

**IN THE COURT OF THE SPECIAL JUDGE, C.B.I., COURT NO.III,
BHUBANESWAR.**

PRESENT : Sri B.N. Das,
Special Judge, C.B.I.,
Court No.III, Bhubaneswar.

T.R.Case No. 5/7 of 2013/2012
(Arising out of R.C. 22(A)/ 2011)

Date of argument : 9.5.2014

Date of Judgment : 15.5.2014

REPUBLIC OF INDIA

Versus.....

Ashok Kumar Panda, aged about 53 years,
Son of Late Anand Chandra Panda,
Vill. Baramba Garh, Via-Athagarh, Cuttack,
At present Qr. No.E-4/5, Barrage Colony,
Near BOSE, P.O.SCB Medical Campus,Cuttack.

... Accused.

For the Prosecution : Sri K. C.Mishra,Sr. P.P.,CBI,
Sri Ashish Jaiswal, P.P.CBI.

For the Accused : Shri Kishore Mishra,
Shri Subhasis Mishra & Associates,
Advocates.

J U D G M E N T

The accused stands charged Under Sec.7 and Sec.13(2)
read with Sec. 13(1)(d) of Prevention of Corruption Act,1988 for
demanding and accepting bribe of Rs.5000/- from the complainant for

sanction of agriculture loan. Being a public servant, by corrupt and illegal means, abusing his official position, he has obtained pecuniary advantage for himself.

2. Prosecution case in nut shell is that, accused Ashok Kumar Panda was functioning as Manager, Kalinga Gramya Bank, Chatua Branch. The complainant Damodar Rout applied for agriculture loan of Rs.50,000/- after satisfying previous loan. In order to process said agriculture loan, accused Ashok Kumar Panda demanded bribe of Rs.5000/- from him and told him not to process the loan application in case bribe amount is not paid. Being aggrieved by such illegal demand, the complainant (P.W.9) lodged a complaint before S.P.CBI, on 6.12.2011 on the basis of which the present case was registered and investigation was taken up by A.K. Samal, Inspector, CBI (P.W.10). On 7.12.2011 a CBI team was constituted consisting of two independent witnesses, complainant and other CBI officials in order to lay trap. On 7.12.2011 all the witnesses including complainant remained present in the office of S.P. CBI, Bhubaneswar. The complainant produced the amount of Rs.5000/- which was tainted with phenolphthalein powder. After necessary chemical demonstration and explaining the purpose of such trap, pre-trap memorandum was prepared vide Ext.3 which was signed by the witnesses. The complainant along with other witnesses and CBI officials proceeded to Kalinga Gramya Bank, Chatua Branch. The complainant was asked to pay the money on demand to the accused and to give signal after transaction of bribe money. Accordingly, both complainant (P.W.9) and the accompanying witness P. Ch. Chattar (P.W.2) went to the accused and the complainant handed over the demanded tainted notes of Rs.5000/- to the accused and soon after

giving signal, CBI officials along with witnesses rushed to the spot. The complainant identified the accused and thereafter, Inspector Sri Samal challenged the accused as to why he demanded and accepted the bribe of Rs.5000/- from the complainant. Then the accused became nervous and fumbled. At that time, 50 to 60 local people gathered there and obstructed CBI staffs and taking advantage of that gathering, accused fled away from the spot. Tainted money could not be recovered from his possession and he could not be apprehended. The matter was reported at Kujanga Police Station and post trap memorandum was prepared. Subsequently, on 8.12.2011 at about 3.30 p.m., in presence of independent witnesses namely P.C. Chattar (P.W.2) and B.N. Routray (P.W.4), the accused was arrested near Bhubanananda Engineering School, Cuttack and was searched. His pant pocket was washed by that time with sodium carbonate solution and the liquid was preserved in a bottle duly sealed and signed by the witnesses. During course of investigation the exhibits were sent for expert opinion to C.F.S.L., New Delhi. Since it was established that the accused being a public servant had demanded and accepted bribe in order to process the loan application of the complainant, charge sheet Under Sec.7 & 13(2) read with Sec. 13(1)(d) of P.C. Act, 1988 was submitted against the accused after obtaining sanction of prosecution from competent authority resulting the present case.

