



1. The aforesaid 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. Briefly stated the prosecution case is that on 10.11.02 night there was theft from the house of the brother of the informant and one Saroj Kumar Das, who was looking after the affairs of that house got one FIR scribed by the father of the informant mentioning the names of some suspects and lodged the same before Air Field Police Station. After registration of the case, the same was entrusted to the accused for investigation. The accused repeatedly called the father of the present informant as well as the informant of that theft case namely Saroj Kumar Das to the police station. He demanded Rs.5,000/- from the father of the informant or else to book a case against him. The informant went to the PS, approached the accused and requested to leave his father. But he reiterated the demand of Rs.5,000/- or else to file a case against his father. On 10.12.02 he approached the accused, expressed his inability to pay such huge amount and the accused reduced the demand to Rs.1,000/- and the informant agreed to pay the same on 12.12.02 against his will. Narrating these facts the informant lodged one FIR before SP, Vigilance basing on which a case was registered and a trap was laid. During preparation, 2 numbers of 500 rupee G.C.Notes produced by the complainant were treated with Phenolphthalein powder and there was demonstration showing reaction of such powder in sodium carbonate solution. One raid party including the informant and independent witnesses

was formed and they went to Air Field PS. The informant and the overhearing witness met the accused and they came to nearby tiffin stall where on demand of the accused, the informant paid the tainted money of Rs.1,000/- and the accused took the same and kept in his shirt pocket. On getting signal from the accompanying witness the raid party rushed to the spot and seeing them the accused threw the notes on the ground which were seized and the hand wash and shirt pocket wash of the accused were taken in sodium carbonate solution which turned to pink colour and the tainted notes and other articles were seized and after completion of investigation, charge-sheet was submitted against the accused.

3. The defence plea is one of complete denial and false implication. Further plea of the accused is that the present informant was pressurizing him to arrest the suspects named in the FIR of the theft case. But he did not agree as there was no material in that case. By the time of occurrence the complainant came to the tea stall, tried to insert some money in his pocket, but he resisted and a false case has been foisted against him.

4. The prosecution has examined ten witnesses whereas the accused has examined one witness in support of their respective cases.

5. Points for determination in this case are :-

(i) Whether on 12.12.2002 at about 7 AM the accused while working as ASI of Police, Air Field Police Station, Bhubaneswar by corrupt or illegal means or otherwise abusing his position as a public servant obtained for himself

pecuniary advantage of Rs.1,000/- from the complainant for not taking any police action against his father ?

(ii)Whether on the aforesaid date and time the accused being a public servant accepted of Rs.1,000/- as gratification for himself other than legal remuneration as a motive or reward from the complainant for not taking any police action against his father ?

6. Both points are taken up together. PW-1 the informant stated that on 10.11.02 there was theft in the house of one Surjit Singh. As per request of Surjit and Saroj (who was looking after that house, his(PW-1) father scribed a report of theft mentioning the names of some suspects and one G.R.Case No.201/2002 was registered. The accused detained his father and Saroj when he gave the report and demanded Rs.5,000/-. He(PW-1) went to the PS and requested the accused to leave his father. The accused demanded Rs.5,000/- and threatened to book a them. On 10.12.02 the accused demanded Rs.5,000/-, but he(PW-1) promised to pay Rs.1,000/- on 12.12.02. He lodged one report before Vigilance vide Ext.1. On 12.12.02 at 5.30 AM he reached the vigilance office, narrated the incident before others, produced 2 numbers of 500 rupee G.C.Notes which were treated with powder and its numbers were noted and given to him to pay the same only on demand. PW-4 was selected as accompanying witness and a preparation report Ext.2 was made and a copy thereof was given to PW-8.

They went to Air Field PS and he with PW-4 went to the up-stair of the PS where the accused was residing and seeing them the accused asked them to go to the nearby

betel shop and they went there. The accused reached there and took tea from the tea stall and asked him whether he brought the money. PW-1 gave the money to him and the accused counted it and kept in his shirt pocket. PW-4 gave signal and the trap party members reached there and caught hold the hands of the accused, gave their identity and challenged the accused to have received the money. The accused struggled seeing the vigilance and threw the money on the ground. PW-4 brought that money, compared its numbers which tallied. Both hand wash and shirt pocket wash of the accused turned to pink. The I.O. seized the FIR, tainted money, wash bottles, shirt and other papers and prepared a detection report Ext.3.

7. During cross-examination he stated that his father had scribed the FIR and for that reason he was detained in the PS. He specifically stated that on 11.11.02 when he went to the PS to release his father from the PS, he had the occasion to know the accused. He further stated that his father was detained for the whole day in the PS. But he had not intimated this fact or the fact of demand to the IIC or to any other higher authority. He specifically stated that on 11.11.02 when he went to Air Field PS and requested the accused to set his father free, he demanded Rs.5,000/-. He denied the suggestion that while he was trying to keep the tainted notes forcibly in the shirt pocket, it fell on the ground as the accused raised his hand and he also denied the suggestion that he ran away from the spot. He admitted that Surjit Singh is his cousin. PW-1 proved the certified copy of

the FIR lodged by Saroj Kumar Das in connection with the theft from the house of Surjit Singh vide Ext.A. Admittedly, there is no mention in Ext.A that the same was written by his father. He denied his knowledge if one Amita Sahoo had lodged FIR in Air Field PS on 6.11.02 against Subir Singh and others. PW-1 denied his knowledge if police had filed final report in the theft case.

PW-2, the scientific officer stated that he had examined the sealed glass bottles marked as A to F and he could detect Phenolphthalein in each of the bottle and proved his report Ext.4. In cross-examination he could not say the details about the hand wash solution belongs to which person. But the same is inconsequential.

8. PW-3 the then SP, Khurda stated that he had perused the copies of FIR, SP's Report, Preparation Report, Detection Report, C.E.Report and the statements of the witnesses and had discussed with the IO and after being satisfied about existence of a prima facie case and applying his mind he accorded sanction against the accused and he proved his sanction order Ext.5 and his forwarding letter Ext.6. During cross-examination he stated that he had not made discussion with the accused, but the same is insignificant. He also could not say as to how many dates the IO visited him in connection with the case. He denied the suggestion that there was no trap laid on 11.12.02.

