present appellant herein at the Police Post Shanti Nagar was conducting the investigation qua the complaint of Sh. Bal Krishan Aggarwal.

11. The complainant herein through his complaint further stated that the appellant had telephoned him four times calling him to the police station and thus on 15.06.1996, Sh. Sunil Kumar Aggarwal along with his friend Surinder Jindal went to the Police Post Shanti Nagar at the instance of the appellant herein and that the complainant informed him of all the facts and told him that there was nothing left in the case now in as much as his friend has also showed the marriage documents but despite the same the appellant herein told the complainant that he would get him apprehended and arrest him in this case and would release him only when the bribe money of Rs.10,000/- was paid to him. As per the complaint, at the request of the complainant herein, the amount was reduced to Rs.5000/- to be paid to the accused / appellant herein on 15.06.1996 itself by 4 p.m. and that if the said amount was not paid, the appellant herein would arrest the complainant Mr.Sunil Kumar Aggarwal. As per Ex.PW-3/A the

complaint of the complainant examined as PW-3 he did not want to pay the bribe to the appellant herein and sought legal action against the appellant herein.

12. As per the charge sheet dated 29.08.1996 submitted under the signatures of Mr.S.K.Peshin, Dy.Superintendent of Police, CBI, ACB Delhi on the complaint of Mr.Sunil Kumar Aggarwal RC 47(A)/96-DLI was registered and the investigation was entrusted to Inspector S.K. Bhati, CBI: ACB: New Delhi, who associated two independent witnesses Naresh Kumar ((Inspector) Vigilance and Raj Kamal Head Clerk, Vigilance Northern Railways, Baroda House and Rs.5,000/- consisting of 100 currency notes of the denomination Rs.50/- which were produced by the complainant were treated with phenolphthalein powder and after recording their numbers they were returned to Sh. Sunil Kumar Aggarwal with the directions to him to hand over the said amount to the present appellant herein Sh. R. N.Tiwari in his office at the Police Post, Shanti Nagar on specific demand for the bribe. The other formalities were also conducted and recorded in the handing over memo and in its Annexure A dated 15.06.1996 and Mr.Naresh Kumar was deputed to act as a shadow witness to overhear the conversation and to see the transaction relating to passing off of the bribe by Sh. Surinder Kumar Aggarwal, the complainant to the present appellant, Sh. Ram Naresh Tiwari.

13. It has further been stated through the said charge sheet that thereafter the members of the trap party left the police post and after reaching the said police post Shanti Nagar, the Investigating Officer Inspector S.K.Bhati directed the complainant and Sh. Naresh Kumar,

the shadow witness, to meet Sh. R.N.Tiwari, i.e., the appellant herein inside the police post. It has further been stated through the said charge sheet that Sh.R. N.Tiwari, ASI, the present appellant herein, after ensuring that the amount had been brought by the complainant, recorded his statement and got it signed by the complainant and thereafter demanded the amount of the bribe and accepted the same with his left hand and passed it on to his right hand and kept the amount under the table. It is averred further through the charge sheet that the shadow witness gave the preappointed signal and SI Vipin Kumar tried to catch Sh. R. N.Tiwari but did not succeed as Sh.R.N.Tiwari, i.e., the present appellant herein gave him a blow on his chest and rushed towards the entrance of the police post where Sh. Bhati tried to catch him but could not succeed but the accused i.e., the appellant herein, was intercepted by Sriprasad and Surinder Kumar, both SIs of the CBI who caught hold of him through the wrists and he was finally overpowered by Inspector Bhati and Constable Wasan Singh. In as much as Sriprasad and Surinder Kumar were both withering with pain in the arms under the impact of the blows of the accused, i.e., the appellant herein, they were shifted to the Hindu Rao Hospital and they had both sustained simple injuries as per the MLC Nos.8203 and 8200 of 96.

14. The appellant herein is stated to have been caught at the roof of the police post and that the various formalities were conducted which included taking of the washes of both his hands and whilst taking out his fingers of the left hand from the colourless solution which had turned pink, the appellant herein hit the glass as a result of which the

pink colour solution spilled on the floor and the glass containing the solution broke into pieces and the spilled solution was collected and sealed and the left hand wash was again taken and the same again turned pink the colourless solution of Sodium Carbonate. The broken glass pieces were collected after taking photographs of the place. The bribe amount of Rs.5,000/- is stated to have been recovered from the cavity of the top of the table and the drawers and the numbers of the currency notes tallied with those as mentioned in Annexure A to the handing over memo. At the spot a Recovery Memo was prepared and all the details were incorporated in it in a graphic manner and three sealed bottles, bribe amount of Rs.5,000/- the file relating to complaint of Shri Bal Krishan Aggarwal were seized and whilst all this was in progress, Sh. R. N.Tiwari, the appellant herein on the pretext of urinating fled away from the spot by jumping of the roof but was caught and brought back by the CBI Staff immediately. 11 witnesses are stated to have been examined during the course of investigation. As per the prosecution version, the spoiled wash, and the washes of the right hand fingers were sent to the CFSL and the CFSL report dated 22.07.1996 opined the presence of phenolphthaleinand sodium carbonate in all these washes.

15. The charges were framed against the present appellant herein, the accused, initially on 05.11.1997 and were amended on 16.09.1998qua the alleged commission of offences punishable under Sections 7/13(2)/13(1)(d) of the Prevention of Corruption Act, 1988 as well as Section 201/511 of the IPC, 1860 read with Section 332 and

353 of the IPC, 1860 to which the appellant herein pleaded not guilty and claimed trial.

16. The CBI examined 11 prosecution witnesses.

17. The accused, i.e., the appellant herein through his statement under Section 313 of the Cr.P.C., 1973 denied the incriminating evidence led against him and rather stated that the complaint Ex-PW3/A of Sh. Sunil Kumar Aggarwal was false and rather stated that there was no recovery of money and denied having demanded and accepted any money from the complainant and stated that the money allegedly recovered was planted on him and claimed that the complainant was an accomplice in the eyes of law and had a grudge against him and had thus falsely implicated him. The appellant further stated that the independent witnesses produced by the CBI were the witnesses of choice and were stock witnesses and had deposed against him at the instance of the CBI and that the TLO and the IO were CBI officials and were interested witnesses and the other witnesses were formal witnesses.

18. The accused, i.e., the appellant herein through his statement under Section 313 of the Cr.P.C., 1973 had stated that he did not admit that Surinder and Alka had submitted any documents of their marriage to him and stated that the father of the girl was insisting for taking of action. The accused, i.e., the appellant herein, produced four witnesses in his defence i.e., DW-1 HC Basti Ram No.362(NW), Police station Keshav Puram who brought the daily diary register of June, 1996 which contained DD No. 4, 10 and 28 dated 15.06.1996

and the photostat copies were EX -DW-1/A to Ex-DW1/C. This witness was not cross-examined by the CBI.

19. DW-2 produced by the accused was HC Jagat Singh No. 560 (NW), S.O.Branch, DCP (N-W) Police Station Keshav Puram stated that he had brought the receipt and dispatch register of the year 1996 from the office of DCP (NW) and stated that as per the entry No. 6194 dated 8.8.1996 of the dispatch register, sanction for prosecution in RC No. 47(A)/96/DLI against Sh.Ram Naresh Tiwari, i.e, the present appellant herein was despatched to SP/CBI/ACB/New Delhi. He however stated that he had not brought the sanctioned file maintained in their office because the file was not traceable inspite of all possible efforts and stated that such files are in the custody of the record clerk and stated that the said file was not in his custody and that he did not lodge any report with any authority about the missing of the said file.

20. DW-3 produced by the accused, i.e., the appellant herein was Sh. Kulbushan Mehta, Advocate, Tis Hazari Courts who stated that on 16.6.1996 he had appeared on behalf of the accused, i.e., the appellant herein whom he identified before the Duty Magistrate at the Patiala House Courts and that he had submitted the application Ex-DW-3/A which was in his handwriting bearing his signature whereby he had prayed to the Duty Magistrate for getting the accused medically examined under Section 54 of the Cr.P.C., 1973 and vide order 16.6.1996 the Investigating Officer was directed to get the accused medically examined and was also to inform about the medical examination of the accused to the concerned Court and that the accused at that time was in custody.

21. On being cross-examined by the CBI it was stated by the said witness that he knew the accused has not been got medically examined because the accused, i.e., the appellant herein, had told him so afterwards. He further stated that there was no medical report of the accused on record thus he could say that the accused had not been got medically examined. However, he stated that he did not file any contempt petition against the Investigating Officer for violation of the Court order because there were summer vacations and thereafter the accused had not approached him.

22. DW-4 produced by the accused, i.e., the appellant herein in his defence before the learned Special Judge was SI Jaipal Singh, Police Training College, Zharoda Kalan, New Delhi who stated that in June 1996 he was posted and working as Incharge Police Post, Shanti Nagar of Police Station Keshav Puram and that the accused R.N.Tiwari, i.e., the appellant herein who was present in Court during that period was working under him as ASI at Police Post Shanti Nagar.

