

IN THE COURT OF THE SPECIAL JUDGE, C.B.I.-IV, BHUBANESWAR.

PRESENT :

**Sri S.K. Mishra**  
**Special Judge, C.B.I.-IV, Bhubaneswar.**

**T.R.No. 8 of 2011.**

R.C. No. 17(A) of 2010.

Date of argument : 19.7.2016

Date of Judgment : 30.7.2016

Republic of India.

**Versus.**

Partha Sarathi Biswal, aged about 34 years,  
Son of Sri Sudhakar Biswal, Adaspur, Dist. Cuttack,  
Rural Marketing & Recovery Officer (RMRO),  
State Bank of India, Umerkote, Dist. Nabarangpur.  
... Accused.

For the prosecution : Sri Ajaya Singh, PP CBI.

For the Defence : Sri M. B. Das and associates.

Offences u/s. 7 and 13(2) read with Section 13(1)(d) of the  
Prevention of Corruption Act, 1988.

### **JUDGMENT**

Accused stands charged u/s. 7 and 13 (2) read with  
Section 13(1) (d) of the Prevention of Corruption Act, 1988 (to be  
referred hereinafter to P.C.Act) for having demanded and accepted  
gratification of Rs.3000/- abusing his position as a public servant.

2. Accusation leading to this prosecution runs thus:

That accused was serving as Officer Marketing and Recovery  
(OMR) S.B.I. Umerkote Branch in the district of Nabarangpur.

Complainant P.W.19 Manindra Panka had approached for agricultural loan to the accused in his village Nagajodi. Accused assured him to sanction the loan. Thereafter, the complainant along with four others namely Miss. Manak Panka, Pustam Gonda, Dayaram Gonda and Baidram Panka submitted application in SBI, Umerkote Branch during the month of July 2009. But those applications were not entered in the application Receipt Register of the bank. Not a single entry as token of receipt of application form has been made during the year 2009 in the said Register. However receipt of the loan application of the complainant and others was mentioned in letter dtd.11.9.2009 of the Branch Manager, SBI Umerkote Branch to Asst. Agricultural Officer, Jharigaon Block, Jharigaon, Nabarangpur. The said letter was received by Asst. Agricultural Officer, Jharigaon Block. After receipt of the application Shri Manoj Kumar Dey, Asst. Agricultural Officer visited village Nagajodi and verified that they are cultivating land in Nagajodi village. The above fact has been intimated by Shri Manoj Kumar Dey to the SBI, Umerkote Branch verbally. Thereafter the complainant approached the accused several times for getting the loan, but his loan was not sanctioned. Being harassed by the bank official, the complainant lodged a complaint before the District Collector, Nabarangpur on 31.8.2009 and later on he informed the matter to the Secretary, Bank Lokpal on 8.9.2009 along with four other applicants. The complaint lodged by the complainant and four others was sent to SBI Umerkote Branch by the Collector and District Msagistrate, Nabarangpur. To conceal their fault the Bank official sent the land records for verification to the Agricultural Officer, Nabarangpur and reportedly issued one letter dtd.11.9.2009 to the Collector and District

Magistrate, Nabarangpur intimating that after getting certificates from Agricultural Officer, Nabarangpur, loan would be sanctioned. But no such letter was received in the office of the Collector and District Magistrate, Nabarangpur. The complaint which was lodged by accused and four others to the Secretary, Banking Lokpal on 8.9.2009 reached SBI Umerkote Branch routed through GM (Network II). In the said letter, it was advised to the Umerkote Branch to acknowledge receipt of the letter to the complainant and to sort out the matter expeditiously. In response to the said complaint, BM, SBI, Umerkote issued letter to GM (Network II) dtd.21.10.2009 mentioning the facts that pre-sanction visit was done by Sri Trilochan Bhoi, Asst. Manager of the Branch on 5.9.2009 and the bank had sought co-operation from the Asst. Agricultural Officer, Jharigaon Block to ascertain the exact share of the land of the complainants. After due instruction, the accused and Sri L.C. Murmu, Field Officer visited Nagjodi village and collected the loan application from the accused and four other complainants. Out of said four other complainants, Miss. Manak Panka and Dayaram Gonda were sanctioned loan on 22.5.2010. Shri Baidram Panka was sanctioned KCC loan on 31.5.2010 and Shri Pustam Gonda was sanctioned the KCC loan on 1.6.2010. After getting information that the other four persons have received the loan, the complainant rushed to the bank and met the accused on 28.8.2010. Accused told the complainant that the four persons in whose favour the loan was sanctioned, have paid some money to him and if the accused requires for sanction of loan, he had to pay Rs.3000/- as bribe. Being aggrieved, the complainant submitted a complaint (Ext.56) before C.B.I. Office, Rourkela. Basing upon that Supt. of Police, C.B.I. Bhubaneswar registered

R.C. Case No.17 ( A) of 2010 and directed Sri A.K. Mishra,(P.W.21) Inspector of Police, CBI for investigation.

Inspector Sri Mishra decided to lay a trap and made arrangement of two independent witnesses namely Sri Arjun Marandi, SDE (FM) office of GMTD, BSNL, Koraput (P.W.1) and Sri R. Siva Prasad Rao, JTO, Office of SDO (T), BSNL, Nabarangpur (P.W.7). Accordingly on 31.8.2010 between 8 a.m. and 9 a.m. all the team members along with the independent witnesses as well as complainant assembled at Room No.301 in Trupti Lodge, Nabarangpur. Pre-trap exercise was taken up there. The process of laying trap was explained. The complainant produced Rs.3,000/- in the form of one number of Rs.1000/-, two numbers of Rs.500/- and ten numbers of Rs.100/- G.C. notes and the notes were smeared with phenolphthalein powder. A pre-trap memorandum was prepared containing the number of G. C. notes and complainant was instructed to hand over the money to the accused only on demand. Witness Mr. A. Marandi was asked to accompany the complainant in order to see the transaction of bribe as well as to over hear the conversation of the complainant and the accused. Accordingly the trap team reached near SBI, Umerkote Branch at about 11.15 a.m. and took convenient positions near the entrance of the bank in a scattered manner. The complainant and witness A. Marandi went inside the bank. The complainant went to the cubical where accused was sitting. Witness Mr. A. Marandi remained near the said cubical mixed up with the crowd of customers. Thereafter, the complainant met the accused and requested for sanction of his loan. The accused asked the complainant whether he had brought Rs.3000/- as per previous direction. When the complainant replied in the affirmative,

accused demanded the amount by stretching his right hand towards the complainant. Thereafter, the complainant took out the tainted GC notes of Rs.3000/- from his pant pocket and handed over the same to accused, who accepted the same in his left hand and counted with both hands and kept the same in his left hand side shirt pocket. After receiving the amount, accused assured the complainant that his loan would be sanctioned within a day or two. At about 11.30 a.m. the complainant came out of the bank and gave the prefixed signal. On getting signal the raiding party entered inside the bank and on seeing that many people are coming towards the accused, he took out the tainted GC notes from his shirt pocket and threw it under his table. The accused was caught red handed. Shri A.K. Mishra asked the identity of Shri Biswal, accused, after introducing himself as well as other team members. The accused identified himself as Partha Sarathi Biswal, Field Officer, SBI, Umerkote. When Shri A.K. Mishra challenged as to why he demanded and accepted the bribe from the complainant, he kept quite. The hands and shirt of the accused were washed and the liquid turned pink. The tainted money, shirt of accused and pink coloured solution were preserved. A post-trap memorandum was prepared and signed by all. The bottles containing the hand wash and shirt pocket wash liquid were sent to C.F.S.L. Kolkata for opinion. The chemical analyst report was received. After obtaining sanction for prosecution of accused from Shri Devendra Prasad, General Manager (N.W.II), SBI, LHO, Bhubaneswar charge sheet was filed. Basing upon that, cognizance of the offences was taken on 15.3.2011. Hence, this case.