9. PW-4 the accompanying witness stated that on 12.12.02 during preparation in vigilance office the complainant narrated before others that the accused was demanding

Rs.5,000/- as bribe and subsequently reduced the same to Rs.1,000/-. PW-4 further stated that the complainant gave 2 numbers of 500 rupee G.C.Notes, its numbers were noted and the same were treated with some powder and demonstration was shown regarding change of colour of the powder in some solution. He was instructed to accompany the complainant to see the transaction and to give signal and a preparation report was made. They went to Air Field PS, stopped their vehicle at a distance and he with the complainant proceeded to the PS. He remained outside the campus and the complainant went inside and after sometime the accused and the complainant came out, went to a tea stall near Lingaraj Railway Stoppage and he followed them to the tea stall where they took tea. Thereafter, the accused asked the complainant "HAN KANA ANICHHA" and the complainant answered affirmatively and brought out the money from his pocket and gave to the accused. The accused kept the money in his wearing half shirt pocket. Seeing this, he gave pre-arranged signal and vigilance staff rushed to the spot and showed their identity cards to the accused. So, immediately the accused brought out the money from his pocket and threw away the same on the ground. PW-8 collected that money from the ground, compared its numbers with the numbers earlier noted and found it tallied. PW-4 also stated that both hand wash of the accused was taken separately and his right hand wash turned to pink but left hand wash did not change its colour. Pocket wash of the wearing shirt of the accused was taken which turned to pink colour. The tainted money, wearing shirt, wash bottles, four fold paper

and the copy of preparation report were seized and finally a report was prepared vide Ext.3. He proved the seizure lists Exts.7 to 11 and the wash bottles M.Os.-I to VI.

During cross-examination he stated that on 17.9.2007 he had deposed in a departmental proceeding No.1/2005 initiated against the accused and in that proceeding he (PW-4) had specifically stated that he had not heard the accused demanded bribe from the complainant. No copy of the deposition of PW-4 of that departmental proceeding has been proved. In his examination-in-chief also PW-4 has not stated that he heard the accused demanded bribe from the complainant. So, Such version of PW-4 no way affects his testimony. PW-4 denied the suggestion that while the complainant was forcibly putting the tainted money in the shirt pocket of the accused, the accused dragged the hands of the complainant and threw away the money on the ground. PW-4 in his cross-examination stated that all the documents were prepared in Lingaraj PS.

10. PW-5, the father of the informant stated that there was a theft in the house of Sunita Singh during her absence and on request of one Sarat (Saroj) Das, he scribed one FIR mentioning some names therein as per his instruction. The present accused who was investigating that case called him and the informant to the PS and detained them for two days and threatened to make them accused in the case and demanded bribe of Rs.5,000/- for their release and after much request they agreed to give Rs.1,000/- and he agreed to accept the same to release them. PW-5 further stated that



after he promised to send Rs.1,000/- through his son on the next day, the accused obtained their signatures on some papers whereon there was no writing. He proved his signatures Exts.12 and 13.

During cross-examination PW-5 stated that he knows Kumari Amita Sahoo, but he could not say if prior to the theft case Kumari Amita Sahoo was kidnapped on 29.9.02 and a missing FIR was lodged at Air Field PS and subsequently it turned to Air Field P.S. Case No.96/02 and if the present accused was investigating the missing case and on his report the kidnapping case was registered. Absolutely, there is no cross-examination of PW-5 as regards the accused obtaining signature of PW-5 on blank papers.

11. PW-6 stated that one Sunita Singh was his neighbour and in her absence on 10.11.02 night there was a theft from her house and on the next day morning detecting the same, he informed the same to Sunita Singh over phone and as per her advice he reported the matter at Air Field PS vide Ext.12/1 and he also proved his signature thereon Ext.12/2. Thereafter, Air Field Police detained him at the PS and they asked him to produce Gyana Ranjan Das and Amalendu Pradhan at the PS and accordingly he produced Amalendu at the PS and submitted a report regarding his production vide Ext.13/1 and his signature Ext.13/2. He also stated that the accused had demanded Rs.5,000/- from Amalendu Pradhan and threatened him to book in the case if money was not given. PW-6 proved his undertaking given at

the PS for production of Amalendu Pradhan vide Ext.14 and his signature therein vide Ext.14/1.

During cross-examination, PW-6 stated that he had named Asish Kumar Sahu, Harsananda Sahu, Saroj Kumar Sahu, Bijay Kumar Das and Gyanendra Mohapatra in his FIR. He could not say the date on which the accused demanded Rs.5,000/- from Amalendu Pradhan, but stated that he and the son of Amalendu were present at the PS when the accused demanded Rs.5,000/-. He denied the suggestion that he had previous enmity with the aforesaid five persons named in his FIR and so he was pressurizing the police staff to arrest them and when police did not arrest them instantly, he lodged FIR Ext.12/1. Ext.12/1 is not the FIR of the theft case. Admittedly, Ext.A filed by the accused is the FIR of the theft case.

PW-7 an independent witness stated that he was having a betel shop near Lingaraj Temple Railway Station and near his shop, a tiffin stall of Sudarsan Barik (DW-1) was there. On 12.12.02 morning the accused with two others came near the shop of Sudarsan, sat over a bench in between two shops and sometime thereafter he had seen the accused being surrounded by many other people and he found red colour liquid on the ground. This witness was declared hostile by the prosecution. But nothing substantial was elicited in the cross-examination in support of the prosecution.

12. PW-8 the Jr. Engineer stated that on 12.12.02 in the vigilance office the complainant narrated that the accused was demanding illegal gratification of Rs.5,000/- or

else to book a case against his father and when he expressed his inability, the accused asked him to pay Rs.1,000/-and the date was fixed to 12.12.02. The complainant produced 2 numbers of 500 rupee G.C.Notes which were smeared with some powder and the numbers and denominations of the notes were noted down. There was demonstration showing reaction of that powder in some solution turning the colour to pink. PW-4 was instructed to accompany the complainant and to watch the conversation and to convey the signal after the transaction. A preparation report Ext.2 was prepared and a copy thereof was given to him (PW-8).

