

**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. 15 of 2011.
Arising out of R.C. No. 8(A) of 10**

Date of argument ... 8.5.2014 & 9.5.2014.
Date of Judgement ... 15.5.2014.

REPUBLIC OF INDIA

VERSUS

1. Shyam Sundar Prusty, aged about 54 years,
son of late Gopinath Prusty, At- Khajuripada,
P.S. Baideswar, Dist. Cuttack.
... Accused.
- Counsel for the C.B.I. ... Sri I.K.Chandra.P.P.
- Counsel for the accused. ... Sri S.K.Sahu,Advocate,
and associates.

J U D G M E N T

The accused Shyam Sundar Prusty 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. **Facts material for the prosecution case hold as follows:**
The accused was working as Asst. Branch Manager, LIC of India, Rourkela Branch, Sector-19, Rourkela from 20.10.2010 to 30.10.2010. The complainant Bhubaneswar Dwibedy was an agent of LIC of India and his agent code number is 04607/589. During the year 2009-10 the complainant was issued with seven number of cheques bearing No. 236159 dated 2.6.09 of Rs.420/-, No.043969

dated 2.7.09 of Rs.716/-, No.236624 dt.10.7.2009 of Rs.1829/-, No.047766 dated 3.8.2004 of Rs.1009/-, No.270566 dated 2.9.09 of Rs.3859/-, No. 271318 dated 3.10.09 of Rs.392/- and No.271866 dated 3.11.09 of Rs.1545/- towards his commission by LIC of India, Rourkela Branch, Sector-19, Rourkela. But he could not deposit those cheques in the Bank within three months for illness of his father. On 20.10.2010 he submitted an application enclosing stale cheques to the Branch Manager, LIC of India, Rourkela Branch, Sector-19, Rourkela for issuing of fresh cheques. Thereafter on 28.10.10 he requested the accused – Asst. Branch Manager, LIC of India, Rourkela Branch for issuing fresh cheques, but the accused told the complainant that he would hand over the fresh cheques, if the complainant would pay him bribe of Rs.1000/-. Since the complainant was not willing to pay the demanded amount, lodged a written complaint with the Superintendent of Police, C.B.I. Bhubaneswar through the D.S.P. C.B.I. Unit Office, Rourkela on 28.10.2010. The case was registered on the above report and Inspector C.B.I. Sri S.N.Rath was directed to investigate into the case by laying a trap. Requisition was made for attendance of two official witnesses by DSP CBI, D.K.Kabi to act as witness during trap. On 30.10.10 about 10 A.M the C.B.I personnel, two official witnesses and informant Bhubaneswar Dwibedy assembled in the CBI Unit Office at Rourkela. During pre-trap proceeding the complainant produced one number of one thousand rupee denomination Government currency note which was treated with the chemical phenolphthalein powder and was given to the complainant with an instruction to pay the tainted Government currency note to the accused only on his specific demand and witness Kishore Kumar Pradhan was asked to accompany the complainant. It is also the prosecution case that after chemical demonstration a pre-trap memorandum was prepared following which the complainant and shadow witness left the CBI Unit office in the motor cycle of the

complainant for LIC of India, Rourkela Branch, Sector-19 Rourkela and reached there about 10.55 A.M. The complainant and shadow witness Kishore Kumar Pradhan entered into the first floor of LIC office building and went to cubical of the accused- Asst. Branch Manager followed by the shadow witness whereas other trap team members took their position in the first floor. The complainant requested the accused-Asst. Branch Manager to give his fresh cheques, but the accused asked him whether he had brought the demanded amount of Rs.1000/- to which the complainant replied in the affirmative and handed over the tainted G.C note of Rs.1000/- to the accused who kept the amount in his left side shirt pocket. Thereafter the accused signed on the vouchers and gave those with fresh cheques to the complainant. Then the complainant passed pre-arranged signal in response to which the trap team members led by the Inspector, C.B.I. Sri S.N.Rath rushed to the spot and the Inspector of C.B.I. disclosed his identity and identity of other trap team members and challenged the accused to have demanded and accepted the illegal gratification of Rs.1000/- from the complainant and two constables of CBI caught hold of both the hands of the accused. Hand wash and shirt pocket wash of the accused were taken. No less specific is the prosecution case that the tainted government currency note of Rs.1000/- was recovered from the right side shirt pocket of the accused and after observing all the formalities of post-trap proceedings the team members left the spot with the accused. Exhibits were sent for chemical examination and sanctioned order was obtained. On completion of usual investigation 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. It is the specific plea of the accused that the complainant had taken a hand loan of Rs.1000/- from him on 20.10.10.