**3.** Denial is the plea of accused to the demand and acceptance of bribe. In his statement u/s. 313 Cr.P.C in course of

explaining the incriminating circumstances, accused has stated that in early part of August, P.W.19 being accompanied by P.W.1 came to his office and there P.W.1 after introducing himself requested him to help P.W.19 to get an agricultural loan by influencing the authorized officers, to which he politely refused to comply. Then Mr. Arjun Marandi told him that the villagers of Nagajodi are facing crop less. Hence, he should not press for recovery. When he refused to entertain that request, both left threatening to teach him a lesson and for that reason they foisted such a false case against him.

4. To bring home charge, prosecution examined 22 witnesses in all. P.W.2 is the sanctioning authority while P.W.3 is the Chemical Analyst. P.W.19 is the complainant while P.W.1 and 7 are the independent witnesses to the trap. P.W.21 is the Trap Laying Officer (TLO). P.W.4,5,6,8,9,10,11, 12, 13, 14, 15, 16 are the officials of SBI, while P.W.17 is the Jr. Clerk, in the Grievance Cell, Collectorate, Nabarangpur. P.W.18 and 20 had applied for the loan along with the complainant from SBI, Umerkote Branch and loan was sanctioned in their favour. Sixty-one documents have been exhibited on behalf of prosecution. Prosecution has proved the material objects i.e. M.O.I to M.O.VII.

The accused has only examined himself as D.W.1 and has not exhibited any documents from his side, except the signature of PW-19 vide Ext.A in Ext.9.

5. The points for determination are :
- (i) Whether accused on 31.8.2010 at MCL S.B.I., Umerkote demanded illegal gratification from complainant P.W.19 as a motive or reward for sanctioning his agriculture loan of Rs.30,000/-?

- (ii) Whether accused on 31.8.2010 at his residence accepted illegal gratification as a motive or reward for sanctioning agriculture loan of P.W.19 ?
- (iii) Whether accused on the above date and place by corrupt and illegal means abusing his position as a public servant obtained Rs.3000/- from the complainant P.W.19 without any public interest?
- (iv) Whether the sanction for prosecution of accused is valid?.

6. The evidence of P.W.13 Chief Manager, Rural, State Bank of India at Regional Office, Jepore, B. Gopal Krishna, Branch Manager, S.B.I. Umerkote Branch, Basanta Kumar Jena P.W.15, Chief Manager (Rural) in S.B.I. Regional Business Office, Jeypore and Debendra Prsada (P.W.2) the sanctioning authority has gone without any challenge and unequivocally proves that on 31.8.2010 accused was posted as Rural Marketing and Recovery Officer (RMRO), in State Bank of India, Umerkote Branch. This evidence gets corroboration from the absentee/ leave statement register of officers/ staff of SBI Umerkote Branch Ext.33. P.W.4 was the Asst. Manager-cum-Field Officer, SBI, Umerkote Branch from 2007 to 2010. According to him, the complainant Manindra Panka had approached their bank in the month of May or June 2009 for KCC Loan. Mr. V.G. Krishna Rao, Branch Manager told that there was complaint of five to six persons before the Collector, Nabarangpur relating to KCC loan and he (P.W.4) was asked by Manager Rao to proceed to Village Nakajodi and to contact the complainant. Accordingly, on 5.9.2009 he had been to village Nakjodi and since the complainant was not available, he told the other complainants to inform Manindra Panka about the matter. Further, according to him on 21.12.2009 he along with W.V. Srinibas Rao, Branch Manager ( P.W.12) met five complainants along with the present complainant and Branch Manager assured them that they would

get loan and handed over the provisional selection letter to them including the complainant. P.W.4 proved the provisional selection letter Ext.9. According to him, the complainant along with others were instructed to produce no due certificate of Gramya Bank Bhodra and KCC Bank, Umerkote along with credit declaration form specifying the landed properties. P.W.12 proved the seizure list Ext.26 towards seizure of documents i.e. application receipt register, customer complain register, four numbers of sanctioned original agricultural finance Kisan credit Card forms, Inward mail register, copies of letters received from Grievance cell of District Collector, Nawarangpur along with two letters written by B.M. Umerkote, copy of the complain by Manindra Panka and four others addressed to Banking Ombudsman, RBI, Bhubaneswar, copy of letter addressed to CJM, SBI, LHO, Bhubaneswar, copy of the letter addressed BM, SBI, Umerkote by GM, Network-2, copy of the letter addressed to G.M. Network-2 by the Branch, copy of the Branch letter dtd.21.12.2009 and copy of letter No.RMSL No.29/132 dtd.22.12.2009 sent by BM, SBI Umerkote to BM SBI Koraput. P.W.8 Gopal Chandra Patra in his evidence has stated that he had received a complaint letter from District Collector, Nabarangpur relating to sanction of loan. The Branch Manager had deputed Trilochan Bhoi, Field Officer (P.W.4) for an enquiry to village Nagajodi and to contact five persons including Manider Panka. According to him, the receipt of application of Manindra Panka does not find place in the application receipt register. According to him the Field Officer and Officer Marketing and Recovery, ordinarily used to go to the field and used to receive application and make entries in the register. Similarly P.W.17 Jr. Clerk, Grievance cell of Collectorate, Nabarangpur has proved Ext.53/1 where the

complaints were forwarded by their office to the Branch Manager, SBI, Umerkote.

7. On going through Ext.9 in which the Branch Manager, SBI Umerkote Branch had written the above letter to the complainant along with other applicants, which have been routed through the Collector, Nabarangpur it is noticed that the complainant along with others have been asked to submit the no-dues certificate which was to be issued by Utkal Gramya Bank, Dhodra and KCC Bank, Umerkote. This part of prosecution evidence is not disputed and it is proved that complainant Maninder Panka had submitted an application for sanction of loan in his favour before the Bank and since the loan has not been sanctioned in due course, he along with other applicants made complaint before the Collector, Nabarangpur which were subsequently transmitted to the Branch Manager, Umerkote Branch.

8. Complainant P.W.19 in his evidence has stated that he had applied for agricultural loan to the SBI Umerkote Branch in the year 2009 along with ROR, receipt issued by the RI Office and voter photo ID card. As he did not get the said loan he had gone to the office of Collector along with Pustam Ganda, Manak Panka, Dayaram Ganda and Baidaram Panka and intimated the fact to the Collector. Accordingly the collector gave one written paper and asked them to show the same in the bank. On the next day, the accused along with two others of SBI Umerkote Branch went to their village. They were asked to go to the said bank in the month of August, since it was not the period for sanction of the loan. According to him, the accused Biswal told him to give some money for the purpose of spending (Kharchabarcha). Accused told him to

