

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.27/2008  
(Arising out of RC No.15(A)/2008).

Republic of India .... Prosecution.

-Versus-

Bijay Mishra, aged about 60 years,  
S/o.Late Balaram Mishra, permanent resident of  
Vill.-Pandia, PS-Patkura, District-Kendrapara,  
A/P.Sector-20, Pump House Colony, Rourkela,  
PS-Sector-19, District-Sundargarh.

....

Accused.  
(ON BAIL)

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

For the Defence : Sri S.Mishra & Associates,  
Advocates.

Date of argument : 23.5.2016.

Date of judgment : 31.5.2016.

Offences u/s.420 of I.P.C. and 13 (1) (d) read with 13(2)/ 7 of  
P.C.Act, 1988.

J U D G M E N T

1. The aforesaid accused stood charged for committing the offences punishable u/s.420 of I.P.C. and 13 (1) (d) read with 13(2)/7 of P.C.Act, 1988.

2. Prosecution case in brief is that there were vacant houses near Pump House Colony, Sector-20, Rourkela and the

accused was in charge of those houses. On 27.5.2008 at about 11.30 AM the complainant met the accused and requested to give one house and the accused told him to pay Rs.6,000/- to him @ Rs.500/- per month and also told that then he will give the key of the house. The accused told that he is the caretaker of those houses and if the complainant will not give money to him, the house will not be given to him. He further told that if the complainant wants the house, he will have to pay Rs.6,000/- to the accused at his residence on 28.5.2008 at 12 noon. Then the complainant wrote a written complaint to the SP, CBI, Bhubaneswar basing on which, the present case was registered. On 28.5.2008 a trap party, including two independent witnesses, was formed and solution of sodium carbonate was prepared in a clean glass tumbler. The complainant produced 12 numbers of GC notes each of the denomination of rupees five hundred, total amounting to Rs.6,000/- which were treated with phenolphthalein powder. Then D.K.Kabi, Inspector instructed the complainant to hand over the money to the accused on his demand. A pre-trap memorandum was prepared at CBI Unit Office, Rourkela, in which all the trap party members including the independent witnesses and the complainant signed. The trap party members went to the residence of the accused. The accused demanded and accepted illegal gratification of Rs.6,000/- from the complainant. Since the transaction was visible to the trap team, Sri D.K.Kabi rushed to the spot and challenged the accused for demanding and accepting illegal gratification of Rs.6,000/- from the complainant. Thereafter, washes of both his hands were taken in sodium carbonate solution separately,

which turned to pink. Witness Sri Bhattacharya checked and found 12 tainted Rs.500/- G.C.Notes from the possession of the accused, compared the same with the numbers noted during pre-trap proceeding and the same tallied. The said tainted GC notes were kept in an envelope, duly sealed and signed by all concerned. A post trap memorandum was prepared at the spot in which all of them signed. The accused was arrested and forwarded to the Court. After completion of investigation and obtaining sanction order, charge-sheet was submitted against the accused. Charge for the offences as earlier mentioned, was framed against the accused.

3. Defence plea is one of complete denial. Specific plea of the accused is that all the prosecution witnesses have stated false things, being instructed by CBI official and that he had never asked for or demanded any money from the complainant and that the complainant is a stock witness of the CBI.

4. The prosecution has examined 12(twelve) witnesses to prove its case. Out of 12 witnesses, PW-9 is the informant, PW-2 is the overhearing witness, PW-4 is the magisterial witness, PW-6 is the sanctioning authority, PW-10 is Trap Laying Officer, PW-11 is the Senior Scientific Officer, CFSL, Kolkata and PW-12 is the Investigating Officer. On the other hand, the accused has examined 1(one) witness in support of his case.

5. Points for determination in this case are:-

(i) Whether on 28.5.2008 at Rourkela the accused cheated the complainant Bidyadhara Behera by dishonestly inducing him to deliver the accused a sum of Rs.6,000/- with a false assurance to allow him to occupy a

vacant quarter at Pump House Colony, Sector-20, Rourkela, taking advantage of his official position, as alleged?

(ii) Whether on 28.5.2008 at his residence bearing NO.ITW-20, Rourkela, the accused being a public servant functioning as Technician-Operator, Water Supply, RSP Township, Rourkela, demanded and accepted Rs.6,000/- from the complainant as gratification other than legal remuneration in order to allow him to occupy one vacant RSP Quarter in Pump House Colony, Sector-20, Rourkela, as alleged?

(iii) Whether during the aforesaid period and place, the accused being a public servant functioning as Technician-Operator, Water Supply, RSP Township, Rourkela, by corrupt and illegal means and/or by otherwise abusing his official position as public servant obtained for himself pecuniary advantage to the tune of Rs.6,000/- from the complainant in order to allow him to occupy one vacant RSP quarter in pump house colony, Sector-20, Rourkela?

6. In a case of trap, demand and acceptance of illegal gratification by a public servant with a motive to do any official act in favour of a person is vital. Before scanning the evidence adduced by the prosecution witnesses, it may be noted here that, in the case of Subas Prabat Sanvane- Vrs.- State of Gujarat reported in (2002) 22 OCR (Supreme Court) at page 817, Their Lordships of the Honourable Apex Court have held that, mere acceptance of money by a public servant, without there being any other evidence that it was demanded, would not be sufficient for convicting the accused U/s.13(1)(d) of the P.C.Act, 1988. Further in the case of Narendra Campaklal Trivedy-Vrs.- State of Gujarat, AIR 2012 (Supreme Court) 2259, the Hon'ble Supreme Court have held that, "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 bribe.

7. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. However, before the accused is called upon to explain how the amount in question was found in his possession, the fundamental facts must be established by the prosecution. 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 provision of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. It has been held by the Honourable Supreme Court in the case of State of U.P.-Vrs.- Dr. G.K.Ghose reported in AIR 1984 S.C. 1453 that the trap laying party is interested to the

extent of the success of the trap and therefore, for taking up such measures, no blame should be given to the prosecution that phenolphthalein was applied to the GC notes in question to grind the accused in a false case. In the light of the aforesaid settled legal position, this Court has to examine how far the prosecution has been able to establish by reliable evidence about such demand and acceptance of bribe by the accused from the complainant.

8. PW-9 the complainant has stated that on 27.5.2008 he met the accused for getting one rented house to operate his business and the accused told him that he has got one quarter allotted in his favour by Rourkela Steel Plant and he can let out the same to him by receiving Rs.6,000/- as advance. PW-9 asked him as to why he is demanding the said amount, since the quarter belongs to Rourkela Steel Plant and the accused replied that he is in charge of the said quarter and also told him to meet on 28.5.2008, so that he can hand over the key of that quarter to him(PW-9). But he (PW-9) did not agree to pay the said amount to the accused and intimated the matter to SP, CBI on 27.5.2008 in writing vide Ext.13 the FIR through DSP, CBI Sri Deepak Kumar Kabi. Sri Kabi instructed him to go to the CBI Office at Rourkela at 10.30 AM of 28.5.2008 along with cash of Rs.6,000/-.

9. PW-9 has further stated that on 28.5.2008 he reported at CBI Office, Rourkela at 10.30 AM along with cash of Rs.6,000/- in the form 12 GC notes of denomination of Rs.500/- and he found two independent witnesses namely, Susanta Kumar Nayak, Sr. Security Assistant of EPF, Sub-Divisional Office, Rourkela and Ashok Kumar Bhattacharya, Stenographer,

Grade-II, Office of the Chief Controller of Explosive, Rourkela were present. He (PW-9) narrated before them and other CBI staff present there about the complaint made by him against the accused and the said independent witnesses went through his written complaint and ascertained the matter to him.

10. PW-9 has further stated that he kept the GC notes on the table and Sri Bhattacharya counted the same and noted down its serial numbers on one paper vide Ext.5 and all of them signed on it. As per the instruction of Sri Kabi, Constable P.K.Palei prepared one solution of sodium carbonate with water in one glass tumbler and Sri Nayak treated the GC notes with phenolphthalein powder and the said GC notes were handed over to Sri Bhattacharya for counting and after handling the said GC notes and upon dipping his hands in the above solution, the colour changed to pink and the said hand wash was preserved in separate empty glass bottle and the said bottle vide M.O.-I was sealed and pasted with one paper, on which all of them signed. Constable Sri Nayak kept the tainted GC notes inside the left side chest pocket of the shirt of PW-9 and told him that he should hand over the said GC notes to the accused, only on demand by the accused and not otherwise. PW-9 has also stated that Susanta Kumar Nayak was instructed to accompany him and to act as overhearing witness and he was instructed to give signal to the rest trap team members by rubbing his head with both his hands after giving the bribe amount to the accused. One pre-trap memorandum vide Ext.6 was prepared by Sri Kabi and all of them signed on it.

11. PW-9 has also stated that witness Susanta Kumar Nayak accompanied him by one motor cycle and reached at

pump house colony at Sector-20, Rourkela at about 12.15 PM. They parked the motor cycle under shadow of one tree and the rest trap team members remained scattered nearby. He (PW-9) went to the quarter of the accused and witness Susant Kumar Nayak was about five feet away from him and he (PW-9) knocked at the door of that quarter and the accused came outside. On seeing him, the accused asked him if he has brought the entire amount of Rs.6,000/- and he(PW-9) answered in the affirmative. The accused showed his right hand and he handed over the tainted GC notes to the accused by bringing out the same from the left side chest pocket of his shirt. The accused counted the said GC notes by both his hands and the accused told him to come in the evening. PW-9 has further stated that he gave the pre-arranged signal by rubbing his head by both his hands, after coming out of the said quarter.

12. PW-9 has also stated that being asked by Sri Kabi, the accused disclosed his name and remained silent after Sri Kabi asked him as to why he has received the money. On the instruction of Sri Kabi, Sri Bhattacharya checked the serial numbers of the GC notes with reference to serial nubs as noted in Ext.5 and the same tallied. He has also deposed that Constable P.K.Nayak prepared solutions of sodium carbonate with water and the right hand wash and left hand wash of the accused were taken by the said solution separately and the colour of the solution changed to pink and were preserved in two separate bottles vide M.O.-III (Mark-R) and M.O.-IV (Mark-L) and sealed and the same were pasted with papers and all of them signed on it. The recovered tainted GC notes were kept in



one envelope vide M.O.-II in sealed condition and all of them signed on it. One sketch map vide Ext.8 was prepared at the spot and one post-trap memorandum vide Ext.7 was prepared by Sri Kabi and the accused was arrested and taken to CBI Office, Rourkela.

