

2. Briefly stated the prosecution case is that the “Puturabohu” of the complainant had applied to the Tahasildar, Khurda for mutation of a land. After getting notice, the complainant and his daughter-in-law (Puturabohu) went to the office on 5.6.08, met the accused who demanded Rs.100/- and the complainant paid Rs.100/- to him and the accused insisted for further illegal gratification of Rs.400/- and asked them to come on 23.6.08 along with Amin Report. The accused also told that unless his demand is fulfilled, there will be no progress in the file. The complainant lodged one report to the SP, Vigilance and as per direction, the complainant appeared in Khurda Vigilance Unit Office on 24.6.08. In presence of vigilance staff and other independent witnesses, he narrated the brief story of the case, produced 4 numbers of 100 rupee G.C.Notes and its numbers were noted and the same were smeared with chemical powder, kept in a paper and handed over to him with instruction to hand over the same to the accused on demand and one Paramananda Behera was selected as accompanying witness to hear the conversation and to pass signal after payment.

The complainant and the accompanying witness went to the Tahasil Office. The complainant entered inside and handed over the R.I.Report to the accused and requested to dispose of his matter, but the accused demanded the illegal gratification of Rs.400/- and accordingly, he paid the same. The accused accepted the notes, kept it in his left side chest shirt pocket and after signal the trap party members rushed inside the office. Being challenged the accused agreed to have accepted the notes. Both hand wash of the accused was taken which turned to pink colour. The connected mutation case record, sample solution bottles and the tainted money were seized, one detection report was prepared and after completion of investigation, chargesheet was submitted against the accused.

3. The defence plea is one of complete denial. Further plea of the accused is that on 24.6.08 while he was in the office, one old man suddenly thrust something in his pocket and when he shouted, by then the old man fled away and two persons came and caught hold him and being asked by them, he brought out the money from his pocket and gave the same to them.

4. The prosecution has examined 11 witnesses whereas the accused has examined 2 witnesses in support of their respective cases.

5. Points for determination in this case are :-

(i) Whether on 24.6.2008 the accused being a public servant working as Junior Clerk, Office of Tahasildar, Khurda obtained for himself pecuniary advantage of Rs.400/- by corrupt or illegal means from the complainant for issue of R.O.R. in favour of his niece Smt. Rebati Bhuyan ?

(ii) Whether on the aforesaid date the accused accepted illegal gratification of Rs.400/- from the complainant in his capacity as a public servant for issue of R.O.R. in favour of his niece Smt. Rebati Bhuyan ?

6. Both points are taken up together. PW-1 the then Collector, Khurda stated that he was competent to remove the accused from his service and on receipt of requisition from the SP, Vigilance, he discussed the matter with the I.O. and perused all the relevant papers and documents produced before him by the I.O. and being satisfied and after application of mind, he accorded sanction for prosecution of the accused vide Ext.1 and forwarded the same to the SP, Vigilance vide Ext.2. In cross-examination, he admitted that in the sanction order he has not given details of the documents which he had verified. He further stated that the ROR was to be issued in the name of one of the relatives of the complainant, but he could not say if the complainant was authorized by that relative to obtain the ROR.

He denied the suggestion that without verifying any document he had mechanically issued the sanction order.

PW-2 Peon of Tahasil Office, Khurda stated that on 24.6.08 at about 12 noon vigilance officials arrived in their office, challenged the accused saying that he had taken bribe and thereafter both the hand wash of the accused was taken in a liquid which turned to pink colour and thereafter the accused brought out the money from the left side chest pocket of his shirt and counted the same in his hand and the vigilance officials seized the same. In cross-examination he stated that being challenged by the vigilance officer, the accused denied to have taken any bribe. He further stated that the hand wash of the accused was taken after he brought out the money from his pocket and he also stated that the hand wash of the accused was taken only once.

7. PW-3 an Assistant Engineer stated that being instructed by his Executive Engineer he himself and J.E.- Ashok Panda reported before the DSP, Vigilance, Bhubaneswar on 24.6.08 at 7 AM and they with other vigilance officials proceeded to Khurda Vigilance Office. There the complainant disclosed that his "Puturabohu" had applied for a mutation and the accused was dealing with her file and initially he had taken Rs.100/- from him and had told to give further Rs.400/- towards 23/24.6.08 to put up his file before the Tahasildar. The complainant produced 4 numbers of 100 rupee G.C.notes and the DSP noted down its numbers and some powder was applied to the G.C.Notes and given to the complainant with instruction to give the same to the accused on his demand. He (PW-3) was selected as accompanying witness to hear the conversation between the complainant and the accused and to see money transaction and to give signal. He proved the preparation report vide Ext.3.

They proceeded to Khurda Tahasil Office and he followed the complainant to the Tahasil Office and saw the

complainant handed over the R.I.Report to the accused and the accused demanded money from the complainant. Then the complainant brought out the money and handed over the same to the accused who accepted the same and seeing this he gave signal and vigilance staff rushed to the spot. Being challenged by them, the accused became nervous and admitted to have accepted the money, Thereafter both hand wash of the accused was taken in a liquid solution separately which turned to pink and thereafter the accused brought out the tainted money from his left side shirt pocket and Ashok Panda compared its numbers with the numbers noted earlier which tallied. He stated regarding seizure of hand wash bottles, mutation case documents, tainted money, Attendance Register etc. and proved the seizure lists Exts.4 to 11, 13,14 and also proved the Detection Report Ext.15. PW-3 proved the seized shirt vide M.O.-I and the glass bottles vide M.Os.-II to VII and seized cotton vide M.O.-VIII.

8. In cross-examination he stated that he had not heard the conversation between the accused and the complainant till he conveyed signal, but specifically he stated that the complainant gave the tainted money to the accused in his right hand. He also stated that after recovery of the money, the hand wash of the accused was not taken. PW-3 categorically stated that the accused took the money and kept the same in his shirt pocket. It is pertinent to note that it was suggested to PW-3 that there was no such occurrence and the complainant had not given any money to the accused and the accused had not taken any money nor brought out any money from his pocket. But PW-3 categorically denied such suggestion.