bring the cash of Rs.3,000/- for the purpose of sanction of Rs.30,000/- in his favour and he further told him that the last date of sanction was 31.8.2010. Thereafter, P.W.19 returned to his house and told the above fact to one Arjuna, who advised him to go to CBI Office at Rourkela. Accordingly, P.W.19 went to CBI Office Rourkela and lodged written complaint vide Ext.56 at CBI Office Rourkela. He further stated that one Mishre Inspector, CBI told him to come to Nabarangpur on the 31.8.2010 and reached at Trupti Lodge on 31.8.2010 at about 8 a.m. to 8.30 a.m. There one Arun Barandi of BSNL, two inspectors including Sri Mishra, three constables were present. He further stated that he narrated before Inspector Sri Mishra regarding demand of cash of Rs.3000/- from him by the accused for the purpose of sanction of loan. Being asked by Sri Mishra, he produced cash of Rs.3,000/- in form of one GC note of the denomination of Rupees one thousand, two GC notes of the denomination Rs.500/- and ten GC notes of the denomination of Rs.100/-. The notes were smeared with chemical powder prepared by Sri Barandi and the colour of the solution changed to pink. Then Sri Mishra had noted down the serial number of the said GC notes in one paper and Sri Barandi placed the GC notes in his (P.W.19) right side pant pocket. Further, P.W.19 has stated that he along with Sri Barandi and one driver went to Umerkote by one Bolero and the CBI personnel went by another vehicle. According to him, they reached Umerkote at about 11 a.m. and he went inside the bank, being followed by Sri Barandi. Sri Barandi waited near the door and when he went near the accused and told him about the loan, he asked him if he had brought the money. When P.W.19 told that he had brought the money, then the accused asked him how much amount he has

brought. Then, the complainant P.W.19 brought out the tainted GC notes from his pant pocket and gave the same to the accused and thereafter, the accused replied that, his (P.W.19) loan will be sanctioned. The accused counted the GC notes by his hands and kept the said tainted GC notes in his shirt pocket. According to him, as he gave pre-arranged signal by scratching his hairs by his hand, then Sri Mishra and Sri P.K. Tripathy came to the spot and asked him as to what he had given. On seeing them, the accused brought the said tainted GC notes from his shirt pocket and threw the same on the floor. Then Inspector Sri Mishra caught hold of both his hands. As per the instruction of Sri Mishra, two constables took the hand wash of the accused by first taking the right hand wash and the colour of the solution changed to pink. Then, his left hand wash was also taken. Both the hand washers were kept separately. The accused was asked to remove his shirt and upon taking wash of the said shirt by water, the colour of the water changed to pink. The said pink colour water was preserved in one bottle. The shirt of the accused was kept in one envelope in sealed condition. As per instruction of Shri Mishra, Shri Barandi collected the tainted GC notes from the floor and kept the same in one envelope in sealed condition. Sri Mishra compared the serial number of the tainted GC notes with the serial numbers earlier noted in one paper with the assistance of one constable and the same tallied and thereafter the said tainted GC notes were kept in the envelope. In cross-examination, P.W.19 admitted that he had not submitted any legal heir certificate of the Office of Tahasildar to show that Mangulu Panka is his paternal grand father. He further admitted that the ROR and receipt submitted by him were in the name of his paternal grandfather Mangulu Panka and were not in

his name or in the name of his father. He has also admitted that he was asked by the bank official to obtain "No due certificates" from different bank and necessary certificate from the concerned RI to show that the land in question in respect of which the loan is applied for is being cultivated by him.

9. In a case of trap, demand and acceptance of illegal gratification by a public servant with a motive to do any official act in favour of a person is vital. Before scanning of the evidence adduced by the prosecution witnesses, it may be noted here that, in the case of **Subas Prabat Sanvane -Vrs- State of Gujarat reported in (2002) 22 OCR (Supreme Court) at page 817**, Their Lordships of the Hon'ble Apex Court have held that,

"Mere acceptance of money by a public servant, without there being any other evidence that it was demanded would not be sufficient for convicting the accused U/s.13(1)(d) under the Act". Further in the case of **Narendra Champaklal Trivedy –Vrs- State of Gujarat, AIR2012 (Supreme Court) 2259**, the Hon'ble Supreme Court have held that, "It is the settled principle of law that, mere recovery of tainted money is not sufficient to record a conviction unless there is evidence that the bribe has been demanded or money was paid voluntarily as bribe.

In the case of State of **Punjab Vrs. Madan Mohan Lal Verma (2013)56 OCR (SC) – 425**, it has been held that, demand of illegal gratification is sine qua non for constituting an offence under the Act 1988. Mere recovery of the tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily

as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the Act, 1988, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the Act, 1988. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the fundamental facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In the light of the aforesaid settled legal position, let me now examine how far the prosecution has been able to establish by reliable evidence about such demand and acceptance of bribe by the accused from the complainant.

10. In the FIR, Ext.56 the complainant Manindra Panka stated that on 21.12.2009, he applied for an agricultural loan to the tune of Rs.30,000/- at SBI, Umerkote along with the required documents and in the month of January 2010 he met the accused Field Officer and requested him to grant the said loan. The accused told him to grant his loan after the month of March, 2010. When the complainant met with the accused in the month of April,

2016, he assured him to grant the loan and thereafter, lingered the matter. When the complainant came to know about the sanction of loan of other persons who had applied with him, he again met the accused on 28.8.2010 at the bank and requested him to consider his matter. The accused told him that those who have been sanctioned the loan amount, have paid some money to him. Thereafter, being the complainant asked the accused about how much money is required for sanction of his loan, the accused told him to come with Rs. 3000/- for sanction of loan of Rs.30,000/-. When the complainant expressed his inability for arranging Rs.3000/-, the accused told him to pay the said amount on 31.8.2010 on a Tuesday. Being aggrieved the complainant lodged the written FIR (Ext.56) before CBI, Bhubaneswar. The complainant (P.W.19) in his cross-examination has stated that The ROR and receipt submitted by him were in the name of his paternal grandfather Mangulu Panka and were not in his name or in the name of his father. Further, he has stated that he has not submitted the legal heir certificate of the office of Tahasildar to show that Mangulu Panka is his paternal grandfather. In his cross-examination in para-17, P.W.19 has stated that Ext.A is his signature given in English language in Ext.9. Ext.9 is dated 21.12.2009. On perusal of Ext.9 it is found that the Branch Manager of SBI Umerkote wrote letter to five persons including the complainant to arrange and to submit the no-dues certificate duly signed by Utkal Gramya Bank, Dhodra & KCC Bank, Umerkote along with the enclosed credit declaration form specifying the land under village duly counter-signed by the Revenue Inspector of their area. P.W.19 the complainant also admit the above facts.

11. Now coming to the evidence of P.W.4 Asst. Manager-cum-Field Officer, SBI, Umerkote Branch who has stated that Mr. V.G. Krishna Rao was the Branch Manager during Sept.2009 and said Mr. Rao told him that there has been complaint of five to six persons before the Collector, Nabarangpur relating to KCC loan and he was asked by Manager Rao to proceed to village Nakjodi and to contact the complainant and accordingly on 5.9.2009 he had been to village Nakjodi and contacted Pustam Ganda, Manak Panka, Dayaram Ganda and Baidyaram Panka, but he could not contact Manindra Panka as he was not available in village on that day. In his cross-examination, he has stated that the accused has been entrusted with the duty of recovery of loan from the loanees. Similarly P.W.5 in his cross-examination has stated that after transfer of Field Officer Trilochan Bhoi, he was entrusted with the work of field officer and took up the responsibility of sanction of agricultural loan. At that time, the accused was serving as Rural Marketing and Recovery Officer of said branch. Further, P.W.6 in his evidence has stated that as per instruction of the Branch Manager, he proceeded to village Nakjodi along with accused for recovery of the old loan and collection of applications for new loans on 8.5.2010. According to him he had received the application of Dayaram Ganda and the accused had received applications of Pustam Ganda, Manak Panka and Baidaram Panka vide Ext.14 to 17. According to him, he has filled up the contents of the above three applications. In cross-examination, he has stated that he himself, Trilochan Bhoi and Kinkar Kumra were the Field Officers of SBI, Umerkote Branch in the year 2009 to 2012 and all three of them were entrusted with the work of agricultural loan. In his cross-examination at Para-9, he has stated that the accused had