13. During cross-examination, PW-9 has deposed that he was searching for a private house to start his catering business and he met the accused at the rest house and again said that he met him on the public road in front of his quarter bearing NO.A/4, pump house colony. PW-9 has further deposed that he knew Deepak Kumar Kabi, Inspector, CBI and earlier he (PW-9) was working as Home Guard attached to his office and he was the complainant in one CBI case bearing T.R.No.7/2008 and Ashis Kumar Mishra and Sri Kabi were the IOs in that case and the said case is ended in acquittal. He has also stated that in the year 2008 he was residing in an abandoned quarter bearing No.A/3 of pump house colony of RSP, Rourkela, Sector-20 for about one month and the accused evicted him from that quarter as he did not pay the monthly rent for that quarter. PW-9 has stated that he does not know if there is no document in this case to show that the accused was the caretaker of the quarter in question. He has also stated that he has not paid any rent to Rourkela Steel Plant Authority or to Rourkela Club for occupying the quarter bearing No. A/3, pump house colony, RSP, Rourkela, Sector-20 and he does not know if the quarters situated at pump house colony, RSP, Rourkela, Sector-20 belonged to Rourkela Club. He has not filed any document to show that the accused was authorized to take care of any such abandoned quarters by RSP and he had not produced any such

document before the CBI. PW-9 has further stated that he had not entered inside the quarter of the accused and he has not marked if the accused after accepting the money from him, entered inside his quarter, since he (PW-9) left that place, but the accused was standing outside the quarter near the door and did not enter inside the quarter during the conversation with him.

14. PWs-2 and 4 have stated that on 28.5.2008 as per the direction and requisition, they had reported before Mr. D.K.Kabi, Inspector, CBI, Rourkela Unit at about 10 AM and the Inspector introduced them and other CBI staff. Sri Kabi stated about the purpose of their gathering in the CBI office and he told about the allegation made by the informant relating to demand of bribe made by the accused. They ascertained the matter from the informant and were satisfied about the genuineness of the allegation made in the complaint petition and they also went through the contents of the FIR. PW-2 has also stated that the informant produced 12 numbers of 500 rupee G.C.Notes before them and as per the instruction of Sri Kabi, PW-2 noted down the numbers on a paper vide Ext.5. Demonstration was made to show the use and effect of phenolphthalein powder with sodium carbonate solution and those notes were treated with the powder and PW-4 handled the tainted noted. His hand wash was taken, which turned to pink and sample was preserved vide M.O.-I. Sri P.K.Nayak, Constable kept those tainted notes in the left side shirt pocket of the informant, with instruction to make payment to the accused only on demand and to give signal by combing his head with his hands and PW-2 was asked to accompany the

informant with instruction to overhear and see the transaction between the accused and the informant. A pre-trap memorandum vide Ext.6 was prepared and its contents were read over and explained and all of them signed on it. PW-4 kept the paper containing the numbers of the notes for future reference. PW-2 accompanied the informant by a motor cycle and others followed them in a vehicle and they arrived near the pump house and motor cycle and the vehicle were parked near the road side. PW-2 and the informant proceeded by walking to the residence of the accused and other trap team members kept positions near the quarter of the accused and waited for the signal.

15. They have also stated that the informant knocked at the door of the house of the accused and the accused opened the door and enquired from the informant whether he has come with the money and the informant told that as per the demand, he had brought Rs.6,000/-. The informant entered into the drawing room and handed over the tainted notes to the accused and the accused counted the notes with both of his hands and told the informant to come in the evening to collect the key from him and PW-2 was witnessing the above transaction and the informant came outside and gave the signal and other members of the trap party rushed to the house of the accused. PW-2 also entered into his drawing room along with others and Sri Kabi disclosed the identities of the trap party members including his own identity and also ascertained the identity of the accused. Thereafter Sri Kabi challenged the accused to have demanded and accepted bribe of Rs.6,000/- from the informant and the accused was found holding the

tainted notes by his hands and fumbled PW-2 has also stated that Sri Kabi instructed PW-4 to collect the currency notes from the hands of the accused and to compare the numbers and on comparison by PW-4, the same tallied with the notings. The tainted notes were kept in an envelope vide M.O.-II and the same was properly sealed. They have further stated that washes of both the hands of the accused were taken separately which turned to pink and the sample was preserved in two separate bottles vide M.Os.-III and IV and were sealed. Post-trap memorandum vide Ext.7 was prepared, its contents were read over and explained and they all signed on it. A sketch map of the spot vide Ext.8 was prepared and thereafter the accused was arrested by CBI.

16. During cross-examination, PW-2 has deposed that he has not produced the written order of his authority to appear before the CBI. PW-2 has further stated that he had not counted the currency notes and Ashok Bhattacharya had counted the currency notes and he does not remember whether the accused was appointed as caretaker of the quarters. He also could not say where the trap team members were standing.

During cross-examination, PW-4 has deposed that he could not say as to who was the authority for allotment of quarters and if the accused was in occupation of A-4 or H-4 quarter. He could not say who opened the door and the colour of the towel which the accused was wearing and the distance of the house of the accused from the main road where they had parked the vehicle. He also could not say as to what was the distance between him and PW-4. He also could not say what

was the talk between the accused and the informant, when they were inside that room. He had also no seen the informant tendering the notes to the accused.

17. PW-10 has stated that on 28.5.2008 D.K.Kabi (since dead), Inspector of Police, CBI asked him to report before him and accordingly he reported before him at his office chamber and at that time, PWs-2 and 4 were present there and Bidhadhar Behera reported there along with Rs.6,000/- to be used as trap money on 28.5.2008 and D.K.Kabi introduced Sri Behera with PWs-2 and 4 and other members of the CBI present there and D.K.Kabi showed the copy of the complaint submitted by Sri Behera against the accused and the witnesses went through the complaint vide Ext.13 and asked certain questions to the complainant and got satisfied and Sri Kabi explained about the contents of the said complaint and he (PW-10) had also gone through the same. PW-10 has also stated that as per the direction, the complainant produced Rs.6,000/- in the form of 12 numbers of GC notes of Rs.500/- denominations and its serial numbers were noted down in a plain paper vide Ext.5 and signed by all of them and the said paper was handed over to PW-4 for future reference and as per the direction, Sri P.K.Nayak, Constable prepared a solution of sodium carbonate and water in a glass tumbler and applied phenolphthalein powder on the said GC notes produced by the complainant and asked PW-4 to handle the said notes and then, on the instruction of Sri Kabi, the hand wash of PW-4 was taken by the said solution and the colour of the said solution changed to pink. The said bottle containing hand wash was marked as "D"

(M.O.-I) and preserved in sealed condition and all of them signed on one paper which was pasted on the said bottle.