23. It was further stated by DW-4 that on 15.06.1996 at about 4.30 PM, he came back to the police post after patrolling duty in the area and Sh.Pratap Singh, Constable who was then working as a Daily diary writer, Rojnamcha Munshi told him that some persons in plain clothes had apprehended the accused and they were disclosing their identity as CBI officials and that the accused was being beaten and manhandled. It was stated by DW-4 that he went to the room of the accused i.e. the present appellant and enquired from the CBI officials and on enquiries they told him that they had apprehended the accused

in a trap case. DW-4 stated that in as much as at that time they were beating and manhandling the accused, he, DW-4 had asked as to where was the bribe money to which they replied that the money could not be recovered. DW-4 further stated that he asked them not to manhandle and leave the accused and told them that their act was illegal to which they reprimanded him and asked him to go away. DW-4 further stated that he then informed the SHO and the additional SHO on telephone and after 20 minutes, the SHO and the Additional SHO also arrived and both of them requested the CBI officials not to manhandle the accused and also enquired that if it was a bribe case, where was the bribe money to which they again stated that the same could not be recovered. It was stated further by this defence witness that those CBI officials along with the accused came to the office room of the duty officer and he, the SHO and Additional SHO came back to his room and it was stated by DW-4 that from the telephone available with the duty officer they, i.e. the CBI officials telephoned at their office and in turn told them that their duty SP was likely to arrive in the Police Post so they remained in the office of the Duty Officer and they remained seated in his office room and after one and a half hour, one official named Peshin came and stated that the money had been recovered.

24. DW-4 stated that no money was recovered in their presence and thereafter at about 9.30 PM, the CBI officials took the accused with them and later on he, DW-4 came to know that the accused had been arrested in a trap case. It was also stated by DW-4 that during their discussion with the CBI officials, the CBI officers had threatened

them that they would be summoned with notices under Section 160 of the Cr.P.C. and would be set right. DW-4 further stated that the SHO had also informed about the incident to the higher officers.

25. On being cross examined by the Sr.PP for the CBI, this witness had denied that he refused to sign the recovery memo for the post raid proceedings. He however stated that he did not report to any higher authority against the high handedness of the CBI officials but had merely reported the matter to the SHO and Additional SHO of the Police Post. He further stated that he did not notice any bleeding from the person of the accused. He further stated that the accused was in the custody of the CBI and as such he did not know whether he had been got medically examined or not. He however denied that he was testifying falsely at the instance of the accused who was his colleague and assistant.

26. Vide the impugned judgment dated 25.04.2001, the learned Special Judge, Tis Hazari Courts, after considering the evidence led by either side and the submissions of the accused, i.e., the appellant herein recorded under Section 313 of the Cr.P.C., 1973, and the contentions raised on behalf of either side held that the sanction accorded for prosecution of the accused, i.e., the appellant herein, vide the order of sanction Ex PW-2/A by the Competent Authority was perfectly valid and legal.

27. The learned Special Judge further held that though there were discrepancies and contradictions in the evidence that had been led by the prosecution, the same did not affect the prosecution case materially in as much as the testimony of PW-3, the complainant, had

been fully corroborated by the testimony of the shadow witness PW-4 Sh.Naresh Kumar, regarding acceptance of tainted money as bribe, recovery of which was effected from the possession of the accused by the members of the trap party who arrived at the spot on the signal given by PW-4,the shadow witness and apprehended the accused. Furthermore, the learned Trial Court held to the effect that it would be difficult to find a case which is bereft of embellishment, exaggeration, contradictions and inconsistencies which are bound to creep in with the passage of time and that if the witnesses were not tutored, they would come with a natural and spontaneous version in their own words and that each witness when asked to reproduce a particular incident witnessed by them, would narrate the story in their own words according to their own perception and proportion of their own intelligence and power of observation.

28. The learned Trial Court also rejected the contention raised on behalf of the accused arrayed as appellant herein to the effect that the complainant bore a grudge against him in view of the factum that it had not been stated categorically by the accused as to what prompted or motivated the complainant to do so.

29. The learned Special Judge also observed to the effect that the accused had failed to substantiate that the tainted money was not recovered from his possession in the manner as deposed by the prosecution witnesses and inter alia observed to the effect that the accused, i.e., the appellant herein in his statement under Section 313 of the Cr.P.C., 1973 had merely stated that the evidence of the recovery of the GC notes from his possession was incorrect. Inter alia,

the learned Trial Court held to the effect the testimony of DW-4 hardly inspired any confidence especially when his own superior PW-2, whilst granting sanction for prosecution of the accused has stated in the order EX PW-2/A to the effect:

> *" I am fully satisfied and am of the opinion that prima-facie a case u/s 7and Section 13(2) r/w 13(1)(d) of P.C. Act 1988, and Section 186, 201 r/w Sections 511, 224 and 332 IPC is made out against Sh. Ram Naresh Tiwari, for which he should be prosecuted in the Court of Law."*

30. The learned Special Judge further held that if there had been any truth in the version given by DW-2(apparently a reference to DW-4) it was un-understandable what prevented him i.e., DW-2(apparently a reference to DW-4) to bring the true facts which he deposed before the Court after a lapse of about 5 years in as much as sanction for prosecution was granted vide EX PW-2/A on 08.08.1996 and DW-4 was examined in the Court on 18.03.2001. The learned Trial Court also observed to the effect that another reason for this witness DW-2(apparently a reference to DW-4) to depose favorably towards the accused and against the prosecution was that he was interested in saving his colleague who was at one time his subordinate from the clutches of law and though the presence of DW-2 (apparently a reference to DW-4) was admitted by the prosecution witnesses but their allegations that the local police officers had reached at the spot and were summoned and were non-cooperative were further confirmed from the conduct of DW-4 as reflected from his testimony. The learned Trial court further observed to the effect that though there were inconsistencies in the statements of PW-3, the complainant and

PW-4, the shadow witness regarding demand and acceptance of the tainted money by the accused yet the material fact that the complainant handed over the tainted money to the accused, who picked up the same from the table and kept the same in the cavity from which it was recovered later on by the member of the raiding party later on in the manner as detailed by all the witnesses, clearly established that the tainted money was passed on to the accused by the complainant, who received the same as illegal gratification for helping the complainant to file the complaint EX PW-6/A pending with him and which admittedly had not been filed by him despite the knowledge that the marriage between Alka and Surinder with the consent of PW-7 (i.e. Shri Bal Krishan Aggarwal) had already taken place on 08.06.1996 which date is prior to that of the trap, i.e., 15.06.1996.

31. The learned Trial Court further held to the effect that it was proved that the statement of the complainant was recorded as Ex PW-3/D by the accused on 01.06.1996 and that statements of Jagdish Gupta and Pawan Kumar were recorded on 08.06.1996 in the case registered on the complaint of Bal Krishan, PW-7 as per Ex PW-6/B-1 to B-9 after they were summoned by the accused but were released in the night on 06.06.1996 after preparing their search memos with direction to appear again at the Police Post Shanti Nagar in the morning and on 08.06.1996 they had made the statement regarding marriage between Alka D/o Bal Krishan and Surinder Kumar S/o Jagdish Gupta and brother of Pawan Kumar and that the complainant was one of the suspects in the complaint of PW-7 and therefore it was natural motivation for the accused to ask for illegal gratification from

the complainant to absolve him of the case registered on the complaint of Bal Kishan Aggarwal which would have been otherwise filed on 08.06.1996 in view of the statements made by the other persons named as suspects. Inter alia it was held vide the impugned judgment that there was no reason for the accused to record the statements of the complainant on 15.06.1996 that is the day on which the trap was laid. The learned Trial Court further held to the effect that the accused, i.e., the appellant herein had tried to create evidence to rebut the initial demand on 15.06.1996 as set up vide Ex DW-1/A, 1/B and 1/C and observed also to the effect that the manipulation of these daily diaries was reflected from the fact that whilst all entries made on 15/16.06.1996 were in the hand of the daily diary writer but the entry with regard to the accused at item No.10 carried over to the next page (Ex.DW-1/B) is in his own hand and that all other entries thereafter were also in the hand of the daily diary writer on duty.