3. Defence plea is complete denial of the complicity of the accused in the alleged crime.

4. The points fall for determination are :

- (i) Whether the accused being a public servant while was functioning as Manager, Kalinga Gramya Bank, Chatua Branch demanded and accepted bribe of Rs.5000/- from the complainant Damodar Rout in order to sanction agriculture loan in his favour ?
- (ii) Whether the accused being a public servant while functioning as Manager, Kalinga Gramya Bank, Chatua Branch by corrupt and illegal means abusing his official position as such public servant, obtained pecuniary advantage of Rs.5000/-from the complainant in order to sanction agriculture loan in his favour ?

5. In order to establish the charges against the accused all together twelve witnesses have been examined on behalf of the prosecution, out of whom P.W.1 is the sanctioning authority, P.Ws.2 and 4 are accompanying witnesses, P.W.3 is the Vigilance Officer of Kalinga Gramya Bank, P.W.5 is the sweeper, P.W.7 is the cashier and P.W.8 is the Branch Manager in-charge of Kalinga Gramya Bank, P.W.9 is the complainant and P.Ws.6, 10, 11 and 12 are the Investigating Officers. No evidence has been adduced on behalf of the defence.

6. It is revealed from the evidence of P.W.1 that he was working as Chairman, Kalinga Gramya Bank, Cuttack and accused was working as Manager of Chatua Branch. Similarly, P.W.3 has also disclosed in his evidence that he handed over the posting order of Sri Ashok Kumar Panda along with delegation of power in seven sheets which were seized by the I.O. According to him, Ashok Kumar Panda was holding temporary charge of Chatua Branch vide reference No.PAD/HO/1969/2006-2007 dtd.27.11.2006 and he was delegated

lending and non-lending power in 2011. As a manager Scale-II, accused was empowered to sanction up to Rs.1 Lakh. Similarly P.W.5 has disclosed in his evidence that on 7.12.2011, Ashok Kumar Panda was Branch Manager while Ranjan Kumar Beura was Cashier and both were present on 7.12.2011. P.W.7 the Cashier has admitted in his evidence that Ashok Kumar Panda was functioning as Branch Manager in Kalinga Gramya Bank at Chatua Branch while P.W.5 was working as Messenger-cum-Sweeper. Similarly, the complainant P.W.9 has also stated in his evidence that accused Ashok Kumar Panda was Branch Manager of the Kalinga Gramya Bank, Chatua Branch. He had taken loan of Rs.25,000/- in the year 2010 and cleared up said loan with interest and requested for extra loan of Rs. 50,000/- for which he furnished the required documents in the branch. Hence, it is clearly established from the evidence of above witnesses that during the relevant period accused Ashok Kumar Panda was working as Branch Manager and he was competent to sanction loan up to Rs.1 Lakh.

7. From the evidence of complainant, it is clearly established that he presented his loan application along with documents to the accused such as rent receipts vide Ext.23 to Ext.23/8, ROR, voter identity card and he has proved his loan application vide Ext.24. He has proved the loan agreement and sanction order etc. vide Ext.25 to Ext.25/6. According to him, the accused demanded bribe of Rs.5000/- and told him not to sanction the loan in case same amount is not paid, for which, he lodged FIR before S.P. CBI vide Ext.26. According to P.W.5 and 7, the loan application of the complainant for Rs.50,000/- was pending with the Branch Manager. P.W.7 has clearly stated in his evidence that the complainant has availed KCC loan of Rs.25,000/- from Kalinga Gramya Bank, chatua Branch in the year 2010 and he had

applied for another loan for Rs.50,000/-. Hence, it is clearly established from the evidence of P.Ws.5,7 and 9 (the complainant) that the loan application for Rs.50,000/- was pending with the Branch Manager.