no authority to sanction any loan. The accused had no authority to process unless or until the applicant placed the application before him. Further he has stated that the complainant Manindra Panka did not meet him or the accused in his village Nagjodi during their visit on 8.5.2010 and also did not furnish any document before them on that day in connection with his application for loan and for the said reason, no agricultural loan was sanctioned in favour of the complainant. P.W.3 Deputy Manager, DVD, S.B.I., Umerkote Branch has stated that he had been entrusted with the work relating to sanction of loans of large amount and supervision in the matter of sanction of loans of small amount. The complainant had approached him for sanction of KCC loan and had come with only Xerox copy of record of right and he instructed him to come with the original record of rights, voter ID card and other documents. But the complainant had never approached him for the second time for the loan amount. According to him, he had received a complaint letter from District Collector, Nabarangpur relating to sanction of loan and the Branch Manager had deputed Trilochan Bhoi, Field officer for an enquiry to village-Nagjodi and to contact five persons including the accused. He had accompanied Branch Manager Mr. Rao to that village and they had discussed with five persons including the complainant and the said five persons were instructed to come to the Branch with "No due certificate" and credit declaration certificate. According to him, except Manindra Panka loan has been sanctioned in favour of four persons in the month of May and June, 2010. P.W.8 has proved the letter of Branch Manager addressed to Collector, Nabarangpur Ext.30 wherein it has been mentioned that they have taken up the matter with the Asst. Agricultural Officer, Jharigam Block to ascertain the exact

share of the lands cultivated by the concerned farmers. In his cross-examination, he has stated that three Field Officers of the branch were looking after agricultural loan and they are Trilochan Bhoi, Asst. Manager, Agriculture, L.C. Murmu, Asst. Manager, Agriculture and K. Kumra, Asst. Manager, Agriculture and the said three officers were responsible for giving agricultural loan upto the amount of Rs.50,000/-. Further in cross-examination he has stated that the accused was the officer for marketing and recovery and he has no authority to sanction any loan to anybody in any respect and the detail duties and responsibility of the accused have been mentioned in Ext.41. On perusal of Ext.41, it is found that the role of the Marketing & field officer (MRO) are to survey the area under his area of operation for assessing the potential for agricultural activities/rural housing etc., to explore potential for agricultural development and promote agricultural advances, carry out pre-sanction survey in respect of loan proposals and submission of reports/ recommendations, carry out post sanction inspections as stipulated from time to time etc. The above duties of the Marketing & Field Officer (MRO) has been proved by P.W.10 Chief Manager, Rural Business, Local Head Office, SBI. According to him, the Field Officer, RMRO or Branch Manager, visit the lands depending on amount of loan to be sanctioned and if the recommending Officer or the visiting officer is satisfied, he recommends the application to the sanctioning Officer. The recommending letter along with the application are entered in loan sanction register for sanction of loan by the competent authority. P.W.12 in his cross-examination has stated that there is no report of the concerned Agricultural Officer or the RI in the file relating to

sanction of loan vide Exts.14 to 17 although the same were received and appraised on 18.5.2010.

12. P.W.18 Manak Panka and P.W.20 Baidyaram Panka in their evidence have stated that loan has been sanctioned in their favour on production of relevant documents. Both of them have stated that Field Officer Murmu and Sri Biswal came to their village and took the required documents from them. P.W.20 in his cross-examination has stated that he along with his co-villagers namely Dayaram Ganda, Pustam Ganda and Manak Panka produced the relevant documents before P.W.6 Litar Murmu and the accused during their visit to their village on 8.5.2010. According to him on 8.5.2010 the bank officials i.e. P.W.6 and the accused could not find the complainant Manindra Panka in their village, for which, he could not produce relevant documents before them for sanction of loan in his favour. On the same day, P.W.6 and the accused told them to intimate the complainant about their visit to their village and to intimate him to produce relevant documents, along with loan application in the said bank. According to P.W.21, he has not complained regarding any harassment by the accused in getting the loans in question.

13. From the evidence of above P.Ws. it is found that the loan application of five persons including the complainant have been filed before the officials of SBI, Umerkote Branch and since their loan was not sanctioned, they complained before the Collector, Nabarangpur and thereafter, on production of documents, the loan was sanctioned in favour of four persons except the complainant. Further, from the evidence of P.Ws. 20, it is found that both the field officers i.e. P.W.6 and the accused visited to their village and he along with other three persons

submitted their documents, but the complainant was not available in the village, for which, he failed to submit required documents for sanction of loan amount.

14. Further, on scrutiny of the evidence of the P.W.8 it is found that three Field Officers of the branch were looking after agricultural loan and they are Trilochan Bhoi, Asst. Manager, Agriculture, L.C. Murmu, Asst. Manager, Agriculture and K. Kumra, Asst. Manager, Agriculture and the said three officers were responsible for giving agricultural loan upto the amount of Rs.50,000/-. Further, on scrutiny of the evidence of P.W.8 it is found that the accused was the officer for marketing and recovery and he had no authority to sanction any loan to anybody in any respect and the detail duties and responsibility of the accused have been mentioned in Ext.41. Further on going through the document Ext.41, it is found that the role of the Marketing & field officer (MRO) was to survey the area under his area of operation for assessing the potential for agricultural allied agricultural activities/rural housing etc., to explore potential for agriculture development and promote agricultural advances, carry out pre-sanction survey in respect of loan proposals and submission of reports/ recommendations, carry out post sanction inspections as stipulated from time to time etc. Therefore, it is not proved that the accused was responsible for processing the loan applications of the applicants and to sanction agricultural loan in favour of the applicants. None of the prosecution witnesses have stated that the loan application of the complainant Manindra Panka was pending with the accused and the accused had any authority to sanction the said loan in favour of the complainant. It is the allegation of the prosecution that the accused received bribe from the four persons

in whose favour loan was sanctioned. But, P.W.18 and 20 in whose favour loan was sanctioned have not stated anything regarding payment of any amount to the accused for sanction of loan in their favour. Further, it is found from the evidence of the witnesses examined from the side of the prosecution that when P.W.6 and the accused have visited the village of complainant, he was found absent, for which, he had not submitted any document for sanction of loan in his favour.

15. So far as the demand and acceptance of bribe by the accused, it is the evidence of P.W.19 the complainant that as the accused had demanded Rs.3000/- for sanction of loan in his favour, he informed the above fact to one Arjuna who advised him to go to CBI Office at Rourkela. Therefore, the complainant went to Rourkela and lodged written complaint vide Ext.56 at CBI Office Rourkela. According to P.W.19 one Sri Mishra, Inspector, CBI told him that they will come to Nabarangpur and then he came to Nabarangpur on 30.8.2010. Further, this witness has stated that he went to Trupti Lodge, Nabarangpur on 31.8.2010 at about 8 AM to 8.30 AM where one Arun Barandi of BSNL, two inspectors including Sri Mishra, three constable were present. So, there is discrepancy found from the evidence of P.W.19 regarding the date on which he had been to Nabarangpur to met CBI officials. If the evidence of P.W.19 is believed for the sake of argument, for a moment, then it creates doubt regarding the presence of P.W.19 on 30.8.2010 at Nabarangpur. Further, P.W.19 has stated that at Nabarangpur he narrated before Inspector Sri Mishra regarding demand of cash of Rs.3000/- from him by the accused for the purpose of sanction of loan where Sri Mishra prepared solutions and as per the instruction of Sri Mishra one person dipped some

powder in one solution, but there was no change of colour. Similarly, as per the instruction of Sri Mishra, Sri Barandi touched the other powder and dipped his hands in one solution and the colour of the solution changed to pink. Being asked by Sri Mishra, P.W.19 produced cash of Rs.3000/- in the form of GC note of denomination of rupees one thousand, two GC notes of the denomination of rupees five thousand each and ten GC notes of the denomination of rupees one hundred each and the said GC notes were treated by one powder by Sri Barandi of BSNL on the instruction of Sri Mishra. Shri Barandi also noted down the serial number of the said GC notes in one paper and then placed the said GC notes in the right side pant pocket of the complainant P.W.19.

