

**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.06/2006  
(Arising out of RC No.34(A)/2009).

**Republic of India** .... Prosecution.

-Versus-

Suresh Kumar Singh, aged about 54 years,  
S/o.Late Ram Kumar Singh, resident of  
Vill.: Dubhaki Kala, PO/PS-Handia,  
District-Allahabad (UP).

....

Accused.  
(ON BAIL)

For the Prosecution : Shri S. S. Mishra, Sr.P.P.CBI,  
Sri A.K.Singh, Spl.P.P.,C.B.I.

For the Defence : Sri P.K.Mahanty &  
Associates, Advocates.

**Date of argument : 18.01.2016**

**Date of judgment : 25.01.2016**

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

J U D G M E N T

The accused stands charged U/s.13(1)(d) read with Sec.13(2) and U/s.7 of the Prevention of Corruption Act, 1988 for obtaining pecuniary advantage of Rs.1000/- (rupees One thousand) by illegal means during his incumbency as Office Superintendent of Lakhanpur OCP, Jharsuguda from the complainant, as bribe, for issuing gate passes for two trucks engaged for lifting coal under Road Sale.

2. The prosecution case in brief is that the complainant was the commission agent for obtaining gate pass for trucks for loading coals from Lakhanpur and the accused was the Gate Pass Issuing Officer (Office Superintendent of Lakhanpur OCP). On 28.9.2005 the complainant had gone to the accused for gate pass in respect of two trucks and the accused had demanded Rs.1,000/- for issuance of gate pass and asked him to come on the next day. Then, the complainant gave a written complaint to the SP, CBI, Bhubaneswar, basing on which, the present case was registered. On the next day i.e. on 29.9.2005 a trap party, including two independent witnesses, was formed and solution of sodium carbonate was prepared in a clean glass tumbler. The complainant produced one 500 rupee G. C. note and five numbers of 100 rupee G. C. notes, which were treated with phenolphthalein powder. Then D.K.Kabi, Inspector advised the complainant to hand over the money to the accused on his demand. A pre-trap memorandum was prepared at the spot in which all the witnesses signed. The trap party members went to the gate pass issue office and took their respective positions. The complainant with the accompanying witness S. D. Ray went to the window of gate pass office and other trap party members waited nearby. On seeing the complainant, the accused demanded and accepted the bribe money from the complainant and counted the same by both hands and kept it in his left side shirt pocket. Getting pre-arranged signal, other members of the trap team went inside. When D.K. Kabi rushed to the spot and gave his identity, the accused fumbled and kept quiet. Upon taking both hand wash of the accused by sodium carbonate solution, it turned pink. Witness S.D. Ray on being

directed by D.K. Kabi brought out the money from the left side shirt pocket of the accused and the serial numbers of the notes were tallied. The said tainted notes were kept in a sealed cover. The shirt of the accused was also removed and its pocket wash was taken in another solution of sodium carbonate with water, which turned pink. The pocket wash was kept in a sealed bottle marked "P". A post trap memorandum was prepared at the spot in which all the witnesses signed. The accused was arrested and forwarded to the Court. On conclusion of the investigation, finding a prima facie case, the I.O. placed the final form against the accused U/s.7/13(1)(d) r/w Sec.13(2) of the P.C.Act,1988. Hence, the case.

3. The accused denied the charges and stated inter-alia that he has been falsely implicated in this case by the complainant. The accused in his statement U/s.313 Cr.P.C. stated that he has neither demanded nor accepted any bribe from the complainant. Further, he has taken the plea that on some occasions, the complainant used to take money from him on loan basis and on the date of occurrence. The complainant has returned Rs.1000/- to him as refund of loan amount taken earlier by him.

4. The points for determination in the instant case are as to –

- (i) Whether the accused is a public servant?
- ii) Whether the accused being a public servant has demanded illegal gratification of Rs.1000/-(Rupees one Thousand ) from the complainant-decoy for issuance of gate pass in his favour, as alleged?
- iii) Whether the accused being a public servant has accepted the illegal gratification of Rs.1000/- (rupees one Thousand ) to do any official act in favour of the decoy, as alleged?

