

signing the work order the Sarpancha sent the same to the accused who was the Secretary of Rajas G.P. The accused demanded 20% of the work as bribe to give the work order and later reduced the demand to Rs.1500/- and asked him to pay the same on 19.1.04 at about 1 PM at Balipatna Block Office or else to cancel the work order. The complainant lodged FIR with SP, Vigilance narrating these facts basing on which a case was registered and a trap proceeding was held. During preparation the complainant before the trap party members stated about the FIR story and produced 3 numbers of 500 rupee G.C.Notes and its numbers were noted and the same were treated with Phenolphthalein powder and given to the complainant to give the same to the accused on demand. The trap party went to the Block Office and there being asked by the complainant to give the work order, the accused told to give the same at Rajas G.P. Office and he went to the G.P. Office followed by the trap party members. There being asked by the accused the complainant handed over the tainted money and the accompanying witness gave signal and the raid party reached there, recovered the tainted money from the pant pocket of the accused. Hand wash and pant pocket wash of the accused in sodium carbonate solution turned to pink colour. The tainted money, work order file, sealed sample solution bottles and other connected papers were seized and the accused was arrested and the C.E.Report and Sanction Order were obtained and after completion of investigation, charge-sheet was submitted against the accused resulting this trial.

3. The defence plea is that on 5.12.03 one work order was issued in his name and on 12.1.04 the Sarpanch, in the Palli Sabha passed another work order in the name of the complainant without cancelling the earlier one and when he informed that fact to Sarpancha and BDO, the complainant got angry and has foisted a false case against him. His further plea is that the

complainant had taken a loan of Rs.1500/- from him and returned the same on the date of occurrence and he (accused) has neither demanded nor accepted any bribe.

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

5. Points for determination in this case are :-

(i) Whether on 19.1.2004 the accused while functioning as Secretary, Rajas Grama Panchayat by corrupt and illegal means or otherwise abusing his position as a public servant obtained for himself pecuniary advantage of Rs.1500/- from the complainant to issue work order regarding construction of concrete road ?

(ii) Whether on the aforesaid date the accused being a public servant accepted of Rs.1,500/- as gratification for himself other than legal remuneration as a motive or reward from the complainant to issue work order regarding construction of concrete road ?

6. Both points are taken up together. PW-1 the then OIC of Vigilance Division stated that being directed by the SP, he registered the case basing on the FIR vide Ext.2. PW-2 the then Sarpancha stated that on 9.6.04 the accused was working as Secretary of Rajas GP and she was competent to remove him from service. The Vigilance Department had moved her to accord sanction for prosecution of the accused and she verified the records and documents produced before her by the Vigilance Authority and after scrutinizing the same, she accorded sanction for prosecution vide sanction order Ext.3 and she proved her signature Ext.3/1. She proved the Order No.3 in the case record vide Ext.4 and the work order Ext.5 with her signature Ext.5/1. In cross-examination she admitted that she had not put any date in Ext.4 when it was passed. She stated that without referring to the file she cannot say if she had signed and approved the work order and sent the same to the BDO who had also approved and signed

it and also she could not say if fresh work order was issued without cancelling the work order.

7. PW-3 stated that on 19.1.04 during preparation before the trap party members the complainant disclosed that the accused was demanding Rs.2000/- from him to issue work order and after negotiation the amount was fixed at Rs.1500/- which was to be paid on that date. So saying the complainant produced 3 numbers of 500 rupee G.C.Notes and its numbers were noted and the notes were treated with some powder, kept in a four fold paper and given to the complainant with instruction to give the same to the accused on demand and he(PW-3) was instructed to accompany the complainant and to see the transaction and to give signal. He proved the preparation report Ext.6. They went to Balipatna Block Office, reached there at 3 PM and he (PW-3) with the complainant proceeded to the Block Office where the complainant asked the accused for the work order, but the accused told to give the work order to him at Rajas Grama Panchayat Office. At about 3.40 PM they proceeded to Rajas GP Office and himself and the complainant proceeded to the Panchayat Office. In the office the accused asked the complainant if he had brought the money and at this the complainant handed over the tainted money to the accused. The accused received the money, counted the same and kept it in his right side back pant pocket and seeing this, he gave signal to the vigilance staff waiting outside and they rushed to the spot and charged the accused that he had received bribe from the complainant and the accused admitted to have taken the bribe. Thereafter the accused brought out the tainted money from his pant pocket and gave the same to PW-5 who compared the numbers with the numbers noted in the copy of preparation report which tallied. Both hand wash and pant pocket wash of the accused were taken separately which turned to pink colour. The pant of the accused, copy of