32. It was further observed by the learned Trial Court that vide Ex DW-1/C, the CBI officials, had made the entry at serial No. 24 which reads as follows:

> " At 9:35 PM today, the CBI party after investigation of the accused the premises of Police Post has left for CBI, Lodi Road, New Delhi, after affecting the arrest of Sh. R.N.Tiwari ASI of Police Post, who was caught red handed while demanding Rs.10,000/- and accepting Rs.5,000/- as bribe from the complainant while the process was going on, Sh. Tiwari made efforts to destroy evidence as well as run away from the Police Post but could not succeed in his

> efforts. S/Sh. Sri Prasad and Surinder Kumar, who had sustained injuries have been rushed to Hindu Rao Hospital for medical relief. The accused Sh. R. N.Tiwari has been since arrested and grounds of his arrest informed to him as well as to the site P/S Keshav Puram. It shall be produced before the Competent Court tomorrow. The CBI party had arrived at Police Post at about 4:15 PM after receipt of the pre-appointed signal.";

and the learned Trial Court thus held that there was no protest note or endorsement made against this entry by the In-charge Police Post, who claimed as DW-4 that he returned to the Police Post on 15.06.1996 at 4:30 P.M. and was informed by Pratap Singh Constable, who was working as a daily diary writer, (Roznamcha Munshi) that some persons in plain clothes had apprehended the accused, i.e., the appellant herein, and they were disclosing their identity as CBI officials and that the accused was being beaten and man-handled and as per his testimony DW-4 remained at the Police Post from 4:30 to 9:30 P.M. and thereafter about 9:30 P.M. the CBI officials took the accused with them, i.e., the appellant herein and lateron he learnt that he had been arrested in a trap case

33. The learned Trial Court held to the effect that everything regarding the alleged beating and man-handling, happened in his knowledge and about which he had informed the SHO and the Additional SHO, who reached the spot but neither of them had taken up the matter with their superior authorities, of the accused being falsely implicated in the instant case. The learned Trial Court also

observed to the effect that there was nothing on the record that either of them made any representation to their superior authorities including the sanctioning authority, namely, Sh. Prabhat Singh, who was working as DCP (North-West District), when the sanction order Ex PW-2/A was passed and thus the learned Trial Court held that the same clearly showed that the accused had allegedly demanded and accepted illegal gratification and that the tainted money was recovered from him and that the sanctioning authority had fully satisfied itself from the material produced before it.

34. The learned Trial Court further held to the effect that in view of the evidence that was on record, the arguments raised on behalf of the accused, i.e., the appellant herein, did not hold ground in the face of the unflinching testimony of PW-3 and PW-4 and the clinching evidence of other prosecution witnesses, who circumstantially corroborated the prosecution version.

35. The learned Trial Court thus held that all the three elements, i.e., demand, acceptance and recovery to constitute the offence of bribe were proved. The learned Trial Court further held to the effect that in as much as demand, acceptance and recovery was established, the bribe money was recovered from the possession of the accused, thus the onus shifted to the accused, i.e., the appellant herein, to rebut the presumption as raised by the application of Section 20 of the Act.

36. Section 20 of the Prevention of Corruption Act, 1988, as applicable at the time of the incident provided as under:

> *"20. Presumption where public servant accepts gratification other than legal remuneration.—*
> *(1) Where, in any trial of an offence punishable under section 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 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 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 be, without consideration or for a consideration which he knows to be inadequate."*

37. The learned Trial Court also placed reliance on the observations in the case ***C.K. Damodaran Nair V. Govt. Of India***; 1997 Crl.L.J. 739 wherein it was held to the effect:

> *" From a combined reading of Section 161 IPC and Section 4 (1) of the Act it is evident that if, in the instant case, the prosecution has succeeded in proving that the appellant was a public servant at the material time and that he had `accepted' or `obtained' Rs. 1,000/- from P.W.9 as gratification not only the first two ingredients of the former would stand proved but also the third, in view of the presumption under the latter which the Court is bound to draw unless, of course, the appellant, in his turn, has succeeded in rebutting that*

presumption. According to Shorter Oxford Dictionary `accept' means to take or receive with a `consenting mind'. Obviously such a `consent' can be established not only by leading evidence of prior agreement but also from the circumstances surrounding the transaction itself without proof of such prior agreement. If an acquaintance of a public servant in expectation and with the hope that in future, if need be, he would be able to get some official favour from him, voluntarily offers any gratification and if the public servant willingly takes or receives such gratification it would certainly amount to `acceptance' within the meaning of Section 161 IPC. It cannot be said, therefore, as an abstract proposition of law, that without a prior demand there cannot be `acceptance'."

and also placed reliance on the observations in this verdict referred to herein above to the effect:

" ....according to the prosecution the appellant `accepted' that amount, the appellant contended that the same was thrust into his trouser pocket by P.W.9. From the judgment of the trial Court we find that the principal reason which weighed with it for accepting the case of the defence in preference to that of the prosecution was that P.W.9 w as an interested witness and P.Ws. 3 and 4, the two independent witnesses, who were examined by the prosecution to prove the transaction did not speak about any demand made by the appellant. Having gone through the evidence of the above two witnesses, namely, P.Ws. 3 and 4 we are in complete agreement with the High Court that the finding recorded by the trial Court in this regard is patently perverse. Both these witnesses, who at the material time were holding responsible positions in State

> *Bank of India and Canara Bank respectively, categorically stated that they saw P.W.9 taking out the notes from his shirt's pocket and handing over the same to Damodaran (the appellant), and the appellant, after counting those notes, putting them in the right front pocket of his trousers. The unimpeachable evidence of these two independent witnesses conclusively proves that the transaction was consensual. That necessarily means that the appellant `accepted' the money and the defence story that P.W.9 thrusted the money is patently untrue. Consequent upon such proof, the presumption under Section 4(1) of the Act would operate and since the appellant did not rebut that presumption the conviction of the appellant under Section 161 IPC has got to be upheld.*

38. The learned Special Judge vide the impugned judgment also placed reliance on the observations of the Hon'ble Supreme Court in ***M.Narsinge Rao v. State of Andhra Pradesh; 2000*** vol. XAD SC, in relation to the question **"can a legal presumption be based on factual presumption?"**, whereupon it was held to the effect:

> *" The latter is discretionary whereas the former is compulsory. Such a question arose in this appeal and in view of the importance of the issue a two-judge Bench has referred this case to be heard by a larger bench. The legal presumption envisaged in Section 20 of the Prevention of Corruption Act, 1988 (for short " the Act") is that on proof of certain fact the Court " shall presume" certain other fact. Where there is no direct evidence for establishing the primary fact the Court has to depend upon the process of inference drawn from other facts to reach the said primary fact. The crux of the question involved, therefore, is whether an inference thus made could be used as a premise*

for the compulsory presumption envisaged in Section 20 of the Act."
Their lordships further observed.
" When the sub-section deals with legal presumption it is to be understood as in terrorum i.e. in tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc.,if the condition envisaged in the former part of the section is satisfied. The only condition for drawing such a legal presumption u/s.20 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act."

39. It was further held vide the impugned judgment that though the accused pleaded innocence in his statement under Section 313 of the Cr.P.C., 1973, which he had vainly attempted to establish by producing defence evidence, by examining DW-3, yet the learned Trial Court held that the accused, i.e., the appellant herein had failed to rebut the onus as laid upon him by virtue of the presumptions under Section 20 of the Prevention of Corruption Act, 1988 and further held that the defence evidence had been found unreliable in the circumstances of the case as had been detailed and discussed in the impugned judgment and thus it was held that the prosecution had been able to establish its case against the accused, i.e., the appellant herein,

for the offences punishable under Sections 7 & 13(2) read with Section 13 (1)(d) of the said enactment.

40. The learned Trial Court also held that the other offences with which the accused had been charged had also been established through the testimonies of the witnesses examined.

CONTENTIONS OF THE APPELLANT

41. It has been submitted through the written submissions and also the arguments addressed on behalf of the appellantthat the prosecution version had not even been remotely established against the appellant and that the Trial Court judgment was wholly infirm.

42. Inter alia, it was submitted on behalf of the accused, i.e., the appellant herein, that in his cross-examination, the complainant had stated that he was not summoned by the appellant, i.e., the accused, and rather alleges that he received a call on his mobile from the appellant, however no such call records had been placed on record by the prosecution to establish that any such call was made and also no witness from the mobile company was examined during trial.

43. On behalf of the accused, i.e., the appellant herein, it has further been submitted that the complainant in his examination-in-chief stated that the appellant herein had called him and Surinder Jindal to the Police Station and there allegedly the initial demand for bribe was made but that the main accused in the case was Surinder Jindal and not the complainant and that it was very surprising that inspite of the main accused being present before him, the appellant did not make the demand for money from him and rather chose to target the co-accused. On behalf of the appellant it has further been submitted that the

complainant has stated in his cross-examination that Surinder Jindal had been sent outside the room when the demand for money was made and that Surinder Jindal hadnot been examined in this case as a witness.

44. It was further submitted on behalf of the appellant that whereas the complainant PW-3 has stated in his examination-in-chief that the appellant had been informed of the marriage of Alka and Surinder Jindal, the complainant in the abduction case (PW7) had also stated in his cross-examination that he had told the appellant not to file the complaint till his son-in-law or his family members hand over the photographs and proof of marriage and that the complainant had also stated in his cross-examination that he was aware that in fact no case had been registered by the appellant on the complaint of the father of the abducted girl.

