

IN THE COURT OF THE SPECIALJUDGE (VIGILANCE),
BHUBANESWAR.

P R E S E N T: Shri N.Sahu, LL.B.,
Special Judge (Vigilance),
Bhubaneswar.

T.R.Case No.1 of 2001

(Arising out of VGR Case No.28/2000
corresponding to Bhubaneswar Vigilance
P.S.Case No.28/2000).

S T A T E Prosecution.

-Versus-

Bijaya Kumar Mishra, aged about 56 years,
S/o.Gadadhar Mishra, Vill.-Talamalisahi,
PS-Kumbharpada, District-Puri.

....Accused.

For the Prosecution : Sri B.B.Sahu, Spl.P.P.Vig.
Sri S.K.Barik, Addl.P.P.

For the Defence : Sri A.H.Mishra &
Associates, Advocates.

Date of argument : 21.08.2014

Date of judgment : 03.09.2014

Offence u/s.13(1)(d) read with 13(2) and 7 of P.C.Act, 1988.

J U D G M E N T

1. The aforesaid accused stood charged for committing the offences punishable u/s.7/13(1)(d) read with 13(2) of P.C.Act, 1988.

2. Briefly stated the prosecution case is that in the super cyclone of 1999 the house of the informant was damaged and the Tahasildar after sanctioning the cyclone relief fund, had directed the informant to go to Puri Tahasil Office to receive the relief. The

present accused who was working as R.I. of Rai Chakradharpur called the informant repeatedly and demanded bribe of Rs.200/- to get that relief amount. But he expressed his inability. On 24.4.2000 the informant met the accused who told him to pay Rs.200/- on 1.5.2000, so that he would disburse his relief amount within 2 days. On 30.4.2000 basing on the FIR of the informant a case was registered against the accused and a trap was laid. On 1.5.2000 during preparation the complainant narrated the allegation of demand by the accused before others. Demonstration was shown about reaction of Phenolphthalein powder in sodium carbonate solution. Two numbers of 100 rupee G.C.Notes produced by the complainant were treated with Phenolphthalein powder and given to him to hand over the same to the accused on demand. The trap party members including the complainant and accompanying witness went to the house of the accused. There the complainant paid the amount to the accused who received the same and was immediately caught by the trap party members and his hand wash in sodium carbonate solution turned to pink. The tainted money, hand wash bottles and other connected papers were seized. The exhibits were sent for chemical examination and sanction order was obtained from competent authority and after completion of investigation, charge-sheet was submitted against the accused resulting this trial.

3. The defence plea is that he had not demanded any bribe and the complainant had forcibly kept Rs.200/- in his pocket and he had brought out the same and thrown away. His further plea is that before 24.4.2000 PW-5 had given one list including the name of the complainant and on 24.4.2000 PW-5 had threatened him and he had informed the then Tahasildar and PW-5 has foisted a false case through the complainant just to harass him.

4. The prosecution has examined 9 witnesses whereas the accused has examined 1 witness in support of their respective cases.

5. Points for determination in this case are :-

(i) Whether on 1.5.2000 at 9 AM at Talamali Sahi, Puri in his house the accused being a public servant by corrupt or illegal means or otherwise by abusing his position obtained for himself pecuniary advantage of Rs.200/- from the complainant to release his house damage assistance of Rs.1000/-?

(ii) Whether on the aforesaid date, time and place the accused being a public servant accepted Rs.200/- from the complainant for releasing his house damage assistance of Rs.1000/-?

