

2. Briefly stated the prosecution case is that the daughter-in-law of the informant purchased one EWS house No.7/6 from the original allottee- Ambujakanta Biswal and on 2.9.08 both of them applied to Orissa State Housing Board for transfer of the same in the name of the purchaser. The said application was pending with the accused. On approach of the informant, the accused demanded Rs.5,000/- as bribe for processing the file and as per her demand, the informant paid Rs.1,000/- to her on 9.9.08 and on his request, she reduced the quantum and asked him to pay the rest amount of Rs.3,500/- on 11.9.08 at OSHB Office. On 11.9.08 the informant lodged FIR with the SP,Vigilance basing on which a trap party was formed. On 11.9.08 during preparation the complainant narrated the F.I.R. story before the Officials, brought out 7 numbers of 500 rupee G.C.Notes which were smeared with Phenolphthalein powder and given to him to hand over to the accused on demand and one Ratnakar Dalei was selected as accompanying witness to see the transaction and to pass signal. Demonstration showing reaction of Phenolphthalein powder in sodium carbonate solution was made.

The complainant and the accompanying witness went to the office of the accused where she had asked for the bribe money and the informant gave Rs.3,500/- to her and she received and kept the same in an almirah. By then, the other trap party members reached there, caught hold her hands, took her hand wash in sodium carbonate solution which turned to pink. The tainted money and the file i.e. the application for transfer of ownership along with its annexures were seized and after completion of investigation and obtaining sanction from competent authority, chargesheet was submitted against the accused.

3. The defence plea is denial of the allegation of demand and acceptance of bribe. Further plea of the accused is that she had kept a cash of Rs.3500/- given by the complainant towards part processing fees.

4. Points for determination in this case are :-

- (i) Whether on 11.9.2008 the accused being a public servant by corrupt or illegal means or by otherwise abusing her position as a public servant obtained for herself pecuniary advantage to the extent of Rs.3,500/- from the complainant Bata Krushna Mohanty for processing the file for change ownership of a house bearing No.EWS-7/6, CS Pur in the name of his daughter-in-law ?
- (ii) Whether the accused being a public servant on 11.9.2008 accepted an amount of Rs.3,500/- as gratification for herself other than legal remuneration as a motive or reward from the complainant for processing the aforesaid file ?

5. Prosecution has examined 8 witnesses whereas the accused has examined 2 witnesses in support of their respective cases.

6. Both points are taken together. PW-1- Scientific Officer stated that on 6.10.08 he examined 5 sealed glass bottles and one slightly wet cotton wool and detected Phenolphthalein in all the exhibits and he proved his report vide Ext.1. PW-2 Section Officer of OSHB stated that the accused was allotted with the work of EWS and LIG, C.S.Pur, Phase-I and on 5.9.08 on the body of the application for transfer of ownership vide Ext.5 she had directed the accused to deal with the same and she proved her endorsement thereon vide Ext.5/1. In the cross-examination, PW-2 stated that though the name of the allottee was not mentioned in the receipt of the deposit, but the deposit was made against the allotted house.

7. PW-3 stated that on 11.9.08 he with others were present in the Vigilance Office and the complainant narrated that

he had submitted an application before the Housing Board for transfer of ownership and the accused was dealing with that file and demanded Rs.5,000/- as bribe to put up his file and he had paid Rs.1,000/- to her and after bargaining he had agreed to pay the balance of Rs.3,500/- on 11.9.08. During preparation some powder was smeared on 7 nos. of 500 rupee G.C.notes and the same was given to the complainant with instruction to give the same to the accused on her demand and he (PW-3) was instructed to witness the money transaction and to give signal. After preparation he with the complainant arrived near the office of the accused and the complainant went inside the room of the accused and he waited outside and after conversation both of them came outside to the Varandah where the complainant gave the money to the accused and the accused accepted, counted and kept the same and returned to her office room. He (PW-3) gave pre-arranged signal and the trap party members rushed to the room. Being confronted about taking of money from the complainant, the accused denied. Her both hand wash was taken separately which turned to pink. Vigilance people brought out the money from the Almirah and PW-6-Baisnab Parida compared the numbers of the notes with the numbers noted in the preparation report which tallied. Cotton wash of the portion of Almirah where the money was kept was also taken which turned to pink.

During cross-examination PW-3 stated that he does not know if the complainant had given Rs.3,500/- to the accused towards part payment of Rs.6,000/- as processing fees to be deposited in the office. PW-3 stated about the seizure of a vanity bag, one mobile phone and cash of Rs.420/- from the accused under seizure list vide Ext.A. He further stated that being asked by the vigilance people, the accused admitted that she had

received Rs.3,500/- from the complainant but denied to have received the same as bribe.

8. PW-4 the complainant stated in his evidence that the house in question was allotted in favour of one Ambuja Kanta Biswal and he decided to purchase the same in the name of his daughter-in-law and after negotiation and finalization of the deal he deposited Rs.6,000/- in the Housing Board for transfer of the house and an application for transfer of ownership (Ext.5) with documents was submitted before the Secretary, Housing Board on 30.8.08. On 2.9.08 he enquired from the Diary Section and came to know that the same was already sent to the Dealing Assistant and he requested her to put up her file and returned home. Again on 5.9.08 he went and approached her and she told if he (PW-4) would pay Rs.5,000/-, she would put up his file and he requested her expressing his inability to give such huge amount and to consider his case. Again on 9.9.08 he approached the accused and she asked him if he had brought money and he answered in affirmative and the accused advised him to go to outside and both of them came outside, went to a narrow passage outside the section and he gave Rs.1,000/- to her and she asked about the balance amount and on his request the accused reduced Rs.500/- and asked him to pay Rs.3,500/- within two days.

