

IN THE COURT OF THE SPECIAL JUDGE (CBI), COURT
NO.IV, BHUBANESWAR.

P R E S E N T : Shri S.K.Mishra, O.S.J.S.,
Special Judge (CBI),
Court No.IV, Bhubaneswar.

T.R.Case No.16/2012
(Arising out of RC No.2(A)/2012).

Republic of India Prosecution.

-Versus-

Rajeev Ranjan, aged about 42 years,
S/o.Rajeswar Prasad, permanent resident of
Vill.-Kotra, Via-Gopalbad, PS-Sarmera,
District-Nalanda, Bihar,
At present Kansi Road, PS-Ainthapalli,
District-Sambalpur.

.... Accused.
(ON BAIL)

For the Prosecution: Sri Ajay Singh, PP, CBI.

For the Defence : Sri S.R.Mohapatra &
Associates, Advocates.

Date of argument : 3.6.2016

Date of judgment : 18.6.2016

Offences u/s. 13 (1) (d) read with 13(2)/ 7 of P.C.Act, 1988.

J U D G M E N T

1. The accused stood charged for committing the offences punishable u/s. 13 (1) (d) read with 13(2) and 7 of P.C.Act, 1988.

2. Prosecution case in brief is that on 8.9.2011 the complainant had submitted IT Return for the year 2011-12 of Smt. Sundaramani Singh at Income Tax Office, Ward No.4,

Rourkela and a sum of Rs.17,862/- was claimed in that Return as refund claim. On 9.3.2012 at about 3 PM the complainant met the accused, who was working as Tax Assistant in Ward No.4 and asked about refund claim. The accused told that if the complainant will give Rs.8,000/- to him, he will send the file to Income Tax Officer. When the complainant asked as to why he will give such huge amount, the accused told that unless an amount of Rs.8,000/- is paid, refund will not be given. Then the accused told the complainant to give him Rs.8,000/- in the morning of 12.3.2012. On 10.3.2012 the complainant wrote a complaint to the SP, CBI, Bhubaneswar through DSP, CBI, Rourkela basing on which, the present case was registered. On 12.3.2012 a trap party, including two independent witnesses, was formed and solution of sodium carbonate was prepared in a clean glass tumbler. The complainant produced cash of Rs.8,000/- in the form of five numbers of Rs.1,000/- G.C. Notes and six numbers of Rs.500/- G.C. Notes which were treated with phenolphthalein powder and instruction was given to the complainant to hand over the money to the accused only on his demand. A pre-trap memorandum was prepared at the spot in which all the witnesses signed. The trap party members reached near Ayakar Bhavan, Udit Nagar, Rourkela. By that time the complainant with the accompanying witness Manas Kumar Pati had already reached there. The complainant called the accused over mobile telephone and on getting his call, the accused told him to wait there. By that time rest team members including witness Brundaban Pradhan had entered Ayakar Bhavan premises separately and took positions in a scattered manner, near the place where the complainant was

standing. After few minutes the accused came out of the office building and went near the complainant. The complainant requested him for processing the refund claim of Sundaramani Singh. On his request, the accused enquired as to whether he has brought the amount as told to him on 9.3.2012. As the complainant replied in the affirmative, the accused stretched his right hand towards him demanding the amount. On this demand, the complainant took out the tainted GC Notes of Rs.8,000/- from his left side shirt pocket and handed over the same to the accused, who accepted it by his right hand, counted the same by both hands and then kept the same in his left hand side pant pocket. Then the complainant gave pre-arranged signal to the trap team members who were present near the place of occurrence. On getting the pre-arranged signal, Inspector Sri S.N.Rath rushed towards the Income Tax Office Building along with the team members including the complainant and both the witnesses. The accused entered the office building and went inside the office room of ITO, Ward No.4 and the trap team members also went inside the said room by following him. After entering the office room of ITO, Ward No.4, Inspector Sri S.N.Rath introduced himself as well as other members of the trap team to the accused and asked for his identity. Then the accused identified himself as Rajeev Ranjan, Tax Assistant, Income Tax, Ward No.4, Income Tax Office, Rourkela. When Inspector Sri S.N.Rath challenged as to why he demanded and accepted the bribe from the complainant, the accused fumbled and told that he had not demanded the amount, but accepted the same when given by the complainant on his own. Being further questioned, the

accused admitted that the IT Return of Sundaramani Singh was submitted by the complainant on 8.9.2011 and the same was pending for processing. Hand washes of both his hands were taken in sodium carbonate solution separately and the colour of the solutions changed to pink. On being asked, the accused took out some G.C. Notes from his left side front pant pocket and kept the same on the table. Witness Brundaban Pradhan, on being asked by Inspector Sri Rath, compared the numbers of the same with the numbers mentioned in the pre-trap memorandum and on comparison, the same tallied. Then the said G.C. notes were kept in a sealed cover. The inner side of the left hand side front pant pocket of the accused was washed in freshly prepared solution of sodium carbonate with water, upon which colour of the said solution turned to pink and the said pink colour solution was preserved separately with proper seal. The accused was arrested. A post trap memorandum was prepared at the spot being signed by all the witnesses present. After completion of investigation and obtaining sanction order, charge-sheet was submitted against the accused. Charge for the offences, as earlier mentioned was framed against him.

3. Defence plea is one of complete denial. The specific plea of the defence which was also taken by the accused during his statement recorded u/s.313 of the Cr.P.C. is that prior to the alleged occurrence, Bibek Dasgupta had taken loan from him of Rs.10,000/-. There was misunderstanding and ill-feeling between them, as the said loan was not repaid by him. At the instance of Bibek Dasgupta, Smt. Sundaramani Singh, the assessee of Ward No.1, resident of Chhend, filed IT return personally showing her address as Koel Nagar,

C/o.B.D.Gupta. The complainant is a land broker and has been set up by B.D.Gupta to file false FIR against the accused. Further it is stated by the accused that the complainant called him on 12.3.2012 over telephone to take back the part loan refund amount stating that the same has been sent by Bibek Dasgupta, so the accused came and the complainant handed over the said amount stating that the same has been sent by B.D.Gupta towards part repayment of loan. The accused has never demanded any amount to process the file nor has accepted the amount knowing it as illegal gratification and no work of assessee was pending with him at that time as he had already handed over the income tax return to the ITO.

4. The prosecution has examined 14(fourteen) witnesses in support of its case. Out of them, PW-1 is Branch Manager, LIC, Panposh Branch, Rourkela, PW-2 is the seizure witness, PW-3 is the sanctioning authority, PW-4 is the Tax Assistant, Office of Income Tax Officer, Ward No.4, Rourkela. The assessee Smt. Sundaramani Singh has been examined as PW-5. PW-6 is the accompanying witness, PW-7 is the Nodal Officer, Bharti Airtel Limited, Bhubaneswar who proved the call details of the mobile No.9556756160, PW-8 is the Income Tax Officer for Ward No.4, Rourkela, PW-9 is the Legal, Regulatory and Nodal Head for Idea Cellular Limited, Bhubaneswar who had given call details of mobile No.9090905372, PW-10 is the magisterial witness, PW-11 is the complainant, PW-12 is the Senior Scientific Officer, CFSL, New Delhi, PW-13 is the Trap Laying Officer and PW-14 is the Investigating Officer. On the other hand, the defence has not examined any witness in its favour.