4. Points for determination are:

- (i) Whether the accused Shyam Sundar Prusty, Asst. Branch Manager, LIC of India, Rourkela Branch, Sector-9 Rourkela being public servant functioning in the above capacity accepted Rs. 1000/- from the complainant as gratification other than legal remuneration for re-validation of the stale cheques on 30.10.10.
- (ii) Whether the accused being public servant functioning as Asst. Branch Manager, LIC of India, Rourkela 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 re-validation of the cheques on 30.10.10.

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

6. There is no denying that the accused Shyam Sundar Prusty was working as Assistant Branch Manager, LIC of India, Rourkela Branch, Sector-19, Rourkela. Undoubtedly, the most important witness for the prosecution is none other than the complainant. He has deposed that LIC Office, Rourkela had given him seven cheques of Rs.10,000/- towards his commission for which he was required to deposit the cheques in the bank within three months, but he could not deposit because of illness of his mother. According to P.W.8 he made fresh application in the LIC office, Rourkela for issuing of fresh cheques. Ext.10 is the application of the complainant and Ext.10/2 is his signature. His further evidence is that he submitted the application on 20.10.10 and on 28.10.10 he met Asst. Branch Manager Shyam Sundar Prusty and requested him to issue fresh cheques. It is the specific allegation of P.W.8

complainant Bhubaneswar Dwibedy that the accused demanded Rs.1000/- and told that unless the amount is paid, fresh cheques could not be issued. His further allegation in the evidence is that the Asst. Branch Manager demanded bribe money. P.W.8 also testified that he was unwilling to pay the demanded bribe money and on that day he met D.S.P. C.B.I. Rourkela and submitted his complaint. The complaint petition has been marked Ext.24 and his signature has been marked Ext.24/1. According to P.W.8, the DSP C.B.I. Rourkela asked him to come to the C.B.I. office on 30.10.10 with the demanded amount of Rs.1000/-. His evidence further reveals that on 30.10.10 he came to C.B.I. Office, Rourkela and met Inspector C.B.I. S.N.Rath who introduced him with all other witnesses. It is the specific testimony of P.W.8 that A.K.Ray noted down the serial number of the Govt. currency note in a separate sheet of paper after which the government currency note was treated with chemical powder. He has also deposed that witness A.K.Ray handled the tainted government currency note after which the hand of A.K.Ray was washed with chemical solution which turned pink in colour. According to P.W.8 the pink coloured chemical solution was preserved in a separate bottle duly sealed, levelled, corked and signed. The bottle containing the solution has been marked M.O.I. P.W.8 has also deposed that A.K.Ray kept the tainted government currency note in his right hand pant pocket and he was instructed to pay the amount of Rs.1000/- to the accused only on specific demand. It is also the evidence of P.W.8 that he was instructed to pass the pre-arranged signal by way of rubbing his head in both the hands and Kishore Kumar Pradhan was instructed to accompany him to see the transaction of demand and acceptance of money by the accused. According to P.W.8 a pre-trap memorandum was prepared by the C.B.I. Inspector which is marked Ext.17/3.

7. No less importance is the evidence of P.W.8 that the accompanying witness Kishore Kumar Pradhan and he reached the LIC Office in a motor cycle, while the witness Ashok Kumar Ray and other trap team members followed them in a vehicle. He has testified that he along with Kishore Kumar Pradhan went to the first floor of the LIC office, Rourkela where the accused Shyam Sundar Prusty was sitting in his seat. His further evidence is that he went to Asst. Branch Manager, S.S. Prusty and the accompanying witness K.K.Pradhan remained at a distance of about 4 to 5 feet for which he was in a position to hear the conversation between the accused and him. According to P.W.8 the other trap team members had taken their position in the first floor of the LIC building.