45. It has been submitted on behalf of the appellant that the complainant had stated in his examination-in-chief that when the Complainant met the appellant in his room, the appellant said"*Main tumhein is case se nikalrahahun, kuchh to karkejao*" and "*kahanjaarahe ho jolaaye ho wo de do*". It has further been submitted on behalf of the appellant that in his cross-examination the complainant stated that he doesn't remember the exact exchange of words that took place between him and the appellant and that PW4, Naresh Kumar, the shadow witness,who was present when thisconversation took place states in his examination-in-chief that the appellant had said to the complainant "*paiselaaye ho*" and thus, it is submitted on behalf of the appellant that the aspect whether there was

any conversation that actually took place between the complainant and the appellant when the demand was allegedly made is wholly doubtful in as much as the complainant is unsure of the actualexchange of words and the shadow witness had also testified to a different exchange of wordsbetween the appellant and the complainant and that it is highly improbable that the appellant had demandedRs. 5000/- as a bribe from the complainant during the conversation.

46. It has thus been submitted on behalf of the appellant that in such circumstances, the question of the appellant demanding a bribe doesn't arise as he had already been informed that Alka and Surinder Jindal had married and that it was inconceivable as to why the appellant would demand the bribe from a person who was not even the main accused in the case and that further when the complainant was not sure as to the words used by the appellant to demand a bribe, the same was enough to cast a doubt on the fact whether any demand of Rs. 5000/- was actually madeby the appellant.

47. It has, *inter alia,* been submitted on behalf of the appellant that there was no proof that the complainant had been called by the appellant to the Police Station or that he had decided to go there of his own accord and it was thus submitted on behalf of the appellant that Surinder Jindal was not present in the room when the alleged initial demand was made and the fact that Surinder Jindal was never examined as a witness leads to an irresistible conclusion that there was no demand of illegal gratification made by the appellant and thus, it has been contended on behalf of the appellant that there is nothing on

the record to establish the demand of the bribe having been made by the appellant.

48. Reliance in relation to the said submissions was placed on behalf of the appellant on the verdict ***in Subhash Parbat Sonvane Vs. State of Gujarat***: JT 2002(4) SC 348, on observations in paragraphs 5 to 8 thereof which read to the effect:-

> *"5. The learned senior counsel Mr. Anand appearing on behalf of appellant submitted that the judgment and order passed by the High Court confirming the conviction of the appellant under Section 13(1)(d)(i) of the Act is on the face of it illegal and erroneous. He submitted that for convicting the appellant for the offence under Section 13(1)(d), the prosecution must establish that by corrupt and illegal means accused has obtained for himself or for any other person any valuable thing or pecuniary advantage. He submitted that in the present case, there is no evidence on record that appellant 'obtained' any amount by corrupt or illegal means.*
>
> *6. In our view, mere acceptance of money without there being any other evidence would not be sufficient for convicting the accused under Section 13(1)(d)(i), Section 13(1)(d) is as under:--*
>
> *" 13. Criminal misconduct by a public servant - (1) A public servant is said to commit the offence of criminal misconduct,*
>
> *(b) if he,-*

(i) by corrupt or illegal means obtains for himself or for any other person any valuable thing or pecuniary advantage or

(ii) by abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage or

(iii) While holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest."

7. In Section 7 and 13(1)(a) and (b) of the Act the Legislature has specifically used the words 'accepts' or 'obtains'. As against this there is departure in the language used in Clause (1)(d) of Section 13 and it has omitted the word 'accepts' and has emphasized the word 'obtains'. Further, the ingredient of Sub-clause (i) is that by corrupt or illegal means, a public servant obtains any valuable thing or pecuniary advantage; under Clause (ii), he obtains such thing by abusing his position as public servant and Sub-clause (iii) contemplates that while holding office as the public servant he obtains for any person any valuable thing or pecuniary advantage without any public interest. Therefore, for convicting the person under Section 13(1)(d), there must be evidence on record that accused 'obtained' for himself or for any other person any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or he obtained for any person any valuable thing of pecuniary advantage without any public interest.

8. This Court interpreted similar provisions under the Prevention of Corruption Act, 1947 in Ram Krishan and

Anr. v. The State of Delhi [(1956) SCR 183]. In the said case, the Court dealt with similar Clause (d) of Sub-section 1 of Section 5 and held that there must be proof that the public servant adopted corrupt or illegal means and thereby obtained for himself or for any other person any valuable thing or pecuniary advantage. The Court observed --

"In one sense, this is no doubt true but it does not follow that there is no overlapping of offences. We have primarily to look at the language employed and give effect to it. One class of cases might arise when corrupt or illegal means are adopted or perused by the public servant to gain for himself a pecuniary advantage. The word "obtains", on which much stress was laid does not eliminate the idea of acceptance of what is given or offered to be given, though it connotes also an element of effort on the part of the receiver. One may accept money that is offered or solicit payment of a bribe or extort the bribe by threat or coercion; in each case he obtains a pecuniary advantage by abusing his position as a public servant...",

to contend to the effect that in the absence of the demand, a conviction cannot be sustained.

Reliance was also placed on behalf of the appellant on the verdict in ***Ramprakash Arora Vs State of Punjab***: AIR 1973 SC(498) with observations in para 10 thereof to the effect:-

"10. *Apart from what has been stated above we cannot overlook the fact as to why the appellant demanded illegal gratification on February 15, 1968, after he had already submitted a report on February 12, by verifying at the spot that the*

connection be given and that the sanction had actually been accorded by the S.D.O. on February 13, 1968.",

to contend to the effect that when the work for whichthe alleged bribe is demanded has already been done, there is no question of a demand forillegal gratification.

49. It was submitted on behalf of the appellant that there was no clarity qua the acceptance of the alleged bribe money by the appellant in as much as according to the complainant in his examination-in-chief, the complainant had stated that he had placed the money on the table whereas the shadow witness has stated in his examination-in-chief that the money was first handed over to the appellant and that the complainant had not kept the money on the table at all and that PW-4 had denied that the complainant had not given the notes in the hands of the appellant. It was thus strenuously urged on behalf of the appellant that there was no clarity as to whether the money was handed over to the appellant or was kept on the table of the appellant and the shadow witness in his examination-in-chief had rather stated that the money was kept on the other side of the table. It was thus submitted on behalf of the appellant that there was no clarity regarding the acceptance of the money whether the same was put on the table or was directly handed over to the appellant and that there is also an ambiguity regarding the position of the money post its alleged hand over to the appellant and that whilst the complainant says that it was put in a cavity in the table, the shadow witness differed in his version and stated that it was put on the other side of the table and that all

these inconsistencies left room for doubt as far as acceptance of money by the appellant is concerned.

50. Reliance was thus placed on behalf of the appellant on the verdict of the Hon'ble Supreme Court in ***BanarsiDass Vs. State of Haryana*** (2010)4SCC 450, to contend to the effect that apart from demand, acceptance of illegal gratification is also necessary for a conviction and placed reliance on paragraphs 23 and 24 of the said verdict which read to the effect:

> ***"23.*** *To constitute an offence under Section 161 IPC it is necessary for the prosecution to prove that there was demand of money and the same was voluntarily accepted by the accused. Similarly, in terms of Section 5(1)(d) of the Act, the demand and acceptance of the money for doing a favour in discharge of his official duties is sine qua non to the conviction of the accused.*
>
> ***24.*** *In M.K. Harshan v. State of Kerala [(1996) 11 SCC 720 : 1997 SCC (Cri) 283] this Court in somewhat similar circumstances, where the tainted money was kept in the drawer of the accused who denied the same and said that it was put in the drawer without his knowledge, held as under: (SCC pp. 723-24, para 8)*
>
> *"8. ... It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly, there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching evidence to*

show that it was with the tacit approval of the accused that the money had been put in the drawer as an illegal gratification. Unfortunately, on this aspect in the present case we have no other evidence except that of PW 1. Since PW 1's evidence suffers from infirmities, we sought to find some corroboration but in vain. There is no other witness or any other circumstance which supports the evidence of PW 1 that this tainted money as a bribe was put in the drawer, as directed by the accused. Unless we are satisfied on this aspect, it is difficult to hold that the accused tacitly accepted the illegal gratification or obtained the same within the meaning of Section 5(1)(d) of the Act, particularly when the version of the accused appears to be probable."

51. Inter alia, it was submitted on behalf of the appellant that the complainant in his examination-in-chief had stated that the person of the appellant was searched but the notes were not found and he further stated that efforts were again made to search for the notes on the arrival of PW-11 S.K.Peshin, the Investigating Officer, whereafter the notes were recovered and that the complainant had also stated that the notes were recovered by the shadow witness PW-4 Naresh Kumar that he further went on to state that search was made of the table but the money was recovered by the shadow witness and not by the Investigating Officer.