5. Points for determination in this case are :-

(i) Whether on 9.3.2012 in the office room of Income Tax Office, Udit Nagar, Rourkela the accused being a public servant functioning as Tax Assistant, Ward No.4, Income Tax Office, Ayakar Bhavan, Rourkela, had demanded Rs.8,000/- from the complainant for processing the refund claim of the income tax assessee Smt. Sundaramani Singh for the financial year 2010-11 (Assessment Year 2011-12) and accepted the said amount of Rs.8,000/- on 12.3.2012 as gratification other than legal remuneration for the above purpose, as alleged?

(ii) Whether on the aforesaid date and place the accused being a public servant functioning in the above capacity, by corrupt and illegal means and/or by otherwise abusing his official position as such public servant, obtained for himself pecuniary advantage to the tune of Rs.8,000/- from the complainant for processing the income tax refund claim of Smt. Sundaramani Singh for the financial year 2010-11 (Assessment Year 2011-12), as alleged ?

6. 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 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 Honourable Apex Court have held that, mere acceptance of money by a public servant, without there being any other evidence that it was demanded as illegal gratification, would not be sufficient for convicting the accused U/s.13(1)(d) of the P.C.Act, 1988. Further in the case of **Narendra Campaklal Trivedy-Vrs.- State of Gujarat, AIR 2012 (Supreme Court) 2259**, the Hon'ble Supreme Court have held 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 bribe.

7. 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. 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. Only thereafter the accused is 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 provision 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.

8. It is a settled position of law that 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. It has been held by

the Honourable Supreme Court in the case of **State of U.P.- Vrs.- Dr. G.K.Ghose reported in AIR 1984 S.C. 1453** that the trap laying party is interested to the extent of the success of the trap and therefore, for taking up such measures, no blame should be given to the prosecution that phenolphthalein was applied to the GC notes in question to grind the accused in a false case. In the light of the aforesaid settled legal position, this Court has to 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.

9. PW-11 the complainant has stated that he had submitted income tax return file vide Ext.9 of Smt.Sundaramani Singh on 8.9.2011 to one Rajiv Ranjan at Income Tax Office for Ward No.4, Rourkela and Smt. Singh had submitted authorization letter in his favour vide Ext.11. On 9.3.2012 he visited the said office and approached Rajiv Ranjan regarding the progress made for refund of income tax in favour of Smt. Singh and on that day Rajiv Ranjan told him that the said work has not been completed and the said work will be done after payment of Rs.8,000/-. He further told PW-11 that the money should be paid to him after three days. As PW-11 was not willing to pay the said amount, he went to CBI Office, Rourkela along with his friend on 10.3.2012 and there he met DSP, CBI, Sri Kabi and told him about the matter. Sri Kabi asked him to give written report. Hence, he submitted the written report (FIR) vide Ext.24. He (PW-11) has further stated that Sri Kabi asked him to come to the CBI Office, Rourkela in between 9.45 AM to 10 AM of 12.3.2012 and accordingly he reached that office on that day at about 9.30 AM. One Inspector of CBI asked

him to wait for Sri Kabi and Sri Kabi came there at about 10.15 AM and two to three other staff of other offices also came there. Then there was a discussion regarding the manner in which the trap will be laid. PW-9 has further stated that he produced GC notes of Rs.8,000/- in different denominations which he could not exactly recollect. PW-11 has also stated that one constable handled the said GC notes, after the same were treated by chemical powder. One solution was prepared by mixing something in the water and upon taking hand wash of one vigilance staff of Rourkela, who handled the said GC notes, the colour of the said solution changed to pink colour and nothing was written at that time. PW-11 has further stated that the said GC notes were kept in his left side shirt pocket and he was taken to Income Tax Office by motor cycle by vigilance staff of Rourkela. There he contacted Rajiv Ranjan over telephone and called him and accordingly he came out of the said office building and asked PW-11 if he has brought the money, PW-11 answered in the affirmative and handed over the tainted GC notes of Rs.8,000/- to him. Rajiv Ranjan told him that his work will be done and at that time, he counted the GC notes in question and went inside his office. Then PW-11 gave the pre-arranged signal to the rest members of the CBI staff team by brushing the backside of his head by hand and thereafter the rest members of CBI staff caught hold of Rajiv Ranjan. PW-11 has further deposed that he does not know what happened thereafter as he left that place.

PW-11 who has been asked leading questions by the prosecution u/s.154 of the Indian Evidence Act, has stated that he has signed vide Ext.12/3 on Ext.12. He has also stated

that he had reported before Sri Rath on 12.3.2012 at about 10 AM at CBI Office, Rourkela and Exts.15/3 and 14/3 are his signatures.

10. During cross-examination, PW-11 has deposed that he has neither submitted income tax return for himself nor for any other person and he has no knowledge or idea about submission of income tax return and the section under which, income tax return is submitted for government employees or for business men. PW-11 also could not say the financial year or assessment year in respect of which, income tax return of Smt. Sundaramani Singh (PW-5) was required to be submitted. He also could not say about her gross income or net income of any particular year and specifically for the assessment year 2011-12. He could not say the amount of income tax paid by her i.e. by PW-5 for the assessment year 2011-12 and the amount of money to which, she was entitled towards income tax refund. He had admitted that he has got no knowledge or idea about TDS. PW-11 has also stated that the contents of Ext.9 have been filled up by Bibek Dasgupta. He does not remember if the document vide Ext.11 was prepared without referring to the said document. It is further revealed from his evidence that he has signed on it on 28.8.2011 and Bibek Dasgupta got it typed by taking the help of somebody near the court premises at Udit Nagar, Rourkela and PW-11 has not submitted Ext.11 at Income Tax Office. His friends Bibek Dasgupta took the said document from him, after obtaining his signature. PW-11 has further stated that Bibek Dasgupta had accompanied him to CBI Office, Rourkela, when he had gone there to lodge FIR and Sri Dasgupta discussed about the matter and as per his instruction,

he lodged the FIR. PW-11 has also stated that he does not know the name of the chemical powder which was used by the CBI staff for treating the GC Notes in question and also the name of the constable who used the said powder for that purpose. PW-11 has also stated that he called Rajiv Ranjan over telephone as per the instruction of Bibek Dasgupta. Bibek Dasgupta had told him that he should give the money to the person, who will come in response to the said telephone call and accordingly, PW-11 gave the money to the said person and thereafter he had no discussion with anybody and came back from that place. During further cross-examination, it is revealed that PW-11 does not know if Bibek Dasgupta had taken loan of Rs.10,000/- from the accused and if there was misunderstanding between both of them, since Sri Dasgupta did not refund the said loan to the accused.

11. PW-5 (Smt. Sundaramani Singh) has stated that she has been working as LIC agent since October, 2004 and she is regularly submitting income tax returns. She knows the complainant. Ext.11 is the authorization letter given by her in his favour, authorizing him to file income tax return for her. She has attested his signature. Ext.9 is the certified copy of her income tax return for the assessment year 2011-12 and in the said return, she had claimed refund of Rs.17,862/-. PW-5 has also stated that she has got no source of income except her income as LIC agent. On 9.3.2012 Mano Ranjan Mishra (the complainant) told her that unless she gives Rs.8,000/- to the accused, she will not get income tax refund and PW-5 told Sri Misha that she will not give the money and if he wants, he can

file a complaint and thereafter PW-5 has not told anything else to the complainant.

