

IPICOL) had been to the chamber of Joint Manager to discuss about the employees' grievance and in course of discussion there was exchange of hot words between them and the Joint Manager lodged a complaint at Saheed Nagar PS against the complainant and his associates. On 19.5.2003 the accused ASI of Saheed Nagar PS) with one women SI went to the office of the complainant, directed them to go to Saheed Nagar PS. They had been to the PS and the Joint Manager was also called there and after hearing from both sides, the then IIC directed the accused to forward the complainant and his associates to Court. Thereafter, the present accused told them to pay Rs.5,000/- to release them on bail. They expressed their inability to pay instantly and the accused told them to arrange the amount on the next date and in the midnight they were released on bail. On the next date i.e. on 20.5.2003 the accused went to their office, demanded the bribe money and on their request to allow one day time, the accused insisted them to pay a minimum of Rs.3,000/- by 21.5.2003 evening after 6 PM at his residence or else to cancel the bail and to forward them to Court. Basing on the report of the informant a case was registered.

During preparation in vigilance office, the complainant narrated these facts, produced 6 numbers of 500 rupee G.C.Notes which were treated with Phenolphthalein powder and given to the complainant to give the same to the accused on demand. Demonstration regarding reaction of Phenolphthalein powder in sodium carbonate solution was shown. PW-10 Ajay Kumar Nayak was selected as accompanying witness. A preparation report was made and a copy thereof was given to PW-12. The trap party members proceeded to the house of the accused where the complainant gave the tainted money to the accused on his demand and he

accepted the same and kept on the cot and getting signal of the accompanying witness, the trap party members rushed there, caught hold the accused and recovered the tainted money. Both hand wash of the accused and the wash of the bedsheet and pillow cover were taken in sodium carbonate solution which turned to pink colour and the tainted money, solution bottles were seized and after obtaining the chemical examination report and sanction order and after completion of investigation, charge-sheet was submitted against the accused resulting the trial.

3. Plea of the accused is that he had neither demanded nor accepted any bribe from the complainant and he was ignorant about the money kept on the bedsheet. His further plea is that several departmental proceedings were pending against the complainant and his associates and during investigation of the case, he searched for them, but could not get and apprehending danger to their service, they have foisted a false case.

4. The prosecution has examined 13 witnesses whereas the accused has examined none.

5. Points for determination in this case are :-

(i) Whether on 21.5.2003 at about 8.30 PM at his residential quarter No. E/12, MIG, B.D.A. Colony, Chandrasekharpur the accused being a public servant working as ASI of Police, Saheed Nagar Police Station, Bhubaneswar by corrupt or illegal means or otherwise abusing his position as a public servant obtained for himself pecuniary advantage of Rs.3,000/- from the complainant for releasing him and his associates in Saheed Nagar PS Case No.106/03 on bail or else to forward them to Court ?

(ii) Whether on the aforesaid date, time and place the accused being a public servant accepted of Rs.3,000/- as gratification for himself other than legal remuneration as a motive or reward from the complainant for releasing him and his associates on bail or else to forward them to Court in the above case ?

6. Both points are taken up together. PW-1 the then Assistant Director, SFSL, Rasulgarh stated that on 3.6.2003 he examined six numbers of sealed glass bottles containing pink colour liquid marked as Exts.A to F and detected Phenolphthalein in each of them and he proved his report vide Ext.1. During cross-examination he admitted that he had not submitted the worksheet along with his report and he had not measured the quantity of Phenolphthalein present in each of the bottles.

PW-2 the then SP, Khurda stated that he was competent to remove the accused from service. He further stated that on receipt of requisition from SP,Vigilance and on perusal of the FIR, preparation report, detection report, statements of witnesses, SP's report and on discussion with the IO and after being satisfied and after applying his mind, he accorded sanction for prosecution against the accused and he proved his sanction order vide Ext.2. During cross-examination he stated that he has not specifically mentioned in the sanction order as to which other documents he had verified besides the FIR and the SP's report.

7. PW-3 stated that on 7.5.03 the members of their union had met Joint Manager S.B.Mohapatra to put forth their grievance and he misbehaved them and threatened saying to forward them to police station. He further stated that on 19.5.03 at about 10.30 AM the accused called them to PS in connection with P.S.Case No.106/2003 and PW-4 Mahapatra Babu arrived there and discussed with the IIC and the IIC told the present accused to forward PW-3 and his associates to Court. PW-3 further stated that at about 11 PM the accused wrote something on a paper, obtained their signatures thereon and told them to give Rs.5000/-, so that he would release them. On 20.5.03 the

accused arrived in their office and asked them as to why they did not give Rs.5000/- though they had told so and they expressed their inability to give Rs.5000/- and the accused told to give at least Rs.3000/- in his residence on 21.5.03 after 5 PM or else he would tear the paper bearing their signatures and would forward them to Court. Each of them contributed Rs.600/- and requested the complainant to inform the matter to vigilance and accordingly the complainant informed and subsequently the accused was trapped.