9. On 10.9.08 he reported the matter to the SP, Vigilance vide Ext.14, he attended vigilance office on 11.9.08, narrated the contents of his FIR before the vigilance officials and the independent witnesses, gave 7 numbers of 500 rupee notes and some powder was applied to these notes and the J.E. noted down its number. The money was kept inside his left side shirt pocket and he was asked to give the money to the accused on her demand. He also stated that PW-3 was instructed to accompany him and to follow the conversation and to give signal and they

proceeded to Housing Board Office. He (PW-4) went near the accused and PW-3 stood at a distance of 4 to 5 feet from him. Seeing him the accused asked "AANICHHA" and he replied "AANICHHI" . Then, the accused indicated him to go to the spot where he had given Rs.1,000/- previously and accordingly he went there and the accused followed him. He handed over the money to the accused and she accepted, counted the same in both her hands and by then PW-3 gave signal and the vigilance staff rushed into the office. After accepting the money the accused went near the Almirah to Allotment Section. The DSP asked her if she had taken the money from the complainant, but she denied. Then the vigilance staff took the hand wash of the accused which turned to pink and they asked the accused about the tainted money and the accused opened the Almirah and brought out the tainted money and PW-6 compared its numbers with the numbers noted in the preparation report which tallied.

During cross-examination, PW-4 admitted that he had got a house bearing No.MIG-32/1 at CS Pur and also admitted that the allottee of the house is to deposit the processing fees of Rs.6,000/- and Banita Mohanty had deposited Rs.6,000/- towards processing fees but not the allottee of the house Sri Biswal. He stated that on 2.9.08 his application reached the accused. He denied the suggestion that on 9.9.08 the accused informed him that the file relates to that house was pending in the Recovery Section since 8.6.06 for closure of loan account taken by the original allottee. But the accused has not taken such plea in her statement u/s.313 Cr.P.C. PW-4 stated that during 2008 he was getting pension of Rs.603/- per month and his son was having a cloth shop, but he could not say his income and he also stated that his daughter-in-law Banita Mohanty had no income and he had given Rs.60,000/- to purchase the house in the name of his daughter-in-law. Whether the daughter-in-law of the complainant

was not entitled to purchase the house on the ground of having one house in the name of her father-in-law (complainant) or on the ground that her annual income was more than the prescribed limit are totally irrelevant for the purpose of this case and needs no consideration.

10. PW-5 Chairman of Orissa State Housing Board stated that the Chairman is competent to remove the accused from service. On receipt of requisition from the Vigilance Office to accord sanction, he called the I.O. who appeared before him with the copies of the FIR, preparation report, seizure list and other relevant documents and he perused those documents and held pre-sanction discussion with the I.O. and was satisfied that there was prima facie case against the accused and accordingly, he accorded sanction for her prosecution vide Ext.16 whereon his signature is Ext.16/1. In cross-examination, he admitted that the Board is guided by the Orissa Housing Board Acts and Rules and all the employees of the Board are appointed by the Board as per Rule-5(2) of the Rules. He stated that he cannot say if the file was put up before the Board or not or if the Board had ratified the sanction order or not. PW-5 categorically denied the suggestion that he had no authority to accord sanction and without application of mind and verification of documents he had mechanically signed on the sanction order.

11. PW-6 stated that on 11.9.08 in Vigilance Office the complainant narrated before vigilance officials, himself and PW-3 that for the purpose of transfer of ownership of the house purchased by his daughter-in-law, the accused was demanding illegal gratification of Rs.5,000/- for processing the file and it was subsequently reduced to Rs.4,500/- and on 9.9.08 a sum of Rs.1,000/- was paid to the accused and the balance of Rs.3,500/- was to be paid on 11.9.08. PW-6 also stated like PW-3 about pre-trap arrangement i.e. smearing of the tainted notes with

powder, giving the same to the complainant and selection of PW-3 as accompanying witness to give signal. After preparation they went to the Housing Board and detained their vehicle at a distance of 200 feet and the complainant and PW-3 proceeded towards the office where the accused was sitting. After getting signal the trap party entered inside. Being challenged by the DSP about receipt of the tainted money the accused first denied and later agreed to have accepted the tainted money and also told that it was kept in Almirah. Her both hand wash was taken which turned to pink colour. As per the instruction of DSP, the accused brought out the tainted notes from the Almirah and he counted and tallied its numbers with the numbers noted down in the preparation report which tallied. PW-6 also stated about seizure of the sample bottles, G.C.notes, Attendance Register, relevant application, duty distribution chart, one mobile phone, cash of Rs.420/- and vanity bag of the accused.

In cross-examination he stated that he received written direction from the Engineer-In-Chief on 10.9.08, but the same was not seized by the I.O. He further stated that the room where the accused was sitting was also occupied by some more 5 to 6 staff and the width of the Varandah in front of the office room was about 10 feet. In cross-examination he stated that the accused admitted to have accepted Rs.3,500/- but not for the work of the complainant. PW-6 also stated that he cannot say if out of processing fees of Rs.6,000/-, the complainant paid Rs.3,500/- to the accused and the rest Rs.2,500/- was to be paid by him later.