During cross-examination, PW-5 has deposed that she does not know the educational qualification of Sri Mano Ranjan Mishra and his place of residence and address. She has further deposed that she had given the income tax return vide Ext.9 to Sri Bibek Dasgupta for filing and he was looking after the same. PW-5 had given authorization letter to him. PW-5 has also deposed that she does not know who had prepared the authorization vide Ext.11. She does not know if the accused was not pulling on well with Bibek Dasgupta. She has admitted that she does not have much acquaintance with Mano Ranjan Mishra (the complainant). PW-5 has further deposed that she has not filled up the said return and Bibek Dasgupta might have filled up the same and there is no mention in Ext.9 that she (PW-5) had authorized Mano Ranjan Mishra to file the income tax return and to look after the same. She has also stated that she had not confronted the accused regarding the statement of Mano Ranjan Mishra that a sum of Rs.8,000/- has to be paid in order to get income tax refund and has also not asked anything to the concerned ITO regarding the said refunds. PW-5 had not given any money to Mano Ranjan Mishra and during the relevant period, PW-5 was staying in the house of Bibek Dasgupta and the income tax office was about 5 KMs away from that house. PW-5 has also stated that she has no grievance against accused and stated that Bibek Dasgupta had taken loan of Rs.10,000/- from Rajeev Ranjan and there was misunderstanding between both of them as the said loan amount was not repaid by Bibek Dasgupta.

12. PWs-6, 10 and 13 have stated that on 12.3.2012 PW-6 met PW-13 at about 10 AM and PW-10 had been to the said office. One Mr. Tripathy, Inspector CBI, one Mr. Barik, SI, CBI, two constables namely Sri A.K.Pradhan and P.K.Pradhan of CBI were also present there. They have stated that a copy of the complaint was shown to them by PW-13 and the complainant had alleged that the accused has demanded Rs.8,000/- from the complainant for refund of income tax in favour of Smt. Sundaramani Singh and the accused asked the complainant to give the said amount to him at his Income Tax Office on 12.3.2012. The complainant produced cash of Rs.8,000/- in shape of five numbers of G.C.notes each of the denomination of Rs.1,000/- and six numbers of G.C.Notes each of the denomination of Rs.500/-. Constable Sri A.K.Pradhan treated the said GC notes with phenolphthalein powder and the said GC notes were counted by PW-10. Then PW-10 washed both his hands in solution of sodium carbonate and water and the colour of the solution changed to pink. The said solution was kept in a glass bottle vide M.O.-I (Marked as "D"), sealed, labelled and signed by all of them. PW-6 has further stated that the said GC notes were kept by Sri A.K.Pradhan, Constable in the left side chest pocket of the shirt of the complainant and Inspector Sri Rath told the complainant to hand over the said tainted GC notes to the accused only on demand and to give signal to the other members of the trap team by brushing the hair of his head by his left hand after the transaction is over. PW-6 was instructed to accompany the complainant and a pre-trap memorandum vide Ext.12 was prepared at the CBI Office and all of them signed on it and a copy of Ext.12 was given to

PW-10 for future reference regarding serial numbers of the GC notes in question.

13. It is in the evidence of the said witnesses that the complainant (PW-11) accompanied PW-6 to the office of the accused by the motor cycle of PW-6 and rest trap team members followed them by one four wheeler and they reached there at about 11.15 AM and parked the motor cycle at the parking place of the said office. The rest trap team members parked the four wheeler at a little distance away from PW-6 and went by walking. They have also deposed that the complainant contacted the accused over telephone and the accused asked the complainant over telephone to wait for some time, as he is coming out of his office. At that time the other trap team members remained scattered nearby. They have also deposed that the accused came out of the office and the complainant wished him and asked the accused regarding the position in the matter of income tax refund of Smt. Sundaramani Singh. The accused asked the complainant if he has brought (Anichhaki) as per previous discussion made on 9th date and the complainant nodded his head. They have also stated that accused showed his right hand and the complainant brought out the tainted GC notes from his left side shirt pocket and handed over the same to the accused. The accused took the said GC notes by his right hand, counted the same by both his hands and kept the said GC notes in the left side of his pant pocket. The accused told the complainant that he will process the matter as soon as possible and went inside his office. At that time, the complainant gave pre-arranged signal and the rest members of the trap team, being led by PW-13 followed

the accused in the said office. They have also stated that the accused went to the office room meant for ITO, Ward No.4 and they went inside the said room. PW-13 disclosed their identities to the accused and asked for his identity. The accused disclosed his name as Rajeev Ranjan and his designation as Tax Assistant, Ward No.4 and being asked by PW-13 as to why he has taken the money, the accused fumbled and told that he had not demanded the money and as the complainant gave the money to him, he has kept the same.

14. They have deposed that Sri Pradhan, Constable had prepared one solution of sodium carbonate with water and the right hand of the accused was washed in the said solution and the said solution changed to pink. The said hand wash was kept in a bottle vide M.O.-II and was marked "R", sealed, labelled by a paper and signed by all of them and similarly, the left hand of the accused was washed in another solution of sodium carbonate with water and the said solution changed to pink and the said left hand wash was kept in another bottle vide M.O.-III and was marked "L", sealed, labelled by a paper and signed by all of them. PW-13 asked PW-6 regarding the place where the accused had kept the tainted GC notes and PW-6 told that the accused had kept the said GC notes in the left side pocket of his pant. The accused brought out the said GC notes from his left side pant pocket, on the instruction of PW-13 and kept the same on the table. They have also deposed that the serial numbers of the said GC notes were compared by PW-10 with the numbers as earlier mentioned in the copy of pre-trap memorandum and the same tallied and then the said GC notes were kept in one envelope vide M.O.-IV and the said envelope

was sealed and signed by all. They have also deposed that one trouser was given to the accused by one constable Sri Pradhan and the pant which the accused was wearing, was taken and the left pant pocket wash of the said pant was taken by another solution of sodium carbonate and water. The colour of the said solution turned to pink and the said pant pocket wash was kept in a bottle vide M.O.-V, sealed and signed by all and marked as "P". The said pant was kept in an envelope vide M.O.-VI which was sealed and signed by all.

15. They have also deposed about personal search of the accused during which one Nokia mobile telephone set with two SIM cards were recovered and seized from his possession as per personal search memo vide Ext.13, preparation of one spot map vide Ext.14 and one post-trap memorandum vide Ext.15 on which all of them have signed. It is in their evidence that one ITO of Ward No.4 Sri Barik was called and on being asked, he told them that the income tax refund matter for January, 2012 is being processed and he has not been told by the accused about the income tax refund matter of the month of September, 2011. PW-6 has also stated that the original income tax return for assessment year 2011-12 of Sundaramani Singh, which was seized on production by the accused in the said office as per seizure list vide Ext.16, one attendance register and 2 to 3 other documents were seized on production by the Office Superintendent of the office vide seizure memo Ext.4. Although the office of the ITO was searched vide search list Ext.17, but nothing was seized. After completion of post trap operation, the complainant left that place and they went

to the house of the accused, but nothing was seized there, as per search list Ext.18.

16. During cross-examination, PW-6 has deposed that he has not produced any document/requisition of the CBI to show that they had sent requisition or request letter to their office for his presence in their office on 12.3.2012 and no such document/requisition has been seized by the CBI on his production or in his presence. He had no prior acquaintance with the complainant. He could not say the income, the amount of tax paid and the amount which the concerned assessee was to receive as refund for the assessment year 2011-12 and the time which was fixed by the accused to meet the complainant on the relevant date and the source from which the complainant had brought a cash of Rs.8,000/-. PW-6 has also deposed that all the five personnel of CBI, who were present at the time of pre-trap proceeding, had gone to the spot. He could not remember the exact time of pre-trap proceeding and the type of four wheeler by which rest trap team members went to the spot. He could not say the exact location/place where the rest members of the trap team were present, although he has stated that they were present in a scattered manner near the office. PW-6 had not ascertained from the complainant regarding the exact position of the office of the accused in the building. He could not say in which floor the accused was present in that office at the time of conversation between him and the complainant over mobile telephone and the exact time when the said conversation took place. PW-6 could not recollect the exact time, when he saw the accused for the first time. PW-6 has also stated that he had not seen the first

person, from out of the rest trap team members, who reached near them at the portico soon after the accused took the money from the complainant.

