

s.7 and 13(2) read with 13(1)(d) of P.C.Act was registered against accused Satyabadi Mishra(dead), the then Dealing Assistant of the Special Treasury. The allegation as per FIR is that the GPF bill of the informant was sent to Special Treasury on 5.6.97 and accused Satyabadi Mishra(dead) made some objection and the bill was re-submitted on 16.6.97 after meeting the objection. The accused Mishra (dead) again made some objection and asked the Office Peon namely Nrusingh Charan Mohanty to meet him in person with Rs.50/- as illegal gratification. Accordingly on 18.6.97 the informant met accused Satyabadi Mishra(dead) and requested him to pass the bill. But accused Mishra demanded Rs.50/- as bribe to pass the bill and asked the complainant to pay that amount on 20.6.97 in his office. After registration of the case a trap was laid. On 20.6.97 in the office of Special Treasury, Bhubaneswar accused Mishra demanded and accepted bribe amount of Rs.50/- from the complainant, kept the same in his wearing shirt pocket and when the trap party reached at the spot and asked him to hand over the money, he told to have handed over the said money to the present accused Pravat Kumar Satpathy who was sitting adjacent to him. Being asked by accused Mishra, the present accused gave the tainted money to him who produced the same before the trap party and the same was seized. Both hand wash and shirt pocket wash of accused Mishra and hand wash of the present accused were taken in sodium carbonate solution which turned to pink. The tainted money, sample bottles, personal cash of the accused Mishra and copy of preparation report were seized and exhibits were sent for chemical examination and sanction for prosecution against both the accused persons was obtained and after completion of investigation, charge-sheet was submitted against both the accused persons resulting this trial.

Charges under the aforesaid sections were framed against both accused Satyabadi Mishra and Pravat Kumar Satpathy. During trial, case against accused Satyabadi Mishra was abated as he died. Hence, this present judgment is meant for accused Pravat Kumar Satpathy.

3. The defence plea is one of complete denial and false implication. Further plea of the present accused is that on 15.6.97 deceased accused Satyabadi Mishra had taken a loan of Rs.50/- from him and on 20.6.97 he returned that loan amount which he had kept in his drawer. But again Sri Mishra asked him to return that money and he returned the same to him and he is quite ignorant about the demand and acceptance of any bribe.

4. In support of their respective cases, the prosecution has examined 8 witnesses whereas the accused has examined none.

5. Points for determination in this case are :-

(i) Whether on 20.6.1997 at 11.20 AM at Special Treasury Office, Bhubaneswar accused Satyabadi Mishra (dead) and present accused Pravat Kumar Satpathy being public servants working as Senior Clerk and Junior Clerk respectively in the office of the Special Treasury Officer, Bhubaneswar obtained for themselves pecuniary advantage of Rs.50/- by corrupt or illegal means from the complainant for passing his GPF bill ?

(ii) Whether on the aforesaid date, time and place the present accused with accused Satyabadi Mishra accepted illegal gratification of Rs.50/- from the complainant in their capacity as a public servants for passing his GPF bill ?

6. Both points are taken up together. It may be mentioned here that the informant, so also, the Trap Laying Officer have not been examined in this case as they were reported to be dead. PW-1 the then Director of Treasuries stated that on the requisition of SP, Vigilance he accorded sanction for prosecution of this accused vide Sanction Order Ext.2. Moreover, he stated that before according sanction, he went

through all the documents, comprehensive report of the IO and the case record which were produced before him and he also discussed the matter with the IO. PW-2 stated that on 24.6.97 the vigilance people seized the bill transit register, objection register and office order No.2319, dt.14.11.96 and prepared seizure lists vide Exts.3 to 5 and returned the same in zima vide Exts.6 to 8. In cross-examination he stated that Siba Charan Bhoi and Purusottam Behera were the custodians of Bill Register and Objection Register, but both of them have not been examined. PW-2 also stated that he had not verified the seized registers and being asked by the vigilance people, he had signed on the seizure lists.