12. PW-7 stated that on 10.9.08 on the basis of the FIR the SP directed to lay a trap and a trap laying party was formed. On 11.9.08 two independent witnesses appeared in the vigilance office and before them the complainant narrated the case of the FIR that he had approached the accused for the first time on

2.9.08 to transfer the ownership of the house in favour of his daughter-in-law as she had purchased the same from the allottee. At this, the accused demanded illegal gratification of Rs.5,000/- from him in order to process the file. Again on 9.9.08 he approached the accused who insisted on demanding Rs.5,000/- and the complainant with much reluctance paid Rs.1,000/- to the accused and on his request the accused insisted to pay Rs.3,500/- on 11.9.08 for the purpose. The complainant produced 7 numbers of 500 rupee G.C.notes which were smeared with Phenolphthalein powder, given to the complainant with instruction to hand over the same to the accused on demand. They went to OSHB Office, parked their vehicle at a distance of one furlong and the complainant with the overhearing witness went towards the office. At about 11.55 AM getting signal the trap party members including the DSP entered inside the office and being challenged by the DSP, the accused denied to have accepted any illegal gratification but later admitted to have accepted the tainted notes and to have kept it in the Almirah. Her both hand wash was taken separately which turned to pink and being told the accused brought out the tainted notes from the Almirah and PW-6 compared the numbers noted in the copy of the preparation report which tallied. A cotton was rubbed on the shelf of the Almirah where the tainted notes were kept and wash of that cotton turned to pink.

PW-7 further stated that he seized the hand wash solution bottles, tainted notes, cotton piece, four fold paper vide Exts.8 to 12 and he also seized the relevant file (Ext.5) from the possession of the accused vide seizure list Ext.13 and he also seized the original Attendance Register, Duty Distribution Chart vide Ext.4 and left the same in zima vide Ext.4/2 and on personal search of the accused, a vanity bag containing Rs.420/- and a cell phone were seized under Ext.20. He seized the brass seal used

for sealing bottles, left the same in zima of Baisnab Parida vide Ext.19, prepared the detection report vide Ext.7. PW-7 proved the sealed bottles M.Os.-I to V and the tainted notes vide M.O.-VII and brass seal vide M.O.-VI and he proved the spot map vide Ext.22. He further stated that being directed by the SP, he handed over the charge of investigation to PW-8.

During cross-examination PW-7 stated that he received the FIR on 10.9.08 at 4.30 PM and also stated that on the FIR, the date "11" is struck down and "10" is inserted, but he categorically denied the suggestion that on 10.9.08 there was no FIR and he himself has manipulated the date on the FIR. PW-7 admitted that as per the FIR the complainant was occupant and owner of a house bearing No.MIG-2-32/1 at CS Pur. PW-7 in his cross-examination categorically denied that DWs-1 and 2 were present at the time of occurrence and they stated before him regarding the occurrence, but deliberately he did not record their statements. He stated that he had not examined any staff or higher official of the Board but had informed the then Secretary of the Board namely, Basudev Bahinipati. He denied the suggestion that when the accused told the complainant that the house cannot be allotted in the name of Banita Mohanty as because he owns a house at Bhubaneswar and thereafter the complainant approached him (PW-7) and with his connivance he lodged false FIR case. Nowhere during her examination u/s.313 Cr.P.C., the accused has taken such stand that she had told so to the complainant.

13. PW-8 stated that on 10.9.08 as per the direction of the SP, he registered this case and on 11.9.08 he took charge of the investigation from PW-7 and on 16.9.08 being moved by him, the SP sent the exhibits to SFSL. On 19.9.08 and 27.9.08 on his prayer, the statements of the complainant and over hearing witness were recorded by the Magistrate u/s.164 Cr.P.C. On

26.12.08 he received C.E.Report. On 27.12.08 the SP moved the competent authority for sanction of prosecution and on 30.12.08 he produced the copies of FIR, preparation report, detection report, seizure list, statements of accused and witnesses and the C.E.Report before the Chairman and held pre-sanction discussion and on 31.12.08 he received the sanction order and examined the Chairman and after completion of investigation he submitted chargesheet.

During cross-examination PW-8 admitted that on the reverse page of the FIR the date "11" has been corrected as "10", but he had not ascertained as to who had made the correction. He denied the suggestion that no FIR was lodged on 10.9.08 and he had manipulated the date. He stated that Ext.5 application for transfer was recovered from the Almirah where the tainted money was kept. He also stated that he had not examined any staff who were sitting around the accused, so also, he had not examined the AAO or other higher officials but he had examined the Section Officer of the Board. He admitted that in the sanction order vide Ext.16, white fluid has been applied at the top just near the words "Sanction Order". But he categorically denied the suggestion that they had prepared a draft sanction order and obtained the signature of the sanctioning authority thereon mechanically and erased the word "Draft" by applying fluid.

14. DW-1 stated that on 11.9.08 an old man came and talked with the accused and she went through the application and told that the original allottee should have deposited the processing fees of Rs.6,000/- and she asked the old man to deposit Rs.6,000/- in the name of the allottee and then to apply for taking back the earlier sum of Rs.6,000/- paid by him. The old man brought out Rs.3,500/-, asked the accused to take and deposit the same stating that he had no further ready cash. When the

accused refused to accept Rs.3,500/-, the old man asked the accused to keep Rs.3,500/- and also told that he will bring the rest amount of Rs.2,500/- immediately. The accused kept Rs.3,500/- along with the application in the Almirah and after 5 to 10 minutes 5 to 6 persons with that old man came and they challenged the accused to have taken bribe and the accused told them that as requested by the old man she had kept Rs.3,500/- awaiting for the rest amount and the bank challan to be brought by the old man. DW-1 also stated that he with others told them about the aforesaid facts but they asked them to remain silent. They had informed these facts to the Secretary orally.