5. At the trial, the prosecution in all examined Ten witnesses, out of whom PW.8 who lodged the written report Ext.15 is the complainant-decoy. PW.1 is an official witness, who witnessed the

entire trap proceeding, P.W.4 is the overhearing witness, who accompanied the complainant to the spot, where the trap was made, P.W.2 is the Gate Pass Clerk of Lakhanpur OCP of MCL, P.W.3 is a witness to the seizure of service sheet of accused, P.W.5 is a witness to the seizure of road sale chalan book, P.W.6 is the clerk of M/s. Bharat Kumar Sitani, who used to receive the delivery orders from MCL Headquarters, Burla for lifting of coal, P.W.7 is the sanctioning authority who accorded sanction for prosecution of the accused, P.W.9 is the witness, who accompanied trap laying officer to the spot. P.W.10 is the investigating officer, who investigated into the case and on completion of the investigation, placed the charge sheet. Besides this, the prosecution has relied on several documents vide Ext.1 to Ext.16 and exhibited material objects under M.O.I to M.O.VII. The accused, in his defence has examined two witnesses.

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 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) of the P.C. Act 1988. 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, 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.

7. It is in the evidence of P.Ws.1, 3, 4, 7 (the sanctioning authority), P.W.8 the complainant, P.W.9 that the accused was working as Office Superintendent, OCP, Lakhanpur under MCL. The said version of the above P.Ws has also been proved by the defence witnesses D.Ws. 1 and 2. Therefore, it is an admitted fact that the accused is a public servant.

8. P.W.8 the complainant Md. Majid has alleged in the F.I.R. stated that on 28.9.2005 he went to the office of accused for issue of gate pass for two trucks. There the accused S.K. Singh who was working as Gate Pass Issue Officer, has demanded Rs.1,000/- as bribe to issue gate pass and asked him to come on the next day. On the same day he wrote a complaint to SP CBI, Bhubaneswar through Sri D.K. Kabi Inspector, CBI, Rourkela Unit who instructed him to come on the next day at 6.35 a.m. at FCI, FSD, Jharsuguda. Consequent upon registration of the case, the TLO D.K. Kabi held pre-trap proceeding at the office of FCI, FSD, Jharsuguda. P.W.1 Kalpataru Das, Telephone Operator of Sundargarh Exchange and P.W.4 Asst. Grade-I Depot Jharsuguda came to the FCI, FSD, Jharsuguda are the official witnesses, before whom PW.8 the complainant narrated about the allegation of demand of bribe by the accused in presence of the (P.W.9) and Sri D.K. Kabi. A demonstration was made in the office of FCI, FSD, Jharsuguda. PW.8, the complainant produced Rs.1000/- in shape of one 500 rupee GC note and five numbers of 100 rupee GC notes for use in the trap which were later mixed with phenolphthalein powder. One constable prepared sodium carbonate solution in clean glass tumbler, and smeared phenolphthalein powder with the GC notes and then P.W.1 dipped his fingers into the contents of one glass tumbler and the colour of solution turned pink and the said bottle was sealed and marked "D".

Both the sample solutions were preserved in empty clean bottles. The tainted GC notes were kept in the shirt pocket of the complainant with instruction to tender the tainted money to the accused on demand. P.W.4 S.D. Ray, being an independent witness was selected as an accompanying witness. He was further instructed to move with the complainant to the Gate pass issue office of Lakhanpur OCP of M.C.L. to witness the transaction, overhear the conversation in between the complainant and the accused and to pass pre-arranged signal soon after the bribe money is paid. A pre-

trap arrangement report pertaining to preparation was prepared by the TLO , and a copy thereof was handed over to PW.4, the accompanying witness. He was further instructed to compare the number and denomination of the tainted GC notes, if recovered during the trap, with the numbers and denomination noted in the preparation report. These witnesses namely PWs.1,4,8 and 9 examined on behalf of the prosecution have corroborated with each other on material particulars so far as the preparation and the demonstration of the phenolphthalein powder and sodium carbonate solution staged during the pre-trap arrangement. Evidence of these witnesses relating to the demonstration and accuracy of preparation held on 29.9.2005 is trustworthy and credible.

9. Admittedly, Shri D.K. Kabi who investigated into the case died during pendency of this case. P.W.10 after taking over the charge from him has investigated into the case and after obtaining sanction order from competent authority, he submitted charge sheet against the accused.