8. It is the categorical evidence of P.W.8 that he requested the accused to give fresh cheques, but he asked him whether he had brought the demanded amount. His further testimony is that he brought out the money of Rs.1000/- and made over the accused and he accepted in his right hand. P.W.8 has specifically deposed that the accused kept the amount in his left side shirt pocket and gave him vouchers with cheques and he signed on the vouchers and received the cheques as contained in Ext.12/ 2 to 12/6. According to P.W.8 Ext.12/7 to Ext.12/13 are his signatures. It is the clear evidence of P.W.8 that he passed pre-arranged signal after which Inspector of Police, C.B.I. S.N.Rath and other trap team members went to the accused Shyam Sundar Prusty. His further testimony is that the Inspector of Police, C.B.I. challenged the accused to have received the bribe amount of Rs.1000/- from him and he kept quiet. His evidence also reveals that P.K.Palei and P.K.Naik caught hold of the left hand wrist and right hand wrist of the accused and his right hand finger was dipped in chemical solution which turned pink in colour after which the chemical solution was preserved in a clean & dry bottle which was sealed, levelled, corked and signed by all

witnesses under M.O.III. It also appears from the evidence of P.W.8 that the left hand of the accused was also dipped in chemical solution but it did not change its colour. His further testimony is that the coloured solution was preserved in a dry and clean bottle which was sealed, levelled, corked and signed by all the witnesses under M.O.II. The evidence of P.W.8 also reveals that the accused handed over the amount of Rs.1000/- to the Inspector C.B.I. , S.N.Rath bringing out it from his left side shirt pocket. His further evidence is that witness Ashok Kumar Ray compared the serial number of the government currency note with the number mentioned in the pre-trap memorandum which tallied. It is also the evidence of P.W.8 that the tainted government currency note denomination was kept in an envelope under M.O.IV/1. It is the specific evidence of P.W.8 that shirt pocket of the accused was washed with sodium carbonate solution which turned pink in colour after which the shirt pocket wash was preserved in a dry clean bottle which was sealed, levelled, corked and signed by the witnesses. The said bottle has been marked M.O.V. According to P.W.8, a post trap memorandum was prepared as contained in Ext.19 and his signature has been marked Ext.19/3.

9. Nothing substantial has been brought out in cross-examination of P.W.8 to discredit his evidence on material aspects of the case. His evidence appears to be quite clear, consistent, convincing, credible and above reproach. In fact P.W.8 successfully stood the test of cross- examination. In fact his evidence suffers from no inherent, infirmity and improbability. I, therefore, find no cogent reason or ground to doubt the veracity of the complainant. The admissions brought out in cross- examination of P.W.8 are too trivial to discredit the otherwise clear and credible evidence of the complainant. It is common legal proposition that minor discrepancy and contradictions should be allowed to take away the intrinsic

worth of the complainant's evidence. The evidence of the complainant has virtually remained unimpeached and inspires confidence.

10. The evidence of the complainant P.W.8 has received ample corroboration from another important witness Inspector of Police, C.B.I. S.N.Rath, P.W.10. He is the trap laying officer. P.W.10 is the then Inspector of Police, C.B.I. has deposed that after registration of the case it was entrusted to him for investigation and to lay the trap of accused Shyam Sundar Prusthy on 30.10.10 at 10 a.m. at LIC Office, Rourkela Branch while demanding and accepting bribe amount of Rs.1000/-. He has further deposed that he requested D.S.P. D.K.Kabi to arrange government officials to act as witness during trap over telephone. According to P.W.10, he instructed the complainant to remain present at unit office C.B.I. Rourkela at 10 a.m. on 30.10.10 along with trap money of Rs.1000/-. P.W.10 has further testified that on 29.10.10 he left Bhubaneswar for Rourkela along with Inspector K.P.Tripathy and reached Rourkela on 30.10.10. According to P.W.10, at 10 a.m. a trap team consisting of K.P.Tripathy Inspector CBI Bhubaneswar, Manoj Kumar Inspector CBI Rourkela, J.R.Barik S.I of Police CBI Rourkela Unit and constables C.B.I P.K.Naik, P.K. Palei and Jitray Singh and he assembled at CBI Unit office at Rourkela. According to P.W.10, in pursuance of the DSP D.K.Kabi independent witnesses namely Kishore Kumar Pradhan, SSA Office of EPFO SRO Rourkela and Sri Ashok KumarRay, Sr.TOA Office of GMTD BSNL Rourkela were also reported there for the purpose of witnessing trap proceeding. His evidence reveals that in accordance with the earlier direction the complainant Bhubaneswar Dwibedy reported at C.B.I. Office Rourkela at 10 a.m. on 30.10.10 along with the amount of Rs.1000/- which was used to be as trap money. It is also the testimony of P.W.10 that he introduced the complainant with the