They proceeded to Air Field PS and the complainant with PW-4 proceeded towards the PS and after 10 to 15 minutes both of them along with the accused came out from the PS and walked towards Lingaraj Railway Station and the other trap laying party followed them and remained at a distance. They noticed that the accused, the complainant and PW-4 were occupying a bench placed before a betel shop. After sometime being asked by the Vigilance Inspector, they rushed to the spot and the DSP, Vigilance gave his introduction by which the accused being scared, brought out 2 numbers of 500 rupee G.C.Notes and threw on the floor near his foot. PW-8 collected the same, compared its numbers with the numbers noted in the copy of the preparation report which tallied. PW-8 further stated that both hand wash of the accused and himself and the shirt pocket wash of the accused were taken separately which turned to pink and the same were preserved. The shirt of the accused, four fold paper, copy of

the preparation report, the solution bottles, the tainted G.C.Notes, station diary and FIR Book were seized and a detection report vide Ext.3 was prepared. He proved the shirt vide M.O.-VII, seized tainted G.C.Notes vide M.O.-VIII and the seizure lists vide Exts.7 to 11 and 15 and the four fold paper vide Ext.16 and the copy of the preparation report vide Ext.17 and the zimanama vide Ext.18. So also, the facsimile seal of SP, Vigilance vide Ext.19.

13. During cross-examination PW-8 stated that he was a witness in the departmental proceeding No.1/2005 against the accused relating to the allegations of this case. PW-8 also stated that since he was not specifically asked about the entire treat bit of the trap, he had no occasion to state before the City DSP(Enquiring Officer) during the D.P. which he stated in his examination-in-chief. He stated that on several occasions the vigilance department moved their office through requisitions and procured witness for such trap cases. PW-8 also specifically stated that though he had not heard the conversation regarding demand, but he had seen the acceptance of money by the accused. But he admitted in his cross-examination that he had not stated before the vigilance police that he had seen the acceptance of the tainted currency notes by the accused from the complainant. So, the version of PW-8 that he had seen the acceptance of the money by the accused is not acceptable. He denied the suggestion that when the complainant forcibly inserted the tainted G.C.Notes in the shirt pocket of the accused, the accused raised protest

raising his both hands and the amount was brought out and thrown on the ground much prior to reach of trap laying party.

14. PW-9 the then Inspector of Vigilance stated that being directed by the SP, he had laid a trap and during preparation in the vigilance office the complainant narrated before others that one month prior to FIR one Saroj Sahoo(Das) had lodged a report regarding theft from the house of his brother and the said report was scribed by his father and the accused was entrusted with the investigation. The accused called his father as well as Saroj Sahoo(Das) to the PS and threatened them to register a case against them and when the complainant approached the accused, he demanded Rs.5,000/- not to register the case and later reduced the demand to Rs.1,000/- with instruction to pay the same on 12.12.02. The complainant produced 2 numbers of 500 rupee G.C.Notes and there was demonstration showing reaction of Phenolphthalein powder in sodium carbonate solution and Phenolphthalein powder was applied to the G.C.Notes and the same were kept in a four fold paper and given to the complainant with instruction to hand over the same to the accused on demand and P.Ws.4 and 8 were selected as accompanying witness and magisterial witness respectively. A preparation report Ext.2 was prepared by him and a copy thereof was given to PW-8 to compare the numbers of the G.C.Notes in case of recovery.

All the trap party members proceeded towards Air Field PS and the complainant and PW-4 proceeded to the PS and the other members remained in scattered distance. At

about 8 AM receiving pre-arranged signal from the betel shop of one Raghunath Swain just near Lingaraj Railway Station, they rushed to the spot where the accused was sitting on a bench and the complainant and overhearing witness were standing near him. No sooner the trap laying party reached near the accused, he threw the tainted currency notes giving it out from his shirt pocket. As per his(PW-9) instruction, PW-8 lifted the notes from the ground, compared its numbers with the numbers noted earlier which tallied. Both hand wash of the accused and PW-8 were taken separately in sodium carbonate solution which turned to pink colour. The four fold paper and copy of the preparation report were seized from the complainant and PW-8 respectively. PW-9 further stated that on the spot the accused refused to remove his shirt for taking its wash and he was brought to Air Field PS. There he removed his shirt and the wash of the shirt pocket was taken in sodium carbonate solution which turned to pink and the same was seized. PW-9 proved the seizure lists Exts.7 to 11 and the copy of preparation report Ext.17 and the sample bottles M.Os.-I to VI and the shirt M.O.-VII and the tainted G.C.Notes M.O.-VIII. He also stated that he seized the station diary book and FIR book and written application of the complainant and the written application of Saroj Das under seizure list Ext.15. He proved the written applications vide Exts.12/1, 13 and 14. He also stated that he kept the impression of the facsimile seal of the SP, Vigilance in a separate paper vide Ext.19 and released the seal in zima of PW-8 under zimanama Ext.18 and he prepared the spot map

vide Ext.21 and also prepared detection report Ext.3. He also stated that copies of the seizure lists and detection report were handed over to the accused and on 13.12.02 he handed over the charge of investigation to PW-10.

15. During cross-examination PW-9 could not say where and when the FIR was scribed. He stated that in the FIR there is overwriting in respect of the month without any initial. He could not say the plot no. and area of the house where from there was theft nor he could say about the time of theft nor he could say as to why the father of the complainant had scribed the FIR of that theft case. So also he could not say as to who was the owner of the house. These are not material. PW-9 also stated that he had not investigated as to why the house owner of that house had not lodged FIR. Ext.A the certified copy of the FIR in the theft case filed by the accused shows that the alleged theft took place during the absence of the house owner Sunita Singh and the key thereof was with the informant Saroj Das. PW-9 admitted that the endorsement of PW-8 is not there on the backside of the preparation report regarding tally of the numbers of the currency notes. In view of the clinching evidence of Pws-1, 4, 8 and 9, absence of endorsement of PW-8 on the preparation report is insignificant particularly when there is no dispute regarding the numbers and denominations of the tainted notes.