17. PW-6 has stated that he could not say where the ITO was present at that particular time. He could not remember the name of the person of their trap team, who first entered inside the room of the ITO and who had taken the hand wash of the accused and the colour of the pant, which the accused was wearing on that day. PW-6 could not say if Inspector Sri Rath has not talked with the complainant, after the pr-arranged signal was given by the complainant till the GC notes were traced/recovered, although the complainant was all along with him (PW-6) during that period. He could not say if any seizure list was prepared for seizure of the tainted GC notes in question. He could not remember the serial numbers of the tainted GC notes in question.

18. During cross-examination, PW-10 has deposed that he cannot produce any written requisition of the CBI in connection with this case requiring their presence as trap team members. He could not say the total income shown by Smt. Sundaramani Singh in the income tax return for the period in question. He has not ascertained the area to which she belongs. He could not say who has scribed the FIR and who was to return the said income tax to her. He could not say if the cash in question belonged to the complainant or to Smt. Sundaramani Singh and in whose custody, the clean dry bottles were kept before use of the same in connection with this case. PW-10 could not say if the mobile telephone number of the

complainant was known to the accused. It is revealed from his evidence that he has no personal knowledge regarding telephonic conversation between the complainant and the accused, except hearing about it from Sri Pati. He could not say if the office of the accused is situated on the first floor and if he sits there in the first floor. PW-10 has stated that the accused disclosed before Inspector Sri Rath, that he had not demanded any money from the complainant, at the time Sri Rath challenged him. He could not say if the income tax return vide Ext.16 relates to salary or business and which paper was first prepared by Sri Rath in the Income Tax Office on that day. He also could not say the colour of the shirt and pant which the accused was wearing. He could not recollect the serial numbers of the GC notes in question. He has also stated that the CBI had not supplied any paper or copy of paper to him, except giving him one certificate of attendance, to be produced by him, before his higher authority.

19. During cross-examination, PW-13 has deposed that the FIR was received from the informant at Rourkela CBI Unit Office on 10.3.2012, but he could not say the time at which it was received at their Rourkela Unit Office and the same has not been mentioned in the record. He has admitted that he has not directed his investigation to ascertain as to who has scribed the FIR. He has further deposed that the FIR was received by their Bhubaneswar Office from their unit office (Rourkela) by special messenger, but he could not say the name of the said special messenger. He has also stated that it has not been mentioned in the FIR that Sundaramani Singh had "authorized" the complainant to look into the matter regarding her refund

claim of income tax. He has also stated that after reaching Rourkela, he contacted the complainant over telephone, but the source from which he collected the telephone number of the complainant, has not been mentioned. He has not seized the authorization letter vide Ext.11 of Smt. Sundaramani Singh, although he has seen the same being shown by the complainant at their Rourkela Unit Office. PW-13 has not directed his investigation to ascertain the source from which, the complainant brought cash of Rs.8,000/- and if the said cash belonged to him. He has deposed that he has not seen Smt. Sundaramani Singh and has not recorded her statement. He has stated that there was no specific instruction by him to the complainant to contact the accused over telephone and to ask him to come out of his office. He could not say the exact time, when the accused came out of his office to meet the complainant on 12.3.2012. He has not directed his investigation to ascertain the total number of Tax Assistants, who were posted in the Income Tax Office, Rourkela during that period. PW-13 has not ascertained the detail procedures for refund of income tax and the time limit which is taken for processing of application for refund of income tax by the accused. He has stated that Column NO.2 of Ext.9 for representing for refund of income tax has been left blank.

20. PW-12 has stated that vide letter No.2009/02 (A)/2012-BBS dated 13.3.2012 of SP In Charge, CBI, SPE, Bhubaneswar, four sealed bottles were received in Chemistry Division, CFSL, New Delhi on 15.3.2012 and the bottles were sealed with seal impression S.P.C.B.I.S.P.E. BBSR No.06 and the seals were intact and tallied with the specimen seal impression

forwarded. He has further stated that the exhibits were marked as R (M.O.-IV), L (M.O.-III), D (M.O.-I) and P (M.O.-V) and the contents of the bottles were examined by him separately using chemical tests and thin lawyer chromatographic technique and the bottles were sent back to SP, CBI, Bhubaneswar after examination and bear his initials and seals. He has also stated that on examination, all the above exhibits gave positive tests for the presence of phenolphthalein and the remnants of the exhibits were sealed with his official seal and returned to the forwarding authority along with his chemical examination report dated 23.3.2012 vide Ext.25.

21. During cross-examination, PW-12 has deposed that the forwarding letter in which the seal impression of the specimen seal was affixed, has not been submitted in this case and he has not submitted the same along with chemical examination report vide Ext.25. He has further deposed that the chemicals used by him for conducting the tests, have not been mentioned in his report and the steps taken by him while conducting thin layer chromatographic technique, have not been mentioned in his report. He has also deposed that the contents of M.O.-I are at present white in colour and the contents of M.O.-III are at present light pink in colour. He has further stated that he had noted down the findings of the chemical examination conducted by him in one worksheet and he prepared his report vide Ext.25 by referring to the said worksheet and the said worksheet has not been submitted in this case. After going through the evidence of PW-12, this Court finds that nothing substantial has been brought out during cross-examination of PW-12 to show that the tests conducted

by him, are not full proof or not reliable. No motive has been attributed to him to show as to why he would file any false report against the accused. His evidence on the other hand, corroborates the oral evidence of the prosecution witnesses regarding the trap in question.

22. PW-1 has stated that he knows Smt. Sundaramani Singh as she is working as LIC Agent for Panposh Branch, Rourkela and he has issued Form-16A vide Ext.1 regarding the annual tax payable in respect of income of Smt. Singh for the financial year 2010-11 on 30.4.2011. As per the said form, she had total income of Rs.1,78,620.99P and total tax of Rs.17,862/- was deducted towards income tax. During cross-examination, PW-1 has stated that PAN of Smt. Sundaramani Singh has been mentioned in Ext.1, but he could not say when she has submitted the PAN number to their office. He has also deposed that neither Ext.1 nor its copy was seized by the CBI from him and there is no endorsement of Smt. Sundaramani Singh or by any personnel of Income Tax Department on Ext.1 to show that the same has been submitted to the Income Tax Department.