During cross-examination by prosecution, DW-1 admitted that at Clause-4 of Ext.C (the office order, dt.7.9.07), there is mention that the applicants have to deposit the processing fees of Rs.6,000/-for EWS category. DW-1 stated that basing on the application of Bata Krushna Mohanty (Ext.24), so also the notesheet, dt.17.11.08 the name of Banita Mohanty has been changed and corrected as "Ambuja Kanta Biswal" on the body of the challan vide Page-66 of the file Ext.D in correspondence side. He also stated that once correspondence is received in the concerned section, the same should be dealt with in the concerned file, but there is no mention in Ext.5 or Ext.D if any action was taken on the application during the period from 2.9.08 to 11.9.08. DW-1 also stated that the act of the accused keeping Rs.3,500/- from that old man is not authorized by law. He also stated that by the time of raid the accused brought out the money and the file Ext.5 from Almirah and gave to Vigilance people.

15. DW-2 stated that on 11.9.08 at about 11 to 11.15 AM an old gentleman came to him, enquired about his transfer application and he (DW-2) told that old man that he had already handed over the application to the accused. Then the old man

went to the accused, asked about his application and the accused brought the application from the Almirah, verified the same and told that old man that the processing fee was deposited in the name of one Banita Mohanty instead of original allottee. So, the file cannot be put up. She asked the old man to deposit Rs.6,000/- in the name of Ambuja Kanta Biswal afresh and then to apply for refund of Rs.6,000/- already deposited in the name of Banita Mohanty. DW-2 also stated that the old man asked the accused to accept the deposit already made in the name of Banita Mohanty and to correct the name into Ambuja Kanta Biswal, but the accused refused to do so. The old man brought out Rs.3,500/-, asked the accused to keep the same telling that he would bring the rest amount of Rs.2,500/- very soon. The accused asked the old man to bring the bank advice slip along with the rest amount and she took the cash and kept the same with the application in an open Almirah. After 10 to 15 minutes that old man with 4 to 5 persons came and those persons challenged the accused to have received bribe, but the accused told that she had not received any bribe and also told that the old man had given Rs.3,500/- towards part payment of the processing fees.

DW-2 also stated that he and DW-1 with other persons told the same fact to those persons, but they did not listen. Thereafter, the accused brought Rs.3,500/- and the application form from the Almirah and gave them and they took the accused to the room of AAO. DW-2 also stated that he with other staff brought those facts to the notice of their Secretary orally. He proved the endorsement with signature of the then Secretary, dt.30.8.08 vide Ext.5/4 on the left side top margin of Ext.5. He also admitted that he had received Ext.5 from General Diary Section, put Diary No.1970, dt.5.9.08 vide Ext.5/5 and he proved the initial with date of the then AAO vide Ext.5/6 and stated that the then Section Officer had endorsed that file vide

Ext.5/1 and he (DW-2) handed Ext.5 along with enclosures to the accused after keeping her acknowledgment in the diary. DW-2 stated that the accused had not dealt with Ext.5 in the original allotment file Ext.D in between 5.9.08 to 11.9.08 and she had not issued urgent official information to proceed with the application for transfer vide Ext.5. He stated that vide office order, dt.28.11.07 bearing No.16332 the accused was given charge of EWS and LIG of CS Pur, Phase-I houses. He also stated that if the application is not in order, the Dealing Assistant is supposed to prepare a note in that line and to place the same before the authority to pass necessary orders. DW-2 admitted that deposit of Rs.6,000/- vide Ext.B corresponding to Ext.30 in the name of Banita Mohanty was accepted without any change of name.

16. The vital question needs answer is whether the tainted money of Rs.3,500/- was given to the accused as bribe or towards part processing fees ? PW-2 the Section Officer has stated that though the name of the allottee was not mentioned in the receipt of the deposit, but it shows that the deposit was made against the allotted house. PW-6 stated that during detection, being challenged by the DSP about receipt of cash of Rs.3,500/- the accused first denied to have received the same and later on agreed to have accepted the same. PW-7 also stated that on challenge the accused denied to have accepted any illegal gratification but later admitted to have accepted the same and to have kept it in the Almirah.

17. Both Dws-1 and 2 stated that on 11.9.08, when the complainant went to the accused, she went through the application and told him about non-deposit of the processing fees in the name of original allottee. It may be noted that during her statement u/s.313 Cr.P.C., the accused has categorically stated that on 10.9.08 she had informed the old man about non-deposit of Rs.6,000/- in the name of the original allottee. If she had so

told the complainant on 10.9.08 there was no occasion for her on 11.9.08 to again bring the application, verify the same and to tell the complainant about non-deposit of the processing fees in the name of original allottee. That apart, Clause-4 of the the office order, dt.7.9.07 (Ext.C) shows that the applicants have to deposit the processing fees. There is no mention in that order that the original allottee must deposit the same. DW-1 in his cross-examination candidly admitted that the deposit made by Bata Krushna Monanty in the name of Banita Mohanty was taken into account since there is no stipulation that the processing fees must be made by the original allottee. DW-2 has stated the same thing. There is no evidence on record to show that either Bata Krushna Mohanty had given any application to change the name from Banita Mohanty to Ambuja Kanta Biswal on the bank challan Ext.B corresponding to Ext.30 or to show that the amount of Rs.6,000/- was ever returned to him.