18. PW-10 has further stated that as per the direction, Sri Nayak kept the said tainted GC notes of Rs.6,000/- on the left side chest pocket of the complainant and Sri Kabi instructed the complainant to hand over the said tainted GC notes to the accused only on demand and not otherwise and to give pre-fixed signal by scratching his hairs by both his hands after the transaction of bribe money is over. PW-2 was directed to accompany the complainant and to see the transaction of bribe money and to overhear the conversation between them. A pre-trap memorandum vide Ext.6 was prepared and all of them signed on it. PW-10 has also stated that the complainant and PW-2 left CBI Office, Rourkela by the motor cycle of PW-2 to the residence of the accused, followed by other trap team members by separate two wheelers and the trap team members reached near the pump house colony, Sector-20, Rourkela at 12.15 PM and took positions near the residence of the accused in a scattered manner and the complainant went to the residence of the accused, followed by PW-2.

19. PW-10 has also stated that at about 12.30 PM the complainant gave the pre-fixed signal coming out of the residence of the accused. Immediately Sri Kabi along with other witnesses and the trap team members rushed to the residence of the accused. At that time the accused was sitting on a chair on the drawing room and the bribe money was kept by him in his hands. Then Sri Kabi challenged the accused why he has demanded and accepted bribe from the complainant, to which the accused became nervous and gave no reply. He has also

stated that being asked by Sri Kabi, PW-4 collected the bribe money kept by the accused by his hand and compared its serial numbers with the serial numbers noted earlier in Ext.5. It was found to be the same tainted GC notes produced by the complainant and then both hands of the accused were washed in solution of sodium carbonate and water separately and colour of the said solution changed to pink. Both the said hand washes were preserved in two separate bottles marked "R" and "L" (M.Os.-III and IV respectively) and the papers pasted separately on the said bottles were signed by all of them. The recovered bribe amount of Rs.6,000/- was kept in an envelope vide M.O.-II and all of them signed on it. He has also stated that sketch map vide Ext.8 was prepared by Sri Kabi at the spot and all of them signed on it. The post-trap proceeding was written by him (PW-10) on the instruction of Sri Kabi vide Ext.7.

20. During cross-examination, PW-10 has deposed that there was no written instruction to him to act as a member of the trap team in this case and he does not know the type and place of job and post which the complainant was holding at that time. He has further deposed that Constable P.K.Nayak placed the tainted GC notes in the left side shirt pocket of the complainant on the instruction of Sri Kabi, but at that time, he(PW-10) had not personally counted the said GC notes. The complainant had not been examined by the IO in his presence and no specimen signature of anybody has been obtained during pre-trap and post-trap proceedings. PW-10 could not say if the accused had given his signature on the papers pasted on M.Os.III and IV and on the envelope M.O.-II. He has stated that the IO has not recorded the statement of anybody in his

presence in connection with this case. He had neither directly asked nor tried to ascertain from the complainant about the authenticity of the allegations made by him against the accused. PW-10 has also stated that he has not witnessed the transaction of handing over the GC notes by the complainant to the accused.

21. Admittedly, the FIR Ext.13 is the preliminary document which has brought out the case of demand for bribe made by the accused from the complainant to the lime light and has set the law into motion to nab the accused. It is the settled principle of law that FIR is not a substantive piece of evidence and it can only corroborate or contradict the statement of the informant. But it is needless to say that the allegation of demand of bribe by the accused from the informant made in the FIR requires corroboration by the author of the FIR during his evidence in the Court to be believed as genuine and to have any evidentiary value.

22. From the evidence of the prosecution witnesses as discussed above, this Court finds that the accused was neither authorized nor competent to allot any such quarter in question at Pump House Colony, Sector-20, Rourkela. No such authority or power was also delegated to him by any competent authority or by any authorized person. Therefore, it is proved that the accused was not in a position to allot any quarter to the complainant during the relevant period. Still then, he gave a promise to the complainant which obviously the accused knew from the very beginning that he will not in a position to allot any such quarter to the complainant. In spite of that, he had gone forward to the extent of demanding bribe by



promising him to allot one quarter in his favour. Thus, it is proved from the evidence on record that the accused had necessary dishonest intention to cheat the complainant from the very inception. The mere fact that the complainant would not have been able to subsequently allot any quarter in favour of the complainant, becomes immaterial, since the accused had very intention to cheat the complainant from the very inception and thereby he has dishonestly induced the complainant to give cash of Rs.6,000/- to the accused. Hence, in the facts and circumstances of this case, the prosecution has been able to prove beyond reasonable that the accused has committed the offence punishable U/s.420 IPC.

In the present case, it is found that the complainant being examined as PW-9, has fully corroborated to his FIR story. PWs-2, 4 and 10 have fully corroborated the evidence of PW-9.