10. PW.10 has stated that on being directed by S.P. CBI, he took charge of investigation of this case from Shri D.K. Kabi and during course of investigation he seized the relevant documents such as service sheet of accused on 14.12.2005 vide seizure memo Ext.9. On 17.12.2005 he seized duplicate office copy of Road sale chalan vide seizure list Ext. 12 and on 29.9.2005 four documents were seized by D.K. Kabi vide seizure memo Ext.8. He has stated that after obtaining CFSL report Ext.16 he submitted charge sheet. He proved the CFSL report Ext.16 and the test of which is amply corroborated with the evidence of Prosecution witnesses.

11. P.W.7 S.P. Dutta Majumdar, General Manager, Lakhanpur area, M.C.L. being the sanctioning authority, has accorded sanction to launch prosecution against the accused vide

sanction order marked as Ext.14. The evidence of P.W.7 shows that he had applied his mind before passing the said sanction order. There is no infirmity in the sanction order and the service details of the accused Ext.9 clearly indicates that the accused was working as Office Superintendent, Lakhanpur OCP and was in-charge of issuance of Gate pass for vehicles under Road Sale.

12. P.W.2 has stated that he was working as a Clerk Gr.III attached to the Gate Pass Office, Lakhanpur. He has stated about the procedure for issuance of gate pass in the gate pass office and the duty of the gate pass issuing officer. But he has not stated anything incriminating against the accused. Further, he has stated that on the date of occurrence i.e. on 29.9.2005 he was not present in the gate pass office but subsequently he heard that there has been a trap.

13. P.W.3 is another official who was working as Dy. Personnel Manager. According to him, on 14.12.2005 the I.O. had seized the service sheet of accused containing 68 pages vide seizure list Ext.9. He has stated that the accused was attached to gate pass office of Lakhanpur OCP in May 2005. He was asked to look after gate pass issue office and he proved the office order dtd.25.4.2003 vide Ext.10/1. But nowhere, he has stated that the accused was issuing the gate passes for the loaded trucks in the gate pass office. P.W.5 is another official witness who has only stated about the seizure of road sale challan book. But he has not stated anything incriminating against the accused. It is the evidence of P.W.6 that Exts.6/15 and 6/16 have been issued from their firm in respect of the two trucks for loading of coal bearing No.CG-04-ZC 6522 and OR-19-9787 in favour M/s. Arun Kumar Agrawal. But he has failed to say the date of issue of the above exhibits.

14. Learned defence counsel contended that the accused neither has made any demand of bribe nor he had received the bribe amount of Rs.1000/- from the complainant. It is his further contention that several times, the complainant has taken money from the accused as loan and on the date of occurrence, while the complainant returned the loan amount of Rs.1000/-, the trap party members caught hold of him alleging that he had received the bribe amount.

15. The trap party led by D.K. Kabi, the TLO had been to F.C.I., F.S.D., Jharsuguda by a vehicle whereas the complainant P.W.8 and P.W.4 S.D. Ray went to the spot by a motor cycle and the trap team took their position at a few distance away from the spot. It reveals from the testimony of PW.8 that they found that the accused was present in the office and he (P.W.8) met the accused, who asked for the money. Thereafter the complainant handed over the tainted GC notes amounting to Rs.1000/- to the accused who received the same and counted it by both of his hands and kept the same in his left side shirt pocket. PW.4, the accompanying witness is the only eye witness to the factum of demand and acceptance of bribe by the accused. It reveals from his oral testimony that PW.8, the complainant and he himself came to the window of the gate pass office and the informant asked a person, who was sitting inside the gate pass office and that person asked for payment of Rs.1000/- as per the earlier demand. Then the informant brought out the tainted currency notes from his left side shirt pocket and handed over the same to that person. Further according to him, he had seen the said transaction and heard the conversation between the accused and the informant. P.W.8 passed the pre-arranged signal to the trap party members by wiping his face. They came forward to the spot and Mr. Kabi gave his identity and identity of other trap team members. Thereafter, he ascertained the identity of that person, who told that he was Suresh Singh, Office superintendent, OCP, Lakhanpur.