preparation report, hand wash bottles, tainted money, some personal cash of the accused and the work order were seized and a detection report was prepared vide Ext.7. PW-3 proved the seizure lists vide Exts.8 to 14 and the hand wash bottles M.Os.-I to VI.

8. In the cross-examination he stated that in the Panchayat Office he had not heard the conversation between the complainant and accused in detail. But he categorically stated that after seeing the transaction he came to office verandah and gave signal and other trap party members came there. He denied the suggestion that the accused explained that 8 days prior to the occurrence the complainant had taken Rs.1500/- from him as loan and returned the same on that day. It was suggested to PW-3 that when the complainant met the accused at Balipatna Block Office, he asked the complainant to refund his loan money as he had assured to refund the loan within 7 days and the complainant told the accused that he would refund the money at Rajas G.P. PW-3 denied such suggestion. The evidence of P.Ws.3 and 6 coupled with such suggestion of the accused goes to show that he was present in the Balipatna Block Office and had met PW-6 (complainant) there. PW-3 also denied the suggestion that the accused had told that first it was decided to do the construction work by the Secretary, GP and then Sarpancha being politically influenced, entrusted the said work to the complainant without cancelling the first work order and for that the complainant reported before BDO. So being aggrieved the complainant filed this case on false allegations. PW-3 stated that he had not given statement before the Vigilance Police in connection with this case and for the first time he was deposing in the Court. He also denied the suggestion that the trap party members had intentionally not recorded the explanation given by the accused.

9. PW-4 the then BDO of Balipatna Block stated that a sum of Rs.2,49,000/- was sanctioned for construction of road work and as per decision of Palli Sabha the work was entrusted to one Ali and the Sarpancha had issued the work order. He denied his knowledge if on 4.12.03 the Sarpancha had passed order to execute the work departmentally through the accused and the BDO had approved such proposal. He denied his knowledge if without cancelling the previous order, the Sarpancha illegally conveyed a Palli Sabha and as per decision of the Palli Sabha she issued work order in favour of the complainant.

10. PW-5 stated that he had attended vigilance office on 19.1.04 where the complainant before other staff stated that the accused was demanding Rs.1500/- from him as bribe to issue work order for construction of a road work and saying so he gave 3 numbers of 500 rupee G.C.Notes to him(PW-5) and he noted down its numbers and the notes were smeared with some powder, kept in a white paper and given to the complainant with instruction to give the same to the accused on demand. PW-3 was instructed to accompany the complainant to overhear the conversation and to see the transaction and to give signal. A preparation report Ext.6 was prepared and a copy thereof was given to him. Thereafter, they went to Baliapatna Block and the complainant and PW-3 went to the accused and after 10 to 20 minutes they returned and told that the accused had told them that he had not put the despatch number in the work order and despatch register was available in the Panchayat Office and he told them to go there to give the work order. Then the accused went to Panchayat Office and the complainant and PW-3 followed him and others followed them. The complainant and PW-3 went inside Panchayat Office to meet the accused. At about 4.20 PM getting signal from PW-3 the trap party rushed into the office and being asked about taking of bribe from the

complainant, the accused initially denied and subsequently admitted to have accepted the bribe. Both hand wash of the accused was taken separately in a solution which turned to pink. Being asked the accused brought out the money from his right side back pant pocket and he(PW-5) compared the numbers with the numbers noted in the copy of the preparation report which tallied. The work order file, tainted money, hand wash bottles, pant of the accused and the Despatch Register were seized and a detection report vide Ext.7 was prepared. He proved the seizure lists vide Exts.8 to 12 and 14 to 16. He also proved the tainted money vide M.O.-VII and seized pant of the accused vide M.O.-VIII.

