

**IN THE COURT OF THE SPECIAL JUDGE,C.B.I. COURT NO.I,
BHUBANESWAR.**

P R E S E N T

**Sri M.K.Panda,
Special Judge, C.B.I.,Court No.I,
Bhubaneswar.**

**T.R. Case No. 33 of 2007
Arising out of R.C. No. 23(A) of 2007.**

Date of argument ... **19.8.2014.**
Date of Judgement ... **21.8.2014.**

REPUBLIC OF INDIA

VERSUS

Arun Kumar Deep, aged about 47 years,
Son of late Dhoba Deep, Vill. Bebijore,
P.S.Tusra, Dist. Bolangir.
At present- Sutpada, P.S. /Dist. Bolangir.

... Accused.

Counsel for the C.B.I. ... Sri K.C.Mishra, Sr P.P.

Counsel for the accused. ... Sri G. Acharya, Adv.
& Associates.

J U D G M E N T

The accused Arun Deep stands charged under Sections 7 and 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988. He pleaded not guilty to the charges and claimed to be tried.

2. The prosecution case is as follows: The accused was working as Field Officer, in Utkal Gramya Bank, Deogaon Branch at

the relevant time. The complainant Kishan Lal Sahu had availed a loan of Rs.45,000/- under K.C.C. Scheme vide loan Account No.1041 from Utkal Gramya Bank, Deogaon Branch. Out of the sanctioned loan amount of Rs.45,000/-, an amount of Rs.32,600/- had already been disbursed to the complainant in four instalments. It is the specific case of the prosecution that on 10.9.2007 when the complainant met the accused and requested for disbursing the balance amount of the loan, the accused told the complainant that as the latter had not paid the former anything for sanction of the loan, he would not pay the balance amount unless the complainant would pay him bribe of Rs.1000/-. Thereafter when the complainant told the accused that the former had no money with him, the accused told the complainant to come on 14.9.2007 to the Bank at about 11 A.M and to pay the accused Rs.1000/-as illegal gratification and only after that the balance loan amount of Rs.12,400/- would be disbursed. The complainant, who was not willing to pay any bribe to the accused for disbursement of balance loan amount, lodged a written complaint with the Superintendent of Police, C.B.I. Bhubaneswar through the C.B.I. Unit Office, Rourkela on 12.9.2007. On the basis of the above written complaint, the case was registered by the S.P.C.B.I. Bhubaneswar and the Inspector C.B.I. Rourkela, Sri D.K.Kabi was directed to investigate into the case by laying a trap. The Inspector C.B.I Sri D.K.Kabi procured some C.B.I. officers as well as two official witnesses namely Padmanav Sahu, JTO (Computer) and Sri Santanu Kumar Behera, SDE (HRD) both from the office of the TDM, BSNL, Bolangir through official procedures for the purpose of witnessing during trap. On 14.9.2007 at about 09 A.M the C.B.I officials, the above named two independent witnesses and the complainant assembled at Inspection Quarters of BSNL, office of the TDM, Bolangir. The complainant was introduced to the witnesses who went through the F.I.R and

confirmed the genuineness of allegations contained in the F.I.R from the complainant. The complainant produced two government currency notes of the denomination of Rs.500/- each to be used as trap money in the case. Thereafter, on the direction of the Inspector, constable P.K.Nayak demonstrated the change of colour of phenolphthalein powder coming in contact with sodium carbonate solution. According to the prosecution, the G.C notes were treated with phenolphthalein powder and the constable P.K.Nayak kept the tainted G.C notes of Rs.1000/- in the left side shirt pocket of the complainant with an instruction to pay the tainted Government currency notes to the accused only on his specific demand. The witness Padmanav Sahu was asked to accompany the complainant and to overhear the conversation between the complainant and the accused. It is further case of the prosecution that the complainant was also instructed to give signal by combing his hair with fingers of both the hands soon after the transaction of bribe was over. According to the prosecution, Inspector D.K.Kabi prepared a pre-trap memorandum and all the witnesses present including the complainant signed thereon. Prosecution case further reveals that the C.B.I. officials, independent witnesses and the complainant left the Inspection Quarters of BSNL, Bolangir for Utkal Gramya Bank, Deogaon branch in a vehicle and reached Deogaon at about 11.15 A.M. and parked the vehicle near Bus stand of Deogaon. It is further case of the prosecution that the complainant and overhearing witness proceeded to the Bank while other raiding party took their position in a scattered manner nearby. It is the specific case of the prosecution that the complainant entered inside the chamber of the accused and the overhearing witness stood near the entrance door of the said chamber mixed up with crowd. It is also the prosecution case that seeing the complainant, the accused enquired from the complainant whether he had brought the money as demanded and