23. PW-2 has stated that the CBI Officer had seized one document on his production on 12.3.2012 as per seizure list vide Ext.2 and Ext.3 is their Attendance Register starting from 1.12.2011 to 12.3.2012. The CBI Officer had seized three documents on his production on 18.4.2012 as per seizure list vide Ext.4. Ext.5 is the transfer order No.11/2008 dated 30.4.2008 of Chief Commissioner of Income Tax, Orissa, Bhubaneswar, Ext.6 is the Office Order dated 8.6.2011 of Joint Commissioner of Income Tax, Rourkela Range, Rourkela and

Ext.7 is the Office order dated 14.6.2011 of Income Tax Officer, Ward No.4, Rourkela. PW-2 has also stated that the accused was posted Tax Assistant in the Office of Additional Commissioner of Income Tax, Rourkela Range, Rourkela as per the order vide Ext.6 and he was allotted the duty for ward no.4, Rourkela vide order Ext.7 for processing the income tax returns. During cross-examination, PW-2 has deposed that Paresh Das, who is a senior staff was also allotted the same duty, besides the accused for Ward No.4 and Paresh Das was allotted the duty of receiving returns and to process the said returns. He has also deposed that the Income Tax Officer is to assess the income of the concerned assessee and is empowered to refund the excess tax, besides being custodian of returns submitted by the assessee. PW-2 has also stated that income tax returns can be personally filed by the assessee or by his advocate and the same can also be filed through authorized person of the assessee by mentioning his name and address in the relevant column of the return. He has further deposed that as per the order vide Ext.6, the accused was allotted the duty of receipt counter of Ward No.4.

24. PW-3 has stated that he, in his capacity as Assistant Commissioner of Income Tax, Sambalpur, was competent to remove the accused from his service and he was the sanctioning authority to accord sanction for his prosecution under the provisions of Corruption Act. He had accorded sanction for prosecution of the accused as per sanction order vide Ext.8 and before passing the said order, he had perused the documents, such as, copy of FIR, statements of the witnesses, pre-trap memorandum, post-trap memorandum and

other documents and on the basis of the said documents, he was satisfied that there is prima facie case against the accused for his prosecution u/s.7 and 13(1) (d) of P.C.Act. During cross-examination, PW-3 has deposed that he could not say without going through the gazette notification, if Commissioner of Income Tax, is the appointing and removal authority of the Tax Assistant and he has not filed any document to show that he was the removal authority of the accused. PW-3 has further stated that sanction order vide Ext.8 does not disclose the mode of receiving documents by him and Ext.8 is also silent about the names of the witnesses, whose statements were perused by him. He has also deposed that the pre-trap memorandum, post-trap memorandum and seizure lists have not been mentioned in Ext.8. He does not know the exact place where the occurrence took place. During the relevant period, the ITO was the competent authority to refund excess income tax of about Rs.1,00,000/-. He does not remember if before according sanction, he had enquired about the matter from the personnel of their department at Rourkela. He has also deposed that Ext.8 is silent regarding any such enquiry by him.

25. Learned defence counsel has relied upon a decision reported in **2007(4) Crimes 22 (SC) State of Karnataka –Vrs.- Ameer Jan** and submitted that sanction vitiated for non-application of mind. He has also relied upon another decision reported in **AIR 1979 Supreme Court 677 Mohd. Iqbal Ahmed-Vrs.- State of Andhra Pradesh** and submitted that the grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and must

therefore be strictly complied with before any prosecution can be launched against the public servant. The learned defence counsel has relied upon a decision reported in **2016(I) OLR- 375 Sankar Prasad Padhy- Vrs.- State of Orissa & another** and submitted that sanction order so proved during the trial, not being from the appointing authority, is invalid in absence of a valid sanction, the Court lacks jurisdiction and the ultimate judgment of conviction or acquittal becomes a nullity. But in view of the clear and categorical statement of PW-3, as discussed earlier, this Court finds that there was proper application of mind by him and that he was competent to accord sanction for prosecution of the accused in this case.

26. PW-4 has stated that during the year 2011-12 he was working as Tax Assistant attached to the Office of Income Tax Officer, Ward No.4, Rourkela and the accused was also working as Tax Assistant in the said office and Sri K.C.Barik was working as ITO. He has also stated that Ext.9 is the certified copy of IT Return of Sundaramani Singh for the assessment year 2011-12 and Sri K.C.Barik, ITO has signed on all the 11 pages of Ext.9. He has also stated that his duty at that time was to receive the returns filed by the assesseees and to make entries in the IT Return Register and the duty of the accused was to receive the returns and to process the same. He has also stated that the return vide Ext.9 was received by the accused and Ext.10 is the IT Return Register for the assessment year 2011-12 and the entry relating to the return vide Ext.9 has been made in the said register at sl.no.2217 at page 142 on 8.9.2011 by him vide Ext.10/1. He has also stated that till 12.3.2012 no refund was paid in respect of income tax return vide Ext.9. During

cross-examination, PW-4 has stated that after receiving IT Returns on any particular day, the concerned Tax Assistant makes a bundle of the same and hand over the same to the concerned ITO on the same day and the IT Return vide Ext.9 was also handed over to the ITO Sri K.C.Barik on the same day. He has also stated that Return vide Ext.9 was personally filed by Sundaramani Singh and she had furnished her address as C/o. Bibek Dasgupta of Koel Nagar, Rourkela. He has also stated that the ITO was to decide regarding refund and the amount of the same to the concerned assessee.

PW-7 has stated that on the requisition of CBI, Bhubaneswar Office, he had furnished the call details of the mobile No. 9556756160 for the period from 12th March, 2012 to 15th April, 2012 as Ext.19 and as per the call record, Mobile No. 9556756160 has received a call from Mobile No.9090905372 on 12th March, 2012 at 10.39 hours for about 33 seconds call duration. The said statement of PW-7 has gone unchallenged. PW-7 has not been cross-examined by defence.

27. PW-8 has stated that on 12.3.2012 he was working as Income Tax Officer, Ward No.4, Rourkela and on that day the accused was working as Tax Assistant under him. Besides the accused, one Sri A.K.Khatua, was the Income Tax Inspector and Sri Paresh Das was working as Tax Assistant under him. He has further stated that on 12.3.2012 at the time of trap of the accused, he was present in the office room of the Joint Commissioner of Income Tax, Rourkela and at about 1 PM he was called by the CBI Officer to his office room. He has also stated that one document pertaining to the income tax return

of Smt. Sundaramani Singh for the assessment year 2011-12 was given in his zima by the CBI Inspector as per zimanama Ext.20 and the original of Ext.9 was given in his zima. He has further stated that the CBI Inspector asked him the reason as to why refund has not been made in favour of the concerned income tax assessee and he told that the accused has not placed the said matter before him after processing. Ext.21 is the seizure list dated 12.4.2012 on the basis of which, the return receipt register for the assessment year 2011-12 was seized from him and Ext.22 is the letter dated 16.4.2012 of Dipi Agrawal, Asst. Commissioner of Income Tax, Head Quarters, Bhubaneswar addressed to DSP, Bhubaneswar, giving information regarding detail period of posting of the accused.

28. PW-8 has stated that there were two Tax Assistants working under him for Ward No.4, Rourkela. The matter regarding refund of income tax of Smt. Sundaramani Singh for the assessment year 2011-12 was processed on 12.3.2012 and he had sent requisition letter to their office at Bombay for refund of the said amount to her. It is pertinent to mention here that the trap was laid on 12.3.2012. PW-8 has deposed that in TDS certificate submitted in Form NO.16A Smt. Singh has mentioned her address as "Chhend Colony, Rourkela" and the said area comes under Ward No.1 of their department and she has shown her PAN NO as "BECPS2830B" in the said TDS Certificate and the same PAN number has been mentioned by her in Ext.9 which was filed in their office for ward No.4 and her address has been as "C/o.Bibek Dasgupta of Koelnagar" and Ext.9 was submitted personally by her. PW-8 has further deposed that Chhend area was not coming under their

jurisdiction and was not coming under Ward No.4 of their department and PAN number was allotted to Smt. Singh for Ward No.1 area, was retained by her while submitting return by her for Ward No.4, being transferred by their department in her favour from Ward No.1 to Ward No.4. He has also deposed that Smt. Sundaramani had not complained before him regarding any delay in refund of income tax to her and he (PW-8) has not conducted any enquiry in connection with the allegation of demand of bribe by the accused. He could not say how many files relating to income tax return were processed by the concerned dealing assistant for Ward No.4, Rourkela by 12.3.2012 and in how many cases, income tax refund was made by that date. Just because, PW-5 might have not complained before income tax authority regarding delay in processing of her matter, does not lead to any inference that there was no such delay. It also does not throw any doubt regarding the trustworthiness of PW-5.

