

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

PRESENT

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

**T.R. Case No. 33 of 2010.
Arising out of R.C. No. 8(A) of 10**

Date of argument ... **10.11.2014.**
Date of Judgement ... **18.11.2014.**

REPUBLIC OF INDIA

VERSUS

Sridhar Nayak, s/o. late Jogendra Nayak,
Vill. South Narasinghpur, P.S. Nilagiri, Dist. Balasore,
At/P. E.P.F. Colony, Saheed Nagar, Bhubaneswar,
P.S.Saheed Nagar, Dist. Khurda.

... Accused.

Counsel for the C.B.I. ... Sri K.L.Kar, Spl.P.P. C.B.I.

Counsel for the accused Sri S.K.Subudhi,Advocate,
and associates.

J U D G M E N T

The accused Sridhar Nayak 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 factual matrix of the prosecution case is as follows: The accused was working as Enforcement Officer in Employees' Provident Fund Organisation, District Office, Sambalpur from 23.3.2010 to 30.3.2010. The complainant Basudev Sethy was a contractor and was also a partner in M/S. Basundhara Construction from the year 2000. His father and younger brother were two other partners of the said firm. Since their firm had no individual P.F number which was required for executing contract work in M/S. Vedanta Aluminium Ltd., the complainant Basudev Sethy submitted an application on 23.3.2010 to the Regional Provident Fund

Commissioner at Rourkela through the accused- Enforcement Officer, Employees' Provident Fund Organisation, District Office, Sambalpur. It is the further case of the prosecution that on receipt of the application from the complainant, the accused telephonically contacted the complainant on 25.03.2010 at about 1.20 P.M. and asked him to meet him (the accused) in the evening. Accordingly the complainant Sri Basudev Sethy met the accused in the evening in his office where the accused told him to pay Rs.40,000/- to get the Employees' Provident Fund code number allotted in the name of the above firm. As the complainant expressed his inability to pay such a huge amount as bribe for getting the P.F number, the accused told the complainant to contact him again on 26.3.2010. When the complainant contacted the accused on 26.3.2010 in the morning, the accused repeated his demand of Rs.40,000/- and told that he would have to pay the accused at least Rs.10,000/- on 30.3.2010 evening for which he (the accused) would personally come to the residence of the complainant for collecting the said amount and told the complainant that he (the accused) would process the matter for allotment of P.F number only after getting Rs.10,000/- and further instructed the complainant to pay the balance amount of Rs.30,000/- within a week. The complainant aggrieved by the aforesaid demand of the accused 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 28.03.2010. The case was registered on the above report of the complainant and Inspector C.B.I. Sri S.B.Mishra was directed to investigate into the case by laying a trap. Thereafter a trap team was constituted with Sri S.B. Mishra as the Trap Laying Officer. The service of two independent witnesses namely Sri S.P.Panda, Jr. Telecom Officer and Sri Indramani Rout, Sr. Telecom Office Assistant was requisitioned through official procedures from the office of the GMTD, BSNL, Sambalpur to act as witness during trap. It is the specific case of

the prosecution that on 30.03.2010 between 6 P.M and 7.15 P.M the pre-trap proceedings were conducted at Room No.106 of MCL Guest House, Burla and the complainant Basudev Sethy reported the Inspector C.B.I. Sri S.B.Mishra at 6 P.M. along with the amount of Rs.10,000/- which was to be used as trap money. The complainant was introduced to the witnesses who were also shown the copy of the written complaint of the complainant. During pre-trap proceeding the complainant produced Rs.10,000/- of eight numbers of Govt. currency notes of five hundred rupee denomination and sixty numbers of currency notes of one hundred rupee denomination. The serial numbers of currency notes produced by the complainant were noted down in a separate sheet of paper. Thereafter, the Inspector C.B.I. S.B.Mishra got the currency notes treated with phenolphthalein powder and also explained its chemical reaction after coming in contact with the sodium carbonate solution. A practical demonstration was given to show the change of colour of sodium carbonate solution when it comes in contact with phenolphthalein powder. The tainted government currency notes were kept in the right side pant pocket of the complainant with an instruction to pay the tainted Government currency notes to the accused only on his specific demand. A pre-trap memorandum was prepared at the said guest house which was read over and explained to all concerned including the complainant. Prosecution case further reveals that the complainant and witness S.P.Panda left MCL guest house in the vehicle of the complainant for his (complainant) residence followed by other trap team members and independent witness in another vehicle at about 7.30 P.M. and reached residence of the complainant at about 8 P.M. The complainant and witness S.P.Panda entered the residence of the complainant whereas other trap team members took their position in the room adjacent to the room which was being used as the office room by the complainant. According to prosecution, at about

8.15 P.M. the accused called the complainant over his mobile phone and told him to wait near the main entrance of his (the complainant) residence as he was to just reaching his residence. The accused within five minutes reached the residence of the complainant in a Taxi bearing Regd. No. OR-15-D-8040 where the complainant greeted the accused and took him inside his residence. Both the accused and the complainant entered the office room of the complainant where the accused was offered a chair to sit and when the complainant requested the accused for early allotment of the P.F number since it was very much required for processing pending bills, the accused replied the complainant that it was only after the receipt of advance of Rs.10,000/- out of the demanded amount of Rs.40,000/- he would start processing the papers for allotment of P.F number and also enquired from him whether he had kept the bribe money of Rs.10,000/- to which the complainant replied in the affirmative. Thereafter the accused extended his right hand towards the complainant and the complainant took out the tainted G.C notes of Rs.10,000/- from his pant pocket and handed over the same to the accused who accepted it in his right hand, counted it with both of his hands and kept the bribe money on the table. After receiving the bribe amount, the accused assured the complainant that P.F number would be allotted within a couple of days. The transaction was clearly seen and heard by the witness S.P.Panda as well as other trap team members as they were standing very close to the place of occurrence. After seeing the transaction, the Inspector S.B.Mishra along with P.K.Palei Constable and witness S.P.Panda rushed to the office room of the complainant and by that time the complainant had passed pre-arranged signal, following which other trap team members including the witness Indramani Rout rushed to the spot. The Inspector of C.B.I. disclosing his identity and identity of other trap team members before the accused, challenged the accused to have demanded and accepted

the illegal gratification of Rs.10,000/- from the complainant. The accused became nervous, fumbled and kept mum. According to the prosecution, the fingers of both the hands of the accused were washed separately in freshly prepared sodium carbonate solution which turned pink in colour. The pink coloured solution was preserved in two bottles duly sealed, labelled and signed by the trap team members and independent witnesses including the complainant. The tainted currency notes were recovered from the office table of the complainant which was kept by the accused and on the instruction of the Inspector Sri Mishra, witness Shri Indramani Rout compared the serial numbers and denominations of the recovered currency notes with the numbers and denomination already noted in the pre-trap memorandum which tallied. The recovered tainted government currency notes were kept in an envelope duly sealed and signed by all concerned. Then the Inspector Sri S.B.Mishra prepared post-trap memorandum at the spot. Exhibits were sent for chemical examination and sanction order was obtained. On completion of usual investigation, Inspector 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. The accused has taken the specific plea that he has neither demanded nor accepted money from the complainant but that the complainant thrust the money in his hands for which he pushed the hands of the complainant in consequence of which the money fell on the complainant's table.