6. Both points are taken up together. PW-1 the then Collector, Puri stated that basing on requisition of the SP, Vigilance and on perusal of the documents, such as, FIR, seizure lists, statements of witnesses etc. and on discussion with the IO, he accorded sanction for launching prosecution against the accused vide Ext.1. In cross-examination PW-1 admitted that there is no documentary evidence to show as to when he had received the requisition from the SP, Vigilance. He denied the suggestion that without assessing the materials he had accorded sanction in mechanical manner. PW-2 chemical examiner stated that on 1.7.2000 he had examined five glass bottles containing pink solution marked as A,B,C,D and E and found Phenolphthalein in sodium carbonate solution in those exhibits and he proved his report vide Ext.2 and the bottles as M.Os.-I to V. He specifically denied the suggestion that he had not conducted any scientific test to ascertain presence of Phenolphthalein powder in sodium carbonate solution as per above exhibits.

7. PW-3 Sr. Clerk, DAO Office stated that as per instruction of the DAO, he with PW-6 went to the vigilance office on 1.5.2000. There the informant complained that the accused had demanded bribe of Rs.200/- for release of compensation of

Rs.1000/- granted for super cyclone damage and produced 2 numbers of 100 rupee G.C.Notes which were smeared with some powder kept in a four fold paper and given to the informant to give the same to the accused on demand. PW-6 was instructed to accompany the complainant and to witness the transaction and to give signal. Numbers of those notes were written in a paper and given to him to compare after detection. A preparation report Ext.3 was prepared and they went to the residence of the accused at Talamali Sahi. PW-6 with the complainant went to the residence of the accused and all others waited outside. Getting signal from PW-6, they rushed to the spot and found the accused, informant and PW-6 standing on the Verandah. Being asked by the DSP, the accused admitted to have received the money from the complainant. His both hand wash and pant pocket wash were taken separately and the colour changed to pink. Being asked the accused brought out the tainted money from his left side pant pocket and gave to him (PW-3) and he verified the numbers which tallied. Some personal cash, one pen and one beneficiary list were seized from the accused. A detection report Ext.4 was prepared and the IO seized the copy of the preparation report and tainted currency notes.

8. In cross-examination he stated that as per the preparation report the accused was staying in rented house at Haragouri Sahi. But they had gone to the house of the accused located at Talamali Sahi. He also stated that Inspector Panda Babu had not disclosed before them during preparation that as to the place where payment was to be made to the accused. He also stated that the complainant had not stated to him the place where the bribe amount was to be paid to the accused. He could not say what was the discussion between the complainant and the accused at the spot. He stated that during detection Jena Babu and Panda Babu asked him to bring out the tainted money from the left side pant pocket of

the accused. He specifically stated that the accused had given explanation that the complainant had forcibly inserted the money in his pant pocket. He stated that finally the detection report was typed out in the house of the accused by the steno as per the dictation of DSP Jena Babu. But the complainant had not signed on the detection report. He further stated that the DSP had recorded his statement at the spot on the date of trap. So also, the statements of other members of the trap party were also recorded by the DSP at the spot.

9. PW-4 the then OIC of Vigilance PS stated that he received the written report of the complainant from the SP, Vigilance and as per the direction he registered this case. PW-5 the then Sarpancha of Biswanathpur GP stated that on 30.4.2000 he was the Sarpancha and the complainant requested him to write a report for him and accordingly he scribed the FIR Ext.10/2 and he also proved his signature Ext.10/3. In cross-examination he stated that on the previous day of the writing of FIR the complainant had come to him and told him that he was not getting his sanctioned money and he advised him to go to R.I. to enquire about the same. Specifically PW-5 stated that on that date the complainant had not told him about any demand of bribe by the accused. He further stated that on the next day the complainant told him that as per his advice on the previous day he had gone to RI Office and at that time the RI demanded bribe of Rs.200/- from him. PW-5 in his cross-examination admitted that he had written Exts.A and B which contain the names of affected persons, but he stated that he does not remember if he had given the same to the accused RI. He denied the suggestion that on 24.4.2000 he had threatened the accused RI for not disbursing money to the persons mentioned in the list given by him and for that the accused had reported to his higher authority.