In cross-examination, PW-5 stated that the Sarpanch had signed the work order, but he could not say on which date the Sarpanch had given the work order to the accused to issue the same to the complainant. PW-5 stated that even after completion of trap, the vigilance people had not recorded his statement. PW-5 stated that except P.Ws.3 and 6 none else was present in the office of the accused and first he received indication from Abhilash (PW-3) and thereafter they all went inside the room of the accused. During cross-examination PW-5 stated that before preparation of the detection report the accused had told the DSP that the complainant had borrowed money from him and had returned the same. But due to long lapse of time he does not remember if such version of the accused was mentioned in the detection report. PW-5 stated that he cannot say if the accused had not demanded and accepted any bribe from the complainant as alleged. Obviously, PW-5 is not an eye witness to the transaction of demand and acceptance of the bribe amount, but he reached at the spot after getting signal.

11. PW-6 the informant stated that on 12.1.04 in Palli Sabha Meeting his name was recommended for execution of a

concrete road work worth Rs.2,49,000/- and the Sarpanch recommended the same and gave that letter to the accused and on 13.1.04 when he approached the accused for the work order, he demanded 20% as bribe. But he expressed his inability to pay such amount. On 14.1.04 the accused called him and insisted to pay Rs.2,000/- to give the work order, but he came back saying that he had no money. On 18.1.04 the accused again called him, reduced the demand to Rs.1,500/- and asked to pay the same at Balipatna Block on the next day. He reported the matter to the SP, Vigilance vide Ext.2 and on 19.1.04 during preparation in the vigilance office he narrated the incident before others, produced 3 numbers of 500 rupee G.C.Notes whose numbers were noted and some powder was applied to the notes, kept in a white paper and given to him with instruction to hand over the same to the accused on demand.

PW-6 further stated that PW-3 was selected as accompanying witness. They all proceeded to Balipatna Block at 3 PM and he with PW-3 went to the accused and he asked the accused about his work order. But the accused told him to go to Panchayat Office saying that he had not entered number of the order in the register. The accused went to GP Office and PWs.3 and 6 followed him and reached at the GP Office, went near the accused. The accused made some entry in the register and asked him to give the bribe amount and to sign on the register. He gave the tainted money of Rs.1,500/- to the accused who gave the work order to him and he signed on the register being asked by the accused. The accused took the money, kept the same in his right side pant pocket. Immediately vigilance raid party came there and challenged the accused if he had taken the money from the complainant and he agreed. They took both hand wash of the accused in a solution separately which turned to pink colour. Being asked by the vigilance people, the accused brought out the

money, gave the same to the official witness who verified the numbers with the previously noted numbers which tallied. Wash of the pant pocket of the accused was taken which turned to pink colour. PW-6 proved the work order Ext.5 and the Detection Report Ext.7 and stated that the vigilance people seized the tainted money, the bottles, the white paper, the work order and other connected papers.

12. During cross-examination, PW-6 categorically denied the suggestion that he had not stated to the IO that being challenged by vigilance people about receipt of money from him the accused agreed and that the official witness verified the numbers of the notes and the same tallied, that the pant pocket wash of the accused was taken which turned to pink, that the accused brought out the money and gave to vigilance people and that the tainted money, four fold white paper and sample bottles were seized.

In cross-examination PW-6 stated that he had not known the accused before January,2004 and he had not reported to the Sarpanch or BDO alleging about demand of bribe by the accused. He categorically denied the suggestion that 8 days before the occurrence he had taken a loan of Rs.1,500/- from the accused and returned that loan amount on the alleged date of occurrence. PW-6 admitted that after recovery of the tainted money, the accused had told to vigilance people that he(PW-6) had taken loan of Rs.1,500/- from him. He denied the suggestion that the accused had not demanded 20% or Rs.2,000/- or Rs.1,500/- as bribe from him on 13th, 14th and 18th of January,2004 respectively.