23. During cross-examination, PW-12 has deposed that he was not the member of the trap team and he was not present when demand and acceptance of bribe was made in connection with this case. He has stated that by the time he submitted charge-sheet in this case, the report of scientific officer was not received. PW-12 has also deposed that D.K.Kabi had sent the material objects to CFSL, Kolkata on 30.5.2008 through special messenger along with forwarding letter and that no document has been filed to show that the said special messenger was directed to proceed to Kolkata along with material objects and the name of the said special messenger has not been mentioned in the record of this case and that he

does not know his name. PW-12 has also stated that he has not directed his investigation to ascertain if the accused during the year 2007-08 was residing at Qr.No.A/3, Pump House Colony, Sector-20, RSP, Township, Rourkela. He has further deposed that the complainant was working at Rourkela Club in the year 2007-08 and he does not know if he has deposed in T.R.No.7/2008 that he was working as milk vendor during that period. He has also stated that although he had examined the then Secretary, Rourkela Club Sri Ajit Kumar Behera during investigation in this case, but he has not been cited as a witness in the charge-sheet and he has also not examined Sri C.S.Mohapatra, the Manager (TS-EV & NEA) and has not cited him as a witness in the charge-sheet. PW-12 has also stated that he has not directed his investigation to ascertain if the complainant had given written application for allotment of RSP quarter to him. He has also stated that as per the spot map vide Ext.8, the complainant was present near the door and the accused was inside the house near the entrance door and the shadow witness was present near the complainant.

24. PW-11 Scientific Officer has stated that on 10.6.2008 Director, CFSL, Kolkata received three sealed glass bottles from SP, CBI, SPE, Bhubaneswar for chemical examination and the Director allotted this case to him for chemical examination. He has also stated at first he tallied the seals of the three bottles with a specimen seal which was forwarded by CBI and found the seals intact and tallied and thereafter he marked the three bottles and broke open the seals and measured the liquid contained in the three bottles separately and the liquids were pink colour. Then he examined

the liquid sample of three bottles separately, by chemical and instrumental method and during examination, he found phenolphthalein, sodium carbonate and water in all those samples and thereafter he resealed the remnants of the three bottles separately and prepared his report vide Ext.14 and he submitted Ext.14 along with the material objects to their Director, who in turn, sent the same to CBI, Bhubaneswar. During cross-examination, PW-11 has deposed that the letter of their director assigning this work to him, has not been filed in this case and he has not mentioned in his report Ext.14 the chemicals used by him for conducting the test and the steps taken by him for conducting the said chemical test. He has further stated that the material objects were received by the Office of CFSL, Kolkata on 10.6.2008 and he (PW-11) received the same on 23.2.2009 for conducting the test.

25. PW-12 the IO has stated that on 18.6.2008 as per the direction of SP, CBI, Bhubaneswar, he took charge of investigation of the case from D.K.Kabi (since dead), Inspector, CBI, Rourkela and this case was registered on 28.5.2008 by the then SP In Charge, CBI, Sri J.N.Rana and Ext.15 is the formal FIR. He has further stated that during investigation, he has examined the witnesses, recorded their statements u/s.161 Cr.P.C. , collected CFSL report and obtained sanction order vide Ext.12 from Sri Suresh Chandra Pattnaik, DGM, RSP and after completion of investigation, on 29.8.2008 he has submitted charge-sheet u/s.7, 13(2) read with Section 13 (1) (d) of P.C.Act, 1988 and Section 420 of IPC against the accused.

26. PW-1 the Chief Manager, Rourkela Club has stated that Ext.1 is the Xerox copy of requirement letter

submitted by A.K.Behera, Secretary and Ext.2 is the certified copy of allotment order for allotment of five quarters and Ext.3 is the authorization letter authorizing him to take possession of five quarters and Ext.4 is the Xerox copy of the allotment order. He has also stated that the quarters were under lock and key and maintenance work was not completed. During cross-examination, he has stated that he does not know about the original of Exts.1 to 4.

27. PW-3 has stated that he was in charge of the section Non-employees Allotment of quarters and if any requisition is being made by an officer or outsider other than the employees of RSP, then Town Services Department used to place a note before the Managing Director and after approval a quarter is being allotted. The allottee is to take occupation of the quarter within seven days of the receipt of the order. The allottee is required to submit an occupation report and in case of employees of RSP, allotment is being guided by the House Allotment Rules keeping in view the seniority etc. PW-3 has further stated that Ext.9 is the house allotment rules of RSP and Secretary, Rourkela Club had made a requisition for allotment of a quarter vide Ext.1 and the notes has been approved by MD for allotment in the note sheet vide Ext.10 and Ext.2 is the allotment order. PW-3 has further stated that five quarters were allotted including Qr.NO.A-3, Sector-20 and allotment order was made on 4.10.2007 and he (PW-3) had issued the order and the quarter was occupied as per the occupation report dated 10.10.2007 vide Ext.11.

28. During cross-examination, PW-3 has deposed that his only role is to forward the application for allotment of

quarters. He could not say in which quarter the accused was staying from the year 2008 to till date. PW-3 has also deposed that he had not received or dealt with any application for or on behalf of the informant for allotment of quarters. He has also stated that a person, who is not an employee of RSP or not a member of Rourkela Club, is not entitled for allotment of any such quarters and without approval of MD, no quarter of RSP is allotted. He has also stated that he has neither given his initial nor signature in Exts.1, 9 and 10. He has also stated that he does not know the name of the informant of this case.

29. PW-5 DGM, Civil, Town Planning Engineering, RSP, Rourkela, has stated that if any quarter is lying vacant not being allotted to anybody, Town Engineering Department takes measure to guard the quarter and Qr.No.A-3 was lying vacant from July, 2004 to October, 2007 and M/s. Gayadhar Enterprisers was guarding that quarter. During cross-examination, PW-5 has stated that he has no personal knowledge relating to the incident of the present case and he could not say in which quarter the accused was staying.