16. The evidence of P.W.9 the official witness of CBI who accompanied the T.L.O. is also amply corroborated by the evidence of P.Ws.4 and 8. According to him, he was present at the time of pre-trap preparation, demonstration process. According to him, at about 8.30 a.m. 29.9.2005 the trap team reached the spot and then the complainant met the accused in his gate pass office, where the accused had demanded bribe. He has further stated that the complainant brought out the tainted notes from his pocket and handed over the same to the accused who accepted the same and counted the notes and kept in his left side chest pocket. When D.K. Kabi challenged the accused, he remained silent and fumbled. He (P.W.9) and T.K. Dutta constable caught hold of both the hands of the accused and a solution was prepared at the spot. The right hand of the accused was dipped into the solution, which turned pink. He proved the sample bottle M.O.II and III respectively containing the said hand washes. According to him, the tainted notes were recovered from the left side chest pocket of the accused and his wearing shirt was removed and the pocket of the shirt was washed in another solution, which turned pink and said solution was kept in a bottle marked M.O.IV. The numbers of the notes were compared with the previous noting, which tallied with the same. According to him, the shirt of the accused was seized and kept in an envelop vide M.O.V and the tainted notes were kept in an envelope vide M.O.VI. Further, he has stated that an amount of Rs.8200/- was recovered from the possession of the accused, which were kept in separate envelop marked M.O.VII. He was also a witness to the entire post trap proceeding at the end of which post trap memorandum vide Ext.3 was prepared.

17. D.W.1 Rakesh Chaturbedi who was working as Sr. Technical Inspector, Open cast Project, Lakhanpur of M.C.L. has stated that on 29.9.2005 at about 7.30 a.m. he joined in duty and gave his attendance in the office of Mines Time Keeper. He saw the

accused at that time in the office of Mines Time Keeper and then both of them were proceeding towards the office of Manager, Colliery. At that time one young man came and talked with the accused and told the accused that it has already become late and he (the accused) should accept the money from him and paid him some amount. On being asked the accused told him that the said young man is named Majid.

18. D.W.2 Pramod Kumar Panda the President of Truck Owners Association has stated that the complainant was not an agent of any delivery order holder. He only moves around their association office and does some errands for them by bringing small articles like soaps, stationery articles, tea, betel etc. Accused Suresh Singh was Supervisor of MCL, Road Sale Office. According to him, about fifteen days prior to arrest of accused, in his presence, Md. Majid asked for a loan of Rs.1000/- from the accused at Road Sale Office, but the loan was not paid in his presence.

19. With regard to the alleged demand and payment of bribe, it is in the evidence of P.W.1 that the complainant and P.W.4 entered into the cabin and the rest members of the trap team stood near the window. The accused asked Md. Mazid (complainant) whether he has brought the money and then Md. Mazid paid him Rs.1000/-. The accused counted it and kept it in his shirt pocket. Then the rest members of the trap team entered into the room and caught hold of the accused.

20. During cross-examination, P.W.1 has stated that the complainant paid the amount through the window and all the trap party members were standing near the window side. In this regard, P.W.4 has deposed that he along with the informant went to the window of the gate pass office. The informant asked a person who was sitting inside the gate pass office. The said person asked for payment of Rs.1000/- as per the earlier demand. The informant brought out the tainted currency notes from his left side shirt pocket

and handed over the same to the said person. Thereafter, being asked by Mr. Kabi, the said person disclosed his identity as Suresh Singh, Office Superintendent, OCL, Lakhanpur.

21. It is in the evidence of P.W.4 that when being challenged by Mr. Kabi as to why he has demanded and accepted bribe of Rs.1000/- from the informant, the accused told that he has not accepted bribe from the informant. But surprisingly, during his cross-examination, P.W.4 has stated that the complainant had not handed over anything i.e. any cash or document at the said counter at the time of obtaining the gate pass. He has specifically claimed that the said gate passes were seized by the C.B.I.