29. PW-9 has stated that on the requisition of the CBI, Bhubaneswar, he had given call details in respect of Mobile NO.9090905372 belonging to the services of Idea Cellular Limited for the date "12.3.2012" in the Call Detail Record dated 3.5.2012 that was provided vide Ext.23 and the said call was made from Mobile phone No.9090905372 to Mobile phone No.9556756160 and the duration of the said call was for 33 seconds and the said call ended at 10.39 AM. During cross-examination PW-9 has stated that there is no mention in Ext.23 regarding any requisition issued from the SP, CBI, Bhubaneswar. He could not say the names of the owners of the mobile telephone numbers in question and the same have also not

been mentioned in Ext.23. Ten calls have been made from mobile telephone no.9090905372 in between 10.11 AM to 20.31 PM on 12.3.2012 to different mobile telephone numbers, besides one call made to mobile telephone no.9556756160.

30. PW-14 has stated that the instant case was entrusted to him for investigation by SP, CBI, Bhubaneswar and during investigation, he had recorded the statements of relevant witnesses, seized the documents, received the CFSL Report from the Director, CFSL, New Delhi through SP, CBI, Bhubaneswar and received the sanction order from the Asst. Commissioner of Income Tax (Headquarters), Sambalpur through SP, CBI, Bhubaneswar. He has stated that he seized three documents from Sri Madhusudan Nayak, Office Superintendent, Income Tax Office, Rourkela vide seizure list Ext.4, one document from Sri K.C.Barik, ITO, Ward No.4, Ayakar Bhawan, Rourkela vide seizure list Ext.21 and one document from Mano Ranjan Mishra vide seizure list Ext.26. He has also deposed that after completion of investigation, he has submitted charge-sheet u/s.7 and 13(2) read with 13 (1) (d) of P.C.Act, 1988 against the accused on 11.7.2012.

31. During cross-examination, PW-14 has stated that he had received the authorization letter vide Ext.11 from the complainant and he has not accompanied the trap team members to the spot. He has also stated that he had submitted Ext.11 in the Court at the time of submission of charge-sheet on 11.7.2012 and that he had not examined Bibek Dasgupta. He has also deposed that he had recorded the statement of Smt. Sundaramani Singh on 4.4.2012 and again on 5.6.2012. He has

stated that the complainant had not disclosed in his statement u/s.161 Cr.P.C. before him that the document vide Ext.11 was available with him. PW-14 has stated that he had not seized any mobile set of the complainant.

32. The learned defence counsel strenuously contended that Section 7 of the P.C.Act is not attracted in this case in as much as the accused has neither shown any favour nor disfavour to the complainant (PW-11) as the application for payment of refund claim amount to the assessee Sundaramani Singh was not pending with him. Learned defence counsel has also argued that the accused is not bound to prove the explanation beyond reasonable doubt. In support of his contention he has relied on a decision reported in AIR 2002 S.C. 486 Punjabrao Singh-Vrs.- State of Maharashtra where it has been held : "The explanation given by the accused for receipt of the money need not be proved by him beyond all reasonable doubt. He can establish his defence by preponderance of probabilities." The learned defence counsel has reiterated that in the present case neither demand nor acceptance of bribe money has been proved as both PW-11 and the accused were inside the same office room. It has also been pointed out that the accused was neither competent nor had he any authority to pay income tax refund claim amount, but it is the Income Tax Officer who had authority to pay refund claim amount . The learned defence counsel has also placed reliance on another decision reported in AIR 1979 S.C. 1408 Surajmal-Vrs.- State (Delhi Administration) where it has been held : "In a case of bribery, 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.” No less specific is the defence contention that the prosecution must prove the motive for showing favour by the accused. In support of his contention he has relied on a decision reported in 2003(II) OLR 255 Khymasagar Baina-Vrs.- State where it has been held “ It is necessary that there should be a motive for showing favour by the accused coupled with the the fact that the recipient of such bribe or gratification has an authority or right to show any favour in course of discharging his official duty and that the prosecution has to prove that bribe or gratification had been received for doing his official act.” The facts and circumstances of the said reported case are completely different from the facts and circumstances of the present case and the said reported case is not applicable to the present case. In the present case, the motive of the accused has been clearly proved from his action of demanding and accepting illegal gratification of Rs.8,000/- from the complainant for the purpose of processing the application for refund of income tax of Smt. Sundaramani Singh.

33. The learned defence counsel has also placed reliance on another decision reported in AIR 1979 S.C. 1455 Mansingh-Vrs.- Delhi Administration wherein it has been held by Their Lordships of the Apex Court that if the accused succeeds in offering a probable explanation or defence, he is entitled to an acquittal and strict standard of proof is not necessary”. The learned defence counsel in support of his contention that the accused was not competent in any way to show any favour to the complainant in his official capacity, has also placed reliance on another decision reported in 1997 Crl.

Law Journal 3889 Ram Krushna Verma-Vrs.-State of Madhya Pradesh where it has been held :“There is evidence showing that the accused was not the sanctioning authority for extending favour in exercise of his official function and demand of bribe by accused and payment of money by the complainant have not been proved. Therefore, mere recovery of certain money from possession of accused without proof of demand is not sufficient to establish guilt”. What cannot be lost sight of in this connection is that in the cited decision it has been established by the evidence on record that the accused was not the person who could have extended any favour for doing any official act as he was not even the concerned clerk, for receiving the application and receiving the application could not be said to bring any favour in discharge of official act. But it is manifest from the evidence of the prosecution in the present case that the accused had the competence and jurisdiction to process the matter of the assessee Sundaramani Singh in his official capacity. The allegations as contained in the FIR corroborated by the complainant PW-11 clearly show that the application was made for payment of refund claim amount to the assessee Sundaramani Singh and that the accused has demanded Rs.8,000/- on 9.3.2012 for sending the file to the Income Tax Officer.

It is well settled that in a case of this nature, every acceptance and illegal gratification whether preceded by demand or not, would be covered under Section 7 of the Act. But, if the acceptance of illegal gratification is in pursuance of a demand by the public servant, then it would also fall under Section 13 (1) (d) of the P.C.Act.

34. The learned defence counsel has relied upon a decision reported in **(2003) 26 OCR – 274 Niranjan Bharati-Vrs.- State of Orissa** and submitted that there could not have been any occasion for the appellant to demand bribe as on the date of trap, no work was pending with the appellant. He has also relied upon another decision reported in **1994 CRI.L.J. 1383 Babu Lal Bajpai- Vrs.- State of U.P.** and submitted that no motive for demanding or accepting bribe proved, as no application of the complainant was pending with the accused. This Court is unable to accept the said submission of the learned counsel for the defence as it is seen from the evidence of PW-8 that the matter in question i.e. the refund of income tax to Smt. Sundaramani Singh was processed on 12.3.2012 i.e. the very day on which trap was laid.