Considering from other angle also, both Dws-1 and 2 in their cross-examination stated that there was no office order authorizing the accused to receive cash from any party directly for any purpose. Both of them have also stated that one branch of Vijaya Bank situates within the premises of OSHB and all the cash transactions of the Board are made through that bank. But only by the time of sale of brochures and application forms, the applicants directly deposit the cost of the same in the Accounts Section and take the application forms with brochures. Moreover, both of them stated that after keeping Rs.3,500/- the accused asked the old man to bring rest amount of Rs.2,500/- along with one bank challan/bank advice slip. But the accused in her statement u/s.313 Cr.P.C. stated that the old man had brought Rs.3,500/- along with one challan form and she kept the same. No Bank Challan has been seized along with the tainted money. Moreover, the complainant who is a retired Section Officer is

supposed to be well versed in filling up a bank challan, so there was no occasion on the part of the complainant to request the accused to fill up the bank challan. Even if he had so requested, the accused in usual course could have guided him to fill up the same, but she must not have kept any challan or part payment of the processing fees, particularly when there was no office order authorizing her to keep the cash directly and when all cash transactions of the Board were done through Vijaya Bank situated in the campus of the Board.

Besides this, if the deposit vide Ext.B corresponding to Ext.30 was made in the wrong name, then the same could have been changed by the Accounts Officer on the request of the depositor which fact is admitted by DW-2 in his cross-examination. In this regard DW-2 in his cross-examination stated that the accused told to the complainant to give application addressing to the Accounts Officer for change of the name of Banita Mohanty to Ambuja Kanta Biswal in the bank challan Ext.B. Had the accused told so to the complainant to give application for change of name from Banita Mohanty to Ambujakanta Biswal, then there was no occasion on the part of the accused for asking the complainant to deposit Rs.6000/- afresh or to keep Rs.3,500/- towards part processing fees.

18. The learned counsel for the accused submitted that the complainant by initiating the false trap case could manage to transfer the house in the name of Banita Mohanty by putting the authorities in fear of vigilance case, although the daughter-in-law of the complainant was not eligible for the house as because she had another house at Bhubaneswar and her annual income exceeded Rs.30,000/- and had furnished false affidavit along with Ext.5. First of all, the application Ext.5 which reached the accused on 5.9.08 was seized from her on 11.9.08. Both Dws-1 and 2 categorically stated that the accused brought the tainted money

and the application (Ext.5) from the Almirah and gave to vigilance people. DW-1 in his cross-examination categorically stated that there is no mention in Ext.5-File (application for transfer) or Ext.D-File (original allotment file) to show if any action was taken on the application in between 2.9.08 to 11.9.08. If in fact the application for transfer (Ext.5) suffers from the aforesaid illegalities, the accused could and should have pointed out that defect and placed the matter before the authority for necessary action. But the plea of the accused is that she asked the complainant to deposit Rs.6,000/- afresh. If in fact, Banita Mohanty had another house at Bhubaneswar and her annual income was more than the prescribed limit rendering her ineligible to purchase the house, then what was the necessity for the accused to ask the complainant to deposit Rs.6,000/- afresh as processing fees. So, such contention of the learned defence counsel is devoid of any force.

19. The learned counsel for the accused during course of argument submitted that PW-4 in his evidence before Court stated that on 5.9.08 at 11 AM he went and approached the accused to put up his file and she told that if he would pay Rs.5,000/-, she would put up his file. But the said fact has not been mentioned in the FIR. So, such evidence of PW-4 does not inspire confidence. Law is well settled that FIR is not an encyclopaedic. There is specific mention in the FIR that on the request of the complainant, the accused demanded Rs.5,000/- as bribe for processing the file. There is also clear mention that as per her demand, PW-4 paid Rs.1,000/- to her on 9.9.08 at 12.30 PM and there was negotiation to pay the rest Rs.3,500/- on 11.9.08. So, the version of PW-4 cannot be discarded merely on the ground that there is no mention of date 5.9.08 in the FIR.

The learned counsel for the accused further contended that there is discrepancy in the evidence of the

witnesses as to who was using the Almirah in question, so also, as to who brought the tainted money from the Almirah. The accused pleaded that she had kept the tainted money as part processing fee. Evidence of Dws-1 and 2 show that the tainted money and the application (Ext.5) were kept in the Almirah and the accused brought and gave the same to vigilance people. So, it is immaterial as to who was using that Almirah or as to who brought out the money there from.

The learned counsel for the accused submitted that there was no motive on the part of the accused to demand and accept any bribe money as no work of the complainant was pending with her. Evidence of witnesses including Dws shows that the accused was working in the Allotment Section. PW-2 and Dws-1 and 2 categorically stated that the application of the complainant for transfer of ownership (Ext.5) was with the accused. The same was seized on her production. Of course, Ext.D original allotment file was not with the accused. The fact that the original allotment file (Ext.D) was not with the accused does not negative the fact that no work of the complainant was pending with her. Even DW-2 categorically stated that the accused had not dealt with that application till 11.9.08. So, it cannot be said that no work of the complainant was pending with the accused.

20. The learned counsel for the accused further contended that PW-3 accompanying witness has not stated that on 11.9.08 at the spot the accused had demanded the money, so the prosecution case should be discarded. It may be noted here that PW-3 specifically stated that the complainant went inside the room of the accused and he waited outside the door. After conversation between the complainant and accused, they came outside the room to the Varandah and the complainant gave the money to the accused and she accepted, counted and kept the

same. 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**). So, such contention of the learned defence counsel is not acceptable.