witnesses who were shown a copy of the written complaint. His evidence further reveals that chemical demonstration was given to the witnesses both official and independent. P.W.10 has also testified that on completion of pre-trap proceeding, witness K.K.Pradhan and the complainant left the CBI Office for LIC office Rourkela in the motor cycle of the complainant followed by the rest of the trap team including witness A.K.Ray in a vehicle at about 10.50 a.m and parked the vehicle at a safe distance and that by that time Bhubaneswar Dwibedy and witness K.K.Pradhan had already reached there. It is the evidence of P.W.10 that the complainant parked his motor cycle inside the LIC office compound and went to the first floor of the LIC office building closely followed by the witness K.K.Pradhan. According to P.W.10, the complainant went to the cubical where the accused was sitting. His evidence further reveals that witness K.K.Pradhan remained outside of the cubical mingling with other people. While the remaining team followed them keeping a safe distance and took position on the first floor of the LIC building from where the cubical, where the accused was sitting, was clearly visible as the partition board of the cubical was four feet in height. P.W.10 has specifically deposed that after entering the cubical of Sri Prusty, the complainant requested him for issuing him the cheques, the accused asked the complainant whether he had brought Rs.1000/- as demanded as bribe money. According to P.W.10, when the complainant answered in the affirmative, the accused demanded the bribe amount of Rs.1000/- by stretching his right hand towards the complainant and the complainant brought out the tainted G.C note of Rs.1000/- from his pant pocket and handed over to the accused who accepted the amount in his right hand and kept the same in his left side shirt pocket. His evidence further reveals that after receiving the amount Sri Prusty took out a bunch of vouchers from his drawer and asked the complainant to sign the said vouchers and accordingly the accused S.S.Prusty

signed the vouchers after which the accused handed over the cheques to him. He has also testified that the complainant took the cheques from the accused and left the cubical. It is specifically alleged in the evidence of P.W.10 that witness K.K.Pradhan only heard the transaction being closed to the cubical and all other team members saw the transaction including the witness A.K.Ray.P.W.10 S.N.Rath categorically deposed that immediately after the transaction is over they all rushed to the cubical of the accused and he first introduced himself as well as other members and wanted to know his identity. According to P.W.10, the accused has disclosed his identity as ShyamSundar Prusty, Asst. Branch Manager, (Sales) LIC of India, Rourkela Branch. P.W.10 has specifically deposed that he challenged the accused to have demanded and accepted the bribe money of Rs.1000/- from the complainant, after which the accused became nervous, fumbled, kept quiet and constables P.K.Naik and P.K.Palei caught hold of both the hands of the accused.

11. It is the evidence of P.W.10 that on his instruction Jitray Singh, constable CBI prepared solution of sodium carbonate and water in a clean glass tumbler and the accused was asked to dip his right hand fingers in solution which he did and the solution turned pink in colour. According to P.W.10 the solution was kept in a clean glass bottle, corked, sealed and signed by all. The bottle containing pink colour solution has been marked M.O.III. He has also deposed that on his instruction the constable Jitray Singh prepared solution of sodium carbonate and water in another clean glass tumbler and Sri Prusty dipped his left hand finger of which did not change its colour. According to P.W.10 the chemical solution was kept in another clean bottle, corked, levelled and signed by all which has been marked M.O.II. It is also the evidence of P.W.10 that Sri Prusty was asked to produce the tainted government currency note which he accepted from the complainant as bribe money. According to

P.W.10 the accused took out the tainted government currency note worth of Rs.1000/- from his right hand side shirt pocket and handed it over to him. It also appears from the evidence of P.W.10 that he asked the accused to change his wearing shirt and after he took off the shirt and the left side shirt pocket was washed in freshly sodium carbonate solution and water after which the colour turned in pink and the solution was preserved in a clean glass bottle, sealed, levelled, corked and signed which has been marked M.O.V. The wearing shirt of the accused has been marked M.O.VI. His further evidence is that he arrested the accused at 12 P.M in presence of witnesses for demanding and accepting legal gratification from the complainant. Nothing substantial has been brought out in the cross-examination of P.W.10. He has successfully stood the test of cross-examination. His evidence appears to be quite clear, consistent, convincing, credible and above reproach. **In effect the evidence of P.W.10 suffers from no inherent, infirmity and improbability.** The admission brought out by the defence cross- examination are too trivial nature of affect the essential credibility of the prosecution case.