35. The learned defence counsel has relied upon the decision reported in **(2009) 44 OCR (SC) – 425 State of Maharashtra- Vrs.- Dnyaneshwar Laxman Rao Wankhede** and submitted that 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. He has also relied upon a decision reported in **(2009) 43 OCR (SC) – 48 C.M.Girish Babu – Vrs.- CBI, Cochin, High Court of Kerala** and submitted that the accused charged with the offence could rebut it either through the cross-examination of the witnesses or by adducing reliable evidence- accused can succeed in proving his case by way of preponderance of probabilities and it is not necessary for him to prove his case beyond a reasonable doubt. He has also relied upon another decision reported in **(2011) 50 OCR – 591**

Debananda Das –Vrs.- State of Orissa and submitted that accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution- He can establish the same by preponderance of probability.

36. It is worthwhile to note that when a trap is laid for a public servant, marked currency notes used for the purpose of trap are treated with phenolphthalein powder, so that handling of such marked currency notes by the public servant can be detected by chemical process. Therefore, considering the evidentiary value of chemical examination report, a presumption of correctness of conclusion arrived at by the chemical analyzer is attached to such a report, unless the contrary is proved. The accused has not at all challenged the correctness of the report as contained in Ext.25 with regard to his hand wash test in chemical solution at the time of trial. Quite obviously, the chemical examination as contained in Ext.25 unmistakably proves the fact that the hand wash of the accused contained phenolphthalein powder. The scientific test has also clearly established the fact that the accused after handling the currency notes had kept the same in his left side front pant pocket. Thus, the prosecution has clearly proved that the accused had voluntarily and consciously accepted the tainted currency notes from the complainant.

37. In view of the overwhelming evidence coupled with chemical examination report, it has been established beyond reasonable doubt that the accused has voluntarily accepted the tainted currency notes from the complainant. What is all the more striking in this connection is that once the

accused accepted the gratification from the complainant it shall be presumed that the accused has accepted the gratification as illegal remuneration. When the accused has failed in his attempt to rebut the legal presumption it shall be presumed unless the contrary is proved that there was demand for taking illegal gratification.

The date, month, year, time and place when Bibek Das Gupta had taken loan of Rs.10,000/- from the accused, has not been deposed by any witness. Thus, the oral and documentary evidence on record, do not support any stand taken by the defence in this case. Besides that, not a single witness has stated that any particular person or persons were present at the time of taking such loan or had direct knowledge regarding taking of such loan by Bibek Das Gupta from the accused. The statement of PW-5 in this regard is very vague and cryptic. The source from which PW-5 came to know regarding such loan said to have been taken by Bibek Das Gupta from the accused and the date, month and year when PW-5 came to know about it, has not been whispered by her. Similar is the state of affairs regarding her claim that there was misunderstanding between both the persons as Bibek Das Gupta did not repay the said loan amount to the accused. There is much force in the submission of the learned PP, CBI that the statement of PW-5 given during her cross-examination that she has no grievance against the accused, clearly shows that due to some obvious reasons, she did not want that the accused should be put to any further trouble. Merely because there are certain minor contradictions and inconsistencies in the evidence of prosecution witnesses, it cannot be said that the

prosecution has failed to prove the guilt of the accused beyond all reasonable doubt. In contrast, the accused has squarely failed to discharge the onus to show that the money was accepted other than motive or reward. It therefore, follows as a natural corollary that the contentions advanced by the learned counsel for the defence are legally untenable and the decisions relied on from the side of the defence hardly supported the defence case. On the other hand the oral as well as documentary evidence of the prosecution coupled with the circumstances leading to trap and recovery of the tainted currency notes from the accused is a definite pointer to the conclusion that the accused had accepted illegal gratification or bribe money from the complainant.

38. In the present case the evidence on record has not only proved the demand of bribe money but also its acceptance by the accused. The preponderance of probability does not tilt in favour of the accused in as much as a semblance of attempt which has been made by the defence to prove the plea is abortive. It is common legal proposition that suggestions however strong cannot take the place of proof. The complainant was given a series of suggestions which have been stoutly denied by him. This plea has also been suggested to the complainant in the cross-examination. It is not the prosecution case that the accused had assured the complainant to send the application for payment of refund claim amount to the assessee Sundaramani Singh. In fact, he had promised to process the application for payment of refund claim amount.

39. It is worthwhile to refer Section 20 of the Act which provides: “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. (2)Notwithstanding anything contained in Sub-section (1)&(2),the court may decline to draw the presumption referred to in either of the said sub-section, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn”. It was argued, though feebly, that the presumption could not be drawn as the charge in this case was under Section 13(23) read with Section 13(1)(d) of the Act. It has been pointed out by the learned counsel for the accused that section 13(1)(d) did not attract the presumption under Section 20 of the Act,. What is being ignored by the learned counsel for the accused is that the charge was not only under Section 13(1)(d), but also under Section 7 of the Act. Section 7 of the Act is as under. “ 7. Public servant taking gratification other than legal remuneration in respect of an official act. Whoever, being, or expecting to be a public servant,

accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavor to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or State Government or Parliament or the legislature of any State or with any local authority, corporation or government company referred to any clause © of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.” Now, there can be no dispute that prosecution in this case was alleging that the accused had accepted or obtained from Manoranjan Mishra (complainant) gratification, which was other than the legal remuneration as a motive or reward for processing the application for payment of refund claim amount. Therefore, there was no question of the presumption not being there, once it was proved that the accused had accepted the illegal gratification. In the perspective, it is legally justified to draw a presumption under Section 20 of the Act. The non-examination of Bibek Das Gupta by the prosecution, does not in any way affect its case as this Court finds in the facts and circumstances of this case, that he was not a material witness for the prosecution.

40. The complainant (P.W.11) has categorically deposed that on 9.3.2012 he approached Rajiv Ranjan

regarding the progress made for refund of income tax in favour of Sundarmani Singh. On that day Rajiv Ranjan told him that the said work has not been completed and the said work will be done after payment of Rs.8000/- and also told him to pay the same after three days. Further he has stated on 12.3.2012 he contacted Rajiv Ranjan over telephone and accordingly, the accused came out of the income tax office building and asked the complainant if he had brought the money and the complainant answered him affirmatively. Then the complainant handed over the tainted GC notes of Rs.8000/- to the accused who received the same and counted and went inside his office. It is manifestly obvious from the evidence on record that the accused has all along maintained contact with the complainant in connection with the bribe money. The defence has signally failed to prove its plea in the standard of preponderance of probability regarding refund of any loan amount by Bibek Das Gupta to the accused that too through the complainant on the relevant date.

41. From the aforesaid discussion of evidence on record, it is proved that the accused had demanded and accepted bribe of Rs.8,000/- from the complainant on 12.3.2012 for sending the application for payment of income tax refund clam amount of Sundaramani Singh. The evidence of Pws-6, 10, 11 and 13 has remained substantially unshaken. The documentary evidence on record, such as, the FIR, pre-trap memorandum, post-trap memorandum, seizure lists, CE Report, and the hand wash and pant pocket wash of the accused turning to pink colour lend sufficient corroboration to their version. Nothing has been brought to record to disbelieve their

testimony. On a conjoint reading of the evidence both oral and documentary and for the discussion made above, the plea of the accused that he received the money sent by Bibek Dasgupta towards refund of loan amount through the complainant, is unbelievable and not acceptable. The oral as well as documentary and circumstantial evidence clearly prove beyond reasonable doubt that the accused Rajiv Ranjan as a public servant i.e. in the capacity as Tax Assistant of Income Tax Department, has demanded and accepted illegal gratification of Rs.8000/- from the complainant for sending the application for payment of income tax refund claim amount of Sundarmani Singh by abusing his official position as such public servant.