PW-9 stated that the accused was trapped in front of the tiffin shop of Sudarsan Barik and tea stall of Raghunath Swain. He also stated that Lingaraj Passenger Halt is at a distance of about 200 metres from Air Field PS. He

admitted that he had not heard nor seen the accused demanding and accepting the money. PW-9 also stated that in front of the accused the money was recovered where the accused was sitting on a bench. Categorically PW-9 stated that he has wrongly written in the detection report that after detection they came to Lingaraj PS. He also stated that he has mentioned in the detection report that the station diary book and the FIR book of Lingaraj PS were left in zima of WSI Sujata Jena, but he has wrongly mentioned Lingaraj PS instead of Air Field PS. PW-9 also stated that the accused had endorsed on the detection report that he had neither demanded the money nor accepted the same and that his hand wash was not taken. He specifically stated that the IIC of Air Field PS arrived at the PS while the detection report was prepared. He denied the suggestion that the hand wash of the accused was not taken. He categorically stated that the detection report was typed out in Air Field PS.

16. PW-10 stated that as per direction of the SP, he took charge of the investigation from PW-9, examined some witnesses, tested the evidence on record, sent the exhibits for chemical examination and received C.E.Report. He further stated that on 29.4.03 he attended the pre-sanction discussion with SP, Khurda and obtained the sanction order and submitted the charge-sheet. In cross-examination, he stated that there was some correction in the FIR about the month and amount but without any initial. He stated that he does not know if final report was submitted in G.R.Case No.3648/02 corresponding to Air Field PS Case No.201/02



which is immaterial. Ext.B certified copy of the final form of the theft case shows that the said case was returned on 24.5.04 as final report false. By then, charge-sheet of the present case was already submitted since 26.6.03. PW-10 further stated that the exhibits were kept in Division Malkhana vide Entry No.43/02 and the same were sent on 20.12.02. PW-10 specifically stated that he produced the documents on record including the chemical examination report, seizure lists, FIR, 161 Cr.P.C. statement, detection report and preparation report before SP, Khurda and he accorded sanction for prosecution against the accused.

17. DW-1 stated that one day in December, 2002 at around 7.30 AM he was in his tea stall and the accused came to his tea stall for taking tea and sat on a bench in front of his tea stall and he was preparing tea. One gentleman who was alone was standing near the accused and he was offering something to the accused. DW-1 stated that he heard that the accused shouted "MUTOTE KICHHI MAGINI, TU MOTE KANHIKI PAISA JACHUCHHU". He found that the accused pushed that gentleman and some money which the gentleman was holding fell on the ground and the accused shouted and that gentleman ran away. After 2 to 3 minutes, 3 to 4 persons in civil dress reached there and caught the accused and they took the accused with them. He stated that hand wash and dress wash of the accused were not taken in the spot in his presence.

In cross-examination he stated that the betel shop of Raghunath Swain was adjacent to his stall and by the

time of occurrence 7 to 8 persons were taking tiffin in his shop. He specifically stated that the accused gave push with his hands to the hands of that gentleman. DW-1 stated that neither he himself nor the accused had tried to chase and catch that gentleman. He admitted that the occurrence took place in front of the betel shop of Raghunath Swain.

18. Learned counsel for the accused during course of argument placing reliance on a decision of our own Hon'ble High Court reported in **Md. Tafazul Rahman-Vs-.State of Orissa decided on 6.9.1985 (1985 CrL. Law Journal), Page-1971** submitted that the sanction accorded by PW-3 is invalid and for that the prosecution is void abinitio. In the said case, the Hon'ble High Court held that the sanction order was a draft sanction order and also held that it was not known what happened to the final sanction order. The final sanction order was not produced nor proved in the trial Court. The Hon'ble High Court further held that when the sanctioning authority gave evidence, he did not remember as to on the basis and on consideration of which material documents, he gave sanction for prosecution. On the other hand, it disclosed that he was asked to sign the draft sanction order Ext.16 and he did so. Above all, the Inspector of Vigilance who had obtained the sanction order was expected to have stated that the material documents which were placed before the sanctioning authority. But, unfortunately except a general statement that all materials placed before the sanctioning authority, he did not state the details thereof. With such evidence of that case,

the Hon'ble High Court held that there was non-application of mind.

In the instant case, PW-3 in his evidence has categorically stated that he had received the letter of SP, Vigilance to accord sanction against the accused and perused the copies of FIR, SP's Report, preparation report, detection report, C.E.Report and the statements of witnesses u/s.161 Cr.P.C. and had also discussed with the IO, after being satisfied and applying his mind he accorded sanction. PW-10 the IO in his cross-examination at para-5 categorically stated that he had produced the documents on record including the C.E.Report, seizure lists, FIR, 161 Cr.P.C. Statement, detection report, preparation report before the sanctioning authority. So, the aforesaid decision being distinguishable on facts, is not helpful to the accused.

19. Learned counsel for the accused during course of argument drawing my attention to the sanction order contended that in the first para thereof, there is a mention that the accused had demanded and accepted illegal gratification of Rs.1,000/- from the informant on 11.12.02 not to take police action against his father. He further submitted that in his cross-examination PW-3 the sanctioning authority has categorically denied the suggestion that no trap was laid on 11.12.02. So, there was non-application of mind and for that the sanction for prosecution is invalid. Admittedly, the present case was registered on 11.12.02 at 1.05 PM vide Vigilance P.S.Case No.52, dated 11.12.02 and the said PS Case No. with section of law finds mention in the sanction

order. There is specific mention in the FIR dt.11.12.02 that the informant against his will had told the accused to pay Rs.1,000/- to him on 12.12.02. All the contemporaneous documents prepared during detection are dt.12.12.02 on which date the accused accepted the bribe amount. It is nobody's case that any bribe was paid or accepted on 11.12.02. Though PW-3 has not stated that it is a typographical mistake, but the reason is obvious. The sanctioning authority was not a witness to the detection. He appeared before the Court to give evidence after eight years. He is not supposed to remember the happenings and naturally he would stick to the narrations of the sanction order. When all the evidence on record including the plea of the accused refer to the occurrence as 12.12.02 mention of the date in the sanction order as 11.12.02 is only a typographical mistake. As discussed above, the sanctioning authority as well as the IO had vividly described as to what documents were produced before the sanctioning authority. The sanctioning authority has categorically stated that after perusal of the documents, discussion with IO and after application of mind, he had accorded sanction. The sanction order contains the narration of facts constituting the offences. For these reasons, merely basing on the mistaken date mentioned in the sanction order, it cannot be held that the sanction order is invalid. So, such contention is devoid of any merit.