9. PW-4 a Senior Clerk of Tahasil Office stated that the vigilance staff came, apprehended the accused and caught hold both his hands near his seat. Thereafter they took the hand wash of the accused in some water which did not change its

colour. Thereafter vigilance staff brought out some money from the left side chest pocket of the accused and they seized the Attendance Register vide seizure list Ext.11. Being declared hostile and cross-examined by the prosecution, PW-4 admitted that he had not stated before the I.O. that both hand wash of the accused was taken in some water which did not change its colour. PW-5 a Junior Clerk of that office stated that the vigilance people had seized the posting order and other official documents relating to the accused vide seizure list Ext.17. In cross-examination she stated that on 24.6.08 she was present in the office. She could not say if the complainant was taking advance from the staff of Tahasil Office for supplying rice. PW-6 a Senior Clerk of that office stated that the vigilance officials seized the copy of transfer order (Ext.18) and work distribution orders (Exts.19 and 20) on production by PW-4 vide seizure list Ext.17. In cross-examination he stated that the accused used to sit in the office room where he (PW-6) was sitting at a distance of 20 cubits.

10. PW-7 the then J.E. stated that being directed by the Executive Engineer, he with PW-3 attended vigilance office, Bhubaneswar on 24.6.08 at 7 AM and they with other vigilance staff proceeded to Khurda Squad Office and reached there at 8 AM. There, the FIR lodged by the complainant was read over and as per FIR, the "Puturabohu" of the complainant had applied for mutation of a land and the complainant was looking after that affair and on 5.6.08 he met the accused who demanded illegal gratification and accepted Rs.100/- from him and told him to meet on 23rd or 24th June along with the R.I.Report and further cash of Rs.400/- stating that unless it is paid, there will be no progress in the file. The complainant supported these facts written in the FIR, produced 4 numbers of 100 rupee notes which were smeared with chemical powder, kept in a four fold paper and handed over to the complainant with instruction to hand over

the same on demand by the accused and PW-3 was selected as accompanying witness to overhear the conversation and to pass signal and a preparation report vide Ext.3 was made.

They all proceeded to the office of the accused and PW-3 and 8 went towards the office and others took their position on the Varandah. At about 12.05 PM receiving signal they went inside the office and being challenged by the DSP about acceptance of the amount, the accused first fumbled and then agreed to have accepted. Thereafter his both hand wash were taken and its colour changed to pink. Thereafter the accused brought out the tainted notes from his left side chest shirt pocket and he (PW-7) compared the numbers which tallied. PW-7 stated about seizure of the tainted money, shirt of the accused, the mutation file No.680/2008 and other articles and proved his signatures therein vide Exts.4/2 to 11/2 and 13/2 and 14/2.

In cross-examination PW-7 stated that he had met the DSP, Vigilance and had shown the written order of the Executive Engineer to him. He further stated that on their arrival inside the office they found some persons other than the staff were standing around the accused and the DSP caught hold the hands of the accused and after being challenged the accused brought out the tainted notes from his left side chest of his pocket by his right hand. Both the hands of the accused and so also his (PW-7) hands washed with solution, but not the hands of the DSP after recovery. During cross-examination PW-7 categorically denied the suggestion that when they entered inside the accused was sitting in his seat and the complainant forcibly put the tainted notes in his left side chest pocket despite the resistance of the accused. So also he denied the suggestion that he had heard the accused was saying as to why the complainant kept the tainted notes in his pocket.

11. PW-8 the informant stated that his "Puturabohu" had applied to Tahasildar, Khurda for mutation of a land and he was looking after that case. He and his daughter-in-law went to Tahasil Office on 5.6.08, met the accused who demanded Rs.100/-and he paid the same and the accused also insisted for further illegal gratification of Rs.400/- asking him to come on 23.6.08 along with Amin Report and also told that unless his demand is fulfilled, there will be no progress in the file. He informed the fact to the SP,Vigilance vide Ext.25 and he was directed by the DSP, Vigilance to attend Khurda Vigilance Office on the next day along Rs.400/-. At about 8 AM the vigilance staff and independent witnesses reached there and he narrated the brief history of the case to all of them and produced 4 numbers of 100 rupee G.C.notes and its numbers were noted and the same were smeared with chemical powder, kept in a paper and handed over to him with instruction to hand over the same to the accused and PW-3 was selected as accompanying witness with instruction to overhear the conversation and to convey signal after payment. All of them proceeded towards the office and he (PW-8) with PW-3 entered inside the office and PW-3 remained at a distance of 4 feet from the accused. After reaching near the accused he (PW-8) handed over the R.I.Report and requested to dispose of his matter but the accused demanded illegal gratification of Rs.400/- and accordingly he paid the amount and the accused counted the notes and kept it in his left side shirt pocket. PW-3 conveyed signal and the trap party members entered inside. The DSP caught hold the hands of the accused and being challenged about acceptance of notes, the accused agreed to have accepted and also told that he had kept it in his left side shirt pocket. His both hand wash in chemical solution were taken which turned to pink colour. After recovery of the notes PW-7 compared the

numbers of the notes which tallied. He proved his statement before the Magistrate vide Ext.26.