12. The evidence of P.W.1, P.W.2 and P.W.8 have proved that the complainant Bhubaneswar Dwibedy, agent of LIC Rourkela has submitted an application along with stale cheques for issuance of fresh cheques. They have also proved the documentary evidence i.e. the application for revalidation of cheques as contained in Ext.10, stale cheques as contained in Exts.2/1, 3/1,4/1,5/1, 6/1, 7/1 and 8/1. P.W.7 and 8 have also convincingly proved that the accused Shyam Sundar Prusty had received illegal gratification of Rs.1000/- and issued fresh cheques after taking signatures of the complainant on the vouchers.

13. It is the specific defence plea as well as the statement of the accused u/s. 313 Cr.P.C that the accused was trapped by the CBI team while complainant was repaying the loan amount of Rs.1000/- which he had taken from the former. D.W.1 Michel Dang has deposed about preparation of fresh cheques which were issued to the complainant. It is the evidence of D.W.2 Satya Narayan Mishra, Development Officer, LIC India, Rourkela Branch that the complainant was repaying the loan amount of Rs.1000/- to the accused Shyam Sundar Prusty when the trap team members had caught hold of him. The most damaging admission in the evidence of D.W.2 is that he has no knowledge about the date and day when the accused has given the loan of Rs.1000/- to the complainant.

14. It is also settled in law that there is statutory presumption under Section 20 of the Act which can be dislodged by the accused bringing on record some evidence, either direct or circumstantial that money was accepted by other than the motive or reward as stipulated Under Section 7 of the Act. It is obligatory on the part of the Court to consider the explanation offered by the accused Under Section 20 of the Act and the consideration of the explanation has to be on the anvil of preponderance of probabilities.. It is significant to note that when the ingredients that the accused is a public servant and that he must be shown to have obtained from any person any gratification are proved by the evidence a rebuttable presumption arises in respect of the third ingredient and in absence of proof of first two ingredients the presumption does not arise. On mere recovery of certain money from the person of the accused without proof of demand or on behalf of such person to whom favour was to be shown the presumption cannot arise. In essence it is the defence plea that the accused has neither demanded or accepted any bribe money from the complainant. There is cogent and convincing evidence that the accused had demanded and accepted the bribe

money from the complainant . In other words the evidence of the prosecution witness with regard to demand and acceptance of bribe is free from blemish and above reproach. It is well settled in law that in case where the accused offers an explanation the question that arises for consideration is whether that explanation can said to have been established. It is further clear that the accused is not required to establish his defence by proving beyond all reasonable doubt as the prosecution but can establish the same by preponderance of probabilities. The accused has denied his knowledge as to how currency notes came to his centre table. What is particularly important in this connection is that the prosecution is bound to establish that there was an illegal offer of bribe and acceptance. In absence of cogent and convincing evidence of demand and acceptance of amount as illegal gratification recovery alone is not the ground to sustain the allegation. More importantly , the only condition for drawing the presumption Under Section 20 of the Act is that during the trial it should be proved that the accused has accepted or agreed to accept any gratification. In this connection reliance can be placed on a decision reported in 2008 SCC- 571 Madhukar Bhaskar Rao Joshi-v- State of Maharashtra where it has been held: " The premise to establish on the facts for drawing the presumption is that there was payment and acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted as motive or reward for doing or forbearing to do any official act. The defence plea is quite acceptable on the anvil of preponderance of probabilities". The accused has taken the plea u/s. 313 Cr.P.C that at the relevant time the complainant was repaying the loan amount which he had taken from the former.

15. True it is that the standard of proof for the defence is not as rigid and high as in case of the prosecution. But that does not mean that the defence will rest content with only by giving some

suggestions to the prosecution witnesses. The most disquieting feature of the defence plea is that even assuming but not conceding for the sake of argument that the complainant had really taken a loan of Rs.1000/- from the accused. This is a circumstance of real consequence which can hardly be brushed aside. It is as much inconceivable as unusual that a sum of Rs.1000/- denomination which was meant to be paid to the accused was treated with phenolphthalein powder. The very fact that the money was treated with phenolphthalein powder shows in no uncertain terms that the amount (money) of Rs.1000/- was never the loan amount. In other words if note of Rs.1000/- was the loan amount C.B.I could not have scope, chance or opportunity to treat it with phenolphthalein powder. It is too much of a co-incidence that the trap team members could know the exact time and place of repayment of the loan amount. Therefore, quite obviously this defence plea is wholly unbelievable being a figment of imagination. It is worthwhile to note that when a trap is laid for a public servant, marked currency notes used for the purpose of trap are treated with phenolphthalein powder, so that handling of such marked currency notes by the public servant can be detected by chemical process and the court does not have to depend upon the oral evidence which is some times of a dubious character for the purpose of deciding the case. Therefore, while considering the evidentiary value of chemical examination report, a presumption of correctness of conclusion arrived at by the chemical analyser is attached to such a report, unless the contrary is proved. The accused has not at all challenged the correctness of the report as contained in Ext. 26 with regard to his hand wash test in chemical solution at the time of trial. Quite obviously by the chemical examination as contained in Ext. 26 unmistakably proves the fact that the hand wash of the accused contained phenolphthalein powder. The scientific test has clearly established the fact that the accused after handling the currency