8. As regards demand of bribe, the complainant himself has clearly stated that accused demanded bribe of Rs.5000/- from him in order to process the loan for which, he intimated the fact to SP, CBI vide Ext.26. On perusal of Ext.26, it is clearly revealed that the complainant has applied loan on 30.11.2011 for Rs.50,000/- and when he asked the Branch Manager about such loan, on 5.12.2011 he demanded bribe of Rs.5000/- and told not to sanction the loan in case the said amount is not paid. Basing on the FIR, direction was given by SP, CBI, for necessary investigation. From the evidence of the complainant as well as other witnesses, it is clearly established that the loan application was pending with the Branch Manager for sanction of loan and the required documents have been given to the accused. Basing on the FIR not only case was registered but Sri S.K. Samal, Inspector (P.W.10) was directed to take up investigation of the case who decided to lay a trap and formed a team consisting of P.K. Sahoo, Inspector, L.Tripathy, ASI, M.S. Moharana, Head Constable, S.S. Sepiyar, Constable and himself. According to him, he procured two independent witnesses P.Ws.2 and 4 to lay the trap and on 7.12.2011 in presence of all, there was a demonstration of reaction of phenolphthalein powder with sodium carbonate solution. In the process Rs.5000/- of different denomination such as one 1000 rupee note, 8 numbers of 500 rupee notes were produced by the complainant which were treated by phenolphthalein powder and witness B. N. Routray (P.W.4) handled the said tainted notes and his

hand wash was taken with sodium carbonate solution which turned pink and same were kept in a bottle vide M.O.I. It is revealed from his evidence that specific instruction was given to the complainant to handover the same only on demand by the accused. P.W.2 was directed to accompany with the complainant. It is also revealed that pre-trap proceeding was prepared at CBI office vide Ext.3 and all the witnesses signed on the same including himself. The complainant (P.W.9) in his evidence has disclosed that he went to the bank with accompanying witnesses and when he met the accused, he told him to wait for half an hour. Subsequently, he called him and asked for the money and accordingly he handed over the same to him. Thereafter, the accused counted the notes and kept in his right side pant pocket. Then he gave signal by touching his head while CBI officials rushed to the spot and gave their identity to the accused and caught hold of both his hands. Such facts find ample corroboration by the evidence of P.Ws.2 and 4. P.W.2 has clearly disclosed in his evidence that the complainant and himself went to the Branch Manager and after 30 minutes, the accused asked for the money which was handed over by the complainant to him. Subsequently, he assured for sanction of the loan. It is revealed from evidence of P.W.10 that he challenged the accused to have demanded and accepted the bribe money and he became nervous and fumbled. His both the hands were caught hold by the CBI staffs and while S.S. Sepiyar was preparing the solution, a mob consisting of 50 to 60 persons arrived at the spot and man handled the CBI staff. By that time, the accused fled away from the spot. It is revealed that a written complaint was lodged at Kujanga Police Station and subsequently post trap memorandum was prepared vide Ext.4. Nothing has been brought out substantial from the

evidence of above witnesses to discredited their testimony. Rather, it is clinching established that accused had demanded bribe for processing the loan application and while the bribe amount was paid, he accepted the same and kept in his pant pocket.

9. It is the case of the prosecution that at the time of apprehension of accused, about 50 to 60 persons entered into the room and created havoc while the accused escaped taking advantage of gathering of mob. The complainant himself has stated that general public rushed to the spot, created commotion and taking advantage of this, the accused fled away. From the evidence of above witnesses, it is clearly established that the accused was caught red handed by the CBI officials and while the trap was in progress and solution was to be prepared, accused escaped from the clutches of the CBI, taking advantage of huge gathering of public.