21. The learned counsel for the accused raised another contention that as stated by PW-6, the complainant had lodged FIR before SP (Vigilance) on 9.9.08, but the same has been suppressed and the FIR (Ext.14) has been manipulated which is fatal for prosecution. It is not the case of the prosecution nor even the case of the complainant that he lodged FIR on 9.9.08 nor even it was suggested by the accused to the complainant that any such report was lodged by him on 9.9.08. What PW-6 stated in the Court is based on the version of the complainant as narrated before him during preparation. Law is well settled that when a witness deposes in the Court after a prolonged period, naturally there would be some minor variations. Even in case of trained and educated persons memory sometimes plays false. So, basing on such a stray sentence, it cannot be held that the complainant had lodged one FIR on 9.9.08 and the same has been suppressed. As regards change of date, it is seen that on the reverse page of FIR, date “11” has been struck off and date “10” has been noted. There is endorsement of the SP, Vigilance (Ext.14/2) that the FIR was received at 4.30 PM on 10.9.08. So also, there is endorsement of the OIC, Vigilance (Ext.14/5) that the case was registered at 4.40 PM on 10.9.08. I found no conceivable reason as to why the responsible police officers would ante date the FIR, struck down the letter “11” and re-write “10”.

Apart from that, Pws-3 and 6 have stated that on 10.9.08 they were directed by their authorities to appear before the Vigilance Office on 11.9.08. The version of Pws-3,4,6,7 and 8 and the preparation report (Ext.6) show that preparation was made on 11.9.08 at 8 AM. There is no material on record to show that the vigilance officials, so also, Pws-3 and 6 had any enmity with the accused. As such, I am not inclined to accept such contention of the learned defence counsel.

22. The learned counsel further placing reliance on a decision of our own Hon'ble High Court reported in **2003 (II) OLR, page-399, Niranjana Bharati-Vrs.-State of Orissa** submitted that there is no evidence as to on which date the demand was raised by the accused for payment of bribe and by the time the trap was laid, there was no work pending with the accused and therefore, there could not have been any occasion for her to demand the money alleged. With profound respect to the authority, it is found the fact of the said case is quite distinguishable from the facts of the present case. In that case, by the time trap was laid, the application for loan from the GPF Account had already been sent to the treasury and leave salary had already been paid to the complainant and on the date trap was laid, there was no work of the complainant pending with the accused. Here, the application for transfer of ownership (Ext.5) was pending with the accused and the same was seized by the time of detection. Moreover, PW-4 has not only stated that the accused had demanded Rs.5,000/- on 5.9.08, but also he stated to have paid Rs.1,000/- to the accused on 9.9.08. So, that decision is not applicable to the present case and is not helpful to the accused.

The learned defence counsel further relying upon a decision reported in **AIR 1977, Supreme Court, Page-1307, Pratap Misra and others-Vrs.-State of Orissa** submitted that it is

open for the accused to prove her defence even from the admissions made by the prosecution witnesses or the circumstances proved in the case. With utmost respect to the authority, I found that the facts of that case are quite distinguishable from the facts of the present case. Here, the plea of the accused is that she had taken tainted money of Rs.3,500/- from the complainant as part of processing fees. The said plea has not been admitted by any prosecution witness nor the circumstance proved in the case corroborates such plea.

23. The learned counsel placing reliance on a decision of the Hon'ble Apex Court reported in **2002 Criminal Law Journal 2787, Subash Parbat Sonvane-Vrs.-State of Gujarat** submitted that mere acceptance of money without there being any other evidence would not be sufficient for convicting the accused u/s.13(1)(d) of P.C.Act. With profound respect to the authority, it is found that in that case the complainant did not support prosecution case on main ingredients of demand and acceptance and was treated hostile. Panch witness had not stated anything about the demand and acceptance but only stated that when the accused started to go towards toilet, the complainant followed him and he gave something from his pocket to the accused who took the same and put that in his pocket. Considering the evidence on record of that case, the Hon'ble Court held that it was unreasonable to hold that the accused demanded money from the complainant as the complainant denied such story and PW-2 had not stated so. But, here as discussed above, there is ample evidence of demand and acceptance of the bribe money by the accused from the complainant.

The learned counsel for the accused placing reliance on a decision of the Hon'ble Apex Court reported in **AIR 1994, Supreme Court, page-1538, Babu Lal Bajpai-Vrs.-State of U.P.** submitted that no work of the complainant was

pending with the accused and no motive for demanding or accepting bribe have been proved. In that case, the defence plea was that the complainant had tried to thrust the money in his pocket and he had resisted the said attempt and thrown down the money on the floor and such version of the accused was supported by adjacent shop owner. That apart, even the Executive Magistrate had not supported the prosecution case regarding actual acceptance of money and in that case, no bill was pending, so there was no motive for demanding and accepting the money. But, here the work of the complainant was pending with the accused. The complainant and other witnesses have supported the prosecution regarding demand and acceptance of the bribe amount. So, the aforesaid citation is not helpful to the accused.

The learned counsel for the accused placed reliance on a decision of the Hon'ble Apex Court reported in **AIR 1979, Supreme Court, Page-1408, Suraj Mal-Vrs.- The State (Delhi Administration)** wherein it was held that in a case of bribery, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. In that case, the Hon'ble Court held that the witnesses made inconsistent statements in their evidence at different stages. Considering the evidence of that case, the appellant was acquitted. But, here there is ample evidence to establish the circumstances under which the tainted money was paid to the accused. So, the said decision is not helpful to the accused.