20. Learned counsel for the accused further relying upon a decision of the Hon'ble Apex Court in **Criminal Appeal No.462/2003(P. Parasurami Reddy-Vs.-State of AP)** decided

on 2.8.2011 submitted that in absence of evidence regarding demand and acceptance of the bribe money, no conviction can lie. I fully agree with the submission to the extent that in such cases, the prosecution is duty bound to prove the most essential factors i.e.the demand and acceptance of the bribe money. But the facts of the aforesaid case are quite distinguishable from the facts of the present case. In that case, though two panch witnesses were present in the raiding party, none of them had accompanied the complainant to hear the conversation or to witness the transaction. That apart, the tainted money which were thrown by the accused could not be found and there was lack of evidence as to what efforts the IO did to find out the notes.

Learned defence counsel further placed reliance on another decision of the Hon'ble Delhi High Court reported in **139 (2007) DLT 407 (Sunil Kumar Sharma-Vs.- State(C.B.I.)** decided on 30.3.07. In that case, the accused being the IO of a dowry death case had recorded the threats posed by the relatives of the deceased in his case diary preceding to the raid. The father of the deceased (PW-2) had lodged a complaint against the accused pursuant to which one departmental proceeding was held against the accused, but he was exonerated. Moreover, the most material witness who happened to be the relation of the deceased who was said to have kept the money in the drawer of the accused was withheld by the prosecution. The important witnesses such as, Pws-3, 5 and 7 of that case were hostile to the prosecution case. PW-7 who was initially arrested as a

suspected accused and from whom the alleged tainted money was recovered was cited as a prosecution witness. But he also did not support the prosecution version. The above decision was rendered depending upon the facts of that case. But the present case being distinguishable on facts from the above case, the said decision is no way helpful to the accused.

21. On the other hand, the learned Special PP placing reliance on a decision reported in **AIR 1982, Supreme Court 1511, Kisan Chand Mangal-Vrs.-State of Rajasthan** submitted that a fact may be proved either by direct testimony or by circumstantial evidence. He further submitted that the version of Pws-1, 4, 8 and 9 and the circumstantial evidence coupled with the documentary evidence are sufficient to hold that there was demand of bribe by the accused. The complainant lodging the FIR, registration of the case, forming of a trap party, visit of the trap party members including the complainant and independent witnesses to Air Field PS, then to the nearby tea stall at Lingaraj Railway Station Halt and detection of the case coupled with the seizure of the tainted money from near the feet of the accused and the fact of seizure of the applications vide Exts.12/1, 13/1, 14 and both hand wash and shirt pocket wash of the accused in sodium carbonate solution turning to pink colour are the circumstances which establish that there was demand and acceptance of bribe by the accused from the complainant.

22. Learned Special PP placing reliance on a decision of the Hon'ble Apex Court reported in **AIR 1984 SC 1453 State of U.P.-Vs.-Dr.G.K.Ghosh** submitted that "Ordinarily,

it is only when a citizen feels oppressed by a feeling of being wronged and finds the situation to be beyond endurance, that he adopts the course of approaching the Vigilance Department for laying a trap. His evidence cannot therefore be easily or lightly brushed aside. ”

Law is also well settled that “to arrive at the conclusion that there had been a demand of illegal gratification, it is the duty of the court to take into consideration the facts and circumstances brought on record in their entirety and for the said purpose, undisputedly, the presumptive evidence as laid down in Section 20 of the Act must also be taken into consideration.” (**State of Maharashtra V. Dnyaneshwar Laxman Rao Wankhede (2009) 15 SCC 200 referred in 2011, Vol.48, OCR(SC) 225**).

The demand and acceptance of the amount as illegal gratification is the sine qua non for constituting an offence under the Act. It is also settled in law that there is a statutory presumption under Section 20 of the Act which can be dislodged by the accused by bringing on record some evidence, either direct or circumstantial, that money was accepted by other than the motive or reward as stipulated under Section 7 of the Act. It is obligatory on the part of the court to consider the explanation offered by the accused under Section 20 of the Act and the consideration of the explanation has to be on the anvil of preponderance of probability. It is not to be proven beyond all reasonable doubt. (**2012 (3) Crimes 24 (SC), Narendra Champaklal Trivedi-Vs.- State of Gujarat**).

23. Let me scrutinize the evidence on record keeping in view the aforesaid position of law. Here, in the instant case, so far the demand, PW-1 in the FIR has categorically stated that the accused had called his father and one Saroj Das (the informant of the theft case vide Ext.A) to the PS and raised false allegation against them and he demanded Rs.5,000/- from his father or else to lodge a case against him and later on the same was reduced to Rs.1,000/- which was to be paid on 12.12.02. Such version of the complainant substantially finds corroboration from the evidence of Pws-4,8 and 9. As regards the demand on the date of occurrence, PW-1 stated that he, PW-4 and the accused took tea in the tea stall at Lingaraj Railway Station and there the accused asked him whether he had brought the money and he gave the money to him and the accused counted it and kept in his shirt pocket. PW-4 the accompanying witness stated that they took tea in the tea stall and thereafter the accused asked the complainant "HANA KANA ANICHHA" and the complainant answered affirmatively and brought out the money from his pocket and gave the same to the accused and the accused kept in his wearing half shirt. PW-8 stated that getting signal, he with the trap party members rushed to the spot- betel shop. Seeing them the accused being scared, brought out 2 numbers of 500 rupee G.C.Notes and threw on the floor just near his right foot which indicates that the tainted money was with the accused by the time when the trap party reached to him. PW-9 the TLO also stated that no sooner the trap laying party reached near the accused, he threw the tainted money giving it out



from his shirt pocket. As such, the evidence of Pws-8 and 9 lends enough corroboration to the evidence of Pws-1 and 4 that the tainted notes were kept in the shirt pocket of the accused when the trap party members arrived there. Moreover, demand and acceptance of the tainted money by the accused from the complainant in the tea stall indicates that there was prior negotiation among them.