7. PW-3 the then Market Intelligence Supervisor stated that being asked by CSO, he with PW-4 went to vigilance office and there the complainant Satyaban Tripathy before other vigilance staff disclosed that accused Satyabadi Mishra (dead) was demanding Rs.50/- from him to pass his GPF bill. Five numbers of 10 rupee G.C.Notes produced by the complainant were treated with chemical powder and given to the complainant to pay the same to the accused Mishra and a preparation report vide Ext.9 was prepared and there was demonstration showing reaction of Phenolphthalein powder in sodium carbonate solution. They went to Special Treasury and the complainant and PW-4 with one vigilance staff went to the room of the accused in the first floor and others remained in the ground floor and after sometime getting signal, they went to that room. Being asked by him(PW-3) about receipt of bribe, accused Satyabadi Mishra(dead) agreed and told that he had handed over the money to the present accused. Being asked by accused Mishra, the present accused handed over the money to him and in turn Mishra gave that money to PW-3 and he compared the numbers

of the notes which tallied. Hand wash of both the accused persons and PW-3 were taken and the tainted money was seized and a detection report vide Ext.10 was prepared and the four fold paper, tainted money, one paper chit, check shirt, cash, wrist watch and copy of preparation report were seized vide Exts.11 to 19. In cross-examination he stated that the vigilance officer had seized the written order of their CSO, but the said order is not available in the record. He categorically stated that during preparation in the vigilance office, the complainant had not whispered anything alleging against the present accused. He further stated that the table drawers of both the tables used by the accused persons were adjacent to each other and anyone of them can put anything in the table drawer of another. He also admitted that there is no mention in the detection report that the present accused Pravat Satpathy had demanded and accepted any bribe from the complainant.

8. PW-4 like PW-3 stated that he was present during preparation and the complainant disclosed before others about demand of Rs.50/- by accused Satyabadi Mishra and there was demonstration and they went to Special Treasury. He (PW-4) with the complainant went to the up-stair and the complainant went inside the room and he stayed outside. There was some talk between the complainant and accused Satyabadi Mishra and the complainant gave Rs.50/- to accused Mishra who kept that money in his pocket. Thereafter, he brought that money and gave to the present accused who was sitting near him and he kept that money in his drawer. He also stated that getting signal, PW-3 came, confronted Sri Mishra to have received the money and he agreed. Being asked to give that money, Sri Mishra asked accused Sri Satpathy to give that money and the present accused gave the same to Sri Mishra and the numbers of notes were

compared by PW-3 which tallied. Both hand wash of the accused persons and PW-3 were taken which turned to pink and the tainted money, sample bottles and some documents were seized under seizure lists Exts.11 to 19.

In cross-examination, he stated that during preparation in the vigilance office the complainant had not made any allegation against this accused, so also during detection no allegation was made against this accused regarding demand and acceptance of any bribe from the complainant. Even he (PW-4) specifically stated that the complainant had not talked with the present accused during the time of occurrence. Moreover, he stated that the present accused was doing his office work in his table while the complainant was talking with accused Satyabadi Mishra. He also stated that the tainted money was recovered from the possession of accused Satyabadi Mishra. He further added that the vigilance people had not asked to accused Satyabadi Mishra as to why he had given the money to the present accused.

9. PW-5 the then OIC of Vigilance PS stated that as per direction direction of SP, he had registered the case and drew up formal FIR vide Ext.20/3. But in cross-examination, he categorically stated that before registration of the case, he had neither seen the complainant nor had asked anything to him. PW-6 Scientific Officer stated that on 4.12.97 he had examined six numbers of sealed glass bottles marked as Exts.A to F and found that those contained Phenolphthalein in sodium carbonate solution and he proved his report Ext.21. In cross-examination he admitted that he has not mentioned the density/concentration of Phenolphthalein as well as sodium carbonate in each bottle. PW-7 Jr. Clerk of the office of Soil Chemist stated that on 15.7.97 the vigilance officer seized one book of drawal and

some documents from their office and prepared seizure list Ext.22. During cross-examination he stated that he cannot say the contents of those documents nor he was dealing with the same.