PW-6 the then DGM, Town Engineering, Water Supply, RSP, Rourkela, has stated that the accused was working as Technician-cum-Operator, Town Engineering, Water Supply, RSP and he (PW-6) was competent to remove the accused from service in any departmental proceeding. He has further stated that all the relevant documents had been placed before him and on perusal of the same, he was satisfied about existence of prima facie case against the accused and therefore, he accorded permission for lodging prosecution against the accused vide sanction order vide Ext.12. During cross-

examination, PW-6 has deposed that some quarters were lying vacant during the relevant time, but he could not say as to which were those quarters and in which quarter the accused was staying at that time. PW-6 has further deposed that Vigilance Department of RSP had placed the documents for his perusal and he does not know the informant Bidyadhar Behera. PW-6 has not ascertained if any quarter has been allotted in favour of the informant.

30. PW-7 a contractor, has stated that he had been entrusted to work relating to maintenance in Sector-20 under the supervision of Sunil Kumar Panda, Engineering Assistant of RSP and A-1, A-3 and A-6 quarters were lying vacant during the period from 12.7.2004 to 10.10.2007 and he had provided guards to keep watch over these vacant quarters. PW-7 has further deposed that on 10.10.2007 the above quarters were allotted to Secretary, Rourkela Club and he (PW-7) had handed over the keys of the above quarters to the Secretary. During cross-examination, PW-7 has deposed that the accused himself was not competent to allot quarters. He has further deposed that he had directed Bidyadhar Behera to keep watch over the vacant quarter A-3 till 2007 and he could not say if Bidyadhar Behera was staying in Qr.No.A/3 in the year 2008.

31. PW-8 has stated that he had taken civil contract work in Rourkela Civil Township from 1999 to 2010 and he had been entrusted with the maintenance work in respect of quarters of Sector-20. He has further stated that basing on the entry made in the complaint register, he used to look after maintenance work and used to collect his fees after submission of bills and whenever any quarter falls vacant. He was asked to

guard that quarter and A-5 and A-8 quarters in Sector-20 were lying vacant in between 12.7.2004 to 10.10.2007 and he had guarded these quarters during the above period. He has also stated that he had engaged people to watch those vacant quarters, but he used to visit those quarters very often to verify the fittings available in the quarters and on 10.10.2007 those two quarters were allotted to Rourkela Club and they had taken possession of the same. During cross-examination, PW-8 has deposed that the IO had not made any seizure of documents from his custody and he has not done any maintenance work in respect of the above two quarters. He has further deposed that he has no direct knowledge relating to the quarter for which the dispute is going on.

It is settled principle of law that in a criminal trial, the prosecution has to prove its case beyond all reasonable doubt. But the same standard or rigour is not applicable to assess the evidence adduced by the defence, since the defence can prove its case in the standard of preponderance of probability.

32. DW-1, the sole witness from the side of the defence, has stated that he was serving as electrician in Rourkela Club, Rourkela from the year 1992 to 2009 and he used to do other works as asked to him by the Secretary, Rourkela Club. DW-1 has also stated that the accused was residing in Qr.No.A/4, Pump House Colony, Sector-20, Rourkela in the year 2007 to 2009 and that he knows the complainant, who is also called as "Bidy Pagala" in Sector-20 locality and during that period he was residing in Qr.No.A/3, Pump House Colony, Rourkela. He has further stated that the complainant

used to tell him that he is attached to CBI Office and he used to pick up quarrel with him and others after consuming liquor, ganja and he was the neighbor of the accused. During cross-examination, DW-1 has deposed that total seven quarters were given to Rourkela Club by RSP in the year 2007-08 in two phases, but he does not remember the date and month of the same and he has not filed any document besides Ext.B in this case to show that he was working as electrician of Rourkela Club.

33. Learned defence counsel has relied upon the decisions reported in 2016 (I) OLR (SC)- 8 N.Sunkanna-Vrs.- State of Andhra Pradesh and submitted that in absence of any proof of demand for illegal gratification the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot held to be established- only on proof of acceptance of illegal gratification that presumption can be drawn u/s.20 of the Act that such gratification was received for doing or for bearing to do any official act- unless there is proof of demand of illegal gratification proof of acceptance will not follow and mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence u/s.7 of the Act, since demand of illegal gratification is sine qua non to constitute the said offence. In the said reported case, it was the ASI, who directed the accused to release the brother of the complainant and therefore, at the time of his releasing on bail, there was no occasion for the accused to demand bribe money from the complainant as he was already released on bail.



34. But, in the present case, it is proved beyond reasonable doubt from the evidence of PWs-2, 4, 9 and 10 that the accused has demanded and accepted money from the complainant for giving a RSP quarter to the complainant. So, the above decision is not applicable to the facts and circumstances the present case.

35. The learned counsel argued that the accused was not a public servant.

The question arises as to whether the accused is a public servant? As per Section 2(c) (viii) of the Prevention of Corruption Act, 1988, “public servant” means any person who holds an office by virtue of which he is authorized or required to perform any public duty and (xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority. (as discussed by the Honourable Supreme Court in the decision reported in State of Maharashtra-Vs.-Prabhakarrao, (2002) 7 SCC 636).

The learned defence counsel had also relied upon another decision reported in 2016 (SAR) (Criminal) 506 Supreme Court, Krishan Chander –Vrs.- State of Delhi and submitted that since the accused was not serving in RSP, there was no occasion for demanding bribe from the complainant. The accused was not competent to allot quarters. However, it is proved from the evidence of PW-6 that the accused was serving as Technician- Operator, Water Supply, RSP Township, Rourkela

and has demanded money from the complainant for giving a quarter to him. So, the above decision is not applicable to the present case.