During cross-examination PW-3 admitted that on three occasions he was put under suspension on the allegation of negligence of duty, misconduct, unauthorized entry in the chamber of MD, lack of sincerity and allegation of theft. He denied the suggestion that as Saheed Nagar PS Case No.106/2003 was registered against him and others under non-bailable offences and for that they were not coming to office to avoid their arrest. During cross-examination he stated that all five including him had signed on the bail bond and they had no bailor. He stated that he had not noted the numbers of the currency notes of Rs.600/-. He had paid one number of 500 rupee G.C.Note and one number of 100 rupee G.C.Note, but he could not say the denominations of the notes given by others. During his cross-examination he denied the suggestion that as the ASI was searching to arrest them and as it was a non-bailable case, they have foisted a false vigilance case against the accused.

PW-4 the then Joint Manager of IPICOI stated that on 7.5.03 Pws-3,5,6,7 and one Ramakanta Singh had come to his chamber, challenged him about stoppage of salary of Ramakanta Singh and when he replied about the reason, they did not accept his reply and started shouting and throwing the paper weights,

files etc., so the matter was informed to the MD and thereafter he (PW-4) reported the matter at Saheed Nagar PS. In cross-examination he stated that those five persons are leaders of Employees' Union and number of departmental proceedings were initiated against them for negligence of duty, misconduct, using alcohol in duty hours etc.

8. PW-5 the complainant stated that on 7.5.03 he with others had been to the office of PW-4 to discuss regarding withheld of salary of some employees and during discussion there was exchange of hot words between them. On 19.5.03 this accused and one lady SI came to their office and the accused called them to Saheed Nagar PS stating that FIR was lodged against them. They went to the PS. PW-4 came there. IIC called him to his room, asked about the incident and instructed the accused ASI to forward him and his associates to the Court and he left the PS. After departure of IIC, the accused told them if they would pay Rs.5000/- to him, then he would release them on bail at the PS. Since they had no money, the accused asked them to arrange money by next date and he obtained bail bond from them and released them from PS. On 20.5.03 the accused came to their office and asked for the money and when they replied in negative, the accused told them to pay at least Rs.3000/- by the next date at his residence at Chandrasekharapur after 6 PM, otherwise he would cancel their bail bond and forward them to Court as instructed by the IIC. So, he reported the matter to the SP (Vigilance) on 21.5.03 vide Ext.4. Before the vigilance staff and official witnesses he narrated about the incident and produced 6 numbers of 500 rupee G.C.Notes, some chemical was applied to the same and the same were kept in a folded paper in his left side shirt pocket with instruction to give that money to the accused on demand. There was demonstration

showing change of colour and Ajay Nayak(PW-10) was selected as accompanying witness and a preparation report vide Ext.5 was prepared.

9. They proceeded to Chandrasekharpur, reached there at 8.30 PM and he with Ajay Nayak (PW-10) went to the house of the accused and he (PW-5) entered inside the house of the accused on second floor and saw the accused was resting on a cot in his drawing room. Seeing PW-5, the accused asked him “KANA AANILE” and he replied in affirmative. The accused asked him to give the money and he brought out the money from his shirt pocket and gave the same to the accused who received the money and kept the same below his pillow and in the meantime Ajay Babu came out and when PW-5 and the accused were discussing about the gravity of the offences, vigilance officer entered inside and asked him why he had come and he told that he had come to give the money to the accused. The DSP recovered the tainted money from below the pillow and witness Baliarsingh (PW-12) compared the numbers which tallied and thereafter right hand wash of the accused was taken which turned to pink, wash of the pillow cover and bed-sheet was taken which also turned to pink and a detection report vide Ext.6 was prepared.

10. During cross-examination PW-5 admitted that a number of disciplinary proceedings were pending against him. PW-5 further stated that as the Joint Manager first misbehaved with them, there was exchange of hot words and they had given in writing against the Joint Manager to the GM and MD, so also, the Joint Manager had complained against them to the MD for the incident, dt.7.5.03. During cross-examination he stated that on 19.5.03 they came to know about the actual lodging of FIR. PW-5 admitted that he has not mentioned in his FIR that he had

complained against the Joint Manager (PW-4) before the MD. Specifically he stated that he alone had gone to lodge FIR, but the four others named in the police case had not gone to meet the SP, Vigilance. During cross-examination he stated that he scribed the FIR in his office and the scoring (correction) made in the FIR were done by him. PW-5 categorically stated that the dispute between them and PW-4 was not sorted out in the PS. He also stated that on 20.5.03 after the accused insisted for the money, he (PW-5) discussed with the co-accused persons for lodging of FIR in the Vigilance and each of the accused persons had contributed Rs.600/-, but he does not remember which accused had given what denominations of notes. PW-5 stated that a bar light was burning in that room and its entrance door was closed and he knocked at the door and probably the wife of the accused opened the door. First he entered inside the room and Ajay (PW-10) followed him inside the room. During cross-examination he stated that Assistant Manager Jagannath Patra and Mahendra Kumar Kar had accompanied the Joint Manager to Saheed Nagar PS on 19.5.03. He denied the suggestion that the accused had never demanded nor accepted any bribe from him.