10. P.W.10 has disclosed that on the next day, the residential premises of accused was searched and subsequently the accused was apprehended and searched on the road near Bhubanananda Engineering School, Cuttack. On search, P.W.10 recovered Rs. 68717.50 and two mobile SIM cards from the possession of accused and seized the same vide search memo Ext.7, which was also taken to police possession. But the tainted money could not be recovered. Then wearing pant of the accused was collected and washed with sodium carbonate solution which turned pink and same was preserved in a bottle as per M.O.II. Said pant has been seized which has been marked M.O.III. After that, a memorandum was prepared vide Ext.6. Such facts find corroboration by the evidence of other independent witnesses such as P.Ws.2 and P.W.4. According to P.W.10, he sent the exhibits to CFSL through S.P. CBI.

11. P.W.6 conducted search on the requisition of P.W.10 and seized original KCC loan voucher dtd.29.11.2011 on production by Pramod Kumar Mohanty P.W.5. He has also seized voter identity card and pass books vide Ext.11. P.W.8 the Branch Manager has produced ledger copy KCC loan No.224/10 of complainant vide Ext.20.

12. P.W.11 during course of investigation has seized the ledger abstract of KCC Loan 244/10 in the name of complainant and subsequently handed over the charge of investigation to P.W.12 and after receipt of chemical examination report vide Ext.30, P.W.12 on completion of investigation submitted charge sheet against the accused. On perusal of the chemical examination report, it is seen that the exhibits marked as 'D' and 'P' were analysed by Physico-chemical methods, chemical tests and thin layer chromatographic technique and Exhibits 'D' and 'P' gave positive tests for the presence of phenolphthalein.

13. From the evidence of the witnesses, it is clearly established that accused is a public servant and he was working as Manager of Kalinga Gramya Bank, Chatua Branch. The loan application of the complainant was pending with him. In order to process the same, he demanded bribe of Rs.5000/- from the complainant, for which, the complainant intimated the fact to SP CBI and ultimately the trap was led. While the accused accepted the bribe, he was caught red handed by the CBI staff. Hence, there is demand and acceptance of bribe by the accused from the complainant which is well established from the evidence of prosecution witnesses beyond all reasonable doubt.

14. During course of argument, learned counsel for the accused submitted before the court that demand of the amount was

not proved and no work of complainant was pending with the accused. Further the amount was not recovered from the possession of accused which cast doubt in the prosecution case. In response to such argument, learned P.P. appearing for CBI drew the attention of the court to the evidence of P.Ws.5,7 and the FIR scribed in Oriya language which clearly reveals that the loan application was pending with the accused and for that purpose, accused had demanded bribe. The recovery of tainted notes has not been established by the prosecution since there was a commotion and gathering of public in the bank premises and taking advantage of that, the accused fled away. From the evidence of prosecution witnesses, it is clearly established that in order to process the loan application of the complainant, the accused has demanded the bribe and accepted the same from the complainant. It is also established that on the day of trap, the accused was present in the office and has signed the attendance register on 7.12.2011. But he has not put his signature putting the time of departure. Hence, it is evident that accused has fled away from the spot and has not returned to the office. Similarly, on 8.12.2011 he has not returned to office. Since the accused fled away from the spot and could not be apprehended, the tainted money could not be recovered from his possession. In the circumstances, the accused cannot take benefit of such circumstance as has been reported in 1998 CRLJ 3022 in the case of Tikaram Vrs. State. In the instant case, evidence of complainant finds ample corroboration by the evidence of accompanying witnesses, for which, there is no reason to disbelieve the same. The loan applications have been brought to record vide Exts.24 and 25 series which clearly reveal that the matter was subjudice before the accused. The loan abstract vide Ext.21 also goes

to reveal that complainant had paid the previous loan amount with interest. In the instant case, gratification accepted by the accused is related to an official act and not to any personal transaction. In ultimate appraisal of the totality of evidence on record, it is clearly established that the accused has demanded and accepted bribe of Rs.5000/- from the complainant.