13. PW-7 stated that being directed by the SP, Vigilance, he formed a trap party including PWs-3 and 5 and before them the complainant narrated that a concrete road work was allotted to him as per Palli Sabha Meeting, dt.12.1.04 his

name was recommended and the Sarpanch signed the work order and it was given to the accused. But to give the work order the accused demanded 20% of the cost of work as bribe and then reduced the amount to Rs.1,500/- to be paid on 19.1.04 or else his work order will be cancelled. PW-7 further stated that the complainant produced 3 numbers of 500 rupee G.C.Notes and they noted down its numbers. PW-3 was selected as accompanying witness and there was demonstration showing reaction of Phenolphthalein powder in sodium carbonate solution and the notes were smeared with Phenolphthalein powder, kept in a four fold paper and given to the complainant to give that amount to the accused on demand. The preparation report Ext.6 was made and a copy thereof was given to PW-6.

They went to Balaipatna Block and reached there at 3 PM and the complainant with accompanying witness went to meet the accused and after sometime the complainant came out and told that the accused had asked him to go to GP Office, so that the work order will be given to him putting the Despatch Number as the Despatch Register was not available with him. The accused had left the Block Office for GP Office. They all went there and the complainant with accompanying witness proceeded to meet the accused. At about 4.20 PM getting pre-arranged signal from the overhearing witness, they rushed to the office of the accused, found him sitting in a chair and the complainant was standing in his front and the overhearing witness was near the door. Both of them told that on demand of the accused, the complainant paid the money and the accused received the same and kept in his right side back pant pocket. They also told that after receiving the money the accused had handed over the work order to the complainant and the complainant had signed on the register. PW-7 further stated that being asked about taking of bribe, the accused agreed that he had taken the bribe and given

the work order. Both hand wash of the accused were taken separately in sodium carbonate solution which turned to pink colour and being asked the accused brought out the tainted notes from his pocket and its numbers were compared by PW-5 which tallied. After recovery of the notes, again both hand wash of the accused were taken which turned to pink. The back side pant pocket of the accused was taken in sodium carbonate solution and it turned to pink. PW-7 stated that he seized the wash bottles, tainted notes, four fold paper, copy of the preparation report, work order, full pant, file of GP and Despatch Register vide seizure lists Exts.8 to 16. He proved the Detection Report Ext.7 and the Despatch Register Ext.17. He further stated that after detection on the same day he examined the complainant(PW-6) and P.Ws.3 and 5 and thereafter handed over the charge of investigation with connected documents to PW-8 at the spot.

14. In cross-examination PW-7 stated that he had not asked the complainant as to how he obtained the copies of Palli Sabha Resolution and letter of BDO enclosed to the FIR. He also stated that he had not seized requisition of SP sent for procurement of official witnesses nor had seized the order of their authorities, but he had seen the same. PW-7 further stated that the complainant told him that the accused asked him to go to GP Office and saying so he had left the Block Office. But he(PW-7) had not enquired from his source if there was any such conversation between them. He also admitted that he had not directed his investigation to ascertain as to through whom the accused had called the complainant. PW-7 admitted that during detection being confronted by him about receipt of bribe, the accused told that 8 days preceding the detection, the complainant had taken loan of Rs.1,500/- from him. PW-7 proved the work order, dt.5.12.03 vide Ext.A assigning the work in question to the accused. PW-7 admitted that in the detection report there are

some corrections and additions which he had made in his own hand, but he has not put his initial or signature to those corrections and addition. It is pertinent to mention here that though PW-7 categorically stated that after detection he had examined the complainant, but the so called contradictions confronted to PW-6 (complainant) at para-7 of his cross-examination were not put to PW-7. So, the same loses significance.