4. Points for determination are:

(i) Whether on 26.3.2010 the accused Sridhar Nayak, being public servant functioning as Enforcement Officer, Employees' Provident Fund Organisation, District Office,

Samabalpur demanded and accepted Rs. 10,000/- on 30.3.2010 from the complainant as gratification other than legal remuneration for processing the application of the complainant for allotment of P.F. number in favour of the firm M/S. Basundhara Construction.

- (ii) Whether the accused being public servant functioning as Enforcement Officer, Employees' Provident Fund Organisation, District Office, Samabalpur by corrupt and illegal means abusing his official position as such public servant obtained for him pecuniary advantage to the tune of Rs.10000/- from the complainant on 30.3.2010 for allotment of P.F. number in favour of the firm M/S. Basundhara Construction .

5. Prosecution in support of its charges against the accused has examined as many as 10 (ten) witnesses whereas defence has adduced the evidence of one witness in substantiation of its plea and case.

6. The important point for determination is whether demand and acceptance of illegal gratification or bribe money by the accused have been proved. There is no denying that the accused Sridhar Nayak was Enforcement Officer, Employees' Provident Fund Organisation, District Office, Sambalpur between 26.3.2010 and 30.3.2010. Undoubtedly, the most important witness for the prosecution is none other than the complainant. This witness appearing as P.W.8 has deposed that he had lodged the complaint against the accused Sridhar Nayak, Enforcement Officer, Employees' Provident Fund Organisation, District Office, Sambalpur on 28.3.2010 with the Inspector C.B.I. Rourkela because the accused demanded bribe money of Rs.40,000/- from him for allotment of E.P.F. code number. He has further deposed that on 23.3.2010 he had been to the office of the accused and submitted the application before the accused. It is the specific evidence of P.W.8 that on 25.3.2010 at about 1.00 P.M the accused telephoned him and called him to meet the accused in the office on that day in

the evening for which he met the accused in his office where the accused demanded Rs.40,000/- for allotment of E.P.F. code number to which he expressed his inability to pay the amount but the accused insisted on him to pay the amount. It is also the evidence of P.W.8 that the accused again asked him to meet the accused on the next day in his office for further discussion in this regard for which he again met the accused in his office on the next day and the accused again demanded Rs.40,000/- from him for allotment of E.P.F code number. He has further testified that the accused asked him to pay the amount of Rs.10,000/- on 30.3.2010 for processing the application and told him that he (the accused) would come to his residence-cum-office. P.W.8's evidence is that Inspector C.B.I., Sri S.B.Mishra asked him to come to the room No.106 of the MCL Guest house, Jharsuguda, Burla. Accordingly he reached the room of the Guest house at 3 P.M. on 30.3.2010 where Inspectors of C.B.I namely S.B.Mishra, K.P.Tripathy, A.K.Pradhan, Constable C.B.I. namely P.K.Palei and the witnesses namely Indramani Rout and S.P.Panda of Telecom Office were present. He has further deposed that S.B.Mishra introduced him with all the officers present there and his complaint petition was shown to the witnesses and also he narrated the allegations before the officers present in the room. He has stated in his evidence that he had taken with him Rs.10,000/- of sixty Govt. Currency notes of 100 rupee denomination and eight Govt. currency notes of 500 rupee denomination. His specific evidence is that according to the instruction of S.B. Mishra, the currency notes were treated with chemical powders and one of the witnesses noted down the serial numbers of the G.C notes in a separate sheet of paper as contained in Ext.16 and Ext.16/1 is his signature. It is the categorical evidence of P.W.8 that the witness Indramani Rout handled the tainted G.C notes after which his hand wash was taken with chemical solution which turned pink in colour. According to P.W.8, Indramani Rout kept the tainted G.C notes in his

right side pant pocket with an instruction to pay the amount to the accused only on his specific demand and to pass pre-arranged signal by nodding his head after the transaction was over. He has stated in his evidence that the pre-trap memorandum was prepared where all the trap team members put their signatures as contained in Ext.2 and Ext.2/3 is his signature. No less specific is the evidence of P.W.8 that on that day at about 6 P.M the accused Sridhar Nayak came to his house and demanded Rs.10,000/- from him for which he brought out the tainted G.C notes from his pant pocket and paid the amount to the accused who counted the same and kept on the table. He has specifically testified that he passed the pre-arranged signal by nodding his head after which the trap team members rushed to the room and he was asked to go out. His evidence further reveals that a post-trap memorandum was prepared where all the trap team members along with the complainant put their signatures as contained in Ext.7 and Ext.7/3 is the signature of the complainant. 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 has successfully stood the test of cross- examination. In effect his evidence suffers from no inherent, infirmity or 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 discrepancies and contradictions should not be allowed to take away the intrinsic worth of the complainant's evidence. In essence, the evidence of the complainant has virtually remained unimpeached and thus inspires confidence. The evidence of the complainant P.W.8 has received ample corroboration from the testimony of P.W.1 S.P.Panda (shadow witness) P.W.3 Indramani Rout

(independent witness) and P.W.9 S.B.Mishra, Inspector of Police, C.B.I. (Trap laying officer) regarding demand, acceptance of illegal gratification of bribe money by the accused and recovery of tainted government currency notes.