when the complainant replied in the affirmative, the accused directed the complainant to wait outside the branch and accordingly the complainant came out of the bank and waited near the window of the accused. At about 11.30 A.M the accused came out of the bank building and went straight to the complainant and by stretching his right hand asked the complainant to hand over the demanded amount and the complainant brought out the tainted G.C notes from his shirt pocket and handed it over to the accused who received and counted the amount in his right hand and kept the same in his right side chest pocket of the shirt and asked the complainant to come to the Bank at about 01 P.M for taking the balance loan amount. According to prosecution, since the transaction was clearly visible to the trap team members who were waiting outside the Bank, they all rushed to the spot, caught hold of both the hands of the accused and the Inspector D.K.Kabi introduced himself as well as other trap team members and also confirmed the identity of the accused. It is the further case of the prosecution that when the Inspector D.K.Kabi challenged the accused to have demanded and accepted the illegal gratification of Rs.1000/- from the complainant, the accused admitted his guilt and then the accused was taken to his chamber. On the instruction of the Inspector Sri Kabi, the constable P.K.Nayak prepared chemical solution of sodium carbonate and on the direction of the Inspector, the accused dipped his fingers of both the hands in solution separately which turned pink in colour and the pink coloured solution was preserved in two clean glass bottles duly labelled, sealed and signed. No less specific is the prosecution case that on being asked by the Inspector Mr. Kabi, the accused informed that the tainted government currency notes of Rs.1000/- were in the left side pocket of his shirt and the witness Santanu Behera, on the direction of the Inspector, recovered the tainted G.C notes from the

right side shirt pocket of the accused and compared the said notes and found that they tallied with the numbers already mentioned in the pre-trap memorandum. Thereafter, the tainted notes were seized and kept in an envelope duly sealed and signed. It is also the prosecution case that the shirt pocket wash was taken by solution of sodium carbonate which also turned pink in colour which was preserved in a clean bottle duly labelled, sealed and signed. The shirt of the accused was seized and kept in an envelope duly labelled, sealed and signed. According to prosecution, Inspector Sri Kabi searched the chamber of the accused and recovered and seized the loan documents in respect of K.C.C loan of the complainant, K.L.Sahu and prepared a search list of which a copy has been handed over to the Branch Manager, Sarat Panda. The Inspector D.K.Kabi also prepared a sketch map of the spot. After observing all the formalities, Inspector D.K.Kabi prepared post-trap memorandum and he read over and explained the contents of it to all concerned. Exhibits were sent for chemical examination and sanction order was obtained. On completion of usual investigation, the Investigating Officer of C.B.I. submitted charge sheet against the accused resulting in the present case.

3. Defence plea is one of complete denial of complicity of the accused in the alleged crimes.

4. Points for determination are:

(i) Whether on or about 10.9.2007 the accused Arun Deep, Field Officer, Utkal Gramya Bank, Deogaon Branch being public servant functioning in the above capacity demanded Rs. 1000/- and accepted the same on 14.9.2007 from the complainant as illegal gratification other than legal remuneration for disbursing the balance loan amount of Rs.12,400/- out of the total loan amount of Rs.45,000/-.

(ii) Whether on or about 14.9.2007 the accused being public servant functioning as Field Officer, Utkal Gramya Bank, Deogaon Branch by corrupt and illegal means abusing his official position as such public servant obtained for him pecuniary advantage to the tune of Rs.1000/- from the complainant for disbursing the balance loan amount of Rs.12,400/- out of the total loan amount of Rs.45,000/-.

5. Prosecution in support of its charges against the accused has examined as many as thirteen witnesses whereas defence has adduced the evidence of two witnesses in substantiation of its plea.

6. The important point for determination is whether the accused has demanded and accepted illegal gratification or bribe money of Rs.1000/- from the complainant at the alleged time and place of detection. Admittedly the accused Arun Deep was working as Field Officer, Utkal Gramya Bank, Deogaon Branch. The most important witness for the prosecution is none other than the complainant. This witness appearing as P.W.11 has deposed that he knows the accused as Field Officer, Utkal Gramya Bank, Deogaon Branch in the year 2007 and he had taken a loan of Rs.45,000/- under K.C.C scheme from the above Bank and he was disbursed an amount of Rs.32,000/-. He has further stated that he met the Manager and approached him for the balance loan amount who asked to meet him in the chamber at 5 P.M. Thereafter he did not support the prosecution case for which he was declared hostile. During cross-examination by the prosecution he has proved the F.I.R as Ext.14 and his signatures on the F.I.R as well as on the pre-trap and post-trap memorandum as Ext.14/1, Ext.5/3 and Ext.6/3 respectively. He has further deposed that he along with trap team members went to the Bank to give the bribe money to the accused

and he had taken two government currency notes of 500 rupee denomination and entered the chamber of the accused to pay him bribe money. The complainant has been declared hostile by the prosecution as he did not support the case. The complainant who has been confronted with his earlier statement before the I.O has stoutly denied. In other words, the prosecution in the cross-examination has signally failed to elicit anything supporting the prosecution case. Consequently the evidence of the complainant is of no avail to the prosecution and hence, is liable to be jettisoned.