In cross-examination though PW-8 stated that the FIR was scribed as per his dictation, but he could not say the name or designation of the scribe. He stated that Rebati Bhuyan had not given anything in writing to the Tahasildar authorizing him to look after the mutation case in her absence. PW-8 stated that he knows one Sitakanta Dalei, a staff of Khurda Vigilance Office but he categorically denied the suggestion that said Sitakanta Dalei had scribed his FIR. He stated that after receipt of the notice, he with his daughter-in-law had been to Tahasil Office and the Tahasildar directed them to meet on 23.6.08 and endorsed that fact in the relevant document. In his cross-examination he denied the suggestion that he had not stated before the police or before the Magistrate that they went to the accused who demanded Rs.100/-and he paid Rs.100/- and the accused insisted for further illegal gratification of Rs.400/- and told that unless the amount is paid, there will be no progress in the file. It may be mentioned here that in his statement u/s.164 Cr.P.C. (Ext.26), there is mention that on 5.6.08 the accused had taken Rs.100/- from him and there is also mention that the accused had asked the complainant to bring Rs.400/- on 23rd/24th and the work would be done thereafter. Several contradictions were brought in the cross-examination of this witness with reference to his statement before the I.O, but those were not put to the I.O. So, the same carry no significance.

12. In his cross-examination PW-8 stated that after entry he immediately handed over the R.I.Report to the accused. He admitted that he had stated before the Magistrate that they had brought the amount on 23.5.08 (corrected as 23.6.08) when they met the SP, Vigilance. PW-8 also stated that on 19.6.08 he received the report on behalf of Rebati Bhuyan who had

authorized him to collect the same. He also admitted that he had not gone through the detection report but as per the instruction of the Vigilance people he put his signature. PW-8 categorically denied the suggestion that on the date of trap he forcibly thrust the tainted notes in the shirt pocket of the accused while the accused was busy in his official work and he also denied the suggestion that the accused had never demanded nor accepted any bribe.

13. PW-9 the then Inspector of Vigilance stated that as per direction of SP(Vigilance), a trap laying party was formed and all of them appeared in Bhubaneswar Vigilance Office and then proceeded to Khurda Squad Office and there before others the complainant briefly stated his case that the accused demanded illegal gratification of Rs.400/- to supply the mutation ROR in favour of one Rebati Bhuyan (wife of the nephew of the complainant). The complainant produced 4 numbers of 100 rupee notes and its numbers and denominations were noted, demonstration of chemical change of Phenolphthalein powder in sodium carbonate was shown. The tainted notes were smeared with Phenolphthalein powder, kept in a four fold paper and handed over to the complainant with instruction to give the same on demand of the accused. PW-3 was chosen as overhearing witness to see the transaction and convey signal. He proved the preparation report vide Ext.3.

They left their office and reached Jail Road and parked their vehicle at a distance from Tahasil Office. The complainant followed by PW-3, proceeded to Tahasil Office and after getting pre-arranged signal, he (PW-9) with others entered inside. The DSP challenged the accused regarding receipt of the tainted money and the accused though fumbled, admitted to have accepted the same. Both hand wash of the accused taken in sodium carbonate solution which changed to pink colour. Being

asked the accused brought out the tainted G.C.notes from his left side shirt pocket. PW-7 (Ashok Panda) compared its numbers which tallied. The shirt pocket wash of the accused turned to pink. PW-9 stated that the tainted notes, hand wash solution, four fold paper, personal belonging of the accused, such as, 2 numbers of 10 rupee notes, the shirt of the accused and the mutation file No.680/2008 on being produced by the accused were seized. He proved the seizure lists vide Exts.4 to 11, 13 and 14. He also stated that he handed over the case record to PW-11 on his transfer.

During cross-examination PW-9 stated that on 23.6.08 when he was present in the office, he received direction at about 4.15 PM. The complainant and the independent witnesses were present there and he directed them to come to the office on the next day. Specifically he stated that during detection when they entered inside, they found the complainant, overhearing witness, accused and two more staff were present and no outsider was present, but he had not examined the staff. PW-9 categorically admitted that he had not obtained the signature of the complainant on all the pages except the last pages of Exts.3 and 15. He denied the suggestion that when he and other members of the trap party entered inside, they heard the accused was shouting aloud to the complainant saying “MO POCKET RE KANHIKI TANKA PURAILA”. Plea of the accused u/s.313 Cr.P.C. is that an old man thrust something in his pocket and he shouted “EITA KANA, EITA KANA” (what is this) and by then that old man left the spot. Such plea indicates that the accused had no idea about the contents what that old man thrust in his pocket. If that be so, then there was no scope for the accused to challenge that old man saying as to why he had thrust money (TANKA) in his pocket. As such, the suggestion put to PW-9 is quite inconsistent with the plea of the accused

taken during his examination u/s.313 Cr.P.C. PW-9 also stated that as per his direction the accused brought out the notes from his shirt pocket and kept on the table and then the Magisterial witness was instructed to compare the numbers and denominations. Specifically PW-9 stated that after the accused brought out the cash from his shirt pocket, his hand wash was not taken in sodium carbonate solution. In para 12 of his cross-examination he stated that detection report was prepared by use of laptop and the print out was made in the office printer of Khurda Unit Office and the witnesses put their signatures in the office.

14. PW-10 the chemical examiner stated that on 5.8.08 he examined six glass bottles, marked as D, C/1, R, L, P, W and one sealed packet marked as C and the glass bottles D, C/1, L, P and W contained the pink colour solution and Ext.R contained light pink colour solution and Ext.C contained some cotton wool slightly wet and light pink colour. He proved the sample glass bottles, M.Os.-II to VII and the cotton piece M.O.-VIII. In cross-examination he stated that he has not mentioned in his C.E.Report (Ext.30) about the manner as to how he examined the samples and about the percentage of contents of Phenolphthalein ingredients in each sample.