7. Another important witness Suresh Prasad Panda who happens to be the accompanying witness has been examined as P.W.1. He has testified that on 30.3.2010 on the direction of the General Manager, BSNL Sambalpur, he reported to D.S.P. C.B.I. in MCL Guest house at Burla where he also met the Inspectors of C.B.I. S.B.Mishra, N.C.Sahoo and Mr. Tripathy as well as constables P.K.Naik, A.K.Pradhan and P.K.Pradhan and Indramani Rout Senior Telecom Office Assistant. He has further testified that he was introduced with the complainant by the Inspector S.B..Mishra and was shown the copy of the complaint petition which revealed that the accused had demanded Rs.40,000/- and in advance Rs.10,000/- to be paid on 30.3.2010 in the residence of the complainant in the evening for allotment of provident fund code number in the name of the firm M/S. Basundhara Construction. His evidence reveals that on 30.3.2010 a trap team was constituted with S.B. Mishra, Inspector of Police, C.B.I. as Trap Laying Officer and requisition was made for his service and the service of Indramani Rout as independent witnesses. It is the specific evidence of P.W.1 that the complainant reported to S.B.Mishra with an amount of Rs.10,000/- with denomination of eight numbers of 500 rupee government currency notes and sixty numbers of 100 rupee government currency notes which were to be used in the trap. According to P.W.1, he noted down the serial numbers of the government currency notes in a separate sheet of paper which was given to Indramani Rout. His categorical evidence is that the government currency notes were treated with phenolphthalein powder and the Inspector S.B.Mishra gave demonstration of change

of colour of phenolphthalein powder after coming in contact with sodium carbonate solution prepared by A.K.Pradhan Constable of C.B.I.. P.W.1 has specifically deposed that the tainted government currency notes were kept in the pocket of the complainant with a specific instruction not to touch those currency notes unless and until those were demanded by the accused. P.W.1 has stated in his evidence that the personal search of the complainant was taken and nothing was found but the inspector C.B.I. Sri S.B.Mishra kept Rs.500/- in his pocket. It is the specific evidence of P.W.1 that the pre-trap memorandum was prepared, read over and explained to all concerned and their signatures were taken. He has proved the pre-trap memorandum which has been marked Ext.2 and Ext.2/1 is his signature. His further testimony is that after completion of pre-trap proceeding, the complainant and he went to the residence of the complainant followed by other members of the trap team and he was instructed to remain present in the residence of the complainant to see the transaction and to overhear the conversation between the complainant and the accused, whereas the complainant was instructed to pass signal by scratching his head after the transaction was over. According to P.W.1, other witnesses had taken their position adjacent to the office room of the complainant. Thereafter he did not support the prosecution case for which he was declared hostile. During cross-examination by the prosecution he has categorically deposed that the accused called the complainant over his mobile phone and told that he was about to reach his residence for which the complainant was present near the main gate of his house and after five minutes the accused reached the residence of the complainant in a taxi and the complainant greeted the accused and called him to his office room. His further testimony is that after entering the office room of the complainant he offered a chair to the accused and when the complainant requested the accused for allotment of his P.F. number

early, the accused told him that he had already told that after receiving advance of Rs.10,000/- out of the demanded amount of Rs.40,000/- he would process the matter immediately. P.W.1 has specifically deposed that the accused enquired from the complainant whether he had kept Rs.10,000/- to which the complainant replied in the affirmative and after the accused stretched his right hand towards the complainant and on the demand of the accused the complainant took out the G.C notes of Rs.10,000/- from his pant pocket and handed over the same to the accused who accepted the same in his right hand and counted with both his hands and kept the amount on the table assuring the complainant to allot the P.F number within a couple of days. His evidence also reveals that the transactions were clearly seen and heard by him as well as the Inspector C.B.I. S.B.Mishra and P.K.Palei who were standing very close to the place of occurrence. According to P.W.1, Inspector S.B.Mishra and P.K.Palei rushed to the office room of the complainant immediately and by that time the complainant had given the pre-arranged signal coming out of the office room following which other trap team members and witness Indramani Rout rushed to the spot. It is the specific evidence of P.W.1 that Inspector S.B.Mishra introduced himself and the trap team members to the accused and also asked his identity who identified himself as Sridhar Nayak, Enforcement Officer, Employees' Provident Fund Organisation, District Office, Sambalpur. P.W.1 has specifically testified that S.B.Mishra challenged the accused to have demanded and accepted the bribe from the complainant. It is also the evidence of P.W.1 that as per the instruction of S.B.Mishra, constable A.K.Pradhan prepared solution of sodium carbonate and water in a clean glass tumbler and the accused was asked to dip his right hand and left hand fingers separately in the solution upon which the colour of the solution turned pink and the pink coloured solution was preserved in two

glass bottles duly sealed, labelled and signed by all the trap team members including the complainant and witnesses. Those bottles have been marked M.O.II and M.O.III. He has stated in his evidence that the tainted G.C notes accepted by the accused as illegal gratification from the complainant, were lying on the table for which Inspector S.B.Mishra asked witness Indramani Rout to compare the numbers of the same with the numbers mentioned in the list prepared earlier and on comparison those tallied. He has further stated in his evidence that the recovered tainted G.C notes were kept in an envelope duly sealed and signed by all of them. The envelope containing the tainted G.C notes has been marked M.O.IV. He has proved the post-trap memorandum prepared at the spot which has been marked Ext.7 and Ext.7/1 is his signature.

8. Besides, another material and independent witness is P.W.3 Indramani Rout, the then Senior Telecom Office Assistant, Sambalpur. The evidence of P.W.8 (complainant) has received ample corroboration from the independent witness. It is the specific evidence of P.W.3 that he collected the tainted government currency notes and compared the serial numbers with the serial numbers already noted in separate sheet which tallied. According to P.W.3 those government currency notes were kept in an envelope vide M.O.IV. The post trap memorandum has been marked Ext.7 and Ext.7/2 is the signature of P.W.3. He has further testified that sketch map has been prepared contained in Ext.6 and Ext.6/2 is the signature of P.W.3. It is the specific evidence of P.W.3 that Inspector searched a carry bag lying on the table and seized some documents from the bag and prepared search list contained in Ext.8 and Ext.8/2 is his signature. The evidence of the complainant P.W.8 and P.W.1 (shadow witness) has also received sufficient corroboration from another important witness Inspector of Police, C.B.I. Subhransu Bhusan Mishra, P.W.9 who is the Trap Laying Officer of this case.