Hence, on perusal of the oral and documentary evidence from the side of the prosecution, this Court finds that the accused was working as Technician Operator, Water Supply, RSP Township, Rourkela and was a public servant at that time.

36. The learned defence counsel has argued that when the complainant was already residing in Qr.No.A/3, Pump House Colony of RSP, Sector-20, Rourkela, there was no need for him to get the same quarter. But, it is evident that the complainant had wanted another quarter to start his catering business for which, he approached the accused for getting a quarter.

The learned counsel for the defence had drawn the attention of the Court to certain discrepancies in the evidence of some of the prosecution witnesses and had submitted that there are material contradictions in the evidence of the said prosecution witnesses and therefore, the evidence of the said witnesses has to be totally discarded.

37. The learned defence counsel has submitted that PW-4 has stated that he reached the CBI office at about 10 AM when the informant and PW-2 and IO were already present there, whereas the complainant has stated that he reached the CBI Office at 10.30 AM and met PWs-2 and 4. PW-4 has stated that when they entered inside the house of the accused, they saw the accused was standing in the house wearing a towel

whereas other witnesses have stated that the accused was sitting on a chair, when they entered. PW-4 has stated that PW-2 was standing five feet away from the complainant under the shadow of a tree, but there is no such mention of a tree in the trap map. PW-4 has also stated that he cannot say as to what was the distance between him and PW-2 whereas earlier in another place, he has stated that he was standing with PW-2 as he was also standing under that tree. PW-9 has stated that PW-4 counted the GC notes and noted down the serial numbers of the same on one paper (Ext.5) whereas PW-4 has stated that PW-2 has counted the notes and noted down the same on paper. PW-9 has stated that at 12.20 PM on the instruction of Sri Kabi, PW-4 checked the serial numbers of the GC notes with reference to serial numbers as noted in Ext.5 and the same tallied. In earlier para, PW-9 has stated that they reached near the house of the accused at 12.15 PM and from there they proceeded to the house of the accused and he along with PW-2 went to the house of the accused after others took positions under a tree. PW-9 has further stated that trap and conversation ended by 12.20 PM which means within 3 to 5 minutes all the things like knocking at the door of the accused and opening the same by the accused, conversation between the accused and complainant, handing over the money was over within 3 to 5 minutes. PW-9 the complainant has stated that except him and PW-2, the other members of the trap team stood under one tree, which is at a distance of about forty metres from both of them, whereas PW-4 has stated that PW-2 was standing near him with, the trap team under the shadow of a tree which is five feet away from the house/door of the

accused. Hence, it is submitted by the learned defence counsel that there are contradictions and mismatching in the evidence of prosecution witnesses for which their evidence should be discarded, being not reliable.

But this Court finds that above minor discrepancies in the testimony of the witnesses do not at all affect the prosecution case.

38. The learned defence counsel has submitted the complainant has stated that in the year 2008 he was residing in an abandoned quarter bearing NO.A/3 of Pump House Colony, RSP, Rourkela, Sector-20 for about one month and the accused evicted him from that quarter as he did not pay the monthly rent for that quarter. He has further submitted that PW-9 has stated that he has lodged FIR against the accused at Jhirpani Police Station as he burnt his house and household articles at Jagda and the complainant has also stated that the accused and Narendra Kumar Mishra have committed the murder of his mother on 15.12.2014. So, there was previous enmity between the accused and the complainant (PW-9).

39. The offence of committing murder took place in the year, 2014, much after institution of the present case. However, from the evidence of prosecution witnesses, it is seen that there was previous enmity between the accused and complainant. However, for this reason, the prosecution case cannot be totally thrown away, but the evidence of prosecution witnesses is to be scrutinized with much care and caution. This Court has gone through the evidence of the complainant with much care and caution.

On the other hand, DW-1 has not filed any document except ID Card Ext.B to show that he was working as electrician in Rourkela Club. He has only stated about the character of the complainant. His evidence does not support the accused in any manner.

The accused has told the complainant to pay Rs.6,000/- to him for giving vacant quarter. From this, it appears that the accused will give a quarter to the complainant by receiving Rs.6,000/-. So, Section 420 of IPC is not attracted to the present case.

40. This Court finds that although the accused was neither competent nor authorized to allot any such quarter in favour of the complainant, still then, the accused while serving in his capacity as Technician Operator, had demanded illegal gratification of Rs.6,000/- from the complainant for the purpose of allotting quarter. Therefore, this Court finds that prosecution has been able to prove its case beyond reasonable doubt that the accused being a public servant, had taken illegal gratification other than legal remuneration as a motive for doing the official act and doing favour for allotting a quarter in favour of the complainant. It was submitted by the learned defence counsel that the said promise of the accused, even if, made to the complainant, does not come within the purview of Section 13(1) (d) read with 13(2) of P.C.Act. But, it is seen that as per Clause-(d) to the explanation of Section 7 of the Act, the said act of the accused is squarely covered and so also u/s.13(1)(d) read with 13(2) of P.C.Act.

41. From the aforesaid discussion of evidence on record, it emerges that the accused had demanded and accepted bribe of Rs.6,000/- from the complainant on 28.5.2008 for giving one RSP quarter to him. The evidence of Pws-2, 4, 9 and 10 has remained substantially unshaken. The documentary evidence on record, such as, the FIR, pre-trap memorandum, post-trap memorandum, seizure lists, CFSL Report, sketch map and the hand wash of the accused turning to pink colour lend sufficient corroboration to their version. Nothing has been brought to record to disbelieve their testimony. No explanation has been adduced by the accused as to why these witnesses would depose lie against him. On a conjoint reading of the evidence both oral and documentary and for the discussion made above, the plea of the accused that he has never asked or demanded any money from the complainant, is unbelievable and not acceptable.