notes had kept the same in his right side pant pocket. It has been contended by the learned defence counsel that the solution contained in M.O.I and M.O.V is not pink in colour even to naked eye. True, it is that the colour of the chemical solution contained in M.O.I and M.O.V is not pink in colour. What cannot be lost sight of is that in course of time the colour of the solution starts fading and ultimate loses its original colour. Thus the prosecution has clearly established that the accused had voluntarily and consciously accepted the tainted currency notes from the complainant.

16. The most important contention advanced by the learned defence counsel is that the prosecution evidence deserves no credence in as much as trap witnesses are interested and partisan witnesses concerned with the success of the trap. However it is the settled legal position that where the evidence of the police officer who laid the trap is found entirely trustworthy, there is no need to seek any corroboration. There is no rule of prudence which has crystallized into a rule of law nor in need of prudence which requires that the evidence of such officer should be treated on the same footing as evidence of accomplices and there should be insistence on corroboration. In the facts and circumstances of a particular case a court may be disinclined to act upon the evidence of such an officer without corroboration, but equally in the facts and circumstances of another case the court may unhesitatingly accept the evidence of such an officer. In fact it is all matter of appreciation of evidence and on such matters there can be no hard and first rule nor can there be any precedential guidelines. In the present case the evidence of all the official witnesses in the given circumstances as already pointed out as quite credible and trustworthy. The fact remains that no independent witness has been examined in this case. Much less elicited nothing has been suggested to the witnesses to show that they are in any way inimical disposed towards the

accused so as to depose falsely against him. It is well settled in law that independent corroboration to the evidence of the official witnesses or C.B.I. officials is necessary only when the evidence on record shows previous enmity between the complainant and the prosecution witnesses were official. Therefore non- examination of independent witness is not fatal to the prosecution in the present case. Besides the onus of proving previous enmity is high on the defence. But the defence has signally failed to discharge this onus. In fact the ultimate result of cases of this nature purely rests on the evidence of official witnesses and for that matter any attempt to get an independent witness will be an exercise in futility. In the perspective the contention of the learned defence counsel carries no legal conviction.

17. It is striking to note that the accused has not at all challenged the correctness of the report Ext.26. Thus the prosecution has amply established that the accused has voluntarily and consciously accepted the tainted government currency note from the complainant. **In effect, on the face of overwhelming evidence both oral and documentary coupled with chemical examination report, washed test, it has been established that the accused has voluntarily accepted the tainted government currency note from the complainant.** What is all the more striking in this connection is that once the accused accepted the gratification from the complainant it shall be presumed that the accused has accepted the gratification as illegal remuneration. When the accused has failed in his attempt to rebut the legal presumption it shall be presumed unless the contrary is proved that there was demand for taking illegal gratification. Merely because there are certain contradictions it cannot be said that the prosecution has not proved the guilt of the accused beyond all reasonable doubt. In contrast, the accused has squarely failed to discharge the onus that the money was accepted other than motive

or reward. **It therefore, follows as a natural corollary that the contentions advanced by the learned counsel for the defence are not only legally untenable but also factually misconceived and the decisions relied on hardly support the defence case.** On the other hand, the oral as well as documentary evidence of the prosecution coupled with the circumstances leading to trap and recovery of the tainted government currency notes from the accused is a definite pointer to the conclusion that the accused had accepted illegal gratification or bribe money from the complainant.