16. It is the evidence of P.W.1 Arjun Marandi who was the SDO, BSNL, Koraput and P.W.7 R. Siba Prasad Rao, JTO, BSNL Nabarangpur that as per the direction of their authority, they reached at Truti Lodge, Nabarangpur where the other trap party members were present. There, they introduced to the CBI officials K.P. Tripathy, Inspector, P.K. Palai, Constable, A.K. Pradhan, Constable, J. Singh constable and informant Maninder Panka and the Inspector Sri Mishra disclosed about the reason for assembly. They have further stated that Inspector Sri Mishra stated before them that Mr. Panka had lodged a complaint alleging demand of bribe of Rs.3000/- by the accused, Field Officer, SBI Umerkote for sanction of loan of Rs.30,000/-. According to P.W.1 the complainant had produced Rs.3,000/- G.C. notes and the numbers of notes were noted in the pre-trap memorandum.

17. It is the evidence of P.W.19 that being asked by Sri Mishra, he produced cash of Rs.3000/- in the form of one GC note of the denomination of rupees one thousand, two GC notes of the

denomination of rupees five thousand each and ten GC notes of the denomination of rupees one hundred each which he obtained as loan. The said GC notes were treated by one powder by Sri Barandi of BSNL on the instruction of Sri Mishra. Sri Barandi also noted down the serial number of GC notes in one paper and then placed the said GC notes in his right side pant pocket. The above evidence of P.W.19 finds support from the evidence of P.W.1, P.W.7 and the investing officer P.W. 21. The above P.Ws. have stated about the process of demonstration made at Trupti Lodge, Nabarangpur. But P.W.7 and P.W.22 who were present at the time of demonstration in their examination in chief have stated that constable A.K. Pradhan kept the tainted notes in the right side pant pocket of the informant. So, there are discrepancies found from the evidence of P.W.1 to that of evidence of P.W.19 as well as from the evidence of P.Ws.7 and 22. P.Ws.1, 7 and 21 that a pre-trap memorandum vide Ext.1 was prepared at the spot. P.W.19 the complainant has stated that he does not remember what else happened at the said Trupti Lodge. So, from the above evidence of P.W.19, it is forthcoming that he is not well aware about the matter at Trupti Lodge.

18. It reveals from the evidence of P.Ws.1,7,19 and 21 that Arjun Marandi was selected as an accompanying witness with instruction to accompany the complainant-decoy, to overhear the conversation in between the complainant and the accused and to see the transaction of bribe and the complainant was directed to give signal to the trap party members. It is further evident from PW.18 the TLO that the trap team left for Umerkote on the same day and arrived there around at 11 a.m. P.W.19 has stated that he went inside the bank, being followed by Sri Barandi and Sri

Barandi waited near the door and while he went near the accused Sri Biswal and told him about the loan, he asked him if he has brought the money and when P.W.19 stated affirmative, the accused told him about how much money he had brought. Then, the complainant brought out the tainted GC notes from his pant pocket and gave the same to the accused and thereafter, the accused replied that his loan will be sanctioned. According to P.W.19, the accused counted the said GC notes by his hands and kept the said tainted GC notes in his shirt pocket. Then, the complainant gave pre-arranged signal by scratching his hairs by his hand.

19. It is the evidence of P.W.1, P.W.7, P.W.19 the complainant and P.W.21 the TLO that they reached at Umerkote by two vehicles and P.W.19 went inside the bank, met the accused and all the trap team members waited outside. The complaint went to the cubicle of the accused and Sri Marandi (P.W.1) stood nearby. The complainant requested the accused to sanction his loan to which the accused enquired whether he has brought Rs.3000/- as demanded earlier and the complainant replied in the affirmative. Thereafter, the complainant gave the accused Rs.3000/- as demanded earlier and the accused by stretching his hand received the same and kept the same in his left side shirt pocket and the accused assured the complainant that his loan will be sanctioned within one or two days. The complainant then came outside and gave signal to the trap party member. Then all the trap party members rushed near the accused. Seeing many persons coming towards him, the accused took out the said tainted GC notes from his shirt pocket and threw away the same under his table. After giving his identity when P.W.21 challenged the

accused as to why he demanded and accepted bribe of Rs.3,000/- from the complainant, he fumbled and kept mum. Thereafter, the hands of the accused was caught hold by constable Jeetrai Singh and P.K. Palei. Thereafter, the solution of sodium carbonate water was prepared and the accused was instructed to dip his fingers of both his hands separately in that solution, to which the solution changed to pink colour. P.W.7 was instructed to collect the tainted GC notes from the ground who collected the same and tallied the same with the GC notes as mentioned in the pre-trap memorandum which are also tallied. According to P.Ws.1,7,19 and 21 the pocket wash of the inner side shirt pocket of the accused was taken in a fresh solution of sodium carbonate with water and the colour of the said solution changed to pink. The said pocket wash was kept in a dry and clean bottle and sealed and wrapped by one paper on which all the trap team members have signed. The wearing shirt of the accused was also kept in an envelope and sealed and signed by witnesses. A post trap memorandum was prepared at the spot and all the witnesses present there have signed on it. According to them, M.O.II, III and V are the right hand wash, left hand wash and pocket wash of the shirt of the accused and M.O. VI is the envelope containing shirt of the accused. M.O.IV is the envelope inside which another sealed envelope containing the tainted GC notes have been kept and M.O.VII is the sealed envelope containing the tainted GC notes on which all of them have signed.

20. P.W.22 in his evidence has stated that as per direction of S.P.CBI on 16.9.2010 he took charge of investigation and during investigation he seized loan sanction register as per seizure list Ext.11 and other documents as per seizure list Ext.58, sized six

numbers of documents as per seizure list Ext.28, copy of letter received from Grievance Cell of District Collector, Nabarangpur vide seizure list Ext.31, two registers Ext.52 and 53 on production by Gagan Bihari Bissoyi, Jr. Clerk vide seizure list Ext.54. After receiving sanction order from P.W.2 he submitted charge sheet against the accused.

21. According to P.W.19 one Barandi went with him near the accused while the tainted GC notes were handed over to him and Sri Barandi was directed to overhear the entire trap process. But, P.W.21 has admitted in his cross-examination that P.W.19 has not stated before him u/s.161 of Cr.P.C. that Arun Barandi had accompanied him to the said bank and stood at the door of the bank and that P.W.19 gave the pre-arranged signal to Mr. Barandi. If the evidence of P.W.19 is believed for a moment for the sake of argument, then the claim of PW-1 that he was witness to the entire trap proceeding is doubtful. The prevaricating and contradictory statement of PW.19 is not trustworthy and credible. The prosecution did not examine the other material witnesses. They are none else but Sri P.K. Tripathy, Inspector, Sri A.K. Pradhan, constable, Sri P.K. Palei, Constable and Sri Jitrai Singh Constable who were the members of the trap team. The evidence of PW.19 the complainant pertaining to demand has not been corroborated by any official witnesses of the bank.