42. In the result, this Court finds that the accused is guilty of the offences punishable u/s.7 and 13(1)(d) r/w 13(2) of the P.C.Act,1988 and convicts him thereunder. Considering the nature of the offences, this Court is not inclined to extend him the benefit under the Probation of Offenders Act.

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 18th day of June, 2016.

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

HEARING ON THE QUESTION OF SENTENCE

The learned counsel for the convict and the learned P.P., CBI, are present. Heard from both the sides on the point of sentence. It is submitted by the convict that he is a Government servant and he has no criminal antecedent. His family members are dependent on him and on these grounds he prays for leniency. The learned PP, CBI submits that considering the nature and gravity of the offences, stringent punishment may be awarded against the convict. Keeping in view the above submissions and the facts and circumstances of the case, the convict is sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs.5,000/- in default to undergo rigorous imprisonment for one month for the offence u/s.7 of the P.C.Act and sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.10,000/- in default to undergo rigorous imprisonment for two months for the offence U./s.13 (1) (d) punishable u/s.13 (2) of the P.C.Act, 1988. The substantive sentences awarded under both the Sections are to run concurrently. The period of detention undergone by the convict as UTP in this case be set off U/s.428 Cr.P.C.

The tainted G.C. Notes of Rs.8,000/- inside an envelope (M.O.-IV) be returned to the complainant (PW-11) if not reimbursed in the meantime. If the said amount has been reimbursed to the complainant in the meantime, in that case the tainted currency notes of Rs.8,000/- be confiscated to the

State. The solution bottles (M.Os. I, II, III & V) and the pant of the accused inside an envelope (M.O.-VI) be destroyed. Order regarding disposal of the property shall take effect four months after expiry of the appeal period if no appeal is preferred and in case of appeal, the same shall be dealt as per the order of the 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 18th day of June, 2016.

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

List of witnesses examined for the prosecution :

PW-1	Amulya Kumar Patjoshi.
PW-2	Madhusudan Nayak.
PW-3	Asutosh Pradhan.
PW-4	Paresh Kumar Das.
PW-5	Smt. Sundaramani Singh.
PW-6	Manas Kumar Pati.
PW-7	Dinesh Kumar Pradhan.
PW-8	Krushna Chandra Barik.
PW-9	AVK Naidu.
PW-10	Brundaban Pradhan.
PW-11	Manoranjan Mishra.
PW-12	Binod Bhagban Ramteke.
PW-13	Sachidananda Rath.
PW-14	Subhransu Bhusan Mishra.

List of witnesses examined for the defence :-

Nil.

List of exhibits marked for the prosecution :-

Ext.1	Form No.16A regarding Annual Tax Payable.
Ext.2	Seizure list dated 12.3.2012.
Ext.2/1	Signature of PW-2.
Ext.3	Attendance Register starting from 1.12.2011 to 12.3.2012.
Ext.4	Seizure list dated 18.4.2012.
Ext.4/1	Signature of PW-2 in 4.
Ext.5	Transfer order No.11/2008 dated 30.4.2008.
Ext.6	Office Order dated 8.6.2011 of Joint Commissioner.
Ext.7	Office order.
Ext.8	Sanction order.
Ext.8/1	Signature of PW-3 in Ext.8.
Ext.9	Certified copy of IT Return of Sundaramani Singh.
Ext.9/1	Endorsement and signature of Sri K.C.Barik (on the first page).
Ext.10	IT Return Register for the assessment year 2011-12.
Ext.10/1	The entry relating to the return vide Ext.9 has been made in the said register at Sl.No.2217 at page 142 on 8.9.2011.
Ext.11	Authorization letter.
Ext.11/1	Signature of PW-5 on Ext.11.
Ext.11/2	Signature of M.R.Mishra in Ext.11.
Ext.12	Pre-trap memorandum.
Ext.12/1	Signature of PW-6 in Ext.12.
Ext.13	Search memo.
Ext.13/1	Signature of PW-6 in Ext.13.
Ext.14	Spot map.
Ext.14/1	Signature of PW-6 in Ext.14.
Ext.15	Post trap memorandum (five pages).
Ext.15/1	Signature of PW-6 in Ext.15.
Ext.16	Seizure list.
Ext.16/1	Signature of PW-6 in Ext.16.
Ext.17	Search list.
Ext.17/1	Signature of PW-6 in Ext.17.
Ext.18	Search list.
Ext.18/1	Signature of PW-6 in Ext.18.
Ext.19	Call details of the mobile No.9556756160 from the period 12 th March, 2012 to 15 th April, 2012.
Ext.19/1	Endorsement with signature of PW-7.
Ext.20	Zimanama.
Ext.20/1	Signature of PW-8 in Ext.20.

Ext.9/2	Signature of PW-8 in Ext.9.
Ext.7/1	Signature of PW-8 in Ext.7.
Ext.21	Seizure list dated 12.4.2012.
Ext.21/1	Signature of PW-8 in Ext.21.
Ext.22	Letter dated 16.4.2012.
Ext.22/1	Signature of PW-8 in Ext.22.
Ext.23	Call details in respect of mobile No.9090905372 dated 12.3.2012.
Ext.23/1	Endorsement with signature of PW-9 on Ext.23.
Ext.12/2	Signature of PW-10 in Ext.12.
Ext.16/2	Signature of PW-10 in Ext.16.
Ext.15/2	Signature of PW-10 in Ext.15.
Ext.13/2	Signature of PW-10 in Ext.13.
Ext.17/2	Signature of PW-10 in Ext.17.
Ext.18/2	Signature of PW-10 in Ext.18.
Ext.14/2	Signature of PW-10 in Ext.14.
Ext.24	FIR.
Ext.24/1	Signature of PW-11 on Ext.24.
Ext.12/3	Signature of PW-11 in Ext.12.
Ext.15/3	Signature of PW-11 in Ext.15.
Ext.14/3	Signature of PW-11 in Ext.14.
Ext.25	Chemical Examination Report.
Exts.25/1 & 25/2-	Signatures with seal of PW-12 in Ext.25.
Ext.24/2	Formal FIR.
Ext.24/3	Endorsement with signature of Mr. M.S.Khan, the then SP.
Ext.12/4	Signature of PW-13 in Ext.12.
Ext.13/3	Signature of PW-13 in Ext.13.
Ext.14/4	Signature of PW-13 in Ext.14.
Ext.15/4	Signature of PW-13 in Ext.15.
Ext.16/3	Signature of PW-13 in Ext.16.
Ext.20/2	Signature of PW-13 in Ext.20.
Ext.17/3	Signature of PW-13 in Ext.17.
Ext.2/2	Signature of PW-13 in Ext.2.
Ext.18/3	Signature of PW-13 in Ext.18.
Ext.4/2	Signature of PW-14 on Ext.4.
Ext.21/2	Signature of PW-14 on Ext.21.
Ext.26	Seizure list.
Ext.26/1	Signature of PW-14 on Ext.26.
Ext.26/2	Signature of Manoranjan Mishra.

List of exhibits marked for the defence :-

Nil.

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

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| M.O.-I | Solution of sodium carbonate with water bottle (Mark-D). |
| M.O.-II | One solution of sodium carbonate with water bottle (Mark-R). |
| M.O.-III | Another solution of sodium carbonate with water bottle (Mark-L). |
| M.O.-IV | Envelope containing tainted money (sealed). |
| M.O.-V | Pant pocket wash (Mark-P). |
| M.O.-VI | Envelope containing the pant of the accused. |

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

Nil.

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