24. The learned counsel for the accused placing 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** submitted that when the sanction for prosecution was accorded without applying mind to materials on record, it is

not a valid sanction. On the other hand, the learned Special P.P. placing reliance on a decision of the Hon'ble Apex Court reported in **2007 (36) OCR (SC) 34, R.Sundararajan-Vrs.-State by DSP, Spe, Cbi, Chennai** submitted that the Court cannot look into the adequacy or inadequacy of the materials placed before the sanctioning authority and cannot sit as a Court of Appeal over the sanction order, when the order granting sanction shows that all the available materials were placed before the sanctioning authority who considered the same.

In the case cited by the learned defence counsel, our Hon'ble High Court held that prosecution evidence was practically nil to prove what materials had been placed before the Sanctioning Authority. But here, the Sanctioning Authority stated that he perused the copies of the FIR, preparation report, seizure list and other relevant documents and discussed with the I.O. and was satisfied that there was prima facie case against the accused and he accorded sanction. PW-8 the IO also corroborated this fact. With such state of evidence, it cannot be held that the sanction was invalid.

25. The learned Special P.P. placed reliance on a decision of the Hon'ble Apex Court reported in **AIR 2004 (Supreme Court), 1242, T.Shankar Prasad-Vrs.-State of Andhra Pradesh** wherein it was held that if any money is received and no convincing, credible and acceptable explanation is offered by the accused as to how it came to be received by him, the presumption under Section 4 (now u/s.20) of the Act is available. When the receipt is admitted, it is for the accused to prove as to how the presumption is not available as perforce the presumption arises and becomes operative.

26. As discussed above, the evidence of the complainant(PW-4),Pws-3, 6 and 7 regarding the demand and acceptance of bribe of Rs.3,500/- has remained unshaken. The

contemporaneous documents, such as, preparation report, detection report and the seizure lists lend enough corroboration to their version. Nothing substantial was elicited during their cross-examination to discard their testimony. I do not find any reason to disbelieve them. On a conjoint reading of the evidence both oral and documentary and for the reasons discussed above, the plea of the accused that she received Rs.3,500/- as part processing fees is held to be improbable and not acceptable. As such, it can be safely held that she had accepted the tainted money of Rs.3,500/- as illegal gratification for processing the file (Ext.5) of the informant.

Therefore, after considering the evidence on record and keeping in view the position of law cited above and the fact that 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.3,500/- from the informant and accepted the same on 11.9.08 for processing his file and as such, she obtained pecuniary advantage by corrupt or illegal means and abusing her position as 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 her thereunder. Keeping in view the nature of the offences, I am not inclined to extend her 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 11th 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 on behalf of the convict that she is a lady and she has suffered a lot of humiliation during trial of this case and she has no criminal antecedent, so, she 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 three months more for the offence U/s.13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and she is sentenced to undergo R.I. for one year 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.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.3,500/-(M.O.-VII) be returned to the complainant (PW-4) 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.3,500/-(M.O.-VII) be confiscated to the State. The sample bottles (M.Os.I to V) be destroyed. The brass seal (M.O.-VI) be returned to DSP,Vigilance, Bhubaneswar. 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 11th day of March, 2014.

Special Judge(Vigilance),
Bhubaneswar.

List of witnesses examined for the prosecution :

P.W.1	Pradip Kumar Samantaray.
P.W.2	Smt. Khiroda Kumari Ray.
P.W.3	Ratnakar Dalei.
P.W.4	Bata Krushna Mohanty.
P.W.5	Sanjay Das Burma.
P.W.6	Baishnab Charan Parida.
P.W.7	Susanta Kumar Panigrahi.
P.W.8	Rabindra Kumar Panda.

List of witnesses examined for the defence :-

D.W.1	Swadhin Kumar Sishugoswami.
D.W.2	Kabi Prasad Samantaray.

List of exhibits marked for the prosecution :-

Ext.1	C.E.Report.
Ext.1/1	Signature of PW-1 on Ext.1.
Ext.2	Attested copy of order No.16332, dt.28.11.07.
Ext.2/1	Signature of PW-2 on Ext.2.
Ext.3	Attested copy of Attendance Register for the Month of September, 2008.
Ext.3/1	Signature of PW-2 on Ext.3.
Ext.4	Seizure list.
Ext.4/1	Signature of PW-2 on Ext.4.
Ext.4/2	Zimanama.
Ext.4/3	Signature of PW-2 on Ext.4/2.
Ext.5	Application of transfer of ownership(19 sheets).
Ext.5/1	Endorsement with 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.9	Seizure list.
Ext.10	Seizure list.