P.W.9 has deposed that after registration of the case it was entrusted to him for investigation and accordingly he took up investigation of this case. He has further deposed that he constituted a trap team for laying a trap on the accused consisting of N.C.Sahoo Inspector of Police C.B.I., Sri K.P.Tripathy Inspector of Police, CBI Bhubaneswar, P.K.Palei constable of CBI Rourkela Unit, A.K.Pradhan constable CBI Rourkela Unit, Sri B.K.Pradhan Constable CBI Rourkela unit and himself. It is the specific evidence of P.W.9 that he was leading the team and K.P. Tripathy, Inspector of Police, C.B.I. gave him the copy of the F.I.R. P.W.9 has further deposed that he instructed all the trap team members to assemble at MCL Guest House on 30.3.2010 at about 6 P.M and also informed the complainant to meet him at MCL Guest house at the aforementioned time. It is the testimony of P.W.9 that two independent witnesses namely Sri S.P.Panda and Sri Indramani Rout, both are of the office of B.S.N.L. Sambalpur were procured through official procedure. He has also specifically testified that all the trap team members, two independent witnesses and complainant assembled in Room No.106 of the MCL Guest House on 30.3.2010 at about 6 P.M. and he introduced the complainant with the trap team members and the independent witnesses. According to P.W.9, he showed the copy of the complaint petition to the trap team members and the independent witnesses who went through the same. He has also deposed that on his direction the complainant produced Rs.10,000/- of eight numbers of notes of five hundred rupee denomination and sixty numbers of notes of hundred rupee denomination and the independent witness Indramani Rout (P.W.3) noted down the serial numbers of the Government currency notes in a separate sheet of paper where all the witnesses signed which has been marked Ext.16. P.W.9 has further testified that the said paper was handed over to the witness Indramani Rout (P.W.3) for future comparison. P.W.9's evidence

further reveals that on his instruction A.K.Pradhan, Constable treated the said Government currency notes with phenolphthalein powder and Sri Indramani Rout was requested to handle the tainted Government Currency notes and on being asked when P.W.3 washed his fingers in the sodium carbonate solution, it turned pink in colour. The pink coloured solution was preserved in a bottle duly corked, sealed, labelled and signed by all. The evidence of P.W.9 further reveals that A.K.Pradhan, Constable of Police, C.B.I. kept the Government currency notes of Rs.10,000/- in the right side pant pocket of the complainant with an instruction to hand over the same only on demand by the accused. It is the specific evidence of P.W.9 that he directed the witness Sri S.P.Panda (P.W.1) to accompany the complainant to his (complainant) residence and to see the transaction, overhear the conversation and to pass the pre-arranged signal soon after the transaction was over. It is the further testimony of P.W.9 that pre-trap memorandum was prepared as contained in Ext.2 and Ext.2/4 is his signature. He has further testified that at about 7.30 P.M the complainant and witness Sri S.P.Panda left for the residence of the complainant followed by other trap team members in another vehicle and the team reached the residence of the complainant at about 8 P.M. According to P.W.9, the complainant and witness S.P.Panda went inside the residence of the complainant whereas P.K.Palai constable and he also entered the residence of the complainant and took position in the room adjacent to the room which was being used as office room by the complainant. P.W.9 has stated in his evidence that at about 8.15 P.M the accused informed the complainant over mobile phone that he was reaching his residence within few minutes for which the complainant waited near the entrance of his residence and after five minutes when the accused reached the residence of the complainant, the latter greeted the former and led to his office room. P.W.9 has further stated in his evidence that the complainant

asked the accused for the allotment of P.F. number of his firm M/S Basundhara Construction to which the accused asked the complainant whether he had arranged Rs.10,000/- as bribe money to which the complainant replied in the affirmative. It is the specific evidence of P.W.9 that the accused stretched out his right hand and received the bribe money from the complainant and the accused counted the bribe money with both hands and kept the same on the table and assured the complainant that the P.F number would be allotted within a couple of days. No less specific is evidence of P.W.9 that the transaction was visible to them where they were standing for which he immediately rushed to the room followed by witness S.P.Panda and P.K.Palai constable. According to P.W.9, by that time the complainant had also passed the pre-arranged signal following which all the trap team members also rushed to the room and he introduced himself as well as other trap team members and asked for the identity of the accused who introduced himself as Sridhar Nayak , Enforcement Officer, E.P.F.O. District Office, Sambalpur. The evidence of P.W.9 further reveals that right hand and left hand of the accused were washed with chemical solution separately which turned pink in colour and the pink coloured solution was preserved in two clean bottles which were corked, labelled, sealed and signed by all concerned. He has also deposed that he directed the witness Indramani Rout to check the tainted Government currency notes kept on the table and the witness compared the serial number of the tainted Government currency notes with the serial numbers already noted in a separate sheet of paper and they tallied and the tainted G.C notes were kept in a packet duly sealed. It is the evidence of P.W.9 that he prepared the sketch map of the spot contained in Ext.6 and Ext.6/4 is his signature. He has also deposed that he searched the carry bag of the accused in the presence of independent witnesses and seized the application form for allotment of P.F. number submitted by the complainant contained in

Ext.8. P.W.9 has further testified that post-trap memorandum was prepared contained in Ext.7 and he made over the charge of investigation to the Inspector of Police C.B.I. S.N.Rath along with all documents and exhibits. Nothing substantial has been brought out in cross- examination of P.W.3 and P.W.9 to discredit their evidence on material aspects of the case. Their evidence appears to be quite clear, consistent, convincing, credible and above reproach. In fact P.W.3 and P.W.9 have successfully stood the test of cross-examination. In effect their evidence suffers from no inherent, infirmity or improbability. I, therefore, find no cogent reason or ground to doubt the veracity of these witnesses. The admissions brought out in cross- examination of P.W.3 and P.W.9 are too trivial to discredit their otherwise clear, credible and consistent evidence.

9. Inspector of Police, C.B.I. Sri S.N.Rath who is the I.O of this case has been examined as P.W.10. He has testified that on 5.4.2010 on the direction of the S.P. C.B.I. he took over charge of investigation of this case from S.B.Mishra, Inspector C.B.I. Rourkela Unit (P.W.9) and in course of investigation he examined the witnesses and seized documents and prepared seizure list contained in Ext.29. He has further asserted in his evidence that he obtained the call details of mobile number of the complainant and the accused, examined the concerned nodal officers, interrogated the accused and after obtaining sanction order from the competent authority of the accused Sridhar Nayak, he submitted charge sheet as a prima facie case was well made out against the accused. P.W.2 Padmanabha Sahu, the then Sub-Divisional Engineer (Commercial) of the office of the General Manager, Cellular Mobile Telephone Service, BSNL, Bhubaneswar has deposed that on the basis of requisition made by the CBI, he had produced the attested copy of call details report of mobile No. 9437392791 for the period from 25.3.2010 to 30.3.2010 with a forwarding letter. He has further