10. PW-8 the then Inspector, Vigilance stated that as per direction of SP, he took charge of investigation of the case with connected documents from B.P.Mohanty(dead). On 26.12.97 he received the CE Report and on 23.2.98 he held pre-sanction discussion with the Sanctioning Authority and on 10.3.98 he received the sanction order and after completion of investigation, he submitted charge-sheet. PW-8 like Pws-3 and 4 also stated about preparation which took place in the vigilance office. He stated that they went to Special Treasury and the complainant with Ashok Rath went to the office of the accused and rest members remained outside and getting signal from Ashok Rath, they went to the first floor of the building and being asked by the DSP (not examined) about receipt of bribe, accused Mishra admitted to have received the bribe amount from the complainant and further told that he had given the bribe money along with a piece of paper containing bill no., amount and the name of some person to the present accused who was sitting by his side. He also stated that the present accused gave Rs.50/- to accused Mishra and accused Mishra gave that money to them. Both hand wash of the accused Mishra (dead) and the present accused, so also shirt pocket wash of accused Mishra were taken which turned to pink and independent witness PW-3 compared the numbers of notes which tallied. PW-8 also stated that sample bottles, tainted money, four fold paper, one paper chit (Ext.24) and copy of preparation report were seized by Sri B.P.Mohanty under seizure lists, Ext.11 to 19. He also stated that B.P.Mohanty had seized one letter No.1162, dt.6.8.96 and one

book of drawal from the office of Soil Chemist and he had also seized the bill transit register, objection register and office order No.2319, dt.14.11.96 from the Special Treasury and released the same in zima.

11. In cross-examination PW-8 categorically stated that there is no allegation in the FIR. So also, there is no mention in the preparation report regarding any demand made by the present accused from the complainant (dead). Similarly, in the detection report also there is no material that the present accused demanded and accepted bribe of Rs.50/- from the complainant. PW-8 further stated that when they entered inside the room, two other staff of that office were working in their seats in the same room and the said fact has been mentioned in the detection report. But PW-8 could not say their names and also stated that he has not cited them as charge-sheeted witnesses. PW-8 further stated that many pensioners were waiting in the first floor by the time of occurrence, but none of them was examined by the TLO (dead), so also, by him (PW-8). Specifically PW-8 stated that there is no mention in the detection report that during detection accused Mishra stated that he had handed over the bribe money of Rs.50/- along with one paper chit containing the bill number, amount and name of some person to the present accused. PW-8 admitted that he had not ascertained as to who had scribed the contents of Ext.24 i.e.the paper chit. Even he stated that the sanctioning authority had not asked anything to him regarding the role of this present accused during the occurrence nor he had specifically appraised the sanctioning authority in this regard. He denied the suggestion that during detection this accused Pravat Satpathy had stated to B.P.Mohanty, Inspector that accused Satyabadi Mishra (dead) had taken Rs.50/- from him as loan and refunded the same on that day and on that impression

he had kept that money without knowing that the same was bribe money given to Mishra and deliberately B.P.Mohanty had not recorded such fact in the detection report.

12. Law is well settled that mere recovery of tainted 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. Mere recovery by itself cannot prove the charge of the prosecution against the accused in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe. **(Suraj Mal-Vrs.-State (Delhi Administration {1979} 4, SCC 725 referred in Para-10 (2013) 54 OCR(SC) 108.**

13. Admittedly, there is no mention in the FIR, preparation report and detection report that the present accused had demanded and accepted the bribe money from the complainant. There is also no mention in the FIR that the present accused was concerned with the so called pending GPF bill of the complainant. PW-3 in his cross-examination has categorically stated that during preparation the complainant had not whispered anything alleging against the present accused. He could not say what had happened in the first floor before they received signal. He stated that the tainted money was recovered from the table drawer of the present accused. He has stated that accused Mishra (dead) and the present accused were using two separate tables and the drawers of both the tables were adjacent to each other and anyone of them can put anything in the table drawer of each other. PW-3 also stated that the Vigilance Inspector had not asked anything to this accused. PW-4 in his cross-examination stated that during preparation the complainant had not made any allegation against the present accused. So