52. It was further submitted on behalf of the appellant that PW-4, the shadow witness, in his examination-in-chief had stated that a search was conducted but the money could not be recovered and had further stated that the money was recovered from the cavity in between the top and the drawer of the table and that the shadow

witness in his cross-examination had stated that the money was not recovered from the table of the appellant and had rather stated that the table was over turned and the tainted notes were recovered . Inter alia, it was submitted on behalf of the appellant that the shadow witness nowhere in his testimony had stated that it was he who had recovered the money, whereas as per the complainant it was the shadow witness who had recovered the money from the appellant.

53. On behalf of the appellant it was further submitted that PW-6 Raj Kamal in his examination-in-chief had stated that he was directed to search and recover the money but he was unable to recover any money on the first attempt and further went on to state that he was again directed to search and this time he recovered the money from the cavity of the table and stated that the complainant had stated that PW4 Naresh Kumar had recovered the money, whereas PW-6 stated that it was he PW-6 Raj Kamal who recovered the money and he stated in his cross-examination that the money was not recovered from the top of the table or from any of the drawers but that despite the same the hand wash of the appellant had been taken.

54. Inter alia, it was submitted on behalf of the appellant that SI Surender Kumar PW-9 who was also a member of the raiding party in his examination-in-chief stated that the money was searched for but could not be traced and it was only on a subsequent attempt that the money could be recovered and that in his cross – examination, like other witnesses he reiterated that the money was not found on the person of the appellant. It was thus submitted on behalf of the appellant that there was a contradiction in the version of the

complainant qua the aspect of the recovery of the money, for in his examination inchief the complainant categorically stated that the money was not found on the person ofthe appellant but was only recovered on the arrival of PW-11 SK Peshin but despite the same, the complainant had not disclosed where the money was recovered from and that in his cross-examinationthis witness had stated that the notes were in fact recovered by the shadow witness PW4 from the person of the appellant.

55. It was also submitted on behalf of the appellant that Naresh Kumar PW-4 was also found essaying the contrary stand when it came to the aspect of recovery of money for whilst in his examination-in-chief, he stated that the money could not be recovered in the initial search but was lateron recovered from the cavity of the table, in his cross-examination on the other hand he stated that the money was not recovered from the table of the appellant and on the other hand he went on to state that the table had to be over turned to recover the money.

56. It was thus submitted on behalf of the appellant that it defies logic as to why the table had to be overturned and searched if the money was kept in the cavity. It was also submitted on behalf of the appellant that PW-4 had never once stated in his examination-in-chief or cross examination that it was he who recovered the money which is in fact contrary to the statement of PW-3. It was thus submitted on behalf of the appellant that there was no clarity as to where the money was recovered from, whether it was from the person of the appellant or from the table of the appellant and there was no clarity regarding

the person who made the recovery and therefore the essential ingredient of recovery of money had not been proved by the prosecution beyond a reasonable doubt.

57. Further it was submitted on behalf of the appellant to the effectthat the complainant in his cross examination states that the Appellant grappled with themembers of the raiding team and that the shadow witness, PW4 alsoin his examination in chief states that the solution in which the hand wash of Appellantwas taken fell on the ground as there was a scuffle between the CBI officials and theAppellant and that in his cross-examination also the shadow witnessstates that there was a scuffle and the CBI officers were using "both" their hands. Further, it is submitted on behalf of the appellant that PW9, Surendar Kumar who was a part of the raiding team states in his examination-inchiefthat the bottle of solution containing hand-wash of the Appellant fell to the groundand all the solution spread on the floor. Thereafter, the same was picked up and put intoanother bottle and the hand-wash of the Appellant was again taken and it was thus submitted on behalf of the appellant that once the solution had spread on the floor it was inconceivable as to how itwas picked up and again put into a bottle,with reliance having been placed on behalf of the appellant on the verdict of the Hon'ble Supreme Court in the case ***Suraj Mal Vs State(1979) 4 SCC 725***, to contend that mere recovery of money *dehors* thecircumstances in which it was paid cannot be sufficient for a conviction and placed reliance on observations in paragraph 2 thereof which read to the effect:

*"**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 PWs 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 PWs 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 draw 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*

Narainand 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 2000, the appellant having demanded Rs 100, yet in the report which he lodged before MrKatoch, 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 Davender Singh has not been mentioned, in this document. This report, undoubtedly contains reference to a demand having been made by the SHO Davender 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 FIR constituting the evidence. We have perused the statements of PWs 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 bushshirt 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 under Section 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 under Section 342 of the CrPC. 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."

58. It was further submitted on behalf of the appellant that the impugned judgment was also infirm in view of the injuries sustained on the person of the appellant with it having been submitted on behalf of the appellant that the prosecution had failed to rebut the testimonies of DW-4 Sh. Jaipal Singh, Incharge Police Station Shanti Nagar, who had stated that the appellant was beaten and manhandled and furthermore, the testimonies of PW-9 SI Surendra who in his cross-examination stated that the appellant was not medically examined and DW-3 Kulbhushan Mehta, the counsel for the appellant before the Trial Court who stated that despite the orders of the Trial Court qua

medical examination of the appellant there was no medical report placed on the record and that it was thus submitted on behalf of the appellant that where DW-4 had also stated that the appellant had been beaten and manhandled by the police, the injuries on the person of the appellant having been conveniently ignored and the appellant having not been examined despite the order of the Trial Court, there was no explanation forth coming from the prosecution regarding the injuries on the person of the appellant and thus serious doubts were cast on the genuineness of the trap proceedings. Reliance was thus placed on behalf of the appellant on the verdict of the Supreme Court in ***Lakshmi Singh AndOrs. vs State Of Bihar(1976) 4 SCC 394***to contend that as the prosecution had failed to explain the injuries on the person of the Appellant, the prosecution version becomesdoubtful placing reliance on the observations in paragraph 12 of the verdict in Lakshmi Singh (supra)which reads to the effect:

> ***"12.*** *PW 8 Dr S.P. Jaiswal who had examined Brahmdeo deceased and had conducted the post-mortem of the deceased had also examined the accused Dasrath Singh, whom he identified in the court, on April 22, 1966 and found the following injuries on his person:*
> *"1.Bruise 3" × ½ " on the dorsal part of the right forearm about in the middle and there was compound fracture of the fibula bone about in the middle.*
> *2.Incised wound 1" × 2 mm × skin subcutaneous deep on the lateral part of the left upper arm, near the shoulder joint.*

3.Punctured wound 1/2" × 2 mm × 4 mm on the lateral side of the left thigh about 5 inches below the hip joint.

According to the doctor Injury 1 was grievous in nature as it resulted in compound fracture of the fibula bone. The other two injuries were also serious injuries which had been inflicted by a sharp-cutting weapon. Having regard to the circumstances of the case there can be no doubt that Dasrath Singh must have received these injuries in the course of the assault, because it has not been suggested or contended that the injuries could be self-inflicted nor is it believable. In these circumstances, therefore, it was the bounden duty of the prosecution to give a reasonable explanation for the injuries sustained by the accused Dasrath Singh in the course of the occurrence. Not only the prosecution has given no explanation, but some of the witnesses have made a clear statement that they did not see any injuries on the person of the accused. Indeed if the eyewitnesses could have given such graphic details regarding the assault on the two deceased and Dasain Singh and yet they deliberately suppressed the injuries on the person of the accused, this is a most important circumstance to discredit the entire prosecution case. It is well settled that fouler the crime, higher the proof, and hence in a murder case where one of the accused is proved to have sustained injuries in the course of the same occurrence, the non-explanation of such injuries by the prosecution is a manifest defect in the prosecution case and shows that the origin and genesis of the occurrence had been deliberately suppressed which leads to the irresistible conclusion that the prosecution has not come out with a true version of the occurrence. This matter was argued before the High Court and we are constrained to observe that the learned Judges without appreciating the ratio of this Court in Mohar Rai v. State of

Bihar [AIR 1968 SC 1281: (1968) 3 SCR 525 : 1968 Cri LJ 1479] tried to brush it aside on most untenable grounds. The question whether the Investigating Officer was informed about the injuries is wholly irrelevant to the issue, particularly when the very doctor who examined one of the deceased and the prosecution witnesses is the person who examined the appellant Dasrath Singh also. In the case referred to above, this Court clearly observed as follows:

"The trial court as well as the High Court wholly ignored the significance of the injuries found on the appellants. Mohar Rai had sustained as many as 13 injuries and Bharath Rai 14. We get it from the evidence of PW 15 that he noticed injuries on the person of Mohar Rai when he was produced before him immediately after the occurrence. Therefore the version of the appellants that they sustained injuries at the time of the occurrence is highly probabilised. Under these circumstances the prosecution had a duty to explain those injuries ... In our judgment the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probabilise the plea taken by the appellants."