15. PW-8 the IO stated that he took charge of the investigation from PW-7, arrested the accused, forwarded him to Court on 20.1.04, sent the exhibits for chemical examination through SP, Vigilance vide Ext.18. On 2.5.04 the SP directed him to appear before the Sanctioning Authority Collector and later on the SP, Vigilance informed that the Sarpanch but not the Collector is the Sanctioning Authority. So, on 9.6.04 he held pre-sanction discussion with the Sarpanch, Rajas GP and produced the copies of the FIR, case record, seizure lists and other connected papers and on the same day he received the sanction order from the Sarpanch vide Ext.3.

In cross-examination he stated that during investigation he had not ascertained as to in what way requisitions were sent to the concerned authorities. He also stated that he had not ascertained if the complainant had submitted any report regarding demand of bribe by the accused before the BDO, Balipatna or Sarpanch, Rajas GP. He denied the suggestion that Ext.3 is a draft sanction order and also denied that on 9.6.04 there was no pre-sanction discussion between himself and the Sarpanch. PW-8 stated that during detection the accused had stated that the complainant had taken a loan of Rs.1,500/- from him and the said fact has been mentioned in the Detection Report (Ext.7). PW-8 proved the work order, dt.5.12.03 vide Ext.A and the signature of Sarpanch thereon vide Ext.A/1.

16. DW-1 stated that he was working as contractor under Rajas GP and he knows the complainant and on 10/11 January,2004 the complainant had taken a loan of Rs.1,500/- from the accused. DW-1 also stated that initially a work for construction of road was undertaken departmentally and it was given to the accused who was the Secretary of the GP. But in one Palli Sabha the complainant was selected to undertake the work and for that there was some misunderstanding between them. In cross-examination, DW-1 admitted that the Sarpanch had issued the work order of the road work in favour of the complainant. DW-1 also stated that he with one Balunki Swain and Sakhawata Ali had taken loans from the accused in between 1998 to 2001. But he has no idea about payment of those loans by the loanees. DW-1 also stated that the complainant had taken the loan from the accused in the GP Office premises at about 11 AM in presence of himself and one Kusa Gaja.

17. 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**).

18. Learned defence counsel placing reliance on a decision of the Hon'ble Apex Court reported in **2013 (56) Supreme Court 425, State of Punjab-Vs.-Madan Mohan Lal Verma** submitted that demand of bribe is sine qua non for constituting an offence under the Act and mere receipt of money is not enough. He further placed reliance on a decision of our own Hon'ble High Court reported in **(2011) 50 OCR 591, Debananda Das-Vs.-State of Orissa** and submitted that the

accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution, but he can establish the same by preponderance of probability.

On the other hand, the learned Special P.P. placing reliance on a decision of the Hon'ble Apex Court reported in **AIR 2004 SC 1242 T.Shankar Prasad-Vrs.- State of A.P.** submitted that when the tainted money was recovered from 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.

19. The learned defence counsel placed reliance on a decision of the Hon'ble Apex Court reported in **AIR 2009 Supreme Court 2022, C.M.Girish Babu-Vs.-C.B.I., Cochin** and submitted that even if recovery of the tainted money is proved, is not sufficient to warrant conviction against the accused when other substantive evidence in the case is not reliable. With profound respect of the authority, I find that the facts of that case are quite distinguishable from the facts of the present case. Therein, PW-10 was the most material witness but in categorical terms he accepted that the appellant had never demanded any bribe amount from him. In para-15 of the judgment the Hon'ble Court held that the only evidence regarding demand and acceptance of bribe was that of PW-10, but he did not support the case of prosecution. So being distinguishable on facts, the same is no way helpful to the accused.