10. PW-6 stated that on 1.5.2000 he with PW-3 had been to Puri Vigilance Office and there the complainant stated that his house was damaged in cyclone and he had applied to the Tahasildar for government help, but the accused had demanded Rs.200/- from him to give the government help. PW-6 also stated that 2 numbers of 100 rupee notes were taken from the complainant and some white powder was smeared to the notes and kept in a paper and was given to the complainant. He (PW-6) was instructed to give signal when the accused would receive the money. He proved his signature vide Ext.3/2 on the preparation report. They went to the house of the accused and after getting down from the jeep, the complainant went to meet the accused and he (PW-6) waited at the half stage of the stair case. While the complainant was offering the money to the accused, he gave signal and other trap party members rushed to the room. One Inspector and another vigilance staff caught hold both hands of the accused and his both hand wash was taken in white water which turned to pink colour. He further stated that the accused had kept the tainted money in his left side shirt pocket and brought out the same and gave the same to the DSP. He proved his signature vide Ext.4/3 on the detection report. This witness was declared hostile by the prosecution.

11. Being cross-examined by the prosecution, he stated that he had accompanied the complainant and overheard the conversation between the complainant and accused and had seen the money transaction. During cross-examination by the accused, he stated that he had well acquaintance with the vigilance staff of Puri and in the requisition it was mentioned to send him as overhearing witness. The said requisition has not been proved by prosecution. PW-6 admitted that he had prior experience about the role of overhearing witness in a trap case as by the time of the present case, he was already overhearing witness in 5 to 10 trap cases. He also

stated that the Vigilance Inspector took them to Talamali Sahi, but he had not asked him as to why he took them to Talamali Sahi although it was written in the preparation report that the accused was staying in Heragouri Sahi. PW-6 further stated that both these streets situate at different locality at a distance of half kilometre and on the way the vigilance staff had not asked anybody regarding the location of the house of the accused.

12. PW-6 also stated that the complainant was illiterate. Specifically, PW-6 stated that he had not heard the conversation between the complainant and the accused. Regarding recovery of the tainted money, PW-6 stated that the vigilance staff Barik inserted his hand in the right side pant pocket of the accused and recovered 2 numbers of 100 rupee G.C.Notes and handed over the same to the TLO(PW-8) and he (PW-8) gave that money to PW-3. Moreover, PW-6 stated that the accused had told that he had not demanded money and the complainant had forcibly inserted the money in his pocket. PW-6 also stated that his statement was recorded by the vigilance one week after the date of occurrence.

13. PW-7 the informant stated that he does not know the accused and he also does not know the contents of the FIR and he has no grievance against the accused. He further stated that the contents of the FIR were not read over to him. He was declared hostile by the prosecution. But nothing substantial was elicited in his cross-examination by the Special PP. Rather, during his cross-examination by the accused, PW-5 stated that he had not given any statement before vigilance police. PW-5 stated that he had requested PW-5 to become the identifying witness for him and being accompanied by PW-5 he had been to Puri in his two wheeler. Moreover, he stated that he was illiterate and he had no prior acquaintance with the accused nor he had seen his house. He also stated that the house of the accused was shown to him by PW-5.

PW-7 stated that he alone went to the house of the accused while PW-5 avoided to accompany him. He categorically stated that he had not gone to the house of the accused in vigilance jeep. PW-5 categorically stated that the accused did not demand any amount from him and on his offering, the accused threw the amount and he (PW-7) collected it from the ground and thrust it inside his pocket. During cross-examination by accused he(PW-7) specifically stated that the accused had never demanded any bribe from him.

14. PW-8 the TLO stated that on 30.4.2000 the informant presented a written report before him which he sent to the SP, Vigilance and he sent requisitions to the DAO and SP, Vigilance, Puri for procurement of official witnesses and lady constable respectively. On 1.5.2000 at 7 AM the complainant, official witnesses and other vigilance staff assembled in the vigilance office, Puri. There the complainant narrated about the allegation of demand of bribe of Rs.200/- by the accused which was to be paid at the residence of the accused on 1.5.2000 at Talamali Sahi so as to cause payment of Rs.1000/- towards super cyclone relief. PW-8 further stated that the complainant produced 2 numbers of 100 rupee G.C.Notes and its numbers were noted and the same were treated with Phenolphthalein powder and there was demonstration showing reaction of Phenolphthalein powder in sodium carbonate solution and PW-6 was selected as overhearing witness and a preparation report was prepared vide Ext.3.