In the result, I found the accused guilty of the offences under Section 7 and 13(1)(d) r/w 13(2) of the P.C.Act,1988 and under Section 420 of the I.P.C. and convicted him there under. Considering the nature of the offences, I am not inclined to extend him the benefit of Probation of Offenders Act.

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

The judgment having been typed to my dictation and corrected by me and being sealed and signed by me is pronounced in the open court today this the 31<sup>st</sup> day of May, 2016.

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

HEARING ON THE QUESTION OF SENTENCE

Heard on the question of sentence. The learned counsel for the convict and the learned PP, CBI are present. It is submitted by the convict that he is the only earning member of his family and his family members are dependent on him and on these grounds he prays for leniency. The learned PP, CBI submits that considering the nature and gravity of the offences, stringent punishment may be awarded against the convict. Keeping in view the submission of the convict, learned PP, CBI and the facts and circumstances of the case, the convict is sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/- (Rupees five thousand), in default, to undergo rigorous imprisonment for three 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 rigorous imprisonment for one year and to pay a fine of Rs.2,000/- (Rupees two thousand), in default, to undergo rigorous imprisonment for two months more for the offence U/s.7 of the Prevention of Corruption Act, 1988 and he is also sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.500/- (Rupees five hundred), in default, to undergo rigorous imprisonment for one month more for the offence U/s.420 I.P.C. The substantive sentences awarded under the above 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 G.C. Notes of Rs.6,000/- inside an envelope (M.O.-II) be returned to the complainant (PW-9) if not

reimbursed in the meantime. If the said amount has been reimbursed to the complainant in the meantime, in that case the seized currency notes of Rs.6,000/- be confiscated to the State. The bottles containing hand washes (M.Os. I, III & IV) be destroyed. Order regarding disposal of the property shall take effect three months after expiry of the appeal period if no appeal is preferred and in case of appeal, the same shall be dealt as per the order of the Appellate Court.

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

The judgment having been typed to my dictation and corrected by me and being sealed and signed by me is pronounced in the open court today this the 31<sup>st</sup> day of May, 2016.

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

List of witnesses examined for the prosecution :

PW-1	Debabrat Mohanty.
PW-2	Sushanta Kumar Nayak.
PW-3	Laxmikanta Nayak.
PW-4	Ashok Kumar Bhattacharya.
PW-5	Pravat Kumar Pradhan.
PW-6	Suresh Chandra Pattnaik.
PW-7	Gayadhar Pati.
PW-8	Pratap Kumar Jena.
PW-9	Bidyadhar Behera.
PW-10	Subhransu Bhusan Mishra.
PW-11	Bimal Chandra Purkait.
PW-12	Srikanta Kumar Behera.

List of witnesses examined for the defence :-

DW-1	Ashok Kumar Sahani.
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List of exhibits marked for the prosecution :-

- Ext.1 Copy of letter.  
 Ext.1/1 Signature of A.K.Behera.  
 Ext.2 Certified copy of allotment order.  
 Ext.3 Authorization letter.  
 Ext.3/1 Signature of A.K.Behera.  
 Ext.4 Copy of allotment order.  
 Ext.5 Paper containing numbers of G.C.Notes.  
 Ext.6 Pre-trap memorandum.  
 Ext.7 Post-trap memorandum.  
 Ext.8 Sketch map.  
 Exts.5/1,6/1,7/1, 8/1- Signatures of PW-2.  
 Ext.9 House Allotment Rules.  
 Ext.10 Office note.  
 Ext.11 Occupation Report.  
 Exts.5/2,6/2,7/2, 8/2 – Signatures of PW-4.  
 Ext.12 Sanction order.  
 Ext.12/1 Signature of PW-6.  
 Ext.13 Written FIR.  
 Ext.13/1 Signature of PW-9 in Ext.13.  
 Ext.5/3 Signature of PW-9 in Ext.5.  
 Ext.6/3 Signature of PW-9 in Ext.6.  
 Ext.8/3 Signature of PW-9 in Ext.8.  
 Ext.7/3 Signature of PW-9 in Ext.7.  
 Ext.5/4 Signature of PW-10 on Ext.5.  
 Ext.6/4 Signature of PW-10 on Ext.6.  
 Ext.7/4 Signature of PW-10 on Ext.7.  
 Ext.8/4 Signature of PW-10 on Ext.8.  
 Ext.5/5 Signature of Sri D.K.Kabi on Ext.5.  
 Ext.6/5 Signature of Sri D.K.Kabi on Ext.6.  
 Ext.7/5 Signature of Sri D.K.Kabi on Ext.7.  
 Ext.8/5 Signature of Sri D.K.Kabi on Ext.8.  
 Ext.14 CFSL Report.  
 Ext.14/1 & 14/2 -Signatures of PW-11 in Ext.14.  
 Ext.14/3 Signature of Director Dr.C.N.Bhattacharya.  
 Ext.15 Formal FIR.  
 Ext.15/1 Signature of Sri J.N.Rana, SP-In-charge.

List of exhibits marked for the defence :-

- Ext. A Certified copy of deposition of PW-6 in T.R.No.7/08.  
 Ext. B ID Card issued to A.K.Sahani by Rourkela Club.

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

M.O.-I	Sample bottle containing hand wash.
M.O.-II	Envelope containing tainted G.C.Notes.
M.Os.-III, IV	Bottles containing hand wash.

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

Nil.

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