15. PW-11 the I.O. stated that on 24.6.08 he took up investigation from PW-9 with connected papers and exhibits, examined the witnesses and on 25.6.08 forwarded the accused to Court. On 26.6.08 and 16.7.08 he prayed the Court to record the statements of the complainant and overhearing witness u/s.164 Cr.P.C. respectively and their statements were recorded on those dates. He sent the exhibits through SP, Vigilance for chemical examination and he proved the copy of requisition vide Ext.31. He also stated that on 28.12.08 he appeared before the Sanctioning Authority, produced the copies of preparation report,

detection report, FIR, seizure lists, zimanama and the copy of the seized documents, held discussion with the D.M. about the sanction and on 31.12.08 he received the sanction order Ext.1 with the forwarding letter vide Ext.2, examined the D.M. and after completion of investigation, submitted chargesheet.

In cross-examination he stated that being asked by him the complainant could not say as to who had scribed the FIR. He also stated that he had not ascertained if Rebati Bhuyan was related to the complainant or not. PW-11 stated that in the chargesheet he has mentioned that the accused was forwarded to Court on 24.6.08 which is typographical mistake. So also, the date "17.5.07" and P.S.Case No."22" mentioned in the last but one page of the chargesheet are typographical mistakes.

16. DW-1 Additional Tahasildar proved the application of Rebati Bhuyan vide Ext.A and her signature thereon vide Ext.A/1. She stated that first page of the ordersheet of the mutation case record Ext.12 and the notices Exts.12/3, B and C contain the handwriting of some peons. She admitted that the mutation case record No.680/2008 was adjourned from 5.6.08 to 23.6.08, but no order was passed by her in that case on 23.6.08. She proved her signature vide Ext.12/5. She stated that the accused had made endorsement on the reverse of the application (Ext.A) forwarding the same to the concerned R.I. vide Ext.12/7. In her cross-examination she stated that the accused was directed to deal with the mutation case records of her Court. She also stated that the R.I. had submitted his report on 19.6.08, but the same was not put up before her till 23.6.08. She further stated that the accused was the custodian of the case record along with its connected papers, but no order sheet has been written on Ext.12 on 5.6.08 or 23.6.08. Further she stated that there is no prohibition in the Mutation Manual restraining

the relation of an applicant to look after the case in his or her absence.

17. DW-2 a Peon of that Office stated that he had filled up the first page of the order sheet and after filling up the same he gave the same to the Additional Tahasildar. He also stated that Exts.B and C i.e. the notices in M.C.No.680/2008 were written by Sri Prafulla Kar. On 24.6.08 he was working in his office and the accused was working in his seat and suddenly he found that an old man was sitting near the accused and the accused was shouting "KANA PUREILU KANA PUREILU". 3 to 4 persons to whom he later knew the Vigilance officials caught hold the hands of the accused and the accused shouted "KANA KARUCHHA KANA KARUCHHA" and then he left the spot being called by the Additional Tahasildar. During cross-examination he stated that there was no office order authorizing him to write the order sheet.

18. Keeping in view the evidence on record and the plea of the accused, the crucial question which requires determination is whether the tainted money was given to the accused as bribe or it was forcibly thrust by the complainant in the shirt pocket of the accused ? To determine the same, the evidence regarding the demand, acceptance, hand wash and recovery of the tainted money needs close scrutiny. The learned counsel for the accused during course of argument submitted that no work of the complainant was pending with the accused. So, there was no scope for demanding and accepting any bribe. DW-1 stated that the accused was directed to deal with the mutation case records of her Court. PW-8 the complainant stated that the accused took Rs.100/- from him and asked him to come with further sum of Rs.400/- along with the R.I.Report or else there will be no progress in their file. The mutation file was seized from

the possession of the accused vide Ext.10. Hence, it can be safely held that work of the complainant was pending with the accused.

19. So far the demand and acceptance, PW-3 stated that the complainant gave the R.I.Report to the accused and the accused demanded for money and the complainant handed over the same and the accused accepted the same and seeing this he gave pre-arranged signal. In his cross-examination PW-3 admitted that he had not heard about the conversation between the complainant and accused till he conveyed signal. But he categorically stated that the complainant gave the tainted money to the accused in his right hand and the accused took the money with one of his hands and kept the same in his shirt pocket. PW-7 stated that being challenged by the DSP about the acceptance of the amount, the accused first fumbled and then agreed to have accepted the currency notes from the complainant. PW-8 the complainant stated in para-4 of his evidence that after reaching at the accused, he handed over the R.I.Report and requested to dispose of his matter and immediately he demanded illegal gratification of Rs.400/- and accordingly, he paid the amount and the accused counted the same and kept it in his left side chest pocket. At page-12 of his cross-examination PW-8 stated that no sooner he entered inside the room of the accused, he handed over the report along with cash to the accused. But he specifically denied the suggestion that he had forcibly thrust the tainted notes on the shirt pocket of the accused. He also denied the suggestion that the accused had never demanded nor accepted any cash from him.

20. As regards the hand wash, PW-2 at one place stated that first both hands of the accused were washed in a solution and then he brought out the money from his left side chest pocket. But during cross-examination he stated that the hand wash of the accused was taken after he brought out the

money from his pocket. PW-3 stated that after his hand wash was taken, the accused brought out the tainted money from his left side chest shirt pocket. During cross-examination PW-3 stated that after recovery of money the hand wash of the accused was not taken. PW-4 stated that hand wash of the accused was taken in some water which did not change its colour. Such version of PW-4 does not inspire confidence since he admitted to have not stated this fact to the I.O. PW-7 stated that after hand wash of the accused, he brought out the tainted notes from his left side pocket. But during cross-examination he stated that both hands of the accused, so also, his (PW-7) hand wash were taken in solution but not the hands of the DSP after recovery. PW-8 the complainant in his evidence stated that the DSP caught hold the hands of the accused and being challenged the accused agreed to have accepted the notes and also told to have kept the same in his shirt pocket. Both hand wash of the accused was taken in chemical solution which turned to pink. PW-9 in his cross-examination specifically stated that after the accused brought out the cash from his shirt pocket, his hands were not put to wash with sodium carbonate solution. He also specifically denied the suggestion that hand wash of the accused was taken after he brought out the cash from his pocket. It is significant to note that during examination u/s.313 Cr.P.C., while answering Question Nos.3, 12 and 25 the accused specifically stated that first he brought out the money and thereafter his hand wash was taken. But while answering Question Nos.36 and 45, he denied that his hand wash was taken and it turned to pink. Hand wash of a person in sodium carbonate solution turning to pink colour is a circumstance to indicate that he had handled the tainted money quoted with Phenolphthalein powder.