also, during detection no allegation was made against the present accused regarding the demand and acceptance of bribe from the complainant. He specifically stated that just before detection in the room of the accused Mishra, there was some talk between the complainant and accused Mishra, but the complainant had not talked with the present accused at that time. PW-4 also stated that the present accused was doing his office work in his table while the complainant was talking with accused Mishra. This witness has not whispered about the contents of talk in between the complainant and accused Mishra (dead). Even, PW-4 has not stated that the present accused had heard any discussion about demand of bribe between the complainant and accused Mishra. Likewise, PW-4 has also not whispered anything that the present accused had received Rs.50/- from accused Mishra knowing that the same was bribe money given by the complainant to accused Mishra on his demand.

14. It is significant to note that two other staff of that office were working in that room during the relevant time. In the detection report, there is mention that the then Treasury Officer T.K.Kasyap was informed by the DSP and he came to the office room of accused Mishra and was kept aware of the facts. The said Treasury Officer and the staff have not been examined nor any explanation has been adduced by the prosecution for their non-examination for which adverse inference should be drawn against prosecution. There is no evidence on record to show as to who had scribed the paper chit Ext.24. PW-8 has admitted that there is no mention in the detection report that accused Mishra (dead) had given bribe of Rs.50/- along with the paper chit (Ext.24) to the present accused. Office Order No.2319, dt.14.11.96 which was seized under Ext.5 has not been produced

before the Court. There is mention in Ext.5 that the said order relates to distribution of work among different Dealing Clerks including the work of Senior Assistant Satyabadi Mishra (dead). There is no mention in Ext.5 to show as to what work was entrusted to the present accused. There is no evidence to establish that the present accused was any way concerned with the pending GPF bill of the complainant or to show that the present accused had scribed that paper chit (Ext.24) or was in any way concerned with the same. It may be reiterated here that PW-4 stated that after receiving the money the accused Mishra kept the same in his pocket and then brought out the same and handed over to the present accused. The plea of the present accused is that the accused Mishra had taken a loan of Rs.50/- from him on 15.6.97 and repaid the same to him on that day i.e. on 20.6.97. As discussed above, there is no evidence on record that the present accused had knowledge that the sum of Rs.50/- was bribe money paid by the complainant to the accused Mishra (dead) as illegal gratification and knowing this fact he received the said money from the accused Mishra and kept in his drawer.

15. It is too well settled legal position that if the accused raise a plausible and probable defence, the same cannot be rejected by applying the same rigor as in the case of discharge of heavy burden on the prosecution. The burden of the accused in such case is not as heavy as that of the prosecution. The defence of the accused has to be considered on the basis of preponderance of probability. In the case of Aher Raja Khima (Supra) (AIR 1956, SC 217), it has been held that when an accused person offers a reasonable explanation of his conduct, then, even though he cannot prove his assertions, they should ordinarily be accepted unless the circumstances indicate that they are false. (Vide Para-11, 2012(4) Crimes 597,

Chhatisgarh, Heera Devi Chandra-Vrs.-State of M.P. (Now CG). Keeping in view such position of law and on a conjoint reading of the evidence on record as discussed hereinbefore, the plea of the accused that he had received Rs.50/- from the deceased accused Mishra towards repayment of loan cannot be thrown out as improbable, particularly when there is no evidence to establish that the same is false.

Therefore, after analyzing the evidence on record and for the reasons discussed above, I am inclined to hold that the prosecution has not been able to prove its case u/s.7 and 13(2) read with 13(1) (d) of P.C.Act, 1988 against the present accused beyond all reasonable doubt and the benefit of such doubt should be extended in favour of the present accused.

In the result, the accused is found not guilty of the offences u/s. 7 and 13(2) read with 13(1) (d) of P.C.Act, 1988 and acquitted u/s.248(1) of Cr.P.C. His bail bond be cancelled and sureties discharged. The tainted money (M.O.-II) of Rs.50/- be confiscated to the state. The seized sample bottles(M.Os.-III to VIII) be destroyed. The brass seal(M.O.-I) be returned to the SP,Vigilance. The Zimanamas be cancelled. Order regarding disposal of property shall take effect four months after expiry of the appeal period if no appeal is preferred and in case of appeal subject to the decision 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 26th day of August, 2014.