They all proceeded to Talamali Sahi and the complainant with overhearing witness went to the house of the accused and they waited at a little distance. He received the signal from the overhearing witness and all the trap party members rushed to the house of the accused. He with ASI P.K.Lenka caught hold both hands of the accused and being questioned by the DSP, the accused replied that the complainant had forcibly thrust the

tainted money in his hand and thereafter he had kept it inside his pocket. Both hand wash of the accused turned to pink and the accused brought out the tainted notes from his left side pant pocket and gave to PW-3 who tallied its numbers. He further stated that he seized the tainted money, pant of the accused, some personal cash of the accused and a list of cyclone affected persons including the complainant (Ext.11), one four fold paper (Ext.14), copy of the preparation report (Ext.13) and prepared seizure lists vide Exts.5 to 9 and he also prepared the detection report Ext.4 and he proved the tainted money as M.O.-VI and seized pant as M.O.-VII. He proved the spot map Ext.16. PW-8 further stated that he examined the accused, complainant and other witnesses and handed over charge of investigation to PW-9 on 1.5.2000.

15. In cross-examination PW-8 stated that during preparation the complainant stated that the house of the accused was located at Heragouri Sahi, but at the time of detection the complainant had shown the house of the accused at Talamali Sahi. He stated that he had not seen the house of the accused prior to detection, but the complainant showed that house. PW-8 admitted that he had not investigated from the accused whether the complainant had gone to him on 24.4.2000 and also admitted that he had not taken the signature of the complainant on the detection report though it was his duty to procure the signature of all the parties. PW-8 specifically stated that he had examined the scribe at the spot of detection. He further stated that during examination the accused had stated that the complainant forcibly handed over Rs.200/- to him and he threw it and when he turned to his room, the complainant forcibly again inserted money in his pocket and he threw that money to outside by which vigilance people caught him.

16. PW-9 the IO stated that on 1.5.2000 he took charge of the investigation of the case from PW-8 and on 12.5.2000 he sent

the exhibits for chemical examination, received CE Report, held pre-sanction discussion with the Collector (PW-1) by producing copies of preparation report, detection report, seizure lists, statements of the witnesses, CE Report and after receipt of sanction order and completion of investigation he submitted charge-sheet. During cross-examination he admitted that he had not directed his investigation as to why there was deviation regarding the place of payment of bribe. PW-9 during cross-examination stated that during his investigation he had not examined the complainant, witnesses Prakash Chandra Mohapatra, Golakh Chandra Pratihari, the scribe (PW-5) and the TLO (PW-8).

17. DW-1 the then Tahasildar stated that on 24.4.2000 the accused had submitted an application to him stating that while distributing cyclone relief fund, PW-5 confronted him (accused) about the distribution of funds to the persons named in the list furnished by him (PW-5) and also threatened the accused and he was apprehending danger to his life and he (DW-1) forwarded the same to the OIC, Satyabadi PS. He proved the xerox copy of application vide Ext.D and his endorsement with signature in original thereon vide Ext.D/1. DW-1 also stated that on 29.4.2000 the accused made another application seeking for his transfer on the ground of danger to his life and on the body of that application he had passed orders for his transfer to another circle. He proved the xerox copy of that application (obtained under RTI Act) vide Ext.E and his initial and signature with endorsement thereon vide Exts.E/1 and E/2. During cross-examination DW-1 stated that he does not remember if he had enquired whether any case has been registered on the application of the accused or not. He denied the suggestion that he had manipulated and prepared Exts.D & E subsequently to help the accused.