20. Keeping in the view the evidence on record including the plea of the accused as discussed above, the crucial question needs determination whether the tainted money was given to the accused as bribe or it was paid towards repayment of loan. To determine the same evidence regarding demand, acceptance and so called loan incurred by the complainant needs close scrutiny. Acceptance of the money is not disputed by the

accused. Of course, his plea is that he had accepted the same as repayment of loan amount. PW-6 in his FIR and during preparation stated regarding prior demand by the accused for giving the work order. P.Ws.3,5 and 7 corroborated the fact that during preparation the complainant had narrated so. So far the demand at the spot i.e. GP Office the complainant(PW-6) in his examination categorically stated that when he and PW-3 reached near the accused, the accused made entry in some register and asked him to give the bribe money and he gave the tainted money of Rs.1,500/- to the accused and he gave him the work order. PW-3 in his cross-examination though stated that he had not heard the conversation between the complainant and the accused in detail, but he stated that after seeing the transaction he came to Office Verandah and gave signal. The accused has failed to adduce any evidence as to why these witnesses are deposing lie against him.

21. On the contrary, it is plea of the accused that he had accepted the money towards repayment of loan. In this regard, the complainant in his cross-examination has categorically stated that he had not known the accused before January, 2004 and he had never done any work in that Panchayat nor he had received any work order from that Panchayat. DW-1 stated that he knows the complainant who was doing contractry work in that GP since 1996-97. He has further stated that on 10th or 11th January, 2004 the complainant had taken a loan of Rs.1,500/- from the accused. No documentary evidence is brought to record to show about entrustment of any work of that GP to the complainant. There is no written document to show about the loan transaction. Admittedly, the complainant and the accused belong to two different villages. It is quite improbable that a person would lend loan to an unknown person who is no way connected with him. That apart, DW-1 testified about a so called

loan transaction of 10 years old with specific date, time and place and the name of the witness in whose presence the so called loan was given. This witness has also deposed about the loan transaction advanced by the accused to one Balunki Swain and Sekhawat Ali in the year 1998 and 2000. Unless there is some extraordinary circumstance, normally it is not possible on the part of a person to depose about any transaction with definite date, time and place and naming the particular witness after a prolonged period of more than 10 years. Above all, advancing a loan of Rs.1,500/- is not so significant feature. Moreover, during cross-examination of PW-6 the accused has not even suggested to him that he had taken loan in presence of DW-1 and one Kusa Gaja.

22. Considering such plea from other angle, it is stated by P.Ws.3 and 6 that initially they went to the Block Office and there being asked by the accused, they went to Rajas GP. As discussed earlier, it was suggested to PW-3 that when the complainant met the accused at Balipatna Block Office, he asked the complainant to refund his loan money as he had assured to refund the loan within 7 days and the complainant told the accused that he would refund the money at Rajas GP. Of course, PW-3 denied such suggestion. One thing is clear from such suggestion that the complainant had met him at Balipatna Block on that day. If in fact, the accused had advanced any such loan to the complainant, ordinarily he should have insisted the complainant to refund the money in Balipatna Block Office. So the conduct of the accused seems to be abnormal. On a conjoint reading of the evidence regarding demand led by the prosecution vis-a-vis the evidence led by the accused as discussed hereinbefore, renders the defence plea unacceptable even to the extent of preponderance of probability. Hence, it is held that the

accused has failed to rebut the statutory presumption u/s.20 of the P.C.Act.

23. Learned defence counsel during course of argument contended that the first work order vide Ext.A in favour of the accused was not cancelled and the subsequent work order in favour of the complainant without cancelling earlier one was invalid and when the accused complained before the Sarpanch and the BDO in this regard, a false case has been foisted by the complainant against the accused, so the prosecution case should be discarded. There is no evidence on record to show that the accused ever complained before the Sarpanch or the BDO. Even while cross-examining PW-2(Sarpanch), no suggestion was put that the accused had ever complained before her challenging the subsequent work order. While answering Q.No.14, the accused has categorically admitted that as per decision of Palli Sabha the work was entrusted to the complainant and the Sarpanch had issued the work order. Admittedly, the work order Ext.5 was with the accused and he gave the same to the complainant on the date of detection after taking his signature vide entry Ext.17/1. That apart, the validity of Ext.5 is not a question to be decided in this case.