deposed that the C.B.I. officer had seized the same and prepared the seizure list contained in Ext.12 and Ext.12/1 is his signature. He has proved the call details report of above mobile phone which has been marked Ext.13. Surendra Swain, the then Accounts Officer, E.P.F. Office, Rourkela appearing as P.W.4 has testified about the follow up action for getting E.P.F.Code in favour of the contractor and also the procedure to file application for getting the E.P.F. code. He has further deposed that on 16.4.2010 the C.B.I. Inspector S.N.Rath seized the document regarding service particulars of the accused and prepared seizure list contained in Ext.17. His evidence also reveals that on 23.4.2010 the Inspector C.B.I. S.N.Rath also seized some documents relating to coverage of establishment and allotment of E.P.F code number and prepared seizure list contained in Ext.18. He has proved the documents such as attested copy of circular relating to allotment of E.P.F. Code number contained in Ext.19, attested Xerox copy of joining report of the accused contained in Ext.20, attested Xerox copy of the office order relating to allotment of work area in favour of the accused contained in Ext.21 and the attested Xerox copy of the office order showing the demarcation of jurisdiction in favour of the accused contained in Ext.22 and the service particular of the accused contained in Ext.23. P.W.5 Samarendra Chatarjee, the then Secretary Govt. of India has been examined as he has accorded sanction for prosecution against the accused. His specific evidence is that he gave the sanction order after due application of mind and careful perusal of the relevant documents. He has proved the sanction order contained in Ext.24 and Ext.24/1 is his signature. Binod Chandra Purkait, the then Senior Supdt. Officer of C.F.S.L.Kolkata has been examined as P.W.6. He has deposed that he took some amount of liquid from the three bottles received from the S.P.C.B.I. Bhubaneswar, examined them separately by chemical and instrumental methods and found phenolphthalein sodium carbonate

in each bottle. He has proved the chemical examination report contained in Ext.25 and Ext.25/1 is his signature. P.W.5 has successfully stood the test of cross-examination. In effect his evidence suffers from no inherent, infirmity or improbability. I, therefore, find no cogent reason or ground to doubt the veracity of this witness.

10. Banamali Sethi, the father of the complainant appearing as P.W.7 has deposed that his eldest son is the complainant of this case. He has further deposed that his eldest son and he have a partnership firm under the name and style of "M/S. Basundhara Construction". According to him, Basundhara Construction was executing the work orders from Vedanta Aluminium Ltd. for which his son had made an application to the District EPF Office, Sambalpur for allotment of provident fund numbers of the labourers. It is the specific allegation in the evidence of P.W.7 that the accused had demanded bribe of Rs.40,000/- from his son for ensuring sanction of E.P.F numbers to the labourers. He has further testified that on 30.3.2010 at about 2 P.M the accused telephoned to his son that he was coming to their house for which his son was standing near the main gate of their house and when the accused arrived there in a Taxi, his son received the accused and took him to the office room. His evidence further reveals that the accused wanted to know from his son whether he had kept the amount of Rs.10,000/- to which he replied in the affirmative. He has further stated in his evidence that the accused stretched his hand and asked him to pay the amount for which his son paid the amount of Rs.10,000/- as advance. No less specific is the evidence of P.W.7 that the accused counted the money in his hands and kept the same on the table and assured his son to expedite the work. He has specifically deposed that C.B.I. team immediately reached their office room where the hand wash

of the accused was taken by chemical solution which turned pink in colour and the C.B.I. team seized the amount of Rs.10,000/- from the possession of the accused. Nothing substantial has been brought out in cross- examination of P.W.7 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.7 has successfully stood the test of cross- examination. In effect his evidence suffers from no inherent, infirmity or improbability. I, therefore, find no cogent reason or ground to doubt the veracity of this witness. The admissions brought out in cross- examination of P.W.7 are too trivial to discredit his otherwise clear, credible and consistent evidence.

11. The learned defence counsel strenuously contended that Section 7 of the P.C.Act is not attracted in this case in as much as the accused has neither shown any favour or disfavour to the complainant (P.W.8) as the application for allotment of E.P.F code number as contained in Ext.27 was not pending with him. It has been pointed out that the accused came across Ext.27 for the first time on 30.3.2010. It has also been argued by the learned defence counsel that the accused has neither demanded nor accepted any bribe money from the complainant for which the latter forcibly inserted the tainted Government currency notes in the hands of the accused who pushed the hands of the complainant in consequence of which the Government currency notes fell on the table. It is also the defence contention that the demand and acceptance of bribe money have been proved as both P.W.8 and the accused were inside the chamber. In essence it is a specific defence plea that the accused has not demanded and accepted any bribe money from the complainant but on the contrary the complainant forcibly inserted the tainted Government currency notes in the hands of the accused who pushed the same as a result of which it fell on the table.

Learned defence counsel has also argued that the accused is not bound to prove the explanation beyond reasonable doubt. In support of his contention he has relied on a decision reported in AIR 2002 S.C. 486 Punjabrao Singh –vrs- State of Maharashtra where it has been held: “The explanation given by the accused for receipt of the money need not be proved by him beyond all reasonable doubt. He can establish his defence by preponderance of probabilities”. The learned defence counsel has reiterated that in the present case neither demand nor acceptance of bribe money has been proved as both P.W.8 and the accused were inside the same office room. It has also been pointed out that the accused was neither competent nor had he any authority to receive the application for allotment of E.P.F code number as contained in Ext.27 but it is the Asst. P.F. Commissioner, Rourkela who had authority to receive the application and its enclosures contained in Ext.27. The learned defence counsel has also placed reliance on another decision reported in AIR 1979 S.C. 1408 Surajmal –vrs- State (Delhi Administration) where it has been held: “In a case of bribery, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable”. No less specific is the defence contention that the prosecution must prove the motive for showing favour by the accused. In support of his contention he has relied on a decision reported in 2003(II) OLR 255 Khymasagar Baina –vrs- State where it has been held: “It is necessary that there should be a motive for showing favour by the accused coupled with the fact that the recipient of such bribe or gratification has an authority or right to show any favour in course of discharging his official duty and that the prosecution has to prove that bribe or gratification had been received for doing his official act”. He has also placed reliance on another decision reported in AIR 1979 S.C. 1455 Mansingh –vrs- Delhi Administration where it has been held: “Their Lordships of the