22. Learned defence counsel has drawn the attention of the court that the accused had no authority to scrutinise the loan application of the complainant. Moreover, the accused had also no authority to sanction agricultural loan in favour of the complainant. Therefore, question of demand to sanction of loan in favour of the complainant by the accused does not arise.

Learned counsel appearing for the accused also drew attention of the court referring the case law in case of State of Punjab V. Madan Mohal Lal Verma reported in (2013) 56 OCR (SC) -425, wherein it has been held by the Hon'ble Court –

“Demand of illegal gratification is sine qua non for constituting an offence under the Act.1988. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification.

Learned defence counsel has also drawn attention of the court by referring case law in case Rajendra Sharma V. State of West Bengal reported in (2013) 56 OCR 430, wherein it has been held by the Hon'ble Court –

“It has been continuously held by this Court in a catena of cases after interpretation of the provisions of Sec.7 and 13(1)(d) of the Act that the demand of illegal gratification by the accused is the sine qua non for constituting an offence under the provisions of the Act. Thus, the burden to prove the accusation against the appellant for offence punishable under Sec.13(1)(d) of the Act with regard to the acceptance of illegal gratification from the complainant, lies on the prosecution.

Xxx xxx xxx

The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Sec.7. The above also will be conclusive insofar as the offence under Secs.13(1)(d) (i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or

abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. "

23. After going through the evidence on record, it is seen that the prosecution witnesses have failed to prove the duty of the accused with regard to his involvement for sanctioning any loan in favour of the complainant. Rather, it is well proved by the prosecution witnesses that except the accused, other three field officers of the SBI Umerkote have been entrusted to collect the loan applications of the customers and to sanction loan in their favour. Further on going through the evidence of the P.Ws., it is found that when the bank officials including the accused went to the village of the complainant, he was found absent and he failed to produce documents in support of his loan application. Since the loan in favour of other four persons were sanctioned on filing of required documents, it was the complainant who failed to produce documents, for which, the loan was not sanctioned in his favour. The other loanees in whose favour the loan has been sanctioned have not stated anything against the accused that he had received any bribe money from them for sanction of loan amount as stated by the complainant P.W.19.

24. From the discussions already made, it is seen that due to the laches on the part of the complainant in not furnishing the required documents before the bank, his loan application could not be processed. It has already been proved that the accused has neither competent nor authorized to process any such loan application or to sanction the same, since he was only Rural Marketing and Recovery Officer (RMRO), in State Bank of India, Umerkote Branch. The plea taken by the defence that this false

case has been foisted by the complainant at the instance of P.W.1 also assumes importance in view of the fact that neither in Ext.47 the letter dtd.31.7.2009 addressed to the Collector, Nabarangpur and nor in Ext.48 (dtd.8.9.2010) the application submitted to the Bank Lokpal by the complainant, the name or designation of the accused has been mentioned. In fact the evidence of the officers of the Bank including P.Ws.4,5 and 6 clearly show that the complainant had never approached them during their visit to village Nagjodi and the relevant documents were never furnished by the complainant before any of them. There is no reliable corroborative evidence in support of the version of the complainant that the accused had the authority to sanction the loan in his favour and had demanded and accepted the bribe amount of Rs.3000/- as alleged by him. Therefore, it is difficult to visualise as to how in the light of the above facts, demonstrated by the materials revealed in the course of investigation, the accused can be construed to have adopted corrupt or illegal means or to have abused his position as a public servant to obtain any valuable thing or pecuniary advantage either for himself or for any of the aforesaid four persons against whom the loan was sanctioned previously.

25. P.W.19 in his evidence has stated that being instructed by Shri Mishra, Barandi has collected the GC notes from the ground, whereas the other witnesses P.W.1 and 7 have stated that as per instruction of P.W.21, P.W.7 has collected the GC notes from the ground. So there is material discrepancies found from the evidence of P.W.19 to that of evidence of P.Ws.1 and 7. The prevaricating contradictory and uncorroborated testimony of PW.19, the complainant, does not create any confidence to accept

the factum of demand and payment of bribe to fasten the guilt of the accused.

26. There are material discrepancies as to who collected the GC notes from the ground. Although P.W.7 in para 9 of his deposition has stated that he collected the GC notes from the ground and the said aspect has already been deposed by P.W.21 TLO, P.W.19 on the other hand in para-10 of his deposition has stated that P.W.1 collected the GC notes from the floor. The possibility of TLO (P.W.21) witnessing the demand and acceptance of bribe by the accused from the complainant P.W.19 becomes highly doubtful, in view of the fact that he was present at a distance of about 15 cubits away from the cubicle of the accused and there were many customers standing near the cubicle of the accused and in between the accused and the TLO P.W.21.

In fact one of the officer of the bank examined as P.W.5 has stated during his cross-examination that the seat of the accused was at a distance of about 20 to 25 feet away from the entrance point of the loan section. It is the evidence of P.W.21 that he was present at the entrance point of the loan section during the relevant time. The said aspect finds corroboration from the evidence of P.W.6 another officer of the bank who has stated that the seat of the accused was at a distance of 20 to 22 feet from the said entrance point of the first floor. The presence of P.W.1 at the relevant time becomes doubtful in view of the evidence given by P.W.7 that he does not remember if P.W.1 was inside the bank or outside the bank.

P.W.5 has categorically stated that it will not be possible from the said entrance point regarding the activities of the person present in the said counter/seat of the accused although one can

see the head and shoulder of that person from the said point. He has also stated that unless the person sitting in the said counter speaks in loud voice, somebody present at the said entrance point cannot hear the words spoken by the person sitting at the said counter. The evidence of P.W.5 has to be given much importance and cannot be lightly brush aside, in view of the fact that he was a responsible officer of the bank and was sitting in the adjoining seat of the accused. P.W.5 has further stated that at the time of the incident he was present at his seat and five to six customers were present near his cubicle. He has also stated that some persons were present in the front of the counter of the accused and it would not have been possible for a person present at the entrance point of the loan section, to see as to what was happening inside his cubicle and cubicle of the accused.

27. The evidence of D.W.1 the accused finds corroboration from the evidence of P.W.5 who has deposed in para-6 and para-7 of his evidence that hearing the commotion and the shout of the accused "Utha, Utha" (lift), he looked towards the accused and found that the accused caught hold of the shoulder of the complainant Manindra Panka and was asking him "Utha" (lift). He did not see as to what thing the accused was asking the complainant to lift. Further, P.W.5 in para-7 of his cross-examination has stated that during the said tussle between the accused and the complainant, 4 to 5 persons came there and disclosed that they belonged to CBI and one of them caught hold of both the hands of the accused. He has not marked if there was any GC notes lying anywhere in the said cubicle of the accused. He has further stated that he has not marked if the complainant was still present there, as he went outside.

28. There is much force in the submission of the learned counsel for the defence that the FIR vide Ext.56 was not in existence by the time, the so called trap was laid at Umerkote, since P.W.19 (the complainant) has himself categorically deposed that he had submitted the FIR to Sri Mishra (CBI Inspector P.W.21) on 30.8.2010. He has also categorically deposed that prior to 30.8.2010 he had not seen Inspector Sri Mishra (P.W.21) or the CBI Office, Rourkella. In this regard the further submission of learned counsel for the defence also has to be given due importance when he has drawn the attention of the court to the fact that there is no document on record and no specific reliable evidence to show as to how the witnesses for the trap team were arranged at Nabarangpur on 31.8.2010.