7. The overhearing witness is Padmanav Sahu, J.T.O. Computer, TDM, BSNL Office, Bolangir. This material witness appearing as P.W.5 has deposed that on the order of his superior authority he had reported before Sri D.K.Kabi, Inspector of Police, C.B.I. at Inspection Bunglow, TDM, BSNL, Bolangir at about 8.30 A.M. According to P.W.5, Santanu Kumar Behera, SDE, HRD, BSNL, Bolangir and C.B.I. staff namely P.K.Palei, P.K.Nayak and S.B.Mishra were also present there. His further evidence is that C.B.I. Inspector Mr. Kabi showed the complaint made by the complainant who stated before them that the accused had demanded bribe of Rs.1000/- for sanction of rest Rs.12,400/- out of the total KCC loan amount of Rs.45,000/-. It is the specific evidence of P.W.5 that being asked by the Inspector Sri Kabi, the complainant produced two numbers of notes of 500 rupee denomination which he had brought for making payment to the accused. According to P.W.5, demonstration was made to show the use and effect of phenolphthalein powder in the solution of sodium carbonate and those two notes were treated with phenolphthalein powder. P.W.5 has testified that the tainted notes were kept in the left side shirt pocket of the complainant with an instruction to make payment only on demand. His further testimony is that he was asked to accompany the informant with an instruction

to overhear the conversation and see the payment of bribe amount. It is the categorical evidence of P.W.5 that after observing other formalities, pre-trap memorandum was prepared and its contents were read over and explained to them and they all signed on it. He has proved the pre-trap memorandum contained in Ext.5 and Ext.5/1 is his signature. His further evidence is that they proceeded to Deogaon in a vehicle and reached there at 11.15 A.M. and parked the vehicle at Deogaon bus stand. It is the specific evidence of P.W.5 that he accompanied the informant to Utkal Gramya Bank and other members of the trap party took their position near the bank office and waited for the signal. It is further specific evidence of P.W.5 that the complainant entered into the office room of the accused and he waited near the door of that room. No less specific is the evidence of P.W.5 that seeing the complainant, the accused enquired about the money to which the complainant answered in the affirmative. Thereafter the accused asked the informant to come outside and when the informant was standing near the window, the accused came outside and the informant handed over the tainted currency notes to the accused. The evidence of P.W.5 also reveals that the accused counted the money and kept in his left side chest pocket and the accused told the complainant to come at 2 P.M to collect the loan amount. He has also testified that the informant gave pre-arranged signal and the trap party members rushed to that place and caught hold of the hands of the accused. His evidence is that the Inspector Mr. Kabi challenged the accused to have accepted bribe from the informant and that the accused admitted to have received money from the complainant. According to the evidence of P.W.5, hand wash of both hands of the accused was taken by sodium carbonate solution which turned pink in colour and the pink coloured solution was preserved in two bottles duly sealed contained in M.O.II and M.O.III. It also appears from the evidence of P.W.5

that on the instruction of the Inspector Sri Kabi, witness S.K.Behera had brought out the tainted government currency notes from the pocket of the accused and numbers on verification, tallied with the numbers already noted in pre-trap memorandum (Ext.5). P.W.5 has specifically stated in his evidence that after collecting the money from the shirt of the accused, left side shirt pocket wash was taken by chemical solution which turned pink in colour and it was preserved in a bottle duly sealed vide M.O.IV. He has also stated that the I.O. seized the tainted G.C notes and kept in an envelope. The said envelope containing tainted G.C notes has been marked M.O.V. The I.O also seized the shirt of the accused and kept in another envelope which has been marked M.O.VI. According to P.W.5, the I.O prepared the sketch map of the spot contained in Ext.6 in which he put his signature and it has been marked Ext.6/1. P.W.5 has also specifically deposed that the post-trap memorandum was prepared and the contents were read over to the witnesses and trap party members. The relevant post-trap memorandum has been marked Ext.7 and the signature of P.W.5 has been marked Ext.7/1. P.W.5 has stated in his evidence that the office chamber of the accused was searched and prepared a search list of recovered documents contained in Ext.8 and Ext.8/1 is his signature.

8. Besides, another material and independent witness is P.W.8 Santanu Kumar Behera, the then SDE (HRD) in the office of the TDM, BSNL, Bolangir. He has fully corroborated the testimony of P.W.5. It is the specific evidence of P.W.8 that he accompanied the trap laying officer to Utkal Gramya Bank, Deogaon Branch and as per the instruction of Mr. Kabi, he brought out the notes from the shirt pocket of the accused and compared the serial numbers with the serial numbers already noted in pre-trap memorandum which tallied. According to P.W.8 those government currency notes were