18. Learned defence counsel during course of argument submitted that there is no evidence on record to prove the most essential ingredients, such as demand and acceptance of bribe for which no conviction can lie. He placed reliance on a decision of the Hon'ble Apex Court reported in **(2011) 6 Supreme Court Cases 450, State of Kerala and another-Vs.-C.P.Rao**. Para 10 of the said judgment is extracted below :-

“In C.M.Girish Babu v. CBI, this Court while dealing with the case under the Prevention of Corruption Act, 1988, by referring to its previous decision in Suraj Mal V. State (Delhi Admn.) held that mere recovery of tainted money, divorced from the circumstances under which it is paid, is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused. In the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.(See SCC para 18).”

The learned defence counsel also relied upon a decision of our own Hon'ble High Court reported in **(2014), Vol.58, OCR-566 Bhagirathi Pera-Vs.-State of Orissa** wherein it was held that in order to succeed the prosecution it must prove the demand, acceptance and recovery of the bribe from the possession of the accused.

19. On the other hand, the learned Special PP placing reliance on the decisions reported in **2012 (53) OCR (SC)-173, Syed Ahmed Vs. State of Karnataka & AIR 1982 SC 1511 Kisan Chand Mangal-Vs.-State of Rajasthan** submitted that the evidence of overhearing witness (PW-6) and other circumstances are sufficient to prove the prosecution case. With profound respect to the authorities of the Hon'ble Apex Court, I found that the facts of

those cases are quite distinguishable from the facts of the present case. In case of **Syed Ahmed**, the eye witness Sidheswar Swami (PW-2) specifically stated that the accused had asked the complainant Nagaraja (PW-1) if he had brought what he was told to bring. The complainant replied in affirmative and gave the tainted money to the accused which he accepted and thereafter kept the tainted money in a purse which was then placed in the pocket of his trousers hung on the wall. Moreover, the testimony of the complainant (Nagaraja) and the corroborative evidence of overhearing witness remained unshaken. In case of **Kisan Chand Mangal**, the complainant Rajendra Dutta was dead and the independent witness Keshar Mal (PW-2) deposed that the accused asked the complainant if he had brought the money and the complainant replied in affirmative and took out the currency notes from his diary and gave the same to the accused who took the amount and kept it under the pillow on the cot. But, in the present case, the complainant has not supported the prosecution at all. The overhearing witness has stated that he had not heard the conversation between the complainant and the accused. So, the decisions relied upon by the Special PP being distinguishable on facts, are not helpful to the prosecution.

20. So far prior demand, it is mentioned in the FIR, dt.30.4.2000 that the accused repeatedly called the informant and demanded Rs.200/- to get the relief, but expressing his inability he returned. On 24.4.2000 he approached the accused who asked him to come on 1.5.2000 with Rs.200/-. The complainant (PW-7) in his evidence has not whispered anything about prior demand. Rather PW-7 stated that he does not know the contents of the FIR. PW-5 the scribe stated that on the previous date of scribing the FIR the informant had not stated anything about demand of bribe by the accused RI. Such version of PW-5 falsifies the allegation of prior

demand. Moreover, the TLO (PW-8) in para 24 of his evidence stated that the complainant during his examination u/s.161 Cr.P.C. had not stated him that he had met the accused on 24.4.2000 and he demanded bribe of Rs.200/- from him. As such, the evidence on record regarding prior demand is quite inconsistent and unacceptable and it is a circumstance which very much weighs against the prosecution.