There are material discrepancies regarding the room in which the pre-trap proceeding was conducted. P.W.1 has stated that the pre-trap proceeding was conducted in Room No. 301 of Trupti Lodge, Nabarangpur, but P.W.7 on the other other hand has statged that it was conducted in Room No.201. No document of said Trupti Lodge, Nabarangpur in question like Booking register, money receipt etc. has been proved in this case to show that any particular room of that Lodge was used on the relevant date by the CBI team, so as to enable them to have the pre-trap proceeding.

29. P.W.21 the T.L.O. has given vivid description regarding the conversation, between the complainant and the accused, the manner in which the complainant demanded and accepted money from the accused, as if to show that P.W.21 himself has witnessed and heard the same. But his subsequent statement clearly shows that he was not available near the spot, when he has stated in para-21 of his deposition that he went inside the said bank only

after the complainant came out the gate of the said bank, situated on the first floor and only after the complainant gave them the pre-arranged signal. Although the evidence of other prosecution witnesses clearly show that some customers were present in the said bank situated on the first floor, at the relevant time, not a single customer has been examined as eye witness to the occurrence by the prosecution, for the reasons best known to the prosecution.

30. It was obligatory on the part of the prosecution to prove that there was any earlier demand of bribe by the accused from the complainant. But surprisingly P.W.19 has not stated that accused told him on any earlier occasion to give him the bribe on 31.8.2010. In view of the material discrepancies and omissions found in the statement of the prosecution witnesses including the complainant (P.W.19) and the T.L.O.(P.W.21), it is highly unsafe to rely on the evidence of prosecution witnesses to come to the conclusion beyond reasonable doubt that there was any such demand and acceptance of bribe by the accused from the complainant, when the defence through D.W.1 has been able to prove in the standard of preponderance of probability, being corroborated by evidence of P.W.5 that he forcibly thrust money in the pocket of the accused.

31. As regards recovery of the tainted GC notes, it is evident from PW.19 that, receiving the prearranged signal, the trap party rushed to the accused. The hand wash of the accused was taken and it was found to be pink rose. The shirt pocket wash of the accused was taken and it also turned to pink. The sample solutions were preserved. According to P.W.21 Sri Rao P.W.7 verified the tainted GC notes and found the numbers and

denominations of the same tallied with the numbers and denominations noted previously. PWs.12 and 13 are the members of the trap party. It is evident from P.W.7 and 21 that, receiving the pre-arranged signal, they along with other trap party members rushed near the accused and found that the complainant and the accompanying witnesses were present there. On seeing the trap party members, the accused brought out the money from his shirt pocket and threw the same on the ground. The TLO has challenged the accused to have received the bribe money from the complainant and his both hand wash was taken in the solution. The colour of the solution turned to pink. The shirt pocket wash of the accused was taken in the solution which became positive. The TLO seized the tainted GC notes and the shirt of the accused and other documents and prepared the detection report. The CBI staffs caught hold of both hands of the accused and took his both hand wash. The right hand wash turned to pink and it was preserved. The bribe money and the wearing shirt of the accused were also seized. PW.22, the I.O. took charge of investigation of the case from the TLO consequent upon the detection. During investigation he examined the witnesses. P.W.21 has sent the seized exhibits to the CFSL, Kolkata for chemical examination and opinion. The prosecution marked the chemical examination report through PW.3 as Ext.8. The contents of the report and the result of the examination has been proved by P.W.3 the Chemical Examiner CFSL, Kolkata.

32. The prosecution examined (P.W.2) the General Manager, Net-work-2, SBI Local Head Office, Bhubaneswar who stated that the relevant documents pertaining to the case were placed before the him and on verification of the documents, being

satisfied about prima facie case against the accused he accorded sanction for launching of prosecution. The sanction order of the Government has been proved by PW.3 vide Ext.8. The defence did not dispute the authority of P.W.2 and the sanction order. But in cross-examination, P.W.2 has stated that the accused was not competent to sanction the loan, but he was simply the recommending authority. Further, he has stated that the loan application of the informant was not placed before him. Further, he has stated that he does not remember if the present accused in any manner had dealt with the loan application of the informant and four others.

33. It is well settled that presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumptions the same would stick and then it can be held by the court that the accused had received the amount towards gratification. He is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt but to discharge the burden by proving in the standard of preponderance of probability in favour of his case. As soon as he succeeds in doing so, the burden is shifted to the prosecution which still has to discharge its original onus that never shifts i.e. that of establishing on the whole case the guilt of the accused beyond a reasonable doubt.(Case of **C.M.Girish Babu Vrs. CBI, Cochin, High Court A.I.R. Supreme Court 2022** is relied on.)

34. In the instant case as discussed above, the factum of demand of bribe by the accused has not been proved. The

prevaricating statement of PW.19, the complainant is not credible and trustworthy pertaining to prior demand and demand of bribe by the accused. The accused in his statement u/s.313 Cr.P.C. specifically denied the demand and acceptance of bribe but took the plea that the complainant thrust the tainted money in his hand with an ulterior motive to harass a public servant when he denied to sanction of the loan. The accused disputed the recovery and seizure of the tainted GC notes from his possession and exhibits his honest intention and stated that the complainant has no work with him since he has no authority to sanction loan in favour of the complainant. Therefore, it is found that PW.19, the complainant has no work with the accused on the alleged date and time of the incident and chance of filing of this case falsely by the complainant, cannot be ruled out.

In the case of **State of Kerala & another Vrs. C.P.Rao(2011) 6 SCC 450**, it has been held by the Hon'ble **Supreme Court** that –

“Mere recovery by itself would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be the bribe, conviction cannot be sustained.”

35. In the present case as discussed in the preceding paragraph, the demand and acceptance of bribe by the accused from PW.19, the complainant-decoy is not reliable and trustworthy, since his evidence does not create confidence and not corroborated by any independent witnesses. The prevaricating statement of PW.19 is extremely shaky, unconvincing and unworthy of credence to rope the accused to the alleged crime. Therefore, in the instant

case, mere recovery of currency notes cannot constitute the offence U/s.7 of the Act, unless it is proved beyond all reasonable doubt that the accused has voluntarily accepted money knowing it to be a bribe. The same view has been reiterated in the case of **U.Harigopal Vrs. The Republic of India reported in 2015 (1) OLR, 669.**

36. Validity of sanction as required u/s. 19 of the P.C.Act is proved through P.W.2. His competency is not questioned. He is not cross-examined by the defence in order to discard his testimony regarding his competency. He has proved sanction order Ext.5 accorded by him. He has stated to have perused all the relevant materials and after being satisfied on application of his mind to have accorded sanction. Ext.5 sanction order itself corroborates the same. No infirmity is ex-facie available.

In this regard law requiring previous sanction u/s. 19 of the P.C.Act is well enumerated in the decision reported **2014 Cri.L.J 930 (S.C.) C.B.I. -vrs- Ashok Kumar Agarwala.**

In the above decision Their Lordships have reiterated that Court must examine the issue regarding failure of justice in the true sense or a camouflage argument relating to sanction. Tested in the touchstone of above law, the sanction order Ext.5 is found valid.

37. Having regard to the discussion made above, this Court finds that in the present case, demand and acceptance of bribe by the accused has not been proved by the prosecution beyond all reasonable doubt and the prosecution has failed to establish the charge against the accused U/s.7/13(1)(d) read with Sec.13(2) of the Prevention of Corruption Act, 1988.

38. In the result, the accused is found not guilty of the offences punishable U/s.7 and 13(1)(d) read with Sec.13(2) of the Prevention of Corruption Act, 1988 and he is acquitted from the said charge U/s.248(1)Cr.P.C. He is discharged of his bail bond.