15. Accordingly, I come to the conclusion that the ingredients of the offences under Sec.7 and Sec.13(2) read with Sec.13 (1)(d) of P.C. Act are well established against the accused and prosecution has successfully established the charge against him beyond all reasonable doubt. Accordingly, the accused is held guilty of the offence under Sec.7 and Sec.13(2) read with Sec.13(1)(d) of P.C. Act and he is convicted thereunder.

SPECIAL JUDGE,CBI, COURT NO.III,
BHUBANESWAR.

Dictated & corrected by me, signed, sealed and pronounced in the open Court today on 15th May, 2014 .

SPECIAL JUDGE, C.B.I., COURT NO.III,
BHUBANESWAR.

HEARING ON THE QUESTION OF SENTENCE:

Heard the convict on the question of sentence. It is submitted by the learned defence counsel that there is no adverse antecedent and complain against the accused. Moreover, he has got future service career, for which, a lenient view may be taken in awarding sentence. On the other hand learned P.P., CBI submitted

that the convict deserves exemplary punishment for committing such offence.

Considering the gravity of the offence as well as submission of both the counsels, I am of the considered opinion that a lenient view be taken in respect of the convict. Consequently, the convict is sentenced to undergo rigorous imprisonment for One year and to pay a fine of Rs.2000/- (Rupees TwoThousand) in default to suffer rigorous imprisonment for two months for the offence under Sec.7 of Prevention of Corruption Act and to undergo rigorous imprisonment for One year and to pay a fine of Rs.2000/- (Rupees Two Thousand) and in default to undergo R.I. for two months for the offence under Section 13(2) read with Sec. 13(1)(d) of P.C. Act with a direction that the sentences shall run concurrently. The period undergone as UTP if any be set off.

The M.Os I to III be destroyed after expiry of four months of appeal period, if no appeal is preferred and in the event of appeal, subject to the order of the appellate court. The cash of Rs.68.717.50 since has been given to accused, no order need to be passed in this regard.

The seized documents be returned to the person from whom seized after cancelling the zimanama after four months of appeal period, if no appeal is preferred and in the event of appeal subject to the order of appellate court.

SPECIAL JUDGE,C.B.I.,COURT NO.III,
BHUBANESWAR.

Dictated & corrected by me and is pronounced in the open court today i.e. on 15th May, 2014.

SPECIAL JUDGE,C.B.I.,COURT NO.III,
BHUBANESWAR.

LIST OF WITNESSES EXAMINED FOR THE PROSECUTION:

P.W.1	S. K. Jain
P.W.2	Purna Chandra Chattar.
P.W.3	Manoranjan Satpathy
P.W.4	Badrinath Routray.
P.W.5	Pramod Kumar Mohanty.
P.W.6	Ashis Kumar Mishra.
P.W.7	Ranjan Beura
P.W.8	Bijay Kumar Swain
P.W.9	Damodar Rout
P.W.10	Sanjay Kumar Samal
P.W.11	Kora Prasad Tripathy
P.W.12	Girish Kumar Pradhan

LIST OF WITNESSES EXAMINED FOR THE DEFENCE:

None

LIST OF DOCUMENTS ADMITTED BY THE PROSECUTION :

Ext.1	Sanction order
Ext.1/1	Signature of P.W.1on Ext.1.
Ext.2(12 sheets)	Regulation of the Bank.
Ext.3	Pre trap memorandum (4 sheets)
Ext.3/1 to 3/4	Signatures of P.W.2 in Ext.4.
Ext.4	Post Trap Memorandum (4 pages)
Ext.4/1 to 4/4	Signatures of P.W.2 on Ext.4.
Ext.5	Arrest memo.
Ext.5/1	Signature of P.W.2 on Ext.5.
Ext.6	Memorandum dtd.8.12.2011.
Ext.6/1	Signature of P.W.2 on Ext.6.
Ext.7	Search memo.
Ext.7/1	Signatures of P.W.2 on Ext.7.
Ext.8	Search list.
Ext.8/1 to 8/2	Signatures of P.W.2 in Ext.8.
Ext.9	Seizure memo.
Ext.9/1	Signature of P.W.2 in Ext.9.