21. As regards demand at the spot, the complainant (PW-7) has not supported the prosecution case at all. He categorically stated that the accused did not demand any money from him and on his offering the accused threw the amount and he collected it from the ground and thrust it inside his pocket. He has specifically stated that the accused had never demanded any money. PW-6 the overhearing witness in his examination-in-chief stated that while the complainant was offering the money to the accused, he gave signal. He was declared hostile by the prosecution. During cross-examination by Special PP he stated that he had overheard the conversation between the complainant and the accused and had seen the money transaction. But during cross-examination by the accused, he stated that he had not heard the conversation between the complainant and the accused. PW-6 stated that he waited at the half stage of the stair case. The accused was staying in the up-stair. The complainant after reaching at the up-stair knocked at the door and he came and gave signal to him (PW-6) that the accused had already received the money from him and he relayed the same to the vigilance staff. Such self-contradictory version of PW-6 does not inspire confidence at all. Obviously, Pws-3 and 8 were not witnesses to the fact of alleged demand made at the spot.

22. So far the recovery, PW-3 stated that after their arrival at the spot, vigilance officials Jena Babu and Panda Babu caught hold the hands of the accused and asked him (PW-3) to bring out

the tainted money from the left pant pocket of the accused. PW-6 during cross-examination stated that vigilance staff Barik inserted his hand on the right side pant pocket of the accused and recovered the tainted money and handed over the same to Inspector Panda and Sri Panda gave that money to PW-3. PW-8 stated that the accused had brought out the money from his left side pant pocket and gave to PW-3 who counted the same. As such the evidence of the witnesses is quite contradictory to each other.

23. Learned defence counsel during course of argument submitted that PW-6 has stated in his evidence that in total 5 persons were the members of the trap party, but the detection report shows that 9 persons were present by the time of detection which fact is quite contradictory to his version. Moreover, PW-6 stated that except the three hand wash bottles of Vigilance staff Barik, Inspector Panda and witness Pratihari, no other pink colour bottles was prepared at the spot which creates a doubt about taking of the hand wash of the accused at the spot. Above all, PW-6 stated that Inspector Panda called him to vigilance office on 8.5.2000 and recorded his statement as well as statement of Pratihari. Such version of PW-6 is unbelievable because PW-8 the TLO stated that he handed over the charge of investigation to PW-9 on the very day of detection. Another significant feature of the case is that admittedly the detection report does not contain the signature of the complainant. No explanation has been adduced by the prosecution in this regard. It creates a doubt if in fact the detection report was prepared at the spot in presence of the witnesses including the complainant or not. PW-8 the TLO stated that he had examined the scribe at the spot of detection which goes to show that PW-5 the scribe had gone to the house of the accused by the time of detection which probabalises the defence plea that PW-5 had led the complainant to the house of the accused. As regards the residence of

accused, the TLO (PW-8) stated that during preparation the complainant had stated that the house of the accused at Heragouri Sahi. But during detection, the complainant had shown the house of the accused at Talamali Sahi. But the complainant had not stated so. As such, the version of the witnesses is inconsistent and contradictory to each other. Though each of the circumstance taken in isolation, is not sufficient to discard the prosecution case, but cumulative effect of all these infirmities and discrepancies raises some doubt in the prosecution case, particularly when the most vital witnesses like Pws-6 and 7 have not supported the prosecution case regarding the essential ingredients like demand and acceptance.

24. Learned defence counsel during course of argument placing reliance on a decision of our own Hon'ble High Court reported in **(2009) 43 OCR 141, State of Orissa-Vs.- Managobinda Sahoo** submitted that investigation of the case by PW-8 (who is a witness to detection) is not permissible in law and renders the prosecution case vulnerable. Para 5 of the judgment is extracted below :-

“xxxx xxxx xxxx xxxx. Therefore, in order to ensure the fair and impartial investigation, it also must be ensured that investigation is carried out by a person who is absolutely impartial, unbiased and unmotivated. The rule of law makes it unthinkable to allow a witness to a crime to himself/herself become the investigator into the said crime. Therefore, the requirement of the Investigating Officer to bring out “the real unvarnished truth” would never been possible by the said Investigating Officer who is also a witness to the said proceeding.”