21. So far the recovery of the money, PW-2 stated in his evidence that the accused brought out the money from his

pocket. PW-3 stated that the accused admitted to have accepted the money and he brought out the tainted money from his pocket. PW-4 has stated that the vigilance people brought out some money from left side chest pocket of the accused. PW-7 has stated that the accused brought out the money from his shirt pocket. PW-8 stated that on demand of the accused, he paid Rs.400/- and the accused counted the notes and kept in his shirt pocket. As discussed above, Pws-2,3,7,8 and 9 have categorically stated about the seizure of tainted money from the accused. The detection report and the seizure lists lend additional corroboration to their version as regards the seizure of the tainted money. Keeping such evidence in view, I am inclined to hold that seizure of the tainted money from the possession of the accused stands amply proved.

22. At this juncture, the evidence on record relating to forcible thrusting of the money as pleaded by the accused needs consideration. PW-2 who was working near the accused stated that 5 to 6 other clerks and some outsiders were present in the office room, but none of them has been examined by the accused to substantiate the plea of forcible thrusting. Even no suggestion was put to PW-2 about forcible thrusting of money. So also, no suggestion about thrusting of money was put to the accompanying witness PW-3. Rather, it was suggested to him that the complainant had never given any money to the accused and the accused had not taken any money from the complainant. Moreover, no suggestion of forcible thrusting was put to Pws-4, 5 and 6. As discussed above, PW-7 was suggested about forcible thrusting of money by the complainant in the pocket of the accused, but PW-7 denied such suggestion. PW-8 the complainant also denied the suggestion that he forcibly thrust the tainted notes in the shirt pocket of the accused. It was suggested to PW-9 that when he and other trap party members

entered inside, they heard the accused was saying aloud to the complainant saying “MO POCKET RE KANHIKI TANKA PURAILA”, but he also denied such suggestion.

23. On the other hand, DW-2 Peon stated that by the time of occurrence while he was working in the office, suddenly he found that an old man was sitting near the accused and the accused was shouting “KANA PUREILU KANA PUREILU” and also he stated that when the vigilance people caught the accused, he shouted “KANA KARUCHHA KANA KARUCHHA”. He further stated that he left the spot being called by the Additional Tahasildar. DW-1 Additional Tahasildar has not stated anything if she had called PW-2 on that day. If DW-2 heard the above talks of the accused, then why the other staff Pws-2, 4 and 6 who were working in the same room, could not hear such talks. Apart from that, in such circumstance, DW-2 who heard the accused shouting so, in usual course he should have informed the matter to the other staff present there but should not have left the spot immediately. Likewise, if the notes were forcibly thrust in his pocket by the complainant, then in usual course the accused should have brought out the money and thrown away. It is significant to note that during his examination u/s.313 Cr.P.C., the accused had taken a plea that an old man thrust something in his pocket and he (accused) shouted as to what is this and that old man fled away. DW-2 has stated that an old man was sitting near the accused and the accused was shouting. DW-2 has not stated that the old man had left the spot. Pws-3, 7, 8 and 9 stated that when they entered inside the office, the complainant was there near the accused. PW-4 also stated that after the occurrence he saw the complainant was sitting inside the office room. As such, the version of PW-4 is not in consonance with the plea of the accused. As discussed above in para 13, the plea of the accused taken u/s.313 Cr.P.C. is also not in

consonance with the suggestion put to PW-9. For the aforesaid discussion, the plea of the accused that the complainant had forcibly thrust the tainted money in his shirt pocket is not acceptable.

24. The learned defence counsel during course of argument submitted that there is no signature of the complainant on the formal FIR showing that he had received one copy thereof. So, the FIR is manipulated and the requisition of the SP for procuring independent witnesses has not been proved and for these reasons the prosecution case should be discarded. Both Pws-3 and 7 have stated that as per the direction of their Executive Engineer, they attended the vigilance office on 24.6.08. PW-8 also stated that after lodging of FIR, the DSP asked him to appear on the next day and accordingly he appeared along with Rs.400/-. PW-9 has stated that on 23.6.08 on the report of the complainant, the SP directed the OIC to register a case and directed him (PW-9) to lay a trap and directed PW-11 to investigate into. In cross-examination he stated that on 23.6.08 at 4.15 PM he received direction of the SP and also received a copy of the FIR through the OIC, Vigilance and the complainant was present there. Of course, the requisition of the SP for procuring the independent witnesses has not been proved. But Ext.25 FIR shows that it was received by the SP on 23.6.08 at 4 PM and as per the direction of the SP, a case was registered on that day at 4.10 PM and a formal FIR Ext.25/5 was drawn on that day. I do not find any conceivable reason as to why the Senior Responsible Officers, like SP and Inspectors of Vigilance would make false endorsements or would manipulate the FIR particularly when there is no proved enmity in between the accused and themselves. Likewise, I also found no reason as to why the Vigilance Officers and the independent witnesses like Pws-3 and 7 would depose falsehood implicating the accused with the alleged offences.

Therefore, for non-proving of the above requisition and for want of signature of the complainant on the formal FIR, the prosecution case cannot be thrown away.