kept in an envelope vide M.O.V. His further testimony is that shirt pocket wash was taken and tested, resulting change of colour to pink and sample was preserved in a bottle contained in M.O.IV. He has testified that the Inspector Mr. Kabi seized the shirt of the accused and kept in an envelope. The said envelope has been marked M.O.VI. According to P.W.8, the post-trap memorandum was prepared. The post-trap memorandum has been marked Ext.7 and Ext.7/2 is his signature. The Trap Laying Officer, Sri D.K.Kabi, Inspector of Police, C.B.I is since dead. P.W.12 Inspector of Police, C.B.I. Subhransu Bhusan Mishra who was also on the spot has claimed in his evidence that he is acquainted with the handwriting and signature of the Inspector Sri D.K.Kabi in regular course of official business. P.W.12 has deposed that after registration of the case it was entrusted to Sri D.K.Kabi, Inspector (C.B.I) for investigation and to lay the trap on the accused Arun Deep, Field Officer of Utkal Gramya Bank, Deogaon Branch while demanding and accepting bribe amount of Rs.1000/- from the complainant. He has further deposed that the Inspector D.K.Kabi, two constables and he assembled at the Inspection quarters of the office of the TMD, BSNL, Bolangir on 14.9.2007 at about 9.30 A.M. He has further testified that Padmanav Sahu, JTO Computer (P.W.5), Santanu Kumar Behera, the then SDE (HRD) of BSNL (P.W.8) both are of the office of the TDM, BSNL, Bolangir and the complainant (P.W.11) arrived there. According to P.W.12, the complaint petition was shown to the trap team members and decided to lay the trap on the accused as he had demanded Rs.1,000/- from the complainant for disbursing the balance loan amount of Rs.12400/-. It is the specific evidence of P.W.12 that Inspector D.K.Kabi gave out in detail the procedure of laying the trap on the accused and asked the complainant to produce the bribe money. He has also deposed that the complainant produced Rs.1000/- of two numbers of government currency notes

of five hundred rupee denomination. It is the testimony of P.W.12 that the serial numbers of the government currency notes were noted in the pre-trap memorandum contained in Ext.5 in which all the trap team members put their signatures. It is the further testimony of P.W.12 that the government currency notes of Rs.1000/- were treated with phenolphthalein powder by Constable Sri P.K.Nayak who had prepared the chemical solution of sodium carbonate. He has categorically deposed that the witness S.K.Behera was requested to handle the said two tainted G.C notes and after that his hand wash was taken which turned pink in colour and it was preserved in a clean glass bottle duly sealed, labelled and signed by all. The bottle containing pink coloured solution has been marked M.O.I. He has further testified that constable P.K. Nayak kept the tainted government currency notes in the left side shirt pocket of the complainant with an instruction to pay the amount to the accused only on his specific demand. According to P.W.12, it was decided that after pre-trap proceeding, all the trap party members would leave for Utkal Gramya Bank Deogaon Branch in a vehicle. It is the specific evidence of P.W.12 that the witness Padmanav Sahu was instructed to remain with the complainant and see the transaction of the bribe money and to overhear the conversation between the accused and the complainant. It is the categorical evidence of P.W.12 that the complainant was asked to give signal by combing his hair with fingers of both the hands after the transaction was over and the pre-trap memorandum was prepared contained in Ext.5. P.W.12 has also testified that all the C.B.I. officials, two independent witnesses and the complainant proceeded to Utkal Gramya Bank, Deogaon Branch in a vehicle, reached at 11.15 A.M. and parked the vehicle near Bus stand of Deogaon. It is the evidence of P.W.12 that the complainant and overhearing witness went to the Bank and other trap team members

took their position nearby. It is the further evidence of P.W.12 that when the complainant entered the chamber of the accused, the overhearing witness stood near the entrance door of the chamber of the accused. P.W.12 has specifically deposed that seeing the complainant, the accused enquired from him whether he had brought the money demanded by him and when the complainant replied in the affirmative, the accused directed the complainant to wait outside the Bank premises for which the complainant came out of the Bank and waited outside the branch. His further evidence is that at about 11.30 A.M the accused came out of his chamber and went straight to the complainant K.L.Sahu and asked for the money by stretching his right hand towards the complainant and the complainant brought out the tainted currency notes from his shirt pocket and handed over to the accused who accepted and counted in his both hands and kept the tainted G.C notes on his left side shirt pocket. The evidence of P.W.12 reveals that the accused asked the complainant to come at about 01 P.M to the Bank for taking the rest of the loan amount. According to P.W.12, as the transaction of giving and taking bribe was clearly visible to the trap members waited outside rushed to the accused and caught hold of both the hands of the accused and the accused was taken to his chamber. It is the further specific evidence of P.W.12 that on the direction of the Inspector, D.K.Kabi, constable P.K.Nayak prepared chemical solution and also being directed by the Inspector, the accused washed his fingers of both the hands in that chemical solution which turned pink in colour. The bottles containing pink coloured solution were marked M.O.II and M.O.III. P.W.12 has deposed that when Inspector D.K.Kabi asked the accused about the money which he has demanded and accepted from the complainant, the accused told that he kept the tainted G.C notes in his left side shirt pocket and as per the direction of the Inspector D.K.Kabi, the witness S.K.Behera