On the other hand, the learned Special PP submitted that though the Trap Laying Officer (PW-8) had examined some of the witnesses but the case was investigated by PW-9. Admittedly, PW-8 was a member of the raiding party and a witness to the

detection. It is also admitted fact that he had recorded the statements of some of the witnesses. Undisputedly, PW-9 was not a witness to detection. But it is pertinent to mention that PW-9 who had subsequently investigated the case categorically, admitted that during his investigation he had not examined the complainant, the witnesses Prakash Chandra Mohapatra, Golakh Chandra Pratihari and the scribe (PW-5). So also, he had not recorded the statement of PW-8. All these witnesses are material witnesses for prosecution. Non-examination of these witnesses by the IO (PW-9) is a serious lacuna in the prosecution case.

25. As discussed above, DW-1 the then Tahasildar stated that on 24.4.2000, the accused had made an application to him alleging against PW-5. Defence plea is that a false case has been foisted against him at the instance of PW-5. As discussed above, evidence of PW-5 before Court is inconsistent with the narration of FIR which was scribed by him. The complainant (PW-7) has stated that PW-5 had instigated him to pay Rs.200/- to the accused and the house of the accused was shown to him by PW-5. Though PW-5 denied that he had led vigilance police to the house of accused, but PW-8 TLO has stated that he had examined the scribe (PW-5) at the spot of detection. It is difficult to believe that a responsible officer like Tahasildar at present working as Joint Secretary to Government of Orissa would depose lie against PW-5 particularly when there is no material on record to show that there was any prior enmity among them. That apart, Pws-3 and 6 in their evidence have categorically stated that the accused had stated during detection that the complainant had forcibly inserted the tainted money in his pocket. PW-8 the TLO has also stated that during his examination the accused had stated that the complainant had forcefully handed over Rs.200/- to him and he threw it and when he turned to his room, the complainant forcefully again inserted the money in his

pocket and he threw that money to outside by which vigilance people caught him. Law is well settled that plea of the accused is to be considered on the touch stone of preponderance of probability.

26. As discussed earlier, the complainant has not supported the prosecution case at all and he was declared hostile. The accompanying witness PW-6 has not stated about demand of bribe by the accused. He(PW-6) was also declared hostile. Evidence regarding prior demand is not reliable. In view of the evidence of Pws-5,7 and DW-1, the plea of the accused cannot be outrightly rejected as improbable. As such, on a conjoint reading of the evidence on record, particularly the evidence of Pws-6 and 7, I am inclined to hold that the prosecution has failed to substantiate the most essential ingredients, such as, demand and acceptance of bribe of Rs.200/- by the accused from the complainant. That apart, the contradictions and discrepancies in the evidence of the Pws and the lacuna in the prosecution case as discussed above render the prosecution case doubtful.

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

In the result, the accused is found not guilty of the offences u/s. 7 and 13(2) read with 13(1) (d) of P.C.Act, 1988 and acquitted u/s.248(1) of Cr.P.C. His bail bond be cancelled and sureties discharged. The seized tainted money of Rs.200/- (M.O.-VI) be returned to the complainant (PW-7) if not reimbursed in the meantime. If the said amount has been reimbursed to the complainant in the meantime, in that case the seized money of

Rs.200/-(M.O.-VI) be confiscated to the State. The seized pant (M.O.-VII) and sample bottles (M.Os. I to V) be destroyed. Order regarding disposal of the property shall take effect four months after expiry of the appeal period if no appeal is preferred and in case of appeal, the same shall be dealt as per the order of the Appellate Court.

Special Judge(Vigilance),
Bhubaneswar.

The judgment having been typed to my dictation and corrected by me and being sealed and signed by me is pronounced in the open court today this 3rd day of September, 2014.

Special Judge(Vigilance),
Bhubaneswar.