This Court clearly pointed out that where the prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probabilise the plea taken by the appellants. The High Court in the present case has not correctly applied the principles laid down by this Court in the decision referred to above. In some of the recent cases, the same principle was laid down. In Puran Singh v. State of Punjab [(1975) 4 SCC 518 : 1975 SCC (Cri) 608] which was also a murder case, this Court, while following an earlier case, observed as follows: [SCC p. 531 : SCC (Cri) p. 621, para 20]

"In State of Gujarat v. Bai Fatima [(1975) 2 SCC 7 : 1975 SCC (Cri) 384] one of us (Untwalia, J.) speaking for the Court, observed as follows: [SCC p. 13 : SCC (Cri) p. 390, para 17]

In a situation like this when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow:

(1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self-defence.

(2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.

(3) It does not affect the prosecution case at all.

The facts of the present case clearly fall within the four-corners of either of the first two principles laid down by this judgment. In the instant case, either the accused were fully justified in causing the death of the deceased and were protected by the right of private defence or that if the prosecution does not explain the injuries on the person of the deceased the entire prosecution case is doubtful and the genesis of the occurrence is shrouded in deep mystery, which is sufficient to demolish the entire prosecution case."

It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:

"(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case."

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the court to rely on the evidence of PWs 1 to 4 and 6, more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. ***We must hasten to add that as held by this Court in State of Gujarat v. Bai Fatima [(1975) 2 SCC 7 : 1975 SCC (Cri) 384] there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises."***

59. It was further submitted on behalf of the appellant that the testimony of PW-2 made it apparent that the sanctioning authority had

not appropriately sanctioned the prosecution of the appellant herein and that DW-2 HC Jagat Singh who was called from the concerned DCP's office which accorded the sanction stated in his examination - in-chief that he had not brought the sanction file as the file was not traceable.

60. Inter alia, it was submitted on behalf of the appellant that in the absence of the file which was used to accord sanction being produced there was nothing to show as to what material was placed before the sanctioning authority for grant of sanction for prosecution and thus the prosecution of the appellant suffered from several legal infirmities and he could not have been prosecuted. It is further submitted on behalf of the appellant that PW-2 Sh. Prabhat Singh the sanctioning authority in his cross-examination had admitted that he had accorded the sanction without mentioning the description of the documents before him and it was thus submitted on behalf of the appellant that it was thus doubtful whether there was any material actually placed before the sanctioning authority to apply its mind. Reliance was thus placed on behalf of the appellant on the verdict of the Hon'ble Supreme Court in ***Mohd. Iqbal Ahmad V. State of A.P.;*** 1979 4 SCC 172.

61. A table of inconsistencies between the testimonies of the prosecution witnessesto demolish their alleged credibility was put forth on behalf by the appellant to the effect:

"

S. No.	*PW3- Examination-in-Chief*	*PW3 Cross Examination*	*PW-4 Naresh Kumar Shadow witness*	*PW9- Surendra Kumar SI CBI*

1.	*Initially states that money was not found on person of Appellant (page 5 , line 6 from top). Later on states money was recovered by SK Peshin (PW11, IO) (page 5 line 8 from top) However, later in his chief states that money was recovered by the witness Naresh Kumar (PW4) (page 6 3rd line from top). At the same time he also states that he cannot admit or deny if recovery was made by Raj Kamal (PW6), the other punch witness.*	*He states that money was recovered by a witness and not by Peshin (page6 , 12th line from top)*	*Does not state in his entire examination-in chief or cross – examination that it was he who recovered the money which is at variance with version of Complainant PW3*	*States in his chief that SK Bhatti (TLO) asked Appellant where the money was but he revealed nothing and money was not found, thereafter Bhatti directed witness Raj Kamal (PW6) to search the table but the money was not recovered.(page 3 7th line from top.)* *He further states in his cross that accused was personally searched yet no money was recovered.(page 1 3rd line from bottom)*

<u>Statements of PW3 – Complainant and PW4 (Shadow Witness) contrasted on the transaction that took place between the Appellant and Complainant</u>

“

S. No.	PW3 Complainant	PW4 Naresh Kumar	
1.	The Complainant PW3	States in his examination in	There is a variance in the conversation that took place

	states in his examination in chief that the Appellant said to him “jo laaye ho de jao”, “Kuchh to karkejao” (page 3bottom)	chief that the Appellant stated “kaafi late aaye ho”, “paise laaye ho” (page 2 2nd para 6th linefrom bottom)	between Complainant and Appellant as reported by theComplainant and the shadowwitness in their respective testimonies.

62. It was thus submitted on behalf of the appellant there is a difference in the version of the prosecution witnesses on crucial points of recovery and acceptance of illegal gratification and thus their testimonies should not have been relied upon for convicting the appellant but the same should have been discarded. Reliance was thus placed on behalf of the appellant on the verdict of the Hon’ble Supreme Court in ***Suraj Mal vs State***, ***1979 (4) SCC 725***, with reliance placed on paragraph 2 of the said verdict. It was further submitted on behalf of the appellant that the version of the prosecution is wholly misconceived and make-believe and that the prosecution had failed to establish the commission of any offence beyond a reasonable doubt and thus it could not be said that the appellant had knowledge of any offence committed by him. Reliance was thus placed on behalf of the appellant on the verdict of the Hon’ble Supreme Court in ***Dinesh Kumar Kalidas Patel vs The State Of Gujarat***; (2018) 3 SCC 313, placing reliance on paragraph 14 thereof which reads to the effect:

> *“**14.** Thus, the law is well settled that a charge under Section 201 IPC can be independently laid and conviction maintained also, in case the prosecution is able to establish that an offence had been committed, the person charged with the offence had the knowledge or the reason to believe that the offence had been committed, the said person has caused disappearance of*

evidence and such act of disappearance has been done with the intention of screening the offender from legal punishment. Mere suspicion is not sufficient, it must be proved that the accused knew or had a reason to believe that the offence has been committed and yet he caused the evidence to disappear so as to screen the offender. The offender may be either himself or any other person."

63. As regards the conviction of the appellant qua the offences punishable under Sections 332/224 of the IPC, 1860 it has been submitted that the appellant was not even medically examined despite the orders of the Trial Court and thus when the injuries on the appellant's body were not explained, the prosecution version becomes wholly doubtful and could not be relied upon. It has thus been submitted on behalf of the appellant that the prosecution version in relation to the chain of events is wholly doubtful and there was no clarity on the aspect whether the appellant had actually voluntarily caused hurt to the public servants to obstruct them in their duty and resisted arrest or whether the appellant was only trying to shield himself from the raiding party that was trying to secure a conviction in a make-believe case. It has thus been submitted on behalf of the appellant that the testimonies of the prosecution witnesses and the defence witnesses examined brought forth that the appellant was man-handled and beaten up in an attempt to apprehend him and secure a conviction and that the ensuing scuffle in which the appellant tried to defend and protect himself could not by any stretch of imagination be the basis for a conviction under Section 332 and 224 of the IPC, 1860 and reliance in relation thereto was placed on behalf of the appellant

on the verdict of the Hon'ble Supreme Court in ***Lakshmi Singh and Ors. V. State of Bihar***; (1976) 4 SCC 394 with reliance on observations in para 12 thereof, already adverted to hereinabove.

CONTENTIONS OF THE CBI

64. Submissions made on behalf of the CBI/respondent through a written synopsis dated 22.7.2020 were submitted under the signatures of Inspector Dharmendra Kumar Singh, Inspector CBI/ACB/New Delhi. It was submitted by the CBI that admittedly the appellant was a public servant and the complaint against the complainant PW-3 had been assigned to the accused, i.e., the appellant herein, and that the recording of the statement of the complainant **Sunil Kumar Aggarwa**l (PW-3)EX PW-3/D on the day of the trap was also admitted. Reliance was thus placed on behalf of the CBI on the ingredients of the offence as defined under Section 7 of the Prevention of Corruption Act as well as provisions of Section 13 and 20 of the said enactment.