22. The complainant (P.W.8) had not stated during his examination-in-chief regarding the exact place where the demand and acceptance of bribe took place. During cross-examination, being asked about it, he has stated that he gave the money to the accused from outside the room through the window. During his examination-in-chief, P.W.8 has not stated that the accused had demanded any bribe from him on the relevant date i.e. on 29.09.2005, although he has stated that the accused asked for the money. During cross-examination, he has also not stated that the accused had demanded any bribe from him, although he has stated that the complainant on seeing him asked him whether he has brought Rs.1000/-. P.W.8 has further stated that then the accused handed over two gate passes to him and subsequently he (P.W.8) gave both the gate passes to the C.B.I. He has specifically denied to the suggestion that no gate passes were issued to him by the accused.

23. P.W.9 has categorically admitted during his cross-examination that he was 10 feet ahead from the window standing on the road side and was not able to hear the conversation. He has also admitted that the complainant and over hearing witnesses have not given any signal, but they i.e. P.W.9 and other trap team members went into the room. P.W.9 had not seen, if any document was presented by the complainant at the window to the gate pass issuing

clerk. Thus, it is seen that there are material discrepancies and contradictions in the evidence of above prosecution witnesses regarding the exact word spoken by the accused to the complainant with regard to the alleged demand of bribe and the exact spot and the manner of acceptance of bribe by the accused from the complainant. If the statement of one of the most important prosecution witness i.e. P.W.4 to the effect that the complainant had not handed over anything i.e. any cash or document at the said counter at the time of obtaining the gate passes, is to be believed, then the entire case of the prosecution with regard to the alleged demand and acceptance of bribe by the accused from the complainant falls flat on the ground. It is highly un-safe to rely upon such contradictory evidence of the prosecution witnesses, as discussed above.

24. On the other hand, the evidence led by the defence through D.Ws. 1 that a sum of Rs.1000/- was returned back by the complainant to the accused on the relevant day, while the accused was going towards his office and that the said sum was repaid towards loan earlier taken by the complainant from the accused seems to be plausible explanation given by the accused the standard of preponderance of probability. The evidence of D.W.2 that the complainant had asked for loan of Rs.1000/- from the accused about fifteen days prior to arrest of the accused, also supports the stand taken by the defence.

25. The explanation given by the defence through D.Ws.1 and 2 seems to be probable. It is in the evidence of defence that the complainant was doing errands for some truck owners and used to take loan from the accused. In the said circumstances, it cannot automatically lead to the conclusion that he had accepted the said cash of Rs.1000/- as bribe, when there is clear and consistent evidence by D.Ws.1 to show in the standard of preponderance of probability that the said amount was given back by the complainant to the accused while the later was coming on his way to the office.

26. So far as any agency in favour of the complainant for issue of any gate pass is concerned, the evidence led by the prosecution is completely vague and inadequate. P.W.8 has not stated during his examination-in-chief regarding the name of any particular person, any particular truck owner or driver or any firm for whom he was working as Commission agent for obtaining gate passes. He has also not deposed regarding registration number of any truck, in respect of which he was authorized or required to obtain gate passes from the gate pass office in question. During cross-examination he has stated that he was working as agent of truck owner. But even at that stage, he did not disclose the name of the truck owner. Being further cross-examined, in this regard, he has stated that he was agent for six to seven years prior to the occurrence. Being further asked about it, he has stated that he was working for the truck of his maternal uncle Kalim Khan and has no document to show that he was working for his truck bearing No. OR-23-1290 and OR-23-1291. He has deposed that Pradip Senapati (P.W.2) was the Clerk and accused was the Superintendent at that time. He has admitted that he has no idea about the duties of the accused. P.W.8 has admitted that he has not brought any paper from his uncle to lift coal. He has been specifically suggested by the defence that he was not working as agent of his maternal uncle.

27. In this regard, P.W.4 could not say if the complainant was a transport agent for loading of coal. He has further admitted that the complainant had not intimated them about registration numbers and names of owners of both the trucks in question and had not shown them any order authorizing him to load coal in both the said trucks. No delivery order in favour of the complainant was verified by anybody in his presence. P.W.9 has stated that he has not verified delivery order and cannot say regarding any delivery order of road sale issue to the complainant. He had not verified regarding the truck, for which, the complainant had asked for gate

passes from the accused. He had not seen if any document was presented by the complainant at the window to the gate pass issuing clerk.