List of witnesses examined for the prosecution :

P.W.1	Pradipta Kumar Mohapatra.
P.W.2	Pradip Kumar Samantaray.
P.W.3	Golekh Chandra Pratihari.
P.W.4	Pradip Kumar Ray.
P.W.5	Kailash Chandra Baral.
P.W.6	Prakash Chandra Mohapatra.
P.W.7	Bhaji Bhoi.
P.W.8	Narahari Panda.
P.W.9	Gopabandhu Pati.

List of witnesses examined for the defence :-

D.W.1	Sudhansu Sekhar Bhuyan.
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List of exhibits marked for the prosecution :-

Ext.1	Sanction Order.
Ext.1/1	Signature of PW-1 on Ext.1.
Ext.1/2	Forwarding Letter No.1028 of Collector,Puri.
Ext.2	C.E.Report.
Ext.2/1	Signature of PW-2 on Ext.2.
Ext.2/2	Signature of Director Basanta Kumar Das.
Ext.3	Preparation Report.
Ext.3/1	Signature of PW-3 on Ext.3.
Ext.4	Detection Report.
Ext.4/1	Signature of PW-3 on Ext.4.
Ext.4/2	Endorsement of Accused.
Exts.5 to 9	Seizure Lists.

Exts.5/1 to 9/1	– Signatures of PW-3 in Exts.5 to 9.
Ext.10	Signature of S.S.Hansda with signature on FIR.
Ext.10/1	Signature of PW-4 on FIR with endorsement.
Ext.10/2	Report scribed by PW-5 (FIR).
Ext.10/3	Signature of PW-5 on Ext.10/2.
Ext.3/2	Signature of PW-6 on Ext.3.
Ext.4/3	Signature of PW-6 on Ext.4.
Ext.5/2	Signature of PW-6 on Ext.5.
Ext.6/2	Signature of PW-6 on Ext.6.
Ext.7/2	Signature of PW-6 on Ext.7.
Ext.8/2	Signature of PW-6 on Ext.8.
Ext.9/2	Signature of PW-6 on Ext.9.
Ext.10/4	Signature of PW-7.
Ext.10/5	Formal FIR.
Ext.10/6	Signature of P.Ray on Ext.10/5.
Ext.3/3	Signature of PW-8 on Ext.3.
Ext.5/3	Signature of PW-8 on Ext.5.
Ext.6/3	Signature of PW-8 on Ext.6.
Ext.7/3	Signature of PW-8 on Ext.7.
Ext.8/3	Signature of PW-8 on Ext.8.
Ext.9/3	Signature of PW-8 on Ext.9.
Ext.4/4	Signature of PW-8 on Ext.4.
Ext.11	List of cyclone affected persons.
Ext.11/1	Signature of the accused on Ext.11.
Ext.12	Application.
Ext.12/1	Signature of the accused on Ext.12.
Ext.13	Copy of the preparation report.
Ext.14	Four fold paper.
Ext.14/1	Signature of PW-8 on Ext.14.
Ext.15	Paper containing facsimile seal.
Ext.15/1	Signature of PW-8 on Ext.15.
Ext.16	Spot Map.
Ext.4/5	Signature of the accused on Ext.4.

List of exhibits marked for the defence :-

Ext. A	A list is written by PW-5.
Ext. A/a	Signature of PW-5 on Ext.A.
Ext. B	List of affected persons prepared by PW-5.
Ext. C	List prepared by PW-5 in the xerox copy of his pad.
Ext. D	Xerox copy of application, dt.24.4.2000.
Ext. D/1	Endorsement with signature of DW-1 on the body of Ext.D.
Ext. E	Xerox copy of the application, dt.29.4.2000.
Ext. E/1	Xerox copy of initial of DW-1.
Ext. E/2	Xerox copy of endorsement with signature of DW-1 on Ext.E.

List of documents marked for identification :-

Mark- X, Y & Z - Three pads(xerox) of PW-5.

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

M.Os. I to V Sample bottles.

M.O.VI Tainted money.

M.O.VII Seized pant.

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

Nil.

Special Judge(Vigilance),
Bhubaneswar.