25. Learned counsel for the accused during course of argument contended that for non-examination of the witness- Rebati Bhuyan, DSP(Vigilance), Sitakant Dalei, so also, R.I., Golabai, adverse inference should be drawn against prosecution. So far, non-examination of Rebati Bhuyan, she was not cited as a C.S. witness, but she was summoned as a D.W. But on 24.2.14 the accused filed one memo declining to examine her. So far, non-examination of Sitakant Dalei, he was also not cited as a chargesheeted witness and PW-8 in his evidence categorically stated that Sitakant Dalei had not written the FIR. As regards non-examination of DSP, Pws-3, 7, 8, 9 and 11 have categorically stated about pre-trap and post-trap arrangements. Their evidence has been discussed in detail here-in-before. No ground has been made out by the accused as to in what way he is prejudiced for non-examination of the DSP. For the reason best known, the accused had not even prayed to examine the DSP as defence witness. Likewise, so far non-examination of R.I., Golabai, there is nothing on record to show his involvement regarding any demand or acceptance of bribe by the accused from the complainant. Therefore, for non-examination of these witnesses, no adverse inference can be drawn against the prosecution.

26. The learned counsel for the accused during course of argument placing reliance on a decision of the Hon'ble Apex Court reported in **AIR 2007 Supreme Court 489, V.Venkat Subharao-Vrs.-State represented by Inspector of Police, A.P.** submitted that in absence of proof of demand, presumption u/s.20 of the P.C.Act cannot be raised. With profound respect to the authority, it is seen that the facts of this case are distinguishable from the facts of the present case. In that case,

number of illegalities were found in the trap proceeding. There was interpolation in the post trap Panchanama. The witness did not know the village of the accused and the suspected persons and above all, only the fingers of the right hand of the accused deeped in the sodium carbonate solution rendered positive result though the allegation was that the appellant counted the tainted money with both of his hands. But, here PW-8 in his FIR, so also, in his evidence before the Court stated that on 5.6.08 the accused made initial demand of Rs.100/- and he paid the same to him and also the accused insisted for further illegal gratification of Rs.400/- or else, there will be no progress in his file. Likewise, as regards the demand on the date of trap, he stated that after he gave the R.I.Report to the accused, immediately he demanded illegal gratification of Rs.400/-. His version in cross-examination that he handed over the report to the accused along with the cash no sooner he entered inside the room of the accused, cannot be equated with the fact that there was no demand. It may be reiterated here that the complainant had categorically denied the suggestion that the accused had never demanded any cash from him. It is not the case of the accused that he had received the money from PW-8 in some other connection, such as, towards repayment of any loan or towards any government dues etc. But his plea is that the money was forcibly thrust in his pocket. PW-3 accompanying witness stated in his examination in chief that the accused demanded money and the complainant handed over the same to the accused. He stated that he had not heard the conversation between the complainant and the accused. But during his cross-examination he has categorically stated that the complainant gave the tainted money to the accused and he took the same and kept in the shirt pocket. Being distinguishable on facts, the aforesaid decision is not helpful to the accused.

Law is 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**).

27. The learned counsel for the accused placed on a decision of our own Hon'ble High Court reported in **2003(II) OLR 399, Niranjana Bharati-Vrs.-State of Orissa** and submitted that no work of the complainant was pending with the accused. So, there was no motive on the part of the accused to make any demand. With profound respect to the authority, I found that the facts of this case are distinguishable from the facts of the present case. In that case, by the time trap was laid, the application for loan from GPF had already been sent to the Treasury and leave salary had already been paid to the complainant. But, here the mutation case filed by “Puturabohu” of the complainant was pending with the accused and it was seized from his possession. The complainant(PW-8) was looking after the same. Evidence of DW-1 shows that this accused was dealing with that case and had made some endorsement on the reverse of the mutation application (Ext.A) vide Ext.12/7. It is also seen that no order was passed in that mutation case record on 5.6.08 and 23.6.08. Keeping these facts and circumstances in view, it can be safely held that the work of “Puturabohu” of the complainant was pending with the accused. So, this decision is not helpful to the accused.

28. Learned defence counsel placing reliance on a decision of the Hon'ble Apex Court reported in **AIR 1994 Supreme Court 1538, Babu Lal Bajpai-Vrs.-State of U.P.**

submitted that the complainant had thrust the money in the pocket of the accused inspite of his resistance and the accused had no motive for demanding and accepting the money. So, the prosecution case should be discarded. With profound respect to the authority, it is seen that the facts of this case are quite distinguishable from the facts of the present case. Therein, the only independent witness i.e. the Executive Magistrate did not support the prosecution case on most material points i.e. actual acceptance of the money by the accused. That apart, therein the defence plea was that the complainant tried to thrust the money in his pocket and the accused had resisted that attempt and thrown down the money on the floor. The adjacent shopkeeper supported such version of the accused. But, here the complainant and overbearing witness have supported the prosecution case on material points i.e. demand and acceptance of the money and pre-trap and post-trap happenings. The plea of the accused regarding forcible thrusting of money has not been substantiated with the materials on record and the said plea has been held as non-acceptable. So, the above decision is not helpful to the accused.

29. The learned counsel for the accused further relied upon a decision of the Hon'ble Apex Court reported in **2002 CRL.L.J. 2787, Subash Parbat Sonvane-Vrs.-State of Gujarat** and submitted that in absence of evidence regarding demand, mere recovery of money is not sufficient to convict the accused. With profound respect to the authority, I found that the facts of the said case are quite distinguishable from the facts of the present case. In that case, the complainant had not supported the prosecution case on the main ingredients of demand and acceptance and was treated hostile. Panch witness had also not stated that the accused demanded any amount from the complainant. But in the instant case as discussed hereinbefore, there is sufficient evidence

regarding demand and acceptance of the bribe money by the accused from the complainant. So, this decision is not helpful to the accused.