28. P.W.10 has admitted that he had not seized any requisition submitted by the complainant. It is in his evidence that the truck number has not been mentioned in the FIR. It is in the evidence that the name of the truck owner, the registration number of the trucks for whom the complainant had sought for issue of gate passes have neither been mentioned in the FIR, pre-trap proceeding, post trap proceeding and also in the evidence of the complainant himself who has been examined as P.W.8. The most surprising aspect in the evidence of prosecution witnesses is that Kalim Khan, the uncle of P.W.6 has neither been cited as witness in the charge sheet nor examined as a witness on behalf of the prosecution to disclose as to whether that he had authorized or requested the accused to obtain any such gate pass on his behalf.

29. The evidence of P.W.6 although discloses that their firm M/s. Bharat Kumar Sitani was acting as agent of M/s. Tarun Kumar Agrawalla, his evidence is completely silent regarding any authorization or request in favour of the accused to obtain any gate pass on their behalf. He has also admitted that Ext.6/15 and Ext.6/16 i.e. requisition in favour of two trucks do not disclose the date of issue of the same, the name of driver and regarding the driving license of the said driver.

30. P.W.6 had not filed any document in favour of the said agency. Even if, for the sake of argument, the entire evidence of P.W.6 is accepted as true, still then the said evidence does not in any way show regarding any authorization in favour of the accused to obtain any gate passes. It is further more surprising that the prosecution has not opted to prove the gate passes in question, which, as alleged and claimed by some of the prosecution witnesses, as earlier discussed, were issued in favour of the

complainant and were seized by the C.B.I. Absence of any reason furnished by the prosecution for non-production of those gate passes, said to have been issued in favour of the complainant and seized by the C.B.I., gives rise to reasonable doubt that those two gate passes, if proved in this case on behalf of the prosecution would not have shown that such gate passes have been actually issued by the accused and that too in favour of the complainant.

31. Now it is relevant to discuss the evidence of prosecution and defence witness regarding the exact duty of the accused. There is no specific and categorical evidence from the side of the prosecution to show that in fact the duty of the accused to issue any gate pass, when admittedly one gate pass issuing clerk was there on that day for the said purpose. Besides that the prosecution has failed to prove by adducing evidence beyond reasonable doubt that the accused himself had issued any gate pass on that day and that too to the complainant in respect of any truck or any truck owner. In the absence of any such specific and categorical evidence, this court is constrained to hold that the allegation made against the accused and the claim made by the complainant that he was authorized by any particular person, to obtain gate pass from the accused, for any particular truck is too inadequate infirm and deficient to connect the accused with regard to issue any gate passes in favour of the complainant. Thus, the very foundation of the prosecution case with regard to issue of gate passes by the accused to the complainant is too fragile to sustain the super structure i.e. the allegation regarding acceptance and demand of bribe by the accused from the complainant.

32. Learned Sr. P.P. CBI had inter-alia submitted that once the recovery of money from the possession of the accused is proved, statutory presumption under Sec. 20 of the P.C. Act 1988 has to be drawn in the facts and circumstances of the case. It was further submitted by the learned Sr. P.P. CBI that there has been

substantial corroboration in the evidence of prosecution witnesses regarding the charge made against the accused and discrepancies if any in their evidence, are minor discrepancies. But it is seen from the evidence already discussed that there are material contradictions in the evidence of prosecution witnesses on vital aspect, which cannot be ignored on the ground that those are minor discrepancies. As demand and acceptance of bribe had not been proved beyond reasonable doubt, therefore, no presumption can be drawn under Sec.20 of the Act.

33. It is in the evidence of P.W.8 that he had some ill-feeling with the accused prior to the date of occurrence. P.W.8 has also deposed that previously both Pradeep and Suresh (the accused) were known to him since six years but prior to 28.9.2005 none of them had demanded bribe from him. Further he has stated that he was giving bribe previously since last five to six years. Therefore, in the circumstances of this case, it is highly unsafe to rely upon the said contradictory and discrepant statement of the above mentioned prosecution witnesses to come to a conclusion beyond reasonable doubt that there was any such demand and acceptance of bribe by the accused from the complainant. Taking into consideration that the said conduct of P.W.8 and in view of the discussions of the evidence led by the prosecution, there is much force in the submission of learned counsel for the defence that the said ill-feeling was the reason for which this case has been falsely filed against the accused. In view of the discussions already made, this court also finds that there was no necessity or requirement for the complainant to give any bribe to the accused for the purpose of obtaining any gate passes. The prosecution has failed to prove that the accused had ever issued any gate pass in favour of any body at any time or was authorized or entitled to issue any such gate pass.