brought out the tainted Government currency notes from the shirt pocket of the accused and tallied the serial numbers of the tainted government currency notes with the serial numbers already noted in the pre-trap memorandum which agreed. His further evidence is that the recovered tainted Government currency notes were kept in an envelope which has been marked M.O.V. P.W.12 also deposed that shirt pocket wash of the accused was taken by chemical solution which turned pink in colour. The pink coloured solution was preserved in a glass bottle duly sealed, labelled and signed and it has been marked M.O.IV. The shirt of the accused was seized and kept in an envelope duly sealed and signed as contained in M.O.VI. He has deposed and proved that the Inspector D.K.Kabi prepared the post trap memorandum which has been marked Ext.7, Ext.7/3 is the signature of Sri D.K.Kabi, Inspector of C.B.I. and Ext.7/4 is his signature. P.W.1, the then cashier of the Utkal Gramya Bank, Deogaon Branch and being the colleague of the accused has proved the loan documents of the complainant contained in Ext.1, the endorsement made by the accused as Ext.1/1, statement of account relating to A/C No. ICC 1041 vide Ext.3, four withdrawal slips filled up by the accused contained in Ext.2 to Ext.2/3. He has further stated that an amount of Rs.11,000/- has been withdrawn. He has specifically deposed that the Field Officer is to decide the disbursement of the instalment. P.W.2 is another colleague of the accused. He has deposed that the Field Officer used to recover the K.C.C loan which was sanctioned by the Branch Manager. He has identified the application of the complainant vide Ext.1 which was recommended by the accused and Ext.1/1 is the recommendation. He has proved the certified copy of the Distribution register.P.W.3 is the messenger of the said Bank. He has identified the handwritings of the accused contained in Ext.2, Ext.2/1, Ext.2/2 and Ext.2/3. P.W.4 was working as Clerk-cum-cashier in the said Bank and know

the accused for which he is acquainted with the signature of the accused. P.W.6 is the Branch Manager, Utkal Gramya Bank, Deogaon Branch at the relevant time and the accused was the Field Officer in that branch. P.W.6 has specifically deposed that on 14.9.07 there had been a gathering in the chamber of the accused and when he enquired about the presence of the people, some of them told that they were officers of the C.B.I and told that they had caught hold of the accused while he was accepting bribe from the complainant and the C.B.I authorities intimated him about arrest of the accused from his branch on that day. He has proved the circular of the Bank relating to the duties and responsibility of different officers of the Bank contained in Ext.9. According to P.W.6, on 14.9.2007 an amount of Rs.11,000/- was released in favour of the complainant by way of cash and the C.B.I. Officer had seized the vouchers, standing orders etc and prepared seizure list vide Ext.10 and Ext.11. It has been materially elicited in the cross- examination of P.W.6 that the accused has refused to recommend the loan application of the complainant as the village Ratakhandi does not come under the servicing area of Utkal Gramya Bank, Deogaon Branch and subsequently the accused recommended on his instruction. His further admission is that Field officer of the Bank has got nothing to do with disbursement of loan amount in any manner whatsoever. P.W.7 is the Govt. examiner of questioned documents. His evidence is that he examined the contents of the bottles received from the S.P. C.B.I. Bhubaneswar with the help of scientific instrument and chemicals. According to P.W.7, on examination he detected phenolphthalein sodium carbonate and water in the bottles and submitted his report. The report has been marked Ext.12 and Ext.12/1 is his signature. P.W.9. has deposed regarding scheme named Kisan Credit Card (K.C.C.) for advancement of loans to the farmers and its objective. Srikanta Kumar Behera, the then

Inspector of Police, C.B.I. Bhubaneswar appearing as P.W.13 has deposed that on 20.9.2007 on the direction of the S.P. C.B.I., he took over charge of this case from D.K.Kabi, Inspector of Police, C.B.I. He has also testified that he verified and scrutinized the documents after taking over the charge. It is the specific evidence of P.W.13 that in course of investigation he examined the witnesses, recorded their statement, seized and collected documents. According to P.W.13, on 25.9.2007 he seized copy of circular relating to duty of Field Officer duly certified by the Branch Manager and Photo copy of duty distribution register certified by the Branch Manager. His signature in the seizure list has been marked Ext.10/2. P.W.13 also deposed that previous I.O Sri D.K.Kabi had seized certain documents on 14.9.2007 from Sarat Panda, Branch Manager, Utkal Gramya Bank, Deogaon Branch and prepared seizure list. He has claimed in his evidence that he is acquainted with the signature and handwriting of Sri D.K.Kabi in regular course of official business. The signature of Sri D.K.Kabi has been marked Ext.11/2. It is the testimony of P.W.13 that S.P.C.B.I moved for sanction for prosecution against the accused and since a prima facie case was established he submitted charge sheet after obtaining sanction order. The defence has proved the contradictions through the evidence of P.W.13. His clean admission is that he has neither collected nor brought any document on record to show that the village Rata Khandi comes within the servicing area of Utkal Gramya Bank, Deogaon Branch.