24. At this juncture, it would be appropriate to consider the defence plea. The accused in his statement u/s.313 Cr.P.C. has pleaded that on 12.12.02 he had been to a tea stall near the police station and the complainant came there and suddenly tried to insert some money in his pocket and he resisted. There was some tussle among them. But he does not know if something fell down on the ground due to the tussle or not. DW-1 has not whispered anything if that gentleman was trying to insert that money in the pocket of the accused. It was suggested to the complainant that while he was trying to keep the tainted notes forcibly in the shirt pocket, it fell on the ground as the accused raised his hands and he ran away to which he denied. It was suggested to PW-4 (accompanying witness) that while the complainant was forcibly putting the tainted money in the shirt pocket of the accused, he dragged the hands of the complainant and threw away the money on the ground to which he denied. It was suggested to PW-8 that when the complainant forcibly inserted the tainted notes in the shirt pocket of the accused, he raised protest raising his both hands and the amount was brought out and thrown on the ground much prior to the reach of the trap party to which he

denied. As such, the plea of the accused taken during his examination u/s.313 Cr.P.C. is quite inconsistent with the plea suggested to Pws-1, 4 and 8, so also to the evidence of DW-1. Apart from that, the so called talk in between the accused and the complainant as stated by DW-1 was not suggested to Pws-1, 4 and 8 nor even stated by the accused during his examination u/s.313 Cr.P.C. It is pertinent to mention here that DW-1 stated that the accused sat on the bench and one gentleman was standing near him alone. As discussed above, Pws-1, 4 and 8 categorically testified that they all went to the tea stall and took tea there. Even PW-7 the betel shopkeeper who has been declared hostile by the prosecution categorically stated that the accused along with two others came near the shop of DW-1 and sat over a bench in between their shops. For these reasons, evidence of DW-1 does not inspire confidence.

It may be reiterated here that both hand wash and the shirt pocket wash of the accused turned to pink colour. Of course, in the detection report(Ext.3) and the seizure lists Exts.7 and 8 the accused endorsed that his hand wash was not taken. Ext.11 shows that the half shirt of the accused along with the glass bottles containing pink colour solution relating to the wash of the shirt pocket were seized at Air Field Police Station. The accused has not made any such endorsement on Ext.11 disputing the shirt pocket wash. In the detection report, there is specific mention that on arrival of the IIC, Air Field Police Station in the police station he was duly informed about the demand and acceptance and detection

of the tainted money from the accused. The accused could have informed the IIC denying the demand and acceptance of the bribe money by him and also denying the fact of his hand wash. Mere endorsing on the seizure lists and detection report is not sufficient to discard the testimony of Pws.1, 4, 8 and 9 as well the documentary evidence. That apart, I am unable to understand as to why the independent witnesses-4, 8 and 9 would depose lie against the accused particularly when there is no previous enmity between them and the accused. Besides this, it is difficult to believe that the complainant would dare to forcibly thrust the tainted notes in the pocket of a police officer at a tea stall which was just near to his own police station that too in presence of 7 to 8 outsiders as stated by DW-1. So, the defence plea seems to be quite improbable.

25. Exts.12/1, 13/1 and 14 were seized at the police station along with station diary book and FIR book of that PS under Ext.15. Of course, PW-6 in his evidence stated that he reported the matter at Air Field Police Station vide Ext.12/1 and submitted a report Ext.13/1 regarding production of one Amalendu Pradhan and an undertaking vide Ext.14. Perused Exts.12/1,13/1 and 14. In Exts.12/1 and 13/1, Pws-1, 5 and 6 had stated that they did not know about the act of involvement of the suspects in the incident of theft nor they can say the details of the stolen articles and they had mentioned their names as suspects due to ill-feeling with the family of Sunita Singh. It sounds quite improbable that after giving Exts.12/1 and 13/1, they were pressurizing the accused to arrest the suspects named in the FIR of the theft

case. Amalendu Pradhan (PW-5) was aged about 75 years by the time of lodging Ext.A (FIR of the theft case). PW-5 stated in his evidence that the accused obtained their signatures on some papers and allowed them to leave the PS and nothing was written on those papers. He proved his signatures Exts.12 and 13. Even no suggestion was put to this witness regarding obtaining of signatures on blank papers.

Fact remains that neither the informant nor his father nor Saroj Das(PW-6) nor Gyana Ranjan Das was named in the case initiated by Amita Sahu vide Ext.C. Under such circumstances, there was no occasion on the part of the accused to obtain an undertaking from PW-6 for production of Amalendu Pradhan and Gyana Ranjan Das vide Ext.14. Surprisingly, even no suggestion was put to PW-6 nor he was cross-examined regarding the undertaking Ext.14. Such unchallenged testimony of PW-6 in this regard lends enough corroboration to the version of Pws-1 and 5. Of course, learned counsel for the accused during course of argument drawing my attention to Ext.14 submitted that the date below the signature of Saroj Das has been changed from 12.12.02 to 12.11.02. So, it should be discarded. But I do not agree with such submission. This document was seized on 12.12.02 vide Ext.15. At Sl.No.5 of the document, there is specific mention that this application is dt.12.11.02. Hence, the so called mere overwriting of the month below the signature of Saroj Kumar Das no way affects his veracity.

26. Ext.A is the certified copy of the FIR in Air Field P.S.Case No.201/02 lodged by one Saroj Kumar Das naming

Asish Sahu, Harsananda Sahu, Saroj Sahoo, Bijay Das and Gyanendra Mohapatra as suspects of that case. Ext.B is the certified copy of final report, dt.24.5.04 of that case returning the case as false. Ext.C is the certified copy of FIR No.196, dt.6.11.02 filed by one Amita Sahu against Subir Singh, Suchitra Singh and 7 others u/s.366, 354, 342, 384, 379, 506 IPC and Ext.D is the certified copy of charge-sheet, dt.30.1.03 of that case. It also appears from Exts.C and D that one K.C.Mohanty was the IO of that case. From the aforesaid documents, it emerges that prior to registration of the theft case, another case was registered on the report of one Amita Sahu against some accused persons including Subir Singh and Suchitra Singh.