30. The learned counsel for the accused placed reliance on a decision of our own Hon'ble High Court reported in **1989, Criminal Law Journal, 224, B.A. Kameswar Rao-Vrs.-State of Orissa** and submitted that there is no evidence on record to show as to what materials were placed before the Sanctioning Authority by the time of according sanction. Here, PW-1 categorically stated that he discussed the matter with the I.O., perused all the relevant papers and documents produced before him by the I.O. and being satisfied and after application of mind, he accorded sanction. PW-11 stated that he appeared before the Sanctioning Authority, produced the copies of preparation report, detection report, FIR, seizure list, zimanama and copies of the seized documents and held discussion with the D.M.(Collector). But in the case cited by the learned defence counsel, prosecution evidence was practically nil to prove what materials had been placed before the Sanctioning Authority before he accorded sanction. So, the facts of that case are distinguishable from the facts of the present case and the same is not helpful to accused and the sanction cannot be held as invalid.

31. The learned Special P.P. placing reliance on a decision reported in **AIR 1982, Supreme Court 1511, Kisan Chand Mangal-Vrs.-State of Rajasthan** submitted that direct testimony of Pws-3 and 8 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 a case, forming of a trap party, visit of the trap party members including the independent witnesses and the complainant to the office of the accused and detection of the case coupled with seizure of the tainted money, case record, hand

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.

32. Learned Special P.P. further placing reliance on a decision of the Hon'ble Apex Court reported in **AIR 2004, Supreme Court, 1242, T.Sankar Prasad-Vrs.-State of A.P.** submitted that when the tainted money was recovered from the pocket of the accused, a presumption u/s.20 of the Act is obligatory. The presumption is a rebuttable presumption and it is by proof and not by explanation which may seem to be plausible.

33. The learned counsel for the accused further contended that there are some discrepancies in the evidence of the witnesses as regards the time of their arrival in the Vigilance Office, sequence of hand wash. So, the prosecution case should be discarded. Of course, there are some minor discrepancies in the evidence of the witnesses. Law is well settled that when the witnesses depose in the Court after long lapse of time, naturally there would be some minor discrepancies. Law is 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*).

34. From the aforesaid discussion of evidence of Pws-3,7,8, and 9, it emerges that the accused had demanded and accepted bribe of Rs.400/- from the complainant for processing the mutation file. Their evidence has remained substantially unshaken. The FIR, Preparation Report, Detection Report and seizure of the tainted money and the mutation case record which are contemporaneous documents just before and after detection

lend sufficient corroboration to their version. Nothing is brought out to record to disbelieve them or to discard 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 hereinbefore, the plea of the accused that the complainant had forcibly thrust the money in his pocket is unbelievable and not acceptable. Hence, the only irresistible conclusion is that he had accepted the tainted money of Rs.400/- as illegal gratification for processing the mutation file (Ext.12) filed by the "Puturabohu" of the complainant.

35. Therefore, after considering the evidence on record and keeping in view the position of law as cited above and when the accused has failed to rebut the statutory presumption u/s.20 of the P.C.Act, I am inclined to hold that the prosecution has been able to prove the charges that the accused being a public servant demanded bribe of Rs.400/- from the complainant and accepted the same on 24.6.08 for processing the mutation record filed by the "Puturabohu" of the complainant for issuance of ROR and as such, he obtained pecuniary advantage by corrupt or illegal means and abusing his position as 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 him the benefit of Probation of Offenders Act.

Special Judge(Vigilance),
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 25th day of March, 2014.

Special Judge(Vigilance),
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 by the convict that he is a Government servant and he has no criminal antecedent and he is the only earning member of his family and on these grounds 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.2000/- (Rupees two thousand) in default to undergo R.I. for two 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.1000/- (Rupees one thousand) in default to undergo R.I. for one month 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.400/- (M.O.-IX) be returned to the complainant (PW-8) 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.400/- (M.O.-IX) be confiscated to the State. The seized shirt (M.O.-I), sample bottles (M.Os. II to VII) and seized cotton (M.O.-VIII) be destroyed. Order regarding disposal of the property shall take effect four months after expiry of the appeal

period if no appeal is preferred and in case of appeal, the same shall be dealt as per the order of the Appellate Court.

Special Judge(Vigilance),
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 25th day of March, 2014.

Special Judge(Vigilance),
Bhubaneswar.

List of witnesses examined for the prosecution :

P.W.1	Narayan Chandra Jena.
P.W.2	Prafulla Kumar Kar.
P.W.3	Paramananda Behera.
P.W.4	Govinda Chandra Sethi.
P.W.5	Smt.Rita Behera.
P.W.6	Kishore Chandra Mohapatra.
P.W.7	Ashok Kumar Panda.
P.W.8	Prahallad Bhuyan.
P.W.9	Ashok Kumar Mohanty.
P.W.10	Pradip Kumar Samantaray.
P.W.11	K.Benugopal Acharya.

List of witnesses examined for the defence :-

D.W.1	Elora Samal.
D.W.2	Khageswar Nayak.

List of exhibits marked for the prosecution :-

Ext.1	Sanction order.
Ext.1/1	Signature of PW-1 on Ext.1.
Ext.2	Letter No.2663, dt.30.12.08.
Ext.2/1	Signature of PW-1 on Ext.2.
Ext.3	Preparation Report.
Ext.3/1	Signature of PW-3 on Ext.3.
Ext.4	Seizure list.
Ext.4/1	Signature of PW-3 on Ext.4.
Ext.5	Seizure list.
Ext.5/1	Signature of PW-3 on Ext.5.
Ext.6	Seizure list.
Ext.6/1	Signature of PW-3 on Ext.6.
Ext.7	Seizure list.
Ext.7/1	Signature of PW-3 on Ext.7.
Ext.8	Seizure list.