Ext.11	Seizure list.
Ext.12	Seizure list.
Ext.13	Seizure list.
Ext.8/1	Signature of PW-3 on Ext.8.
Ext.9/1	Signature of PW-3 on Ext.9.
Ext.10/1	Signature of PW-3 on Ext.10.
Ext.11/1	Signature of PW-3 on Ext.11.
Ext.12/1	Signature of PW-3 on Ext.12
Ext.13/1	Signature of PW-3 on Ext.13.
Ext.4/4	Signature of PW-3 on Ext.4.
Ext.14	FIR of PW-4.
Ext.14/1	Signature of PW-4 on Ext.14.
Ext.6/2	Signature of PW-4 on Ext.6.
Ext.7/2	Signature of PW-4 on Ext.7.
Ext.12/2	Signature of PW-4 on Ext.12.
Ext.15	Folded paper.
Ext.15/1	Signature of PW-4 on Ext.15.
Ext.5/2	Signature of the daughter-in-law of PW-4 on Ext.5.
Ext.5/3	Signature of the owner of the house on Ext.5.
Ext.16	Sanction Order.
Ext.16/1	Signature of PW-5 on Ext.16.
Ext.17	Forwarding Letter No.17511, dt.31.12.2008.
Ext.17/1	Signature of G.Sahoo on Ext.17.
Ext.6/3	Signature of PW-6 on Ext.6.
Ext.7/3	Signature of PW-6 on Ext.7.
Ext.18	Copy of the Preparation Report.
Ext.18/1	Signature of PW-6 on Ext.18.
Ext.4/5	Signature of PW-6 on Ext.4.
Ext.8/2	Signature of PW-6 on Ext.8.
Ext.9/2	Signature of PW-6 on Ext.9.
Ext.10/2	Signature of PW-6 on Ext.10.
Ext.11/2	Signature of PW-6 on Ext.11.
Ext.12/3	Signature of PW-6 on Ext.12.
Ext.13/2	Signature of PW-6 on Ext.13.
Ext.19	Zimanama.
Ext.19/1	Signature of PW-6 on Ext.19.
Ext.20	Seizure List.
Ext.20/1	Signature of PW-6 on Ext.20.
Ext.15/2	Signature of PW-6 on Ext.15.
Ext.21	Facsimile Seal Impression.
Ext.21/1	Signature of PW-6 on Ext.21.
Ext.14/2	Endorsement with signature of S.P. on Ext.14.
Ext.14/3	Endorsement with signature of O.I.C.(V) on
Ext.14.	
Ext.14/4	Formal FIR.
Ext.14/5	Signature of O.I.C.(V) on Ext.14/4.
Ext.6/4	Signature of PW-7 on Ext.6.

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.12/4	Signature of PW-7 on Ext.12.
Ext.8/4	Signature of the accused on Ext.8.
Ext.9/4	Signature of the accused on Ext.9.
Ext.10/4	Signature of the accused on Ext.10.
Ext.11/4	Signature of the accused on Ext.11.
Ext.12/5	Signature of the accused on Ext.12.
Ext.15/3	Signature of PW-7 on Ext.15.
Ext.13/3	Signature of PW-7 on Ext.13.
Ext.13/4	Signature of the accused on Ext.13.
Ext.4/6	Signature of PW-7 on Ext.4.
Ext.4/7	Signature of PW-7 on Ext.4/2.
Ext.19/2	Signature of PW-7 on Ext.19.
Ext.21/2	Signature of PW-7 on Ext.21.
Ext.22	Spot Map.
Ext.22/1	Signature of PW-7 on Ext.22.
Ext.23	Application of Ambujakanta Biswal, dt.27.8.08 bearing Page no.32 in file of Ext.D in correspondence side.
Ext.24	Page 65 of correspondence side in the file of Ext.D is an application of one Bata Krushna Mohanty, dt.11.11.08.
Ext.25	Notesheet at page 5 to 7 of Ext.D.
Ext.26	Notesheet,dt.11.10.08 at page 14 of the file Ext.D.
Ext.27	Letter of Bata Krushna Mohanty vide page-64.
Ext.28	Notesheet, dt.10.11.08 at Page-14.
Ext.28/1	Signature of Sri Dhruba Charan Dehury below the note.
Ext.29	Notesheets at page-17, 18 in Ext.D.
Ext.30	Receipt at page 54 of Ext.D.
Ext.5/4	Endorsement with signature in green ink of Bahinipati in the left side top margin of application form.
Ext.5/5	Endorsement of the diary no. and date.
Ext.5/6	Initial with date of Sri Pravat Kr. Biswal the then AAO on Ext.5.

List of exhibits marked for the defence :-

Ext. A	Seizure list.
Ext. A/a	Signature of PW-3 on Ext.A.
Ext. A/b	Signature of B.Parida on Ext.A.
Ext. B	Photocopy of Challan in the name of Banita Mohanty.
Ext. C	Office order, dt.7.9.2007.

- Ext. C/1 Signature of AAO on Ext.C.
 Ext. D File of EWS-7/6, 28 pages notesheet, 135 pages
 correspondence.
 Ext. E Copy of charge report, dt.3.12.2007 (2 sheets) Kabi
 Prasad Samantaray handed over charge to accused.
 Ext. E/1 Signature of Kabi Prasad Samantaray on Ext.E.
 Ext. E//2 Signature of accused on Ext.E.
 Ext. F Forwarding letter of B.Mallick, AAO, letter
 No.647, dt.25.1.14.
 Ext. D/1 Letter No.14702, dt.1.11.08 A.K.Biswal was asked
 to deposit of Rs.2918/-.
 Ext. G Letter No.15517, dt.20.11.08 at Page-74 of
 correspondence in Ext.D.
 Ext. H Office note ,dt.17.11.08 at page 15 of Ext.D.
 Ext. H/1 Endorsement with signature.
 Ext. J Note sheet, dt.10.12.08 Page-21 & 22 of Ext.D.
 Ext. J/1 Endorsement with signature of B.Bahinipati.
 Ext. K Letter No.13841, dt.1.12.13 of B.Mallick addressed
 to accused at page-133/1 of correspondence side of
 Ext.D.
 Ext. L Letter of AAO addressed to accused at page-135/1
 of correspondence side of Ext.D.

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

- M.Os.I to V Five nos. of glass bottles.
 M.O.VI Brass Seal.
 M.O.VII Seven numbers of 500 rupee G.C.Notes.

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

Nil.

Special Judge(Vigilance),
 Bhubaneswar.