27. Learned counsel for the accused during course of argument contended that Exts.13/1 and 14 were created on the date of trap by the vigilance in order falsely implicate the accused by influencing Pws-1, 5 and 6. There is no evidence on record that Pws-5 and 6 were present on the date of detection by the time of seizure of those documents vide Ext.15. No such suggestion was put to Pws-1,5 and 6 that those documents were prepared on the date of detection. So, such contention of the learned counsel is devoid of any force.

Learned defence counsel during course of argument submitted that PW-4 during his cross-examination has stated that the left hand wash of the accused did not change its colour which is contradictory to the version of other witnesses. So, his testimony should be discarded. Pws-1, 8 and 9 have categorically stated that both hand wash of

the accused changed to pink colour. The detection report as well as the seizure lists Exts.7 and 8 indicate that both hand wash of the accused turned to pink colour. PW-4 Sadanand Jena was a signatory to the seizure list Exts.7 and 8. So, much importance cannot be given to such version of PW-4 which may be due to accidental slip of tongue or loss of memory as this witness deposed in the Court after prolonged period of occurrence. So, discrepancy of such nature is obvious.

28. Learned defence counsel during course of argument submitted that as mentioned in detection report, PW-8 S.K.Mohapatra has stated that after completion of preparation report in the vigilance office, he came to Lingaraj PS. But PW-9 the TLO who had prepared the detection report categorically stated in para-9 of his cross-examination that he has wrongly mentioned "Lingaraj PS" instead of "Air Field PS".

Learned defence counsel further contended that PW-8 admitted in his cross-examination that on several occasions vigilance department moved their office through requisitions and procure witnesses for such cases. So, he is a stock witness of vigilance department and for that his testimony should be discarded. There is no evidence on record to show in how many occasions PW-8 was cited as a witness to such type of cases. So, evidence of PW-8 cannot be discarded stamping him as a stock witness.

Learned defence counsel during course of argument submitted that PW-9 in his cross-examination stated that he could not say when and where the FIR was

scribed and he admitted that there are some overwritings in the FIR without any initial. Ext.1 FIR has been proved by the complainant. Of course, the date has been overwritten, but the endorsements of SP, Vigilance and the OIC, Vigilance PS on the body of the FIR vide Exts.1/2 and 1/3 show that it was lodged on 11.12.02. That apart, there is mention in the FIR that having no alternative the complainant had assured the accused to pay the amount on 12.12.02. So, absence of evidence regarding the time and place, where it was scribed, so also, the so called overwritings are insignificant and have no bearing on the merits of the case.

29. Of course, there are some minor discrepancies in the evidence of P.Ws., but as discussed above, the same are insignificant and do not touch to the root of the case. Law in this regard is well settled as follows :-

**In Rammi alias Rameshwar V. State of Madhya Pradesh(AIR 1999 SC 3544)**, it was held as follows :-

“When eye-witness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But Courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as

between two statements of the same witness) is an unrealistic approach for judicial scrutiny.” **(Referred at Para-35 in 2012(3) Crimes Page-15 (SC), Jugendra Singh-Vrs.-State of U.P.)**

Law is equally well settled that discrepancies may occur in the evidence of witnesses which may be due to normal error of observation or loss of memory or due to lapse of time and the like. Even in case of trained and educated persons, memory sometimes plays false. **(Vide Boya Gangana and another-Vrs.-State of Andhra Pradesh, A.I.R. 1976 (S.C.) Page 1541).**

30. From the aforesaid discussion of evidence, it emerges that the accused had demanded and accepted the bribe of Rs.1,000/- from the informant(PW-1) for not taking any police action against his father. The evidence of Pws-1, 4, 8 and 9 has substantially remained unshaken. The other contemporaneous documents, such as, the FIR, the preparation report, the detection report, seizure of the tainted money and the applications and undertaking vide Exts.12/1, 13/1 and 14 lend enough corroboration to the version of Pws. No material was brought to record to discard their testimony. The accused has failed to adduce any explanation as to why Pws-4, 6 and 8 are deposing lie against him. Of course, he has taken a plea that PW-1 was pressurizing him to arrest the persons named in the FIR of the theft case, but as he did not agree to his pressure, the complainant has foisted a false case against him. The accused has also taken a further plea that on the date of occurrence the complainant was trying to insert



some money in his pocket, but he resisted. No explanation has been adduced by the accused as to how and why his both hand wash and shirt pocket wash turned to pink colour. It indicates that the accused had received the tainted money and kept in his shirt pocket. A conjoint reading of the evidence on record, both oral and documentary, leads to an irresistible conclusion that the plea of the accused that PW-1 was forcibly trying to thrust the money in his pocket, is unbelievable and not acceptable. Considering the entire evidence on record and keeping in view the position of law as discussed above and when the accused has failed to rebut the statutory presumption u/s.20 of P.C. Act, I am inclined to hold that the prosecution has well proved the charges that the accused being a public servant, demanded Rs.1,000/- from the complainant and accepted the same from him on 12.12.02 for not taking any police action against his father and as such, he obtained pecuniary advantage by corrupt or illegal means and abusing his position as a public servant.

In the result, I found the accused guilty of the offences u/s.7 and 13(1)(d) r/w 13(2) of the P.C.Act,1988 and convicted him thereunder. Considering the nature of the offences, I am not inclined to extend the benefit of Probation of Offenders Act in favour of the accused.

Judge(Vigilance),

Special

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 28<sup>th</sup> day of June, 2014.

Judge(Vigilance),  
Special  
Bhubaneswar.

HEARING ON THE QUESTION OF SENTENCE

Heard on the question of sentence. The learned counsel for the convict and the Special P.P. are present. It is submitted on behalf of the convict that he is a retired Govt. servant and is an aged person and he has no criminal antecedent, so, he prays for leniency. Keeping in view the submission of the convict and the facts and circumstances of the case, the convict is sentenced to undergo R.I. for one and half years and to pay a fine of Rs.2500/-(Rupees two thousand five hundred) in default to undergo R.I. for four months more for the offence U/s.13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and he is sentenced to undergo R.I. for one year and to pay a fine of Rs.1500/- (Rupees one thousand five hundred) in default to undergo R.I. for three months more for the offence U/s.7 of the Prevention of Corruption Act, 1988. The substantive sentences awarded under both the Sections would run concurrently. The period of detention undergone by the convict in this case be set off U/s.428 Cr.P.C.