65. It was thus submitted on behalf of the CBI that placing reliance on the verdict of the Hon'ble Supreme Court in ***Noha V. State of Kerala***SC MANU/SC/8635/2006 where it had been laid down to the effect:

> *"When it is proved that there was voluntary and consciousacceptance of the money, there is no further burden cast on theprosecution to prove by direct evidence, the demand or motive. Ithas only to be deduced from the facts and circumstances obtained in the particular case."*

66. Reliance was also placed on behalf of the CBI on the verdict of the Hon'ble Supreme Court in ***Raj Rajendra Singh Seth @ R.R.S.***

Seth vs. The State of Jharkhand&Anr. ***(2008) AIR (SC) 3217*** wherein it was laid down to the effect:

> *" ... The word "obtains", on which much stress was laid does not eliminate the idea of acceptance of what is given or offered to begiven, though it connotes also an element of effort on the part ofthe receiver.*
> *One may accept money that is offered, or solicit payment of a bribe, or extort the bribe by threat or coercion; in each case, he obtains a pecuniary advantage by abusing his position as a public servant.. .. "*

67. Reliance was also placed on behalf of the CBI on the verdict of the Hon'ble Supreme Court in ***M. W. Mohiuddin vs. State of Maharashtra (21.03.1995 - SC) MANU/SC/0690/1995***,wherein it was held to the effect:

> *"Therefore whether there was an acceptance of what is given as abribe and whether there was an effort on the part of the receiver toobtain the pecuniary advantage by way of acceptance of the bribedepends on the facts and circumstances in each case."*

and it was thus submitted on behalf of the CBI that the prosecution had been able to establish that the accused had accepted the tainted money for which he had made the demand and it was thus submitted on behalf of the CBI that the acceptance in the instant case had been established through the testimony of PW-3, the complainant and through the testimony of the PW-4, the shadow witness. It was further submitted on behalf of the CBI/respondent to the effect that in the instant case, the acceptance had been duly proved by thecomplainant PW -3 and the shadow witness PW -4 apart from the recovery also of the tainted money. The CBI thus submitted that the present case was

on a better footing and far beyond theproving of only of acceptancein as much asthe PW 3, the complainant and PW 4 the shadowwitness had categorically proved the demand and acceptance ofmoney. It was also submitted by the CBI that apart from that recovery of the tainted money had also been proved by the testimonies of PW3/PW4/PW6and PW9. The CBI further submitted that it had been specifically deposed by the PW3 that themoney was recovered by the witness and not by Peshin. PW 6, whois an independent witness has specifically submitted that herecovered the money from the cavity between the top and the drawerof the table. The CBI further submitted that consistent statements of material witnesses coupledwith the recovery of tainted money and availability of phenolphthalein powderin the hand washes of the accused i.e. the appellant herein clearly establishes that moneywas accepted by the accused which was later on discovered fromthe cavity of the table.

The CBI further submitted that the Ld. Special Judge had thoroughly analyzed the depositions ofthe prosecution witness and had also taken note of omissions madetherein and had applied the settled law and in para-49 ofthe impugnedjudgment had rightly held, "though there are inconsistencies inthe statements of PW-3 & PW-4-the shadow witness regardingdemand and acceptance of the tainted money by the accused yetthe material fact that complainant handed over tainted money tothe accused, who picked up the same from the table and kept in thecavity from which it was recovered later on by the member of the raiding party later on in the manner as detailed by all

thewitnesses clearly establish that the tainted money was passed on to the accused by the complainant.

68. It has thus been submitted on behalf of the CBI that the demand ofillegal gratification, acceptance thereof and recovery thereof of the tainted money had been categorically proved by the witnesses and the deposition of the witnesses had been duly corroborated by the scientific evidence of presence of phenolphthalein powder in the hand washes of the appellant herein i.e. the accused and that, it is natural that there would be some difference in the testimonies of the prosecution witnesses. It was further submitted on behalf of the CBI that in the instant case the statements of all the witnesses as a whole led to only one conclusion and that was the guilt of the accused. It was further submitted on behalf of the CBI that there was a gap of 3-4 years between the occurrence and the recording of the statements of witnesses and thus natural minor differences were bound to occur due to lapse of time and that despite the same the testimonies of witnesses were consistent and sufficient enough to prove the guilt of the accused. It was thus submitted on behalf of the CBI that the statements of the prosecution witnesses, the photographs, the broken tumbler, the medical examination of the accused all brought forth that the accused, i.e., appellant herein not only tried to destroy the evidence but resisted the same as well as injured the trap witnesses and thus apart from the conviction of the appellant under Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, the conviction of the appellant under Section 201 read with Section

511/332/224 of the IPC, 1860, had been rightly imposed vide the impugned judgment.

ANALYSIS

69. On a consideration of the submissions that have been made on behalf of either side through the oral submissions made and the written synopsis submitted as well as on a perusal of the entire available record i.e. the impugned judgment and the Trial Court record, this Court is of the considered view that there is no infirmity whatsoever in the impugned judgment dated 25.04.2001 of the learned Special Judge, THC, New Delhi in RC No.47(A)/96-DLI whereby the appellant herein has been held guilty of the commission of the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and the offence punishable under Section 13(2) r/w Section 13(1)(d) thereof as also qua the offences punishable under Section 201 r/w 511/332/224 of the Indian Penal Code, 1860. This is so, in as much as, though undoubtedly there are some variations in the testimonies of the prosecution witnesses as set forth through the table that has been put forth on behalf of the appellant in the written synopsis that has been submitted which has been adverted to hereinabove in relation to the recovery of the tainted money and in relation to the conversation that took place between the appellant and the complainant of the instant case i.e. Sh.Sunil Kumar Aggarwal in relation to the transaction qua the bribe to be paid as illegal gratification for closure of the complaint of Sh.Bal Krishan Aggarwal of the complaint *inter alia* against Sh.Sunil Kumar Aggarwal, the complainant of RC No.47(A)/96-DLI, nevertheless the factum of Sunil Kumar Aggarwal having been called

to the office of the accused i.e. the appellant herein at Police Post Shanti Nagar by the accused to where Sunil Kumar Aggarwal had gone on 15.06.1996 and on which date the statement of the complainant, Sh.Sunil Kumar Aggarwal exhibited as Ex.PW3/D was recorded, **is a matter of record**. That the complainant of the present RC No.47(A)/96-DLI was called to the Police Post Shanti Nagar by the accused/appellant herein on 15.06.1996 despite Sh.Surender Jindal and Alka Aggarwal, the missing daughter of the complainant Sh.Bal Krishan Aggarwal, the complainant of complaint dated 04.06.1996 lodged with the In-charge of the Police Post, Shanti Nagar to the effect that his daughter Alka Aggarwal was missing since 28.05.1996,- having informed the accused/appellant herein of Surender Jindal and Alka Aggarwal having got married prior to the date 15.06.1996 and of his no longer being interested in pursuing the complaint against persons suspected by him of kidnapping his daughter i.e. Jagdish Jindal, Pawan Jindal, Surender Jindal and three to four other persons including Sunil Kumar Aggarwal, the complainant of RC No.47(A)/96-DLI, stands established on the record.

70. This is so as PW3 Shri Balkishan Aggarwal stated in his cross examination "after the marriage of Smt.Alka "I was not interested in pursuing the matter, but I do not remember if I had given such a thing in writing to the accused or not. The factum that PW-3, Sunil Kumar Aggarwal and Surender Jindal had gone to the Police Post, Shanti Nagar on 15.06.1996 is not denied by the accused/appellant herein and rather through his statement under Section 313 of the Cr.P.C., 1973 in response to question no.3 which reads to the effect:-

> ***"Q.3. It is in evidence against you that PW-3 Sunil Kumar Aggarwal was called by you in the Police Station after the marriage of Surender Jindal with Miss Alka and Surender Jindal had also accompanied PW-3 to the Police Station. What have you to say?***

has stated to the effect:-

> ***A. It may be matter of record but I do not remember.,***

and in response to question no.4 put to the accused which reads to the effect:-

> ***"Q.4. It is further in evidence against you that PW-3 and Surender Jindal disclosed to you that Surender and Alka had married and you told them that there was a complaint of the father of the girl (Alka) against PW-3, Surender Jindal and others and you would arrest them in this matter. What have you to say?***

it was submitted by the accused/appellant as under:-

> ***A. It is not admitted as stated. Surinder and Alka had not submitted the documents of their marriage with me and the father of the girl is insisting for taking action."***,

making it apparent thus, that on the date 15.06.1996, the accused/appellant herein was aware of Surender Jindal and Alka Aggarwal having married. That the raiding party of the CBI had gone to the Police Post, Shanti Nagar on 15.06.1996 where the accused/appellant herein was present and conducted the raid, is also established on the record through the testimonies of the prosecution witnesses examined by the CBI and is also not refuted through the

statement under Section 313 of the Cr.P.C., 1973 of the accused/appellant herein.

71. It has been observed by the Hon'ble Supreme Court in ***"Brajendra Singh Vs. State of Madhya Pradesh"*** in Criminal Appeal Nos.113-114 of 2010 decided on 28.02.2012 vide paragraph 10to the effect:-

> *"**10. It is a settled principle of law that the statement of an accused under Section 313 Cr.P.C., 1973 can be used as evidence against the accused, insofar as it supports the case of the prosecution. Equally true is that the statement under Section 313 Cr.P.C. simplicitor normally cannot be made the basis for conviction of the accused. But where the statement of the accused under Section 313 Cr.P.C. is in line with the case of the prosecution, then certainly the heavy onus of proof on the prosecution is, to some extent, reduced. We may refer to a recent judgment of this Court in the case of Ramnaresh&Ors. v. State of Chhattisgarh, (being pronounced today) wherein this Court held as under:***
>
> > *"In terms of Section 313 Cr.P.C., the accused has the freedom to maintain silence during the investigation as well as before the Court. The accused may choose to maintain silence or complete denial even when his statement under Section 313 Cr.P.C. is being recorded, of course, the Court would be entitled to draw an inference, including adverse inference, as may be permissible to it in accordance with law. Right to fair trial, presumption of innocence unless proven guilty and proof by the prosecution of its case beyond any reasonable doubt are the fundamentals of our criminal jurisprudence. When we speak of prejudice to an accused, it has to be shown that the accused has suffered some*

disability or detriment in relation to any of these protections substantially. Such prejudice should also demonstrate that it has occasioned failure of justice to the accused. One of the other cardinal principles of criminal justice administration is that the courts should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage, as this expression is perhaps too pliable. [Ref. Rafiq Ahmed @ Rafi v. State of Uttar Pradesh [(2011) 8 SCC 300].