9. Much has been sought to be made of the admissions of P.W.11, Kishanlal Sahu, complainant and the independent witness P.W.5 Padmanav Sahu. P.W.11 has admitted that the Branch Manager asked me to meet him in the chamber at 5 P.M and also asked him to accompany him to Bolangir and to act according to his

instruction. Further admission is that he was taken to the Inspection quarters of BSNL where he was introduced to Sri Kabi and was asked to sign on the written complaint, Ext.14. He has also admitted that the contents of Ext.14 was not read over and explained to him, although he was illiterate and he did not know reading and writing of English language. Similarly P.W.5 has admitted that he has not enquired from the complainant about his educational qualification and whether he knows reading and writing of English language. His further admission is that he does not remember whether the F.I.R was read over and explained to the complainant. It is also the admission of P.W.5 that he has not read over and explained the complaint to the complainant. The learned defence counsel while containing that the oral as well as documentary evidence relied on by the prosecution does not prove the case of the prosecution, has relied on a decision reported in 2003(II) OLR-399 Niranjana Bharati-vrs- State of Orissa, where it has been held: "On the date trap was laid, there was no work of the complainant pending with the appellant and therefore demand of bribe as alleged is not free from doubt and not acceptable". He has also placed reliance on a decision reported in 2014 (I) OLR-808 Raj Kishore Lenka - vrs- Republic of India, where it has been held: "Evidence regarding demand of bribe before the trap is sketchy, inconsistent and contradictory. Evidence adduced by the prosecution is not reliable and the evidence of P.W.2 does not stand the test of being trustworthy and corroborated and the evidence on record probablises the defence case for which the appellant is entitled to benefit of doubt. Reliance has also been placed on another decision reported in 2013 (II) OLR-308 Antaryami Bihari - vrs- State of Orissa, where it has been held: "Therefore, mere recovery of tainted money without proof of demand by the appellant and acceptance by him cannot be sufficient to convict the appellant".

10. The learned Sr.P.P on the other hand contends that the ingredients of Section 7 and 13(2) read with Sec.13(1)(d) of the P.C.Act are attracted because the accused has demanded and accepted the same from the informant for showing favour to the informant. In support of his contention he has relied on a decision reported in 1986 CrI.L.J.1101 (Ramesh -vrs- State) wherein it has been held: "In a criminal trial it is quite natural that there will be some inconsistencies between the statement of the witnesses. But minor inconsistencies cannot dislodge the case of the prosecution. It has also been held: "It is also our experience that invariably the witnesses add embroidery to prosecution story perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the court to cut out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the judge has to perform". He has also placed reliance on another decision reported in 1995 Supreme Court Cases (CrI.) 546 (M.W.Mahiuddin -vrs- State of Maharashtra wherein it has been held: "The complainant had parted with the tainted money and the same came under the hold and control and hence into the possession of the accused. Therefore, it cannot be said that the accused had not come into possession of the money. When once this requirement namely that he came into possession of the money is satisfied then the only inference is that he accepted the same and thus obtained the pecuniary advantage". The learned Sr.P.P has pointed out that the complainant turned hostile for which

he has been cross-examined by the prosecution as he has suppressed the truth with a view to shield the accused from legal punishment. He has also urged that the statement of the independent witnesses and the official witnesses, the pre-trap and post-trap memorandum contained in Ext.5 and Ext.7, C.F.S.L. expert opinion contained in Ext.12 as well as the other oral and documentary evidence adduced by the prosecution has clearly established the commission of the alleged offences by the accused. His specific contention is that just because the complainant turned hostile in course of trial it should not be allowed to throw out the entire prosecution case. It has also been contended that the plea taken by the accused that the bribe money was thrust by the complainant into his pocket is not at all believable in view of overwhelming evidence of the prosecution to negate the plea of the accused. It is also the argument of the learned Sr.P.P that since the prosecution has proved the case that the accused has demanded as well as accepted illegal gratification as a motive or reward to show favour to the complainant onus lies upon the accused to disprove the same.

11. Dhanmat Panua appearing as D.W.1 has deposed that the accused was working as Field Officer, Utkal Gramya Bank, Deogaon Branch from the year 2006 to 2007. His specific evidence is that he has a savings bank account bearing no. 12004018563 at Utkal Gramya Bank, Deogaon Branch and it has been marked Ext.A. D.W.1 specifically claimed that he had deposited an amount of Rs.30,000/- in his account on 14.9.2007 and the relevant entry has been marked Ext.A/1. His further testimony is that he has personally gone to the Bank to deposit the amount at about 11.30 A.M and he saw that a person came running to the accused and inserted something in the shirt pocket of the accused and fled. According to D.W.1, when the accused Arun Deep shouted , they went to him and

on query the accused disclosed that somebody forcibly kept money in his pocket and ran away and the accused showed the amount of Rs.1000/- to them. His evidence also reveals that some C.B.I officials came and challenged the accused to have demanded and accepted the bribe money and arrested him. Sasibhusan Sahu appearing as D.W.2 has deposed that he has a saving account at Utkal Gramya Bank, Deogaon Branch bearing Account no.7 and had deposited Rs.500/- on 14.9.2007. The said pass book has been marked Ext.B and the relevant entry has been marked Ext.B/1. D.W.2 claims in his evidence that he personally deposits the amount in his account and he had been to the Bank between 11.30 A.M and 12 noon and while he was coming out the Bank, he saw a person came and forcibly inserted some money in the chest pocket of the accused in front of the Bank and ran away. He has also testified that the accused raised alarm which attracted people to the spot. His evidence further reveals that five to seven people came and caught hold of him challenging that he had demanded and accepted bribe money from the complainant. P.W.2 has also testified that the accused told that the complainant forcibly kept money in the pocket. It is the specific claim of P.W.2 in his evidence that he has seen the complainant forcibly inserted the money inside the pocket of the accused.