Ext.10	Receipt dtd. 29.11.11.
Ext.11	Search list.
Ext.11/1 & 11/2	Signatures of P.W.2 in Ext.11.
Ext.12	Seizure list.
Ext.12/1 & 12/2	Signatures of P.W.2 in Ext.12.
Ext.13	Seizure memo.
Ext.13/1	Signature of P.W.3 on Ext.13.
Ext.14	Certified copy of circular dtd.11.3.2011.
Ext.15	Circular dtd.30.8.2011.
Ext.16	Letter dtd. 31.12.2011 of General Manager.
Ext.16/1 to 16/7	Enclosures of the Ext.16.(7 sheets)
Ext.16/8 to 16/15	Enclosures of the Exts.16 from Sl.I to VII(27 sheets)
Ext.17	Attendance register.
Ext.17/1	Relevant entry in Ext.17.
Ext.3/5	Signature of P.W.4 on the last page of Ext.3.
Ext.18	Spot map.
Ext.18/1	Signature of P.W.4 in Ext.18.
Ext.4/5	Signature of P.W.4 in Ext.4.
Ext.5/2	Signature of P.W.4 in Ext.5.
Ext.6/2	Signature of P.W.4 in Ext.6.
Ext.7/2	Signature of P.W.4 in Ext.7.
Ext.8/3 & 8/4	Signatures of P.W.4 in Ext.8.
Ext.9/2	Signature of P.W4 in Ext.9.
Ext.11/3	Signature of P.W.4 in Ext.11.
Ext.12/3 & 12/4	Signatures of P.W.4 in Ext.12.
Ext.19	Seizure memo.
Ext.19/1	Signature of P.W.5 in Ext.19.
Ext.9/3	Signature of P.W.6 in Ext.9.
Ext.11/4	Signature of P.W.6 in Ext.11.
Ext.12/5	Signature of P.W.6 in Ext.12.
Ext.20	Forwarding letter dtd.28.2.2012.
Ext.20/1	Signature of P.W.8 in Ext.20.
Ext.21	Copy of ledger in two parts.
Ext.21/1	Signature of P.W.8 in Ext.21.
Ext.22	Computer copy of closed account.
Ext.22/1	Signature of P.W.8 in Ext.22.
Ext.23 to 23/8	Rent receipts.
Ext.24	Loan application.
Ext.24/1	Signature of P.W.9 in Ext.24.
Ext.25 to 25/6	Loan documents.
Ext.26	Written complaint.
Ext.26/1	Signature of P.W.9 in Ext.26.

Ext.3/6	Signature of P.W.9 in Ext.3.
Ext.4/6	Signature of P.W.9 in the last page of Ext.4.
Ext.26/3	Signature of the then S.P.
Ext.3/7	Signature of P.W.10 in Ext.3.
Ext.27	Copy of the written complaint.
Ext.4/7	Signature of P.W.10 in Ext.4.
Ext.6/3	Signature of P.W.10 in Ext.6.
Ext.19/2	Signature of P.W.10 in Ext.19.
Ext.28	Forwarding note.
Ext.28/1	Signature of P.W.10 on Ext.28.
Ext.29	Letter dtd.13.12.2011.
Ext.29/1	Signature of S.P.,CBI, I/C.
Ext.13/2	Signature of P.W.11 in Ext.13.
Ext.30	Chemical examination report.
Ext.31	Charge sheet.

LIST OF DOCUMENTS ADMITTED BY THE DEFENCE:

NIL

LIST OF M.Os. MRKED BY THE PROSECUTION:

M.O.I	Solution of sodium carbonate.
M.O.II	Solution bottle.
M.O.III	Jeen Pant of accused.

LIST OF M.Os. MARKED FOR THE DEFENCE:

NIL

SPECIAL JUDGE,C.B.I.,COURT NO.III,
BHUBANESWAR.