The seized tainted money of Rs.1,000/-(M.O.-VIII) be returned to the complainant (PW-1) if not reimbursed in the meantime. If the said amount has been reimbursed to the

complainant in the meantime, in that case the seized money of Rs.1,000/-(M.O.-VIII) be confiscated to the State. The sample bottles (M.Os.I to VI) and seized shirt of the accused (M.O.-VII) 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.

Judge(Vigilance),

Special

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 28<sup>th</sup> day of June, 2014.

Judge(Vigilance),

Special

Bhubaneswar.

List of witnesses examined for the prosecution :

- |        |                           |
|--------|---------------------------|
| P.W.1  | Dwibendhu Pradhan.        |
| P.W.2  | Prasanna Kumar Acharya.   |
| P.W.3  | Arun Kumar Sarangi.       |
| P.W.4  | Sadananda Jena.           |
| P.W.5  | Amalendu Pradhan.         |
| P.W.6  | Saroj Kumar Das.          |
| P.W.7  | Raghunath Swain.          |
| P.W.8  | Sukant Chandra Mohapatra. |
| P.W.9  | Sumanta Kumar Mohapatra.  |
| P.W.10 | Mayadhar Swain.           |

List of witnesses examined for the defence :-

- |       |                 |
|-------|-----------------|
| D.W.1 | Sudarsan Barik. |
|-------|-----------------|

List of exhibits marked for the prosecution :-

Ext.1	Report of PW-1.
Ext.1/1	Signature of PW-1 on Ext.1.
Ext.2	Preparation Report.
Ext.2/1	Signature of PW-1 on Ext.2.
Ext.3	Detection Report.
Ext.3/1	Signature of PW-1 on Ext.3.
Ext.3/2	Signature of the accused on Ext.3.
Ext.4	C.E.Report.
Ext.4/1	Signature of PW-2 on Ext.4.
Ext.5	Sanction Order.
Ext.5/1	Signature of PW-3 in Ext.5.
Ext.6	Forwarding letter No.1941, dt.30.4.03.
Ext.6/1	Signature of PW-3 on Ext.6.
Ext.2/2	Signature of PW-4 on Ext,2.
Ext.3/3	Signature of PW-4 on Ext.3.
Ext.7	Seizure list.
Ext.7/1	Signature of PW-4 on Ext.7.
Ext.8	Seizure list.
Ext.8/1	Signature of PW-4 on Ext.8.
Ext.9	Seizure list.
Ext.9/1	Signature of PW-4 on Ext.9.
Ext.10	Seizure list.
Ext.10/1	Signature of PW-4 on Ext.10.
Ext.11	Seizure list.
Ext.11/1	Signature of PW-4 on Ext.11.
Ext.12 & 13	Signatures of PW-5 on 2 nos. of paper.
Ext.12/1	Report of PW-6.
Ext.12/2	Signature of PW-6 on Ext.12/1.
Ext.13/1	Report of PW-6.
Ext.13/2	Signature of PW-6 on Ext.13/1.
Ext.14	Written Undertaking.
Ext.14/1	Signature of PW-6 on Ext.14.
Ext.2/3	Signature of PW-8 on Ext.2.
Ext.3/4	Signature of PW-8 on Ext.3.
Ext.7/2	Signature of PW-8 on Ext.7.
Ext.8/2	Signature of PW-8 on Ext.8.
Ext.9/2	Signature of PW-8 on Ext.9.
Ext.10/2	Signature of PW-8 on Ext.10.
Ext.11/2	Signature of PW-8 on Ext.11.
Ext.15	Seizure list.
Ext.15/1	Signature of PW-8 on Ext.15.

Ext.16	Four fold paper.
Ext.16/1	Signature of PW-8 on Ext.16.
Ext.17	Copy of Preparation Report.
Ext.18	Zimanama.
Ext.18/1	Signature of PW-8 on Ext.18.
Ext.19	Facsimile Seal.
Ext.19/1	Signature of PW-8 on Ext.19.
Ext.1/2	Endorsement of SP, Ritu Arora.
Ext.1/3	Signature of the SP, Vig.
Ext.1/4	Endorsement of A.F.Khan, the then OIC, Vig.
Ext.1/5	Formal FIR.
Ext.1/6	Signature of A.F.Khan.
Ext.2/4	Signature of PW-9 on Ext.2.
Ext.7/3	Signature of PW-9 in Ext.7.
Ext.8/3	Signature of PW-9 on Ext.8.
Ext.9/3	Signature of PW-9 on Ext.9.
Ext.17/1	Signature of PW-9 on Ext.17.
Ext.10/3	Signature of PW-9 on Ext.10.
Ext.16/2	Signature of PW-9 on Ext.16.
Ext.11/3	Signature of PW-9 on Ext.11.
Ext.15/2	Signature of PW-9 on Ext.15.
Ext.20	Zimanama.
Ext.20/1	Signature of PW-9 on Ext.20.
Ext.19/2	Signature of PW-9 on Ext.19.
Ext.18/2	Signature of PW-9 on Ext.18.
Ext.21	Spot Map.
Ext.21/1	Signature of PW-9 on Ext.21.
Ext.3/5	Signature of PW-9 on Ext.3.

List of exhibits marked for the defence :-

Ext. A	Certified copy of FIR lodged by Saroj Kumar Das.
Ext. B	Certified copy of Final Form in Air Field PS Case No.201/2012 corresponding to G.R.Case No.3648/12.
Ext. C	Certified copy of FIR in Air Field PS Case No.196/02 corresponding to G.R.Case No.3583/12.
Ext.D	Certified copy of chargesheet in Air Field PS Case No.196/02 corresponding to G.R.Case No.3583/12.

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

M.Os.I to VI-Six nos. of glass bottle containing pink colour solution.

M.O.-VII- Seized shirt.

M.O.VIII- Seized tainted notes.

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

Nil.

Special Judge(Vigilance),  
Bhubaneswar.