12. The learned Sr.P.P argued that the prosecution case is otherwise sustainable even if the complainant has turned hostile. In support of his contention he has relied on a decision reported in 2001 CrI.L.J. S.C.515 M.Narsinga Rao -vrs- State of Andhra Pradesh where it has been held: "Where the appellant was caught red handed with the currency notes, he never demurred that they were not received by him. In fact, the story that the currency notes were stuffed into his pocket was concocted by the appellant only after

lapse of a period of four years and that too when appellant faced the trial in the court. During trial, the complainant and the accompanying witness denied having paid any bribe to the appellant and also denied that the appellant demanded the bribe amount. They were declared hostile by the Public Prosecutor and cross-examined. The trial court and the High Court disbelieved the defence evidence in toto and found that the complainant and the accompanying witness were won over by the appellant and that is why they turned against their own version recorded by the I.O and subsequently by a Magistrate under section 164 Cr.P.C. The Special Judge ordered the two witnesses to be prosecuted for perjury, and the said course suggested by the trial court found approval from the High Court also. The only condition for drawing legal presumption u/s. 20 of the P.C.Act is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved but that is not the only mode envisaged in the Evidence Act. The appellant made a serious endeavour to rebut the presumption through two modes. One is to make the complainant and accompanying witness speak to the version of the appellant and the other is by examining two witnesses on the defence side. The two defence witnesses gave evidence to the effect that the appellant was not present at the station on the dates when the alleged demand was made by the appellant. In spite of hostility of the complainant and the independent witnesses, acceptance of bribe was considered and proved because recovery of money was smeared with phenolphthalein powder”.

13. The learned defence counsel, on the other hand, in a bid to refute the above contentions, has submitted that the whole prosecution case is liable to be jettisoned once the complainant did not support the prosecution case being declared hostile. In support of his contention he has relied on a decision reported in (2014) 58 OCR (SC) 175 (B. Jayaraj-vrs- State of A.P.) where it has been held: "The complainant did not support the prosecution case in so far as the demand of the accused is concerned. But prosecution has not examined any other witness present at the time when the money was allegedly handed over the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext.P-11) before LW-9, and there is no other evidence to prove that the accused had made any demand, the evidence of P.W.1 and the contents of Ext.P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned Trial Court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive in so far as the offence under Section 13(1)(d)(i)(ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.

In so far as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under section 7 and not the offences under Section 13 (1)(d)(i)(ii) of the Act in any event. It is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent for which the conviction is not sustainable”.

14. The learned defence counsel has submitted that the prosecution is not sustainable in the absence of proof of demanding and receiving money from the complainant. In support of his contention he has relied on a decision reported in 2013 (II) OLR-308 Antaryami Bihari – vrs- State of Orissa where it has been held: “There is no reliable evidence at all that the appellant demanded the money and received the same from the informant. The evidence that the informant himself inserted the money in the pocket of the appellant does not amount to acceptance of the money by the appellant. Therefore, there is grave doubt about demand and acceptance of bribe by the appellant and, therefore, the benefit of such doubt shall go to the appellant. It is well settled that there is no qualitative difference between the evidence led by the defence or by the prosecution, and such evidence cannot be rejected merely because of conjecture and surmises. It is also well settled that while prosecution has to prove its case beyond reasonable doubt, defence has only to produce evidence or probablised its defence. In this connection reliance can be placed on the decision reported in 1995 C.L.T. 223 (Ram Kumar Agarwal –vrs- State of Orissa where it has

same weight as that of the prosecution. His credibility should not be doubted merely because his attendance has been procured by the accused. Prosecution witnesses are not necessarily truthful and the defence witnesses are false witnesses. When two versions are before the court-one by the prosecution and the other by the defence, it is for the court to scrutinize and find out as to which of them is probable and believable. If on assessment of the evidence led by the parties probability factor echoes in favour of the defence, the court should give benefit of doubt to the accused". Reliance has also been placed on the decision reported in 2004 Cr.L.J. 884 (T.Shankar Prasad -vrs- State of Andhra Pradesh and A.I.R. 2012 S.C.2263 (Narendra Champaklal Trivedi -v- State of Gujrat. Presumption under Section 20 of the act will apply in the facts and circumstances of the case. The decision in the case of T. Shankar Prasad (supra) reveals that the accused in that case received the tainted money and, therefore the court raised the presumption under Section 20 of the Act.