Ext.8/1	Signature of PW-3 on Ext.8.
Ext.9	Seizure list.
Ext.9/1	Signature of PW-3 on Ext.9.
Ext.10	Seizure list.
Ext.10/1	Signature of PW-3 on Ext.10.
Ext.11	Seizure list.
Ext.11/1	Signature of PW-3 on Ext.11.
Ext.12	Original Mutation Record.
Ext.13	Seizure list.
Ext.13/1	Signature of PW-3 on Ext.13.
Ext.14	Seizure list.
Ext.14/1	Signature of PW-3 on Ext.14.
Ext.15	Detection Report.
Ext.15/1	Signature of PW-3 on Ext.15.
Ext.16	Seized Attendance Register.
Ext.16/1	Entry at Sl.No.10 in respect of accused H. Swain.
Ext.11/2	Signature of PW-4 in Ext.11.
Ext.17	Seizure list.
Ext.17/1	Signature of PW-5 in Ext.17.
Ext.17/2	Signature of PW-6 on Ext.17.
Ext.18	Attested true copy of Transfer Order.
Ext.18/1	Signature of S.C.Ray on Ext.18.
Ext.19	Copy of order of work d the istribution.
Ext.19/1	Signature of Tahasildar G.N.Das on Ext.19.
Ext.20	Copy of the work distribution order, dt.16.9.07.
Ext.20/1	Signature of Addl. Tahasildar Smt. E.Samal on Ext.20.
Ext.21	Attested copy of order,dt.19.6.07.
Ext.21/1	Signature of Addl. Tahasildar Smt.E.Samal on Ext.21.
Ext.3/2	Signature of PW-7 on Ext.3.
Ext.15/2	Signature of PW-7 on Ext.15.
Ext.4/2	Signature of PW-7 on Ext.4.
Ext.5/2	Signature of PW-7 on Ext.5.
Ext.6/2	Signature of PW-7 on Ext.6.
Ext.7/2	Signature of PW-7 on Ext.7.
Ext.8/2	Signature of PW-7 on Ext.8.
Ext.9/2	Signature of PW-7 on Ext.9.
Ext.10/2	Signature of PW-7 on Ext.10.
Ext.11/3	Signature of PW-7 on Ext.11.
Ext.13/2	Signature of PW-7 on Ext.13.
Ext.14/2	Signature of PW-7 on Ext.14.
Ext.22	Copy of the Preparation Report.
Ext.22/1	Certificate with signature of PW-7 on Ext.22.
Ext.23	Four fold paper.
Ext.23/1	Signature of PW-7 on Ext.23.
Ext.24	Facsimile Impression.

Ext.24/1	Signature of PW-7 on Ext.24.
Ext.25	Report of PW-8 (Written FIR).
Ext.25/1	Signature of PW-8 on Ext.25.
Ext.15/3	Signature of PW-8 on Ext.15.
Ext.14/3	Signature of PW-8 on Ext.14.
Ext.26	Statement of PW-8 (164 Cr.P.C.).
Ext.26/1	Signature of PW-8 on Ext.26.
Ext.3/3	Signature of PW-8 on Ext.3.
Ext.23/2	Signature of PW-8 on Ext.23.
Ext.12/1	Hazira filed by Rebati Bhuyan in M.C.No.680/08.
Ext.12/2	Hazira of Rebati Bhuyan.
Ext.12/3	Notice.
Ext.12/4	Signature of Rebati on Ext.12/3.
Ext.25/2	Endorsement of S.P.Vigilance.
Ext.25/3	Signature of S.P.Vigilance.
Ext.25/4	Endorsement of OIC,Vigilance P.S.
Ext.25/5	Formal FIR.
Ext.25/6	Signature of D.D.Seth.
Ext.3/4	Signature of PW-9 on Ext.3.
Ext.15/4	Signature of PW-9 on Ext.15.
Ext.15/5	Signature of accused.
Ext.4/3	Signature of PW-9 on Ext.4.
Ext.5/3	Signature of PW-9 on Ext.5.
Ext.6/3	Signature of PW-9 on Ext.6.
Ext.7/3	Signature of PW-9 on Ext.7.
Ext.8/3	Signature of PW-9 on Ext.8.
Ext.9/3	Signature of PW-9 on Ext.9.
Ext.10/3	Signature of PW-9 on Ext.10.
Ext.11/3	Signature of PW-9 on Ext.11.
Ext.13/3	Signature of PW-9 on Ext.13.
Ext.14/3	Signature of PW-9 in Ext.14.
Ext.27	Zimanama.
Ext.27/1	Signature of PW-9 in Ext.27.
Ext.28	Zimanama executed in favour of accused.
Ext.28/1	Signature of PW-9 in Ext.28.
Ext.29	Spot Map.
Ext.29/1	Signature of PW-9 in Ext.29.
Ext.30	Chemical Examination Report.
Ext.30/1	Signature of PW-10 on Ext.30.
Ext.17/3	Signature of PW-11 on Ext.17.
Ext.31	Carbon copy of requisition.
Ext.31/1	Signature of PW-11 on Ext.31.
Ext.32	Seizure list, dt.3.12.08 on production.
Ext.32/1	Signature of PW-11 on Ext.32.
Ext.12/5	Xerox copy of the said sale deed containing six sheets.
Ext.12/6	Signature of DW-1 on Ext.12/5 on the first page.

Ext.12/7 Endorsement of accused.
Ext.12/8 Signature of DW-1 on Ext.12/7.
Ext.12/9 Endorsement of DW-1 on the reverse side of
Ext.A.
Ext.12/10 Report,dt.19.6.08 of R.I.,Golabai.

List of exhibits marked for the defence :-

Ext. A Application of Rebati Bhuyan.
Ext. A/1 Signature of DW-1 on Ext.A on dt.6.5.08.
Ext. B General Notice in Mutation Case No.680/08 signed
by DW-1.
Ext. C Notice issued to Bhikari Mohanty in said case
signed by DW-1.

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

M.O.-I Seized Shirt.
M.Os.II to VII Six nos. of glass bottles.
M.O.VIII Seized cotton.
M.O.IX Tainted money(Packet).

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

Nil.

Special Judge(Vigilance),
Bhubaneswar.