18. The learned defence counsel also strenuously argues that the whole prosecution case is liable to be jettisoned in as much as no work was pending with the accused on the date of trap. In support of his contention he has relied on a decision reported in 2003 (26) OCR, Criminal Appeal No. 142 / 2001 – Page- 274 where it has been held: “As on the date of trap no work is pending with the accused that would entail no liability of the accused in the matter”. Significantly it is the assertion in the evidence of P.W.8 that he brought out the demanded amount of Rs.1000/-and made over to the accused in his right hand and was accepted by the accused in his right hand. It is further evidence of the complainant that the accused kept it in his left side shirt pocket. His evidence further reveals that the accused gave him vouchers with cheques and he signed on the vouchers and received the cheques. According to P.W.8, Ext.12 to Ext.12/6 are relevant vouchers and Ext.12/7 to Ext.12/23 are his signatures. This piece of evidence of P.W.8 has virtually remained unimpeached. **It is, therefore, manifestly obvious from the evidence of P.W.8 that** the real work between the complainant and the accused on the relevant day was revalidation of the cheques. Therefore the argument that there was no work of the complainant with the accused is not only wholly factually misconceived but also legally untenable. Undeniably the defence

contention that as no work of the complainant was pending, it cannot be said that the accused has demanded and accepted as illegal gratification, is not acceptable. In effect, preponderance of oral as well as documentary evidence of the prosecution coupled with the circumstances leading trap and recovery of tainted government currency note point to the inescapable conclusion that the accused has demanded and accepted the illegal gratification or bribe money from the complainant.

19. In ultimate appraisal of the totality of the evidence on record I am driven to hold that prosecution has proved its case against the accused beyond all reasonable doubt. I, therefore, find the accused guilty of the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the P.C.Act, 1988 and convict him thereunder.

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

Dictated & corrected by me and pronounced in the open court today i.e. on 15th May, 2014.

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

SENTENCE

I heard the learned defence counsel as well as the learned Public Prosecutor for the C.B.I on the point of sentence. While the learned defence counsel submits that the convict should be dealt with leniently because of serious distress in his family, the learned Public Prosecutor for the C.B.I, on the other hand, urges that the convict deserves exemplary punishment. However, considering the

mitigating factors and extenuating circumstances in favour of the accused, I am of the view that he should be dealt with leniently. Therefore the convict is sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.10,000/- (Rupees Ten Thousand) in default to suffer rigorous imprisonment for one month for the offence under Section 7 of the P.C.Act, 1988 and to undergo rigorous imprisonment for one year and to pay a fine of Rs.15,000/- (Rupees Fifteen Thousand) in default to suffer rigorous imprisonment for two months for the offence under Section 13(1)(d) read with Section 13(2) of the P.C.Act, 1988 with a direction that both the sentences shall run concurrently.

The seized tainted government currency note contained in M.O.IV be returned to the Govt., if the same has not been reimbursed, the seized documents be returned from whom seized, the zimanama, if any, be cancelled and the sample bottles contained in M.Os. I to III & V along with the seized shirt of the accused contained in M.O.VI be destroyed four months after the appeal period is over if no appeal is preferred and in the event of an appeal subject to the order of the Hon'ble Appellant Court.

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

Dictated & corrected by me and pronounced in the open court today
i.e. on 15th May, 2014.

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

List of witnesses examined for the prosecution.

P.W.1	Sesadeb Barik.
P.W.2.	Susanta Kumar Mishra.
P.W.3.	Ashok Kumar Roy.
P.W.4.	BibhudhaPrasad Nayak.
P.W.5.	Binay Sah.
P.W.6.	Subodh Acharya.
P.W.7.	Kishore Kumar Pradhan.
P.W.8.	Bhubaneswar Dwibedy.
P.W.9.	Baijayanta Mukhapadhya.
P.W.10.	Sachidananda Rath.

List of witnesses examined for the defence.

D.W.1.	Michel Dang.
D.W.2.	Satyanarayan Mishra.

List of documents admitted for the prosecution.

Ext. 1	Voucher movement register
Ext.1/1	Relevant entry.
Ext.2.	Payment voucher.
Ext.2/1	Stale cheque.
Ext.3.	Payment voucher.
Ext.3/1	Stale cheque.
Ext.4.	Payment voucher.
Ext.4/1	Stale cheque.
Ext.5.	Payment voucher.
Ext.5/1	Stale cheque.
Ext.6.	Payment voucher.
Ext.6/1	Stale cheque.
Ext.7.	Payment voucher.
Ext.7/1	Stale cheque.
Ext.8.	Payment voucher.