24. Learned defence counsel during course of argument contended that the complainant has failed to name the person through whom the accused had called him on 14th and 18th January 2004. Learned defence counsel further contended that PW-3 has categorically stated that he had not given his statement before vigilance police in this case and for the first time he deposed the incident before the Court, so, the version of P.Ws.3 and 6 should be discarded. First of all, the complainant had not mentioned in the FIR that on 14.1.04 and 18.1.04 the accused had called him through some person, but he had mentioned in the FIR that the accused had told him to meet on 14th & 18th

January,2004. PW-7 the IO in his evidence has categorically stated that he had examined PW-3 after detection. PW-3 has also proved the preparation report Ext.6 and his signature vide Ext.6/1 thereon which contains the details as to what happened in the vigilance office during preparation. Moreover, PW-3 proved the detection report Ext.7 and his signature thereon vide Ext.7/1 which contains the details of what took place at the spot including the narration what PW-3 had stated before PW-7. 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)*. P.Ws.3 and 6 were examined before the Court after a prolonged period of 6 years and 10 years after the occurrence respectively, so naturally there may be some discrepancies in their evidence. But their evidence cannot be discarded on this ground.

25. Learned defence counsel further contended that PW-7 in his evidence has categorically admitted that he had not asked the complainant as to how he obtained the xerox copies of Palli Sabha Resolution and the letter, dt.6.1.04 of BDO, Balipatna which were enclosed to the FIR. Fact remains that the accused has categorically admitted that in the Palli Sabha Meeting, dt.12.1.04 the work was assigned to the complainant. Admittedly, the work order in the name of the complainant was given by the accused to the complainant on the date of detection. So, when the resolution of Palli Sabha is not disputed, the failure on the part of PW-7 to ascertain how the complainant brought the xerox copies of Palli Sabha Resolution and letter of BDO enclosed with the FIR is immaterial and has no bearing on the case.

26. 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 a fact may be proved either by direct testimony or by circumstantial evidence. He further submitted that the testimony of Pws.3,5,6 and 7 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 Block Office and the Grama Panchayat Office on the date of detection and recovery of the tainted money and the work order at the spot and hand wash and pocket wash of the accused in sodium carbonate solution turning to pink colour coupled with the fact that the accused has failed to rebut the presumption u/s.20 of the P.C.Act establish that there was demand and acceptance of bribe of Rs.1,500/- by the accused from the complainant.

27. The learned counsel for the accused placed reliance on a decision of our own Hon'ble High Court reported in **1988(2) OLR, 211, 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. So, the sanction is invalid. In this case, PW-2 stated that she verified the records and documents produced before her by the vigilance authority and after scrutinizing those records and documents, she accorded sanction. PW-8 the IO stated that he held pre-sanction discussion with PW-2 and produced the copies of FIR, case record, seizure lists and other connected documents before her. The contents of the sanction order Ext.3 also show about production of documents and discussion of PW-2 with the

IO. 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. As such, the facts of that case are distinguishable from the facts of the present case and the same is not helpful to accused. So the sanction cannot be held as invalid.

28. From the aforesaid discussion of evidence of P.Ws.3,5,6 and 7, it is crystal clear that the accused had demanded and accepted bribe of Rs.1,500/- from the complainant to give the work order Ext.5. The evidence of these witnesses was not substantially shaken. The other contemporaneous documents, such as, the FIR, preparation report, detection report, the work order register lends sufficient corroboration to their version. Nothing was brought out to record to discard their testimony or to disbelieve them. The accused has failed to explain as to why these witnesses, so also, P.Ws.2 and 7 would lie against him. For the reasons discussed above, the plea of the accused that he had received Rs.1,500/- from the complainant toward repayment of loan is not convincing and the same is highly improbable and unbelievable. Therefore, after analysing the evidence on record with the discussion made hereinbefore and keeping in view the position of law as cited above, I am inclined to hold that the prosecution has well proved the charges against the accused that he being a public servant demanded Rs.1,500/- from the complainant and accepted the same on 19.1.04 for issuing the work order Ext.5 and as such, he obtained pecuniary advantage by corrupt or illegal means and abusing his position as a public servant.