It is a settled principle of law that the obligation to put material evidence to the accused under Section 313 Cr.P.C. is upon the Court. One of the main objects of recording of a statement under this provision of the Cr.P.C. is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires. But once he does not avail this opportunity, then consequences in law must follow. ***Where the accused takes benefit of this opportunity, then his statement made under Section 313 Cr.P.C., in so far as it supports the case of the prosecution, can be used against him for rendering conviction. Even under the latter, he faces the consequences in law." (emphasis supplied)***

72. In the instant case the statement under Section 313 of the Cr.P.C., 1973 of the accused i.e. the appellant herein supports the prosecution version that the accused / appellant herein on the date 15.06.1996 was aware that Surinder Jindal and Alka had got married, and that the CBI raid at the Police Post Shanti Nagar was conducted on 15.06.1996 when the appellant was posted there. The burden of the prosecution in relation to these aspects is thus reduced.The testimonies

of the prosecution witnesses examined by the CBI i.e. the testimonies of PW-3, the complainant and PW-4, the shadow witness bring forth the garbed demand made by the accused/appellant herein towards illegal gratification for closure of the complaint made by Bal Krishan Aggarwal against Sunil Kumar Aggarwal as indicated through the conversation between the complainant Sunil Kumar Aggarwal and the accused/appellant herein to the effect:-

> ***"Accused: Aa gaye.***
> ***Complainant: Han Sir aa gaye.***
> ***Accused: Baithye.***
> ***The complainant deposed further that the accused was taking his meal, at that time and the conversation continued as follows:***
> ***Complainant: Hamara case nibtadijiye."***
> ***He went on stating that the accused recorded his statement and the following conversation took place again between him and the accused.***
> ***"Complainant: Chalteyhain.***
> ***Accused: Kahan jaarahe ho. Jo laye ho wo de jao.***
> ***Complainant: There was no role of mine in the episode.***
> ***Accused: Mein tumhe is case se nikalrahahun, kuch to karkejao."***

73. That the currency notes of the denomination of Rs.50/- each amounting to a total of Rs.5,000/- i.e. totalling 100 notes numbers of which were noted down as per Ex.PW3/B were given to the accused/appellant by the complainant, Sh.Sunil Kumar Aggarwal, is

corroborated by the testimony of PW-3, the complainant and the shadow witness PW-4.

74. The findings of the learned Trial Court in paragraph 49 of the impugned judgment thus cannot be faulted in view of the prosecution evidence led on record.

75. The defence evidence led by the accused i.e. the appellant herein before the Trial Court, in unable to create any dent in the prosecution version which establishes the factum of the garbeddemand of illegal gratification made by the appellant for removal of the name of the complainant, Sh.Sunil Kumar Aggarwal in relation to allegations against him in the complaint dated 04.06.1996 of Sh.Bal Krishan Aggarwal against Jagdish Jindal and others inclusive of Surender Jindal and the complainant herein i.e. Sh.Sunil Kumar Aggarwal for having kidnapped his daughter Alka Aggarwal; that tainted GC notes were handed over to the accused/appellant herein is also established through the testimonies of PW-3 and PW-4 and that the hand wash of the hand of the appellant turned pink even after the first hand wash having been deliberately thrown and spilt on the ground by the appellant herein, establishes the receipt of the tainted money by the appellant herein pursuant to his demand for illegal gratification in the course of his public duty.. That the tainted money could be recovered only after the Investigation Officer SI, SK Peshin came and overturned the table of the appellant herein, does not detract from the veracity of the testimonies of the prosecution witnesses that the tainted money smeared with Phenolphthalein powder on 100 GC notes of the denomination of Rs.50/- each had been given to the

accused/appellant herein by the complainant which the accused/appellant herein had placed in his table's drawer and which apparently fell into the cavity of his drawer and could be recovered only when the table was overturned by SK Peshin, also stands established through the consistent testimonies of the prosecution witnesses examined. That the sodium carbonate solution turned pink when the left hand and right hand wash of the accused/appellant herein were taken, is also established through the record. That the accused/appellant herein had attempted to destroy the incriminating evidence in the form of the hand wash of his hand which had turned pink on being put into the Sodium Carbonate solution, establishes also that during the course of the commission of the offences punishable under Section 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988, the appellant herein had also given a blow to SI Vipin Kumar when he had tried to apprehend him after the shadow witness had given the pre-appointed signal whereafter the appellant herein had tried to run towards the sole exit of the Police Post where the Trap Link Officer, Insp. S.K.Bhati tried to apprehend him who was also dodged by the accused/appellant herein who proceeded towards the left side where he was intercepted by SI Sriprasad and SI Surender Kumar for accompanying the raiding party and who were thus hit by the fist blows by the accused/appellant herein who was finally overpowered by Insp.Bhati and Constable Wason Singh in which scuffle SI Sriprasad and SI Surender Kumar sustained injuries which were declared as being simple as per the MLC Nos.8203/96 and 8200/96 prepared by the Medical Officer at the Hindu Rao Hospital,

Delhiwhich brings forth the commission of the offences punishable under Section 201 read with Section 511 read with Section 353 of the Indian Penal Code, 1860 and in as much as, the appellant also created an obstruction in his lawful apprehension by the personnel of the CBI on 15.06.1996 also brings forth the culpability of the appellant under Section 224 of the Indian Penal Code, 1860 as rightly held vide the impugned judgment by the learned Special Judge, THC, New Delhi.

76. Reliance that has been placed on behalf of the appellant on the verdicts relied upon is thus misplaced in the facts and circumstances of the instant case. As regards the injuries sustained allegedly by the appellant herein, it cannot be said that the injuries if any caused to the appellant who entered into a scuffle with the trap party personnel, whilst attempting to escape whilst the raiding party was attempting to apprehend himcan be held to be unexplained. Furthermore, in terms of the verdict of the Hon'ble Supreme Court in ***State of Gujarat v. Bai Fatima&Anr. [(1975) 2 SCC 7***the instant case has to be held to be of a kind where the non-explanation of any of the injuries on the accused i.e. the appellant herein does not affect the prosecution case, for the verdictin ***Lakshmi Singh (supra)*** relied upon by the appellant related to a murder case, the facts of which are not in *parimateria*with the facts of the instant case in which for doing his duty as such public servant in the instant case, the prosecution version establishes the demand, and acceptance of illegal gratification and recovery of tainted money recovered from the appellant, a public servant in the discharge of his public duty.

CONCLUSION

77. There is thus, no infirmity in the impugned judgment convicting the appellant for the commission of the offences punishable under Sections 7 &13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 and for the commission of the offences punishable under Section 186, 201 read with Section 511 read with Section 224, 332 & 353 of the Indian Penal Code, 1860 as has been rightly held by the learned Special Judge.

78. As regards the quantum of the sentence imposed, the appellant having been sentenced vide the impugned order on sentence dated 26.04.2001 as has been detailed elsewhere hereinabove in paragraph 2, it is held that the sentence imposed on the accused/appellant is commensurate with the nature of offence committed by the appellant as per the sentence imposable on the date of the commission of the offence and thus, the impugned order on sentence dated 26.04.2001 against the accused/appellant herein in RC No.47(A)/96/DLI is upheld.

79. The appeal is thus, dismissed and the bail granted to the appellant vide order dated 03.05.2001 suspending the sentence is withdrawn and the accused/appellant who has as per the nominal roll received from the Superintendent of Prison, Central Jail No.4, Tihar, Delhi undergone 16 days of detention as an undertrial from 16.06.1996 to 01.07.1996 as also as per the nominal roll dated 13.09.2021,is directed to be taken into custody forthwith. The period

of detention undergone by the appellant herein is directed to be set off under Section 428 of the Cr.P.C.,1973

80. Copy of this order be sent to the Superintendent of the CBI, ACB, New Delhi and be supplied free of cost to the appellant, and be sent to the Superintendent Jail, Tihar, Delhi.

ANU MALHOTRA, J.

SEPTEMBER15, 2021
SV/ '*Neha Thepra*'