15. Defence cross-examination has brought out damaging admissions in the evidence of the complainant. His candid admission is that when the accused came out of the toilet, he inserted an amount of Rs.1000/- into his pocket and left the spot. His further admission is that the accused has never demanded bribe money of Rs.1000/- from him. The distinguishing feature which is manifestly obvious from the decision relied on by the prosecution is that in that case the complainant and the accompanying witness were won over by the appellant for which they resiled from their statement recorded by the I.O and subsequently by a Magistrate u/s. 164 Cr.P.C. Much less elicited nothing has been suggested to the complainant that he has been won over by the accused. Besides, no materials have been brought on record to show that the complainant

has been won over in the present case. Therefore, the decision cited by the prosecution on this score has no application to the present case. It is important to note that the decision of larger Bench of the Hon'ble Supreme Court has got overriding effect on other decisions. It is significant to note that the decisions cited by the learned Sr.P.P have no applications to the present case whereas the decisions relied on by the defence lend sufficient assurance to its case. In the perspective the accused is entitled to benefit of doubt.

16. In ultimate analysis of the totality of the evidence on record, I am constrained to hold that the prosecution has failed to prove its case against the accused beyond all reasonable doubt. I, therefore, find the accused not guilty of the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the P.C.Act,1988 and acquit him under Section 248(1) Cr.P.C. The bail bond stands cancelled.

The seized documents be returned from whom seized and the zimanama, if any, be cancelled four months after the appeal period is over, if no appeal is preferred and in the event of an appeal subject to order of the Hon'ble Appellate Court.

Special Judge, C.B.I. Court No.I,
Bhubaneswar.

Dictated & corrected by me and pronounced in the open court today
i.e. on 21st August, 2014.

Special Judge, C.B.I. Court No.I,
Bhubaneswar.

List of witnesses examined for the prosecution.

- P.W.1 Lokanath Mishra.
P.W.2. Gopal Krishna Nayak.
P.W.3. Ganesh Sahu.
P.W.4. Subash Ch. Nath.
P.W.5. Padmanav Sahu.
P.W.6. Sarat Panda.
P.W.7. Bimal Chandra Purkait
P.W.8. Santosh Kumar Behera.
P.W.9. Kodandadhar Mohanty.
P.W.10. Nabin Kishore Das.
P.W.11. Kishan Lal Sahu.
P.W.12. Subhransu Bhusan Mishra.
P.W.13. Srikanta Kumar Behera.

List of witnesses examined for the defence.

- D.W.1. Dhanmat Panua.
D.W.2. Sasibhusan Sahu.

List of documents admitted for the prosecution.

- Ext. 1 Loan Document.
Ext.1/1. Endorsement.
Ext.1/2. Do.
Ext.2 to

Ext.2/3. Withdrawal slip.
Ext.3. Account statement.
Ext.4. Certified copy of Distribution register.
Ext.3/1. Signature of Branch Manager, Sarat Panda.
Ext.5. Pre-trap memorandum.
Ext.5/1 Signature of P.W.5.
Ext.6. Sketch map.

- Ext.6/1. Signature of P.W.5.
- Ext.7. Detection report.
- Ext.7/1. Signature of P.W.5.
- Ext.8. Search list.
- Ext.8/1. Signature of P.W.5.
- Ext.2/4. Endorsement with signature of accused.
- Ext.9. Circular.
- Ext.10 and
Ext.11. Vouchers.
- Ext.10/1 and
Ext.11/1. Signature of P.W.6.
- Ext.12. Report of P.W.7.
- Ext.12/1. Signature of P.W.7.
- Ext.12/2. Signature of Bhattacharya.
- Ext.5/2, 6/2,
7/2 and 8/2. Signatures of P.W.8.
- Ext.13. Sanction order.
- Ext.13/1. Signature of P.W.10.
- Ext.14. F.I.R.
- Ext.14/1. Signature of P.W.11.
- Ext.5/2. Signature of P.W.11.
- Ext.6/3. Signature of P.W.11.
- Ext.15. Formal F.I.R.
- Ext.15/1. Signature of the S.P. C.B.I. Pranab Mohanty.
- Ext.5/4. Signature of the Inspector, D.K.Kabi.
- Ext.5/5. Signature of P.W.12.
- Ext.7/3. Signature of Inspector D.K.Kabi.
- Ext.7/4. Signature of the complainant.
- Ext.7/5. Signature of P.W.12.
- Ext.6/4. Signature of P.W.12.
- Ext.6/5 and

Ext.11/2. Signatures of the Inspector D.K.Kabi.

Ext.10/2. Signature of P.W.13.

List of documents admitted for the defence.

Ext.A. Savings Account Pass book of D.W.1.

Ext.A/1. Signature of D.W.1.

Ext.B. Savings Account pass book of D.W.2.

Ext.B/1. Signature of D.W.2.

List of M.Os.

M.O.I, M.O.II,

M.O.III, M.O.IV Sample bottles.

M.O.V. Envelope containing G.C notes.

M.O.VI. Envelope containing shirt of the accused.

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Special Judge, C.B.I. Court No.I, Bhubaneswar.