As a 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 26th day of May, 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 on behalf of the convict that he is an old man and he has no criminal antecedent 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.3,000/- (Rupees three thousand) in default to undergo R.I. for four months more for the offence U/s.13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and he is sentenced to undergo R.I. for one year and to pay a fine of Rs.1,500/-(Rupees one thousand five hundred) in default to undergo R.I. for two months more for the offence U/s.7 of the Prevention of Corruption Act, 1988. The substantive sentences awarded under both the Sections would run concurrently. The period of detention undergone by the convict in this case be set off U/s.428 Cr.P.C.

The seized tainted notes of Rs.1,500/-(M.O.-VII) be returned to the complainant (PW-6) if not reimbursed in the

meantime. If the said amount has been reimbursed to the complainant in the meantime, in that case the seized tainted notes of Rs.1,500/- (M.O.-VII) be confiscated to the State. The hand wash bottles (M.Os. I to VI) and seized pant of the accused (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 26th day of May, 2014.

Special Judge(Vigilance),
Bhubaneswar.

List of witnesses examined for the prosecution :

P.W.1	Abdul Fazal Khan.
P.W.2	Ritanjali Nayak.
P.W.3	Abhilas Srichandan.
P.W.4	Mahadev Rath.
P.W.5	Surendra Kumar Srichandan.
P.W.6	Mir Ajmat Ali.
P.W.7	Debadutta Seth.
P.W.8	Narahari Panda.

List of witnesses examined for the defence :-

D.W.1	Iswar Ch. Mishra.
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List of exhibits marked for the prosecution :-

Ext.1	C.E.Report.
Ext.2	F.I.R.
Ext.2/1	Signature of PW-2 on Ext.2.
Ext.2/2	Signature of SP.
Ext.2/3	Formal FIR.
Ext.3	Sanction Order.
Ext.3/1	Signature of PW-2 on Ext.3.
Ext.4	Order No.3 on File of Rajasa G.P.
Ext.5	Work Order.
Ext.5/1	Signature of PW-2 on Ext.5.

Ext.6	Preparation Report.
Ext.6/1	Signature of PW-3 on Ext.6.
Ext.7	Detection Report.
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	Seizure list.
Ext.12/1	Signature of PW-3 on Ext.12.
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.6/2	Signature of PW-5 on Ext.6.
Ext.7/2	Signature of PW-5 on Ext.7.
Ext.8/2	Signature of PW-5 on Ext.8.
Ext.9/2	Signature of PW-5 on Ext.9.
Ext.10/2	Signature of PW-5 on Ext.10.
Ext.11/2	Signature of PW-5 on Ext.11.
Ext.12/2	Signature of PW-5 on Ext.12.
Ext.14/2	Signature of PW-5 on Ext.14.
Ext.15	Seizure list.
Ext.15/1	Signature of PW-5 on Ext.15.
Ext.16	Seizure list.
Ext.16/1	Signature of PW-5 on Ext.16.
Ext.17	Seized Despatch Register.
Ext.2/4	Signature of PW-6 on Ext.2.
Ext.6/3	Signature of PW-6 on Ext.6.
Ext.14/3	Signature of PW-6 on Ext.14.
Ext.7/3	Signature of PW-6 on Ext.7.
Ext.6/4	Signature of PW-7 on Ext.6.
Ext.17/1	Relevant entry at page-15-16 of the Despatch Register.
Ext.7/4	Signature of PW-7 on Ext.7.
Ext.7/5	Signature of accused on Ext.7.
Ext.8/3	Signature of PW-7 on Ext.8.
Ext.9/3	Signature of PW-7 on Ext.9.
Ext.10/3	Signature of PW-7 on Ext.10.
Ext.11/3	Signature of PW-7 on Ext.11.
Ext.12/3	Signature of PW-7 on Ext.12.
Ext.13/2	Signature of PW-7 on Ext.13.
Ext.14/4	Signature of PW-7 on Ext.14.