Apex Court hold that if the accused succeeds in offering a probable explanation or defence, he is entitled to an acquittal and strict standard of proof is not necessary". The learned defence counsel in support of his contention that the accused was not competent in any way to show any favour to the complainant in his official capacity, has also placed reliance on another decision reported in 1997 Cri. Law Journal 3889 Ram Krushna Verma – vrs- State of Madhya Pradesh where it has been held: "There is evidence showing that the accused was not the sanctioning authority for extending favour in exercise of his official function and demand of bribe by accused and payment of money by the complainant have not been proved. Therefore, mere recovery of certain money from possession of accused without proof of demand is not sufficient to establish guilt". What cannot be lost sight of in this connection is that in the cited decision it has been established by the evidence on record that the accused was not the person who could have extended any favour for doing any official act as he was not even the concerned clerk, for receiving the application and receiving the application could not be said to bring any favour in discharge of official act. But it is manifest from the evidence of the prosecution in the present case that the accused had the competence and jurisdiction to process the matter of the complainant in his official capacity. The allegations as contained in the F.I.R clearly show that the complainant Basudev Sethi had applied for allotment of E.P.F code number in respect of his establishment M/S. Basundhara Construction and that the accused has demanded Rs.40,000/- on 25.3.2010 and subsequently agreed to take Rs.10,000/- as first instalment for processing his application on 30.3.2010.

12. It is well settled in the case of this nature that every acceptance and illegal gratification whether preceded by demand or not, would be covered under Sec.7 of the Act. But, if the

acceptance of illegal gratification is in pursuance of a demand by the public servant, than it would also fall under Sec.13 (1) (d) of the P.C.Act. The further argument of the learned defence counsel is that the evidence of P.W.1 Suresh Prasad Panda deserves no credence as he has been declared hostile by the prosecution. This argument has absolutely no merit for simple and obvious reason that the evidence of hostile witness can also be relied upon by the prosecution to the extent to which it supports the prosecution version. In the present case P.W.1 who is the accompanying witness did not slightly support the prosecution case at the initial stage of examination-in-chief, but subsequently admitted all the facts as stated before the I.O. in his statement u/s. 161 Cr.P.C in support of the prosecution version. In this connection the learned Spl. Public Prosecutor has placed reliance on the decision reported in (2012) 52 O.C.R (S.C.)-92 Bhajju @ Karan Singh -vrs- State of M.P. where it has been held: "The evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident". The plea of the accused that he had never met the complainant and had never demanded any bribe and that he was not competent to receive the application from the complainant is wholly unbelievable and carries no legal conviction in as much as he has signally failed to explain why he had come to the house of the complainant on the date of trap after the office hour at about 8.30 P.M in the evening. This is a circumstance of real consequences which can hardly be brushed aside. The learned Spl. Public Prosecutor in support of his contention has relied on a decision reported in (2010)1 Supreme Court Cases (Cri.) 801 State represented by C.B.I. Hyderabad -vrs- G.Prem Raj where it has been held : "The respondent failed to explain why a responsible officer like him chose to go to a hotel for doing official work of getting government contract signed and such movement of respondent out of his office, after office hours, raises an accusing finger towards

intention of respondent". No explanation whatsoever has been offered by the accused why a responsible officer like him chose to go to the house of the complainant. Therefore, such visit of the accused out of his office raises the accusing finger towards his intention. It is significant to note that at no point of time the accused has complained to anybody that the amount of money was thrust in his hands. The very fact that he has not complained before anybody shows in no uncertain terms that he was in conscious possession of the tainted government currency notes. Much less elicited nothing has been suggested to the complainant to show that he was in any way inimical disposed towards the accused so as to falsely implicate him in this case. True it is that the burden of proving the plea of the defence is not as strict as that of the prosecution. But the reason for not accepting the defence plea needs no reiteration.

13. 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. 25 with regard to his hand wash test in chemical solution at the time of trial. Quite obviously, the chemical examination as contained in Ext. 25 unmistakably proves the fact that the hand wash of the accused contained phenolphthalein powder. The scientific test has also clearly established the fact that the accused after handling the currency notes had kept the same

on the table which was lying inside the office room of the complainant. Thus, the prosecution has clearly proved that the accused had voluntarily and consciously accepted the tainted currency notes from the complainant.

14. No less striking is the fact that the accused has not at all challenged the correctness of the report as contained in Ext. 25 with regard to his hand wash test in chemical solution in course of trial. Therefore, the chemical examination report as contained in Ext. 25 unmistakably proves that the hand wash of the accused contained phenolphthalein powder. In fact the scientific test has clearly proved that the accused after handling the Govt. currency notes (tainted money) had kept the same on the table which was lying inside the office room of the complainant. Thus the prosecution has amply established that the accused has voluntarily and consciously accepted the tainted government currency notes from the complainant. In effect, on the face of the overwhelming evidence coupled with chemical examination report, wash test it has been established that the accused has voluntarily accepted the tainted government currency notes 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 and inconsistencies 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 legally untenable and the decisions relied on by it 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.

15. In the present case the evidence on record has not only proved the demand of bribe money but also its acceptance by the accused. The preponderance of probability does not tilt in favour of the accused in as much as a semblance of attempt which has been made by the defence to prove the plea is abortive. It is common legal proposition that suggestions however strong cannot take the place of proof. The complainant has been given a series of suggestions which have been stoutly denied by him. This plea has also been suggested to the complainant in the cross-examination. It is not the prosecution case that the accused had assured the complainant to give allotment of E.P.F. code number. In fact, all that he has promised was to process the application for allotment of E.P.F code number.

16. It is worthwhile to refer Section 20 of the Act which provides: "20.Presumption where public servant accepts gratification other than legal remuneration.-(1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or

attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate. (3) Notwithstanding anything contained in sub-section (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn". It was argued, though feebly, that the presumption could not be drawn as the charge in this case was under Section 13(2) read with Section 13(1)(d) of the Act. It has been pointed out by the learned counsel for the accused that Section 13(1)(d) did not attract the presumption under Section 20 of the Act. What is being ignored by the learned counsel for the accused is that the charge was not only under Section 13(1)(d), but also under Section 7 of the Act. Section 7 of the Act is as under: "7. Public servant taking gratification other than legal remuneration in respect of an official act.- Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the legislature of any State or with any local authority, corporation or government company referred to in any clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine". Now, there can be no dispute that prosecution in this case

was alleging that the accused had accepted or obtained from Basudeb Sethi (complainant) gratification, which was other than the legal remuneration as a motive or reward for processing the application of allotment of EPF Code number. Therefore, there was no question of the presumption not being there, once it was proved that the accused had accepted the illegal gratification. In the perspective, it is legally justified to draw a presumption u/s. 20 of the Act.