Special Judge(Vigilance),

List of witnesses examined for the prosecution :-

P.W.1	Upendranath Puhan.
P.W.2	Purna Chandra Senapati.
P.W.3	Niranjan Mohanty.
P.W.4	Ashok Kumar Rath @ Mishra.
P.W.5	Raghunath Sahu.
P.W.6	Satyananda Moharana.
P.W.7	Surendranath Malla.
P.W.8	Nityananda Nayak.

List of witnesses examined for the defence :-

N o n e.

List of exhibits marked for the prosecution :-

Ext.1	Sanction Order.
Ext.1/1	Signature of PW-1 on Ext.1.
Ext.2	Sanction Order.
Ext.2/1	Signature of PW-1 on Ext.2.
Ext.3	Seizure list.
Ext.4	Seizure list.
Ext.5	Seizure list.
Ext.3/1	Signature of PW-2 on Ext.3.
Ext.4/1	Signature of PW-2 on Ext.4.
Ext.5/1	Signature of PW-2 on Ext.5.
Ext.6	Zimanama.
Ext.7	Zimanama.
Ext.8	Zimanama.
Ext.9	Preparation Report.
Ext.9/1	Signature of PW-3 in Ext.9.
Ext.10	Detection Report.
Ext.10/1	Signature of PW-3 in Ext.10.
Ext.11	Seizure list relating to four fold paper.
Ext.12	Seizure list relating to tainted money.
Ext.13	Seizure list relating to chit paper.
Ext.14	Seizure list relating to seizure of shirt, cash, wrist watch.
Exts.15 to 18-	Seizure lists relating to seizure of sealed bottles.
Ext.19	Seizure list relating to seizure of copy of preparation report.
Exts.11/1 to 19/1-	Signatures of PW-3 in Exts.11 to 19.
Ext.9/2	Signature of PW-4 on Ext.9.
Ext.10/2	Signature of PW-4 on Ext.10.
Exts.11/2 to 19/2-	Signatures of PW-4 on Exts.11 to 19.

- Ext.20 Written FIR.
 Ext.20/1 Endorsement with signature of the then SP, Vigilance Smt. B.Radhika.
 Ext.20/2 Endorsement with signature of PW-5 on the body of FIR.
 Ext.20/3 Formal FIR drawn up by PW-5.
 Ext.20/4 Signature of PW-5 on the last page of the formal FIR.
 Ext.21 Examination report, dt.4.12.97.
 Ext.21/1 Signature of PW-6 on Ext.21.
 Ext.22 Seizure list, dt.15.7.97.
 Ext.22/1 Signature of PW-7 on Ext.22.
 Ext.22/2 Signature of Sarat Chandra Swain on Ext.22.
 Ext.9/3 Signature of PW-8 on Ext.9.
 Ext.9/4 Signature of Sri B.P.Mohanty on Ext.9.
 Ext.10/3 Signature of Sri B.P.Mohanty on Ext.10.
 Ext.10/4 Signature of PW-8 on Ext.10.
 Exts.11/3 to 19/3- Signatures of Sri B.P.Mohanty on the seizure lists Exts.11 to 19.
 Ext.23 Separate paper containing specimen of brass seal of SP, Vigilance.
 Ext.24 Paper chit containing bill number-32/97-98 seized from accused Satpathy.
 Ext.25 Four fold paper which was seized from the complainant.
 Ext.26 Spot map.
 Ext.26/1 Signature of Sri B.P.Mohanty on Ext.26.

List of exhibits marked for the defence :-

N i l.

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

- M.O.- I Brass Seal.
 M.O.- II Tainted notes.
 M.O.-III to VIII – Sample bottles.

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

N i l.

Special Judge(Vigilance),
 Bhubaneswar.