Ext.8/1 Stale cheque.
Ext.9. Cheque movement register.
Ext.9/1. Entry dated 28.10.10.
Ext.10. Application for revalidation of cheque.
Ext.10/1. Endorsement.
Ext.11. Inward receipt register.
Ext.11/1. Entry in Ext.11.
Ext.11/2. Endorsement of accused.
Ext.12 to Ext.12/6. Duplicate vouchers.
Ext.2/2 to 8/2. Endorsement of Arati Pattanaik.
Ext.13. Stale cheque register.
Ext.13/1. Relevant entry.
Ext.14 to 14/6. Xerox copies of cheques.
Ext.9/2. Endorsement of P.W.2.
Ext.15. Seizure list.
Ext.15/1 Signature of P.W.2.
Ext.16. List of stale cheques (7 sheets)
Ext.17. Pre-trap memorandum.
Ext.17/1. Signature of P.W.3.
Ext.18. Sketch map.
Ext.18/1. Signature of P.W.3.
Ext.19. Post trap memorandum.
Ext.19/1. Signature of P.W.3.
Ext.20. Seizure list.
Ext.20/1. Signature of P.W.3.
Ext.21. Sanction order.
Ext.21/1. Signature of P.W.5.
Ext.22. Seizure list.
Ext.22/1. Signature of P.W.6.
Ext.23. Charge report.
Ext.23/1. Signature of P.W.6.
Ext.23/2. Signature of accused.

- Ext.17/2 Signature of P.W.7.
Ext.18/2. Signature of P.W.7.
Ext.19/2. Signature of P.W.7.
Ext.10/2. Signature of P.W.8.
Ext.24. Complaint petition.
Ext.24/1. Signature of P.W.8.
Ext.17/3. Signature of P.W.8.
Ext.12/7 to 12/13. Signature of P.W.8.
Ext.14/7 to 14/13, 18/3, 19/3. Signature of P.W.8.
Ext.25. Seizure list.
Ext.25/1. Signature of P.W.8.
Ext.26. CFSL Report.
Ext.26/1 & 26/2. Signature of P.W.9.
Ext.26/3. Signature of the Director, CFSL, C. Bhattacharya.
Ext.19/11. Signature of accused.
Ext.20/2. Signature of P.W.10.
Ext.20/3. Signature of K.P.Tripathy.
Ext.20/4. Signature of ManojKumar
Ext.20/5. Signature of J.R.Barik.
Ext.20/6. Signature of K.K.Pradhan.
Ext.20/7 Signature of A.K.Roy.
Ext.20/8. Signature of the accused.
Ext.20/9. Signature of B.M. S.Acharya.
Ext.18/4. Signature of P.W.10.
Ext.18/5. Signature of K.P.Tripathy.
Ext.18/6. Signature of ManojKumar.
Ext.18/7. Signature of J.R.Barik.
Ext.22/2. Signature of P.W.10.
Ext.29. Search list.
Ext.29/1 Signature of P.W.10.
Ext.25/2. Signature of P.W.10.
Ext.15/2. Signature of D.S.P. D.K.Kabi.

- Ext.27. F.I.R.
- Ext.27/1. Signature of J.N.Rana.
- Ext.27/2. Gist of F.I.R.
- Ext.24/2. Endorsement.
- Ext.24/3. Signature of DSP D.K.Kabi.
- Ext.17/4. Signature of P.W.10.
- Ext.17/5. Signature of K.P.Tripathy.
- Ext.17/6. Signature of ManojKumar
- Ext.17/7. Signature of J.R.Barik.
- Ext.17/8. Signature of P.K.Palei.
- Ext.17/9. Signature of P.K.Naik.
- Ext.17/10. Signature of Jitray Singh.
- Ext.28. Arrest memo.
- Ext.28/1. Signature of P.W.10.
- Ext.19/4. Signature of P.W.10.
- Ext.19/5. Signature of K.P.Tripathy.
- Ext.19/6. Signature of Manoj Kumar.
- Ext.19/7. Signature of J.R.Barik.
- Ext.19/8. Signature of P.K.Palei.
- Ext.19/9. Signature of P.K.Naik.
- Ext.19/10. Signature of Jitray Singh.
- Ext.19/11. Signature of the accused.

List of documents admitted for the defence.

- Ext.A. Order.
- Ext.A/1. Relevant entry.
- Ext.B. Document of LIC in respect of the complainant and his wife.

List of M.Os.

- M.O.I Demonstration sample bottle.
- M.O.II & III Bottles containing right and left hand wash of the accused.

- M.O.IV Envelope containing tainted money.
- Ext. V Sample bottle containing shirt pocket wash of accused.
- M.O.VI Packet containing shirt of the accused.

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