17. The defence in support of its specific plea has examined Aurobinda Pradhan, the then Enforcement Officer, E.P.F. Office, Rourkela. His evidence is that there is prescribed form to apply for E.P.F code number and the employer is required to deposit the application along with other enclosures and Bank Draft of E.P.F. contribution to the Regional E.P.F. Commissioner, Rourkela for obtaining the code number within the jurisdiction of Rourkela Sub-Regional office. He has also testified that Sambalpur Office has no Drawing and Disbursing power and it is not the head of the office. D.W.1 has also deposed that the Commissioner after due scrutiny will allot a code number to the employer and the applications are entered in a register maintained in the office at Rourkela. His further evidence is that Sambalpur office is not competent to receive application from the employers regarding allotment of code number. It is the specific testimony of D.W.1 that he was dealing with the matters relating to Vedanta Aluminium Jharsuguda whereas the accused was dealing with the matters coming under Baragada, Hirakud, Sambalpur and Burla. D.W.1 has produced and proved the circular issued by Head Office, New Delhi dated 30.8.2000 regarding allotment of Code Number which has been marked Ext.E and the relevant paragraphs No.7 & 8 of the circular at Page No.2 about allotment of code number have been marked Ext.E/1 and Ext.E/2. The Paragraph No.7 as contained in Ext.E/1

reads: "Requests for coverage submitted in person in the reception counter should be entered in a separate register. The date of receipt and the serial number in the register should be affixed with a rubber stamp in the Proforma submitted by the employer and the same serial no. and date stamp should be affixed in a receipt to be given to the employer or his representative who brings the application to our office. The same serial no. be sent to the APFC in-charge of the Compliance circle the same day or the next day morning". The paragraph as contained in Ext.E/2 reads: "It would be the responsibility of the APFC in charge of the circle to allot a Code No. to the establishment immediately on receipt of the minimum documentation as aforementioned and in any case within three working days of receipt of the particulars for coverage from any employer along with a demand draft for payment of the first dues. The letter allotting the Code Number will be signed by the Assistant Provident Fund Commissioner. It would be the responsibility of the APFC who signs the letter to ensure that the details of the establishment to whom the code number is allotted is properly entered in the code number register under his signature. The details of the newly covered establishment should immediately be entered in the data base of the computer to Employer Master. The Demand Draft/ Pay Order received should be sent to the cash section immediately denoting the name and Code No. allotted to the establishment in the challan by the APFC the same day itself". True it is that the relevant circular shows that Assistant Provident Fund Commissioner in charge of the circle is to allot a code number to the establishment immediately after receiving the minimum documentation. The procedure of allotment of EPF code number as contained in Ext.19 relied on by the prosecution shows that on receipt of coverage proposal in the office, the same is scrutinized/ processed and EPF Code Number/ Business Number is allotted to the establishment under the signature of Assistant Provident Fund

Commissioner in charge of Compliance. The most damaging admission appearing in the cross-examination of D.W.1 is: "The circulars and guidelines as stated above cannot be known by public at large". Therefore, the accused made the complainant believe that he is competent to process the application for allotment of EPF Code number for his establishment. It is never the prosecution case that the accused had ever promised or assured the complainant to provide E.P.F. code number for his establishment. It has been materially elicited in the cross-examination of D.W.1 that no officer of the office of E.P.F. can go to the residence or establishment of an applicant without the written direction of the Commissioner or the Asst. Commissioner as the case may be. The above admissions squarely discredit the assertion of D.W.1 in his evidence. Therefore, the contention of the learned defence counsel in this regard is not legally sustainable. The accused had demanded the bribe money not for allotment of E.P.F. code number but for processing the application of the complainant for allotment of EPF Code number. Therefore, it cannot be said that the accused was not competent to process the application as the establishment of the complainant was coming under his jurisdiction. The competency of the accused to process the application of the complainant has not been challenged by the defence in any manner whatsoever. Consequently the argument that the accused has no jurisdiction and was not competent to process the application for allotment the EPF code number is not factually misconceived but also legally untenable. The decisions relied on by the defence in this connection have no application to the present case. It is as much inconceivable as unusual that the complainant thrust the tainted government currency notes in the hands of the accused following which those fell on the table. This behaviour of the accused is wholly inconsistent with a natural reaction of an unwilling person under the given circumstance. It is common knowledge that if the accused

was really unwilling to accept the money right from the first movement of the complainant, the duration of time will frustrate the attempt of the complainant so much so that there would be virtually no scope or opportunity for the tainted government currency notes to come in contact with the hands of the accused. Therefore, the defence plea and the evidence that the complainant thrust the money in the hands of the accused being wholly impossible passes common human comprehension and thus does not stand to legal scrutiny. In essence, the preponderance of probability has not been satisfied by the defence in this case.

18. True it is that the defence in addition to oral evidence has placed reliance on the documentary evidence as contained in Ext.C in support of the plea of alibi of the accused. A Xerox copy of sheet of paper of attendance register as contained in Ext.C simply shows that the accused was on tour on 23.3.2010, 25.3.2010 and 30.3.2010. What is particularly significant in this connection is that even if the accused was on tour on the above three days nothing renders the presence of the accused at his office and in the office of the complainant impossible. Ext.C is conspicuous by the absence of time of arrival and departure before or after the tour.

19. It is also the argument of the learned defence counsel that since the accused was on tour on 23.3.2010, 25.3.2010 and 30.3.2010 the allegation that he had demanded and accepted bribe money from the complainant is not only unbelievable but also highly improbable. P.W.10 Sachidananda Rath, the Investigating officer of this case has deposed at para-2 of his cross-examination that he had seized the Xerox copy of the attested attendance register which has been marked Ext.C. His further evidence is that the attendance register shows that on 23.3.2010 and 25.3.2010 the accused was on tour. It is also the testimony of P.W.10 that the