34. In ultimate analysis of the evidence on record, this Court holds that the prosecution has failed to prove its case against the accused beyond all reasonable doubt. Hence, the accused

Suresh Kumar Singh is found not guilty of the offence under Secs. 13(1)(d) read with Sec.13(2) and U/s.7 of the Prevention of Corruption Act, 1988 and he is acquitted under Sec. 248 (1) Cr. P.C. He is set at liberty forthwith. The bail bonds stand cancelled.

The seized documents be returned from whom seized and the zimanama, if any be cancelled, the seized amount of Rs.1000/- be confiscated to the state and the other M.Os be destroyed after four months of the expiry of the appeal period, if no appeal is preferred and in the event of an appeal subject to order of the Hon'ble Appellate Court.

Special Judge, C.B.I. Court No.IV,  
Bhubaneswar.

Dictated, corrected by me and is pronounced in the open Court on this the 25<sup>th</sup> day of January, 2016 under my hand and seal of the Court.

Special Judge, C.B.I., Court No.IV,  
Bhubaneswar.

**List of witnesses examined for the prosecution :**

P.W.1	Kalpataru Das.
P.W.2	Pradeep Kumar Senapati.
P.W.3	Anup Kumar Santoshi.
P.W.4	Surya Dev Ray.
P.W.5	Sukhwant Singh.
P.W.6	Anil Kumar Panigrahi.
P.W.7	S.P.Dutta Majumdar.
P.W.8	Md. Mazid.
P.W.9	L.Salu.
P.W.10	Subhransu Bhusan Mishra.

**List of witnesses examined for the defence :-**

D.W.1	Rakesh Chaturbedi
D.W.2	Pramod Kumar Panda.

**List of exhibits marked for the prosecution :-**

Ext.1	Paper bearing the nos. of G.C.Notes.
Ext.1/1	Signature of PW-1.
Ext.2	Pre-trap memo.
Ext.2/1	Signature of PW-1.
Ext.3	Post-trap Memo.
Ext.3/1	Signature of PW-1.
Ext.4	Gate Pass Register.
Ext.5	Register.
Exts.5/1 & 5/2 –	Notings in the register Ext.5.
Exts.6 to 6/23 –	Requisitions.
Ext.7	Gate Pass Challan Book.
Ext.8	Seizure List.
Ext.8/1	Signature of PW-2.
Ext.9	Seizure List.
Ext.9/1	Signature of PW-3.
Ext.10	File.
Ext.10/1	Office Order.
Ext.10/2	Suspension Order.
Exts.1/2, 2/2 & 3/2 –	Signatures of PW-4.
Ext.11	Sketch Map.
Ext.11/1	Signature of PW-4.
Ext.12	Seizure list.
Ext.12/1	Signature of PW-5.
Ext.13	Receipt Book.
Ext.14	Sanction Order.
Ext.14/1	Signature of PW-7.
Ext.15	Written complaint.
Ext.15/1	Signature of PW-8 in Ext.15.
Ext.2/3	Signature of PW-8 in Ext.2.
Ext.3/3	Signature of PW-8 in Ext.3.
Ext.2/4	Signature of PW-9 in the last page of Ext.2.
Ext.3/4	Signature of PW-9 in Ext.3.
Ext.11/2	Signature of PW-9 in Ext.11.
Ext.15/2	Formal FIR.
Ext.9/2	Signature of PW-10 in Ext.9.
Ext.12/2	Signature of PW-10 in Ext.12.
Ext.8/2	Signature of D.K.Kabi in Ext.8.
Ext.16	C.F.S.L. Report.

**List of exhibits marked for the defence :-**

Nil.

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

M.O.-I	The bottle containing solution after demonstration.
M.Os.-II & III	Two bottles containing liquid of both hand wash.
M.O.-IV	Bottle containing of shirt pocket wash.
M.O.-V	Envelope containing shirt.
M.O.-VI	Cover containing tainted money.
M.O.-VII	Cover containing money.

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

Nil.

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