The seized GC notes of Rs.3000/-(rupees three thousand) under M.O.VII be confiscated to the State, the sample bottles, T shirt under M.Os.I, II, III, IV, V, VI be destroyed, the seized register be returned to the Bank after expiry of four months from the period of appeal, if no appeal is preferred and in the event of any appeal, the same shall be guided by the orders of the Hon'ble Appellate Court.

Special Judge (CBI),  
Court No.IV, Bhubaneswar.

The judgment having been typed to my dictation and corrected by me and being sealed and signed by me is pronounced in the open court today this the 30<sup>th</sup> day of July, 2016.

Special Judge (CBI),  
Court No.IV, Bhubaneswar.

List of witnesses examined for the prosecution :

PW-1	Arjuna Marandi.
PW-2	Debendra Prasad.
PW-3	Bimal Chandra Purkait.
PW-4	Trilochan Bhoi.
PW-5	Kinkar Kumura.
PW-6	Lita Chandra Murmu.
PW-7	R.Siba Prasad Rao.
PW-8	Gopal Chandra Patra.
PW-9	Dambarudhar Prasad Pattnaik.
PW-10	Pramod Kumar Mishra.
PW-11	Manoj Kumar Dey.
PW-12	W.V.Srinivas Rao.
PW-13	Fakir Mohan Biswal.
PW-14	B.Gopal Krishna.
PW-15	Basanta Kumar Jena.

PW-16	Bhaskar Chandra Jena.
PW-17	Gagan Bihari Bissoyi.
PW-18	Manak Panka.
PW-19	Manindra Panka.
PW-20	Baidyaram Panka.
PW-21	Ashis Kumar Mishra.
PW-22	Manoj Kumar.

List of witnesses examined for the defence :-

DW-1	Partha Sarathi Biswal.
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List of exhibits marked for the prosecution :-

Ext.1	Pre-trap memo.
Ext.1/1	Signature of PW-1.
Ext.2	Sketch map.
Ext.2/1	Signature of PW-1.
Ext.3	Post-trap memo.
Ext.3/1	Signature of PW-1.
Ext.4	Copy of No Due Certificate.
Ext.5	Sanction order.
Ext.5/1	Signature of PW-2.
Ext.6	Delegation of power.
Ext.7	Circular.
Ext.8	CFSL Report.
Ext.8/1	Signature of PW-3.
Ext.8/2	Signature of Director Mr. Bhattacharya.
Ext.9	Provisional selection letter.
Ext.10	Intimation.
Ext.10/1	Signature of Branch Manager.
Ext.11	Seizure list.
Ext.11/1	Signature of PW-5.
Ext.12	Loan sanction register.
Ext.13	Movement Register.
Exts.14 to 17	– Loan Applications.
Ext.18	Forwarding letter.
Ext.18/1	Signature of PW-6.
Ext.19	Voucher dated 18.9.2010.
Ext.20	Statement of insurance premium.
Exts.21 to 24	– Statements of account of loanees.
Exts.1/2, 2/2 & 3/2	– Signatures of PW-7.
Ext.25	Letter dated 6.10.2010.
Ext.25/1	Signature of W.V.C.Srinibash Rao, the then Manager.
Ext.26	Seizure list.
Ext.26/1	Signature of Srinibash Rao.

- Ext.27 Application Receipt Register.  
 Ext.28 Customer complaint register.  
 Ext.29 Inward mail registers.  
 Ext.30 Letter dated 11.9.2009.  
 Ext.31 Letter dated 22.12.2009.  
 Ext.32 Seizure list.  
 Ext.32/1 Signature of PW-9.  
 Ext.33 Register (Leave Register of SBI).  
 Ext.34 Letter dt.11.9.09 along with enclosure (eight sheets).  
 Ext.35 Seizure list.  
 Ext.35/1 Signature of PW-11.  
 Ext.36 Information given by PW-13 to the CBI.  
 Ext.36/1 Signature of PW-13 in Ext.36.  
 Ext.37 Appointment document.  
 Ext.38 Posting document.  
 Exts.39 & 40 – Permanent absorption document.  
 Ext.41 Official responsibility document of accused.  
 Ext.42 Letter of PW-13 to the CBI.  
 Ext.43 Attested true copy of circular.  
 Ext.42/1 Signature of PW-13 in Ext.42.  
 Exts.44 to 47 – Complains relating to agricultural loan.  
 Exts.44/1 to 47/1 – Endorsements with signatures of PW-14 in  
 Exts.44 to 47.  
 Ext.48 Written complain.  
 Ext.49 Xerox copy of letter dated 7.10.2009 of RBI,  
 Bhubaneswar.  
 Ext.50 Xerox copy of the reply dated 23.12.2009.  
 Ext.51 Forwarding letter dated 19.11.2010 of RBI.  
 Ext.52 Grievance Register from 31.8.2009 to 11.12.2009.  
 Ext.53 Original Issue Register.  
 Ext.54 Seizure list.  
 Ext.54/1 Signature of PW-17 in Ext.54.  
 Ext.52/1 Relevant entry vide Sl.No.1124 of page No.7 of Ext.52.  
 Exts.52/2 & 52/3 – Relevant entries vide Sl.Nos.1135 and 1136  
 respectively of Page No.8.  
 Ext.52/4 Relevant entry vide Sl.No.1155 of page No.11.  
 Ext.52/5 Relevant entry vide Sl.No.1160 of page No.12 of  
 Ext.52.  
 Ext.53/1 Necessary entry No.18 dated 1.9.2009 at page No.198.  
 Ext.55 Letter dated 10.12.2010.  
 Ext.55/1 Initial of PW-17 in Ext.55.  
 Ext.55/2 Signature of the then Deputy Collector.  
 Ext.56 Written complaint.  
 Ext.56/1 Signature of PW-19 in Ext.56.

Ext.1/3 Signature of PW-19 in Ext.1.  
 Ext.3/3 Signature of PW-19 in Ext.3.  
 Ext.17/1 Signature of PW-20 in Ext.17.  
 Ext.56/2 Formal FIR.  
 Ext.56/3 Endorsement with signature of SP,CBI.  
 Ext.1/4 Signature of PW-21 in Ext.1.  
 Ext.57 Seizure list.  
 Ext.57/1 Signature of PW-21 in Ext.57.  
 Ext.2/3 Signature of PW-21 in Ext.2.  
 Ext.3/4 Signature of PW-21 in Ext.3.  
 Ext.11/2 Signature of PW-22 in Ext.11.  
 Ext.58 Seizure list.  
 Ext.58/1 Signature of PW-22 in Ext.58.  
 Ext.26/2 Signature of PW-22 in Ext.26.  
 Ext.54/2 Signature of PW-22 in Ext.54.  
 Ext.59 Leave Record.  
 Ext.60 Seizure list.  
 Ext.60/1 Signature of PW-22 in Ext.60.  
 Ext.61 Seizure list.  
 Ext.61/1 Signature of PW-22 in Ext.61.

List of exhibits marked for the defence :-

Ext.A Signature of PW-19 in Ext.9.

List of M.Os. marked for the prosecution :-

M.O.-I Sample bottle with solution after demonstration.  
 M.Os.II & III – Sample bottles containing both hand wash.  
 M.O.-IV A cover containing tainted money.  
 M.O.-V Bottle containing shirt wash.  
 M.O.VI Shirt.  
 M.O.VII Sealed envelope containing tainted G.C.notes.

List of M.Os. marked for the defence :-

Nil.

Special Judge (CBI), Court No.IV,  
 Bhubaneswar.