accused was on tour at Rourkela to look into the case of 7-A proceeding at E.P.F. Office, Rourkela on 26.3.2010 and was also on tour on 30.3.2010. It is the admitted position that the trap was laid on the accused on 30.3.2010 at about 8.30 P.M at night. Therefore, quite obviously the accused was in the residence-cum-office of the complainant. Ext.C simply shows that the accused was on tour on 23.3.2010, 25.3.2010 and 30.3.2010. The most unusual feature is that there is no mention in the Ext.C of the time of return of the accused to the head quarters on the above dates. However, what cannot be lost sight of in this connection is that the accused was available at Sambalpur Office in the first hour of 23.3.2010. Even assuming that the accused was on tour on 23.3.2010, 25.3.2010 and 30.3.2010, it cannot be conclusively said that the accused had no opportunity or time to return to the head quarters to contact the complainant. It can be well said that the accused had returned on the same day and had maintained contact with the accused in connection with the demand of bribe money for processing the application for allotment of E.P.F. code number. The complainant P.W.8 Basudeb Sethi has categorically deposed that on 25.3.2010 at about 10 P.M the accused telephoned him and called him to meet him (the accused) in the office on that day in the evening and on that day he met him in the office where the accused demanded Rs.40,000/- for allotment of EPF code. This piece of evidence of P.W.8 has virtually remained unimpeached. It is manifestly obvious from the evidence on record that the accused has all along maintained contact with the complainant in connection with the bribe money. In the conspicuous absence of time of departure and return of the accused on the dates of tour in the sheet of Attendance Register, it is absolutely unsafe to act upon a sheet Xerox copy of the attendance register contained in Ext.C. The defence has signally failed to prove the plea of alibi of the accused to the hilt and beyond all reasonable doubt. It is common legal

proposition that the plea of alibi has to be proved by the defence beyond all reasonable doubt like the prosecution proving its case. Even if conceding that the accused had been on tour on the above three dates, there was enough time for the accused to return and to contact the accused for his own purpose. The most important argument advanced by the learned defence counsel that the accused had no competence or jurisdiction to show any favour to the complainant in his official capacity hardly carries any legal conviction. I, therefore, find no force in the contentions advanced by the learned defence counsel. The preponderance of oral as well as documentary and circumstantial evidence points to the irresistible conclusion that the accused Sridhar Nayak has demanded and accepted illegal gratification of Rs.10000/- from the complainant for processing the application to allot E.P.F code number.

20. 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.

Typed to my dictation & corrected by me and pronounced in the open court today i.e. on 18th November, 2014.

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

S E N T E N C E

I heard the learned defence counsel as well as the learned Special 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 Special 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 notes 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 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 Appellate Court.

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

Typed to my dictation & corrected by me and pronounced in the open court today i.e. on 18th November, 2014.

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

List of witnesses examined for the prosecution.

P.W.1.	Suresh Prasad Panda.
P.W.2.	Padmanabha Sahu.
P.W.3.	Indramani Rout.
P.W.4.	Surendra Swain.
P.W.5.	Samarendra Chatarjee.
P.W.6.	Bimal Chandra Purkait.
P.W.7.	Banamali Sethi.
P.W.8.	Basudev Sethi.
P.W.9.	Subhransu Bhusan Mishra.
P.W.10.	Sachidananda Rath.

List of witnesses examined for the defence.

D.W.1.	Aurobinda Pradhan.
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List of documents admitted for the prosecution.

Ext.1.	Signature of P.W.1 on M.O.I.
Ext.2.	Pre-trap memorandum.
Ext.2/1.	Signature of P.W.1 on Ext.2.
Ext.3.	Signature of P.W.1 on M.O.II.
Ext.4.	Signature of P.W.1 on M.O.III.
Ext.5.	Signature of P.W.1 on M.O.IV.
Ext.6.	Sketch map.
Ext.6/1.	Signature of P.W.1.
Ext.7.	Post trap memorandum.
Ext.7/1.	Signature of P.W.1 on Ext.7.
Ext.8.	Seizure list.
Ext.8/1.	Signature of P.W.1 on Ext.8.
Ext.9.	Signature of p.W.1 on arrest memo.
Ext.10.	Forwarding letter of A.G.M.
Ext.10/1.	Signature of the then A.G.M. S.N.Nanda.
Ext.11.	Attested call register report.
Ext.12.	Seizure memo.
Ext.12/1	Signature of P.W.2.
Ext.13.	Detail report of mobile No.9437392791
Ext.14.	Forwarding letter.
Ext.14/1.	Signature of P.W.2.
Ext.15.	Seizure list.
Ext.15/1.	Signature of P.W.2.
Ext.1/1	Signature of P.W.3 on M.O.I.
Ext.2/2.	Signature of P.W.3.
Ext.16.	Paper containing the serial number of tainted money.

- Ext.16/1. Signature of P.W.3.
- Ext.3/1. Signature of P.W.3 on M.O.II.
- Ext.4/1, Signature of p.W.3 on M.O.III.
- Ext.5/1. Signature of P.W.3 on M.O.IV.
- Ext.6/2 to 8/2. Signature of P.W.3.
- Ext.17. seizure list.
- Ext.17/1. Signature of P.W.4.
- Ext.18. Seizure list.
- Ext.18/1. Signature of P.W.4
- Ext.19. Attested copy of circular relating to allotment of EPF code number.
- Ext.20. Attested Xerox copy of joining report of accused.
- Ext.21. Attested Xerox copy of office order relating to allotment of area to work of the accused.
- Ext.22. Attested Xerox copy of office order of showing demarcation of jurisdiction.
- Ext.23. Service particulars of accused.
- Ext.24. Prosecution sanction order.
- Ext.24/1 Signature of P.W.5.
- Ext.25. Letter of Opinion.
- Ext.25/1. Signature of P.W.6.
- Ext.25/2 Signature of Director.
- Ext.26. Complaint petition.
- Ext.26/1. Signature of P.W.8.
- Ext.16/2. Signature of P.W.8.
- Ext.2/3. Signature of P.W.8.
- Ext.7/3. Signature of P.W.8.
- Ext.6/3. Signature of P.W.8.
- Ext.27. Application.
- Ext.27/1. Signature of P.W.8.
- Ext.28. Formal F.I.R.
- Ext.28/1. Signature of P.W.9 on Ext.28.
- Ext.16/3. Signature of P.W.9
- Ext.2/4. Signature of P.W.9.
- Ext.6/4. Signature of P.W.9.
- Ext.8/3. Signature of P.W.9.
- Ext.8/4. Signature of the accused.
- Ext.7/4. Signature of P.W.9.
- Ext.29. Seizure list.
- Ext.29/1. Signature of P.W.10.

List of documents admitted for the defence.

- Ext.A. Seizure list prepared in the office of the accused.
- Ext.B. Seizure list prepared in the house of the accused.
- Ext.C. Xerox copy of Attendance register.

List of M.Os.

M.O.I to M.O.III. Sample bottles containing liquid solution.

M.O.IV. Envelope containing tainted G.C notes.

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