11. PW-6 an employee of IPICOL stated that on 7.5.03 he with Pws-3,5 and 7 and two others had gone to the office of PW-4 to discuss about their demands and problems and during discussion there was exchange of hot words and for that PW-4 had lodged the FIR against them at Saheed Nagar PS. Being called by the accused, they had gone to PS on 19.5.03 and there was discussion in the PS in presence of PW-4 and the IIC and thereafter the IIC left the PS directing the accused to forward them to Court. After that the accused demanded Rs.5000/- from them to finalize the matter at the PS and released

them after executing bond and told them to give Rs.5000/- on 20.5.03. On the next day the accused came to their office, asked for the money and during discussion he reduced the demand to Rs.3000/- and it was decided that the money would be paid to the accused in his house on 21.5.03 evening and he had contributed Rs.600/- towards his share.

During cross-examination, he stated that PW-5 was not holding any post in the association but was taking leading part. He also stated that they had intimated the then President, General Secretary and Secretary about the incident that took place in the chamber of PW-4. During cross-examination he admitted that he had been warned by his office on some occasions for remaining absent from duty unauthorizedly. During cross-examination he further stated that one M.K.Kar and Jagannath Patra had taken part in the discussion. He further stated that they had not intimated the IIC about the demand of bribe by the accused.

12. PW-7 stated that on 7.5.03 he with others had gone to the room of PW-4 to discuss regarding stoppage of salary and there was exchange of hot words between them for which PW-4 lodged FIR against them. On 19.5.03 being called by the ASI, they went to Saheed Nagar PS and in the police station the higher officer of the accused asked the accused to forward them to Court. He further stated that the accused released them after executing bond and told to give Rs.5000/- to settle the matter at the PS. On 20.5.03 the accused came to the office to receive the money and when they expressed their inability to give Rs.5000/-, he reduced the demand to Rs.3000/- and told to give the same in his house on 21.5.03 evening. They decided to report the matter to vigilance and authorized PW-5 to lodge report.

During cross-examination PW-7 admitted that as per Office Order No.4257, dt.17.11.2000 he was called upon to explain for his unauthorized absence on 15.11.2000 and he also admitted that charge was framed against him for theft in the office and he was suspended and he also admitted that in the departmental enquiry under charge of gross negligence in duty, misconduct and disobedience of office order, he was recommended by the Enquiring Officer to be dismissed from service. During cross-examination he could not say what type of bond he signed at the PS. But he stated that all of them had signed on a paper. During cross-examination he (PW-7) could not say what was the denominations of those 600 rupees which he gave to PW-5 towards his share. He denied the suggestion that they had foisted a false case against the accused as he was investigating officer.

13. PW-8 the then Reserve Sub-Inspector stated about seizure and zima of the original service book of the accused on his production. In cross-examination, he denied the suggestion that there was no such seizure. PW-9 the then ASI of Saheed Nagar PS stated about seizure of the FIR Book containing case nos. 86 to 110 including case no.106 of 2003 and the Station Diary Book containing entry no.155 to 539 w.e.f. 8.5.03 on 22.5.03 on his production and about its zimanama vide Exts.11 and 12 respectively. He could not say the contents of all the FIRs and station diary entries. He further stated that only the FIRs were in the FIR Book and no connected papers were in that FIR.

14. PW-10 the accompanying witness stated that on 21.5.03 he with PW-11 had been to vigilance office. There the complainant narrated that on 7.5.03 there was some disturbance between the staff of IPICOL and its Manager and in this regard

FIR was lodged at Saheed Nagar PS and on 19.5.03 the police officer, Saheed Nagar PS had called some staff of IPICOL and the complainant to the PS to have a compromise and the date of compromise was fixed to 21.5.03. PW-10 further stated that he had noticed one constable applying some chemical powder over 5 numbers of 500 rupee currency notes and he was instructed by the DSP to accompany the complainant and to call him after receiving signal. This witness was declared hostile by the prosecution and during cross-examination by the prosecution, he admitted that he has been convicted in vigilance case bearing T.R.No.53/2005 on the allegation of accepting illegal gratification and on that ground he was dismissed from service. During cross-examination he stated that on the date of occurrence at about 8.20 PM they reached BDA Colony, Chandrasekharapur and the complainant entered in the residential quarters of the accused at 2nd floor and he (PW-10) followed him and others remained outside. He denied to have stated to IO that the complainant had narrated before others that the accused had gone to their office, called the complainant and 4 others to the PS and there was discussion in the PS and the accused demanded Rs.5000/- to allow them bail from PS and reduced the amount to Rs.3000/-. He also denied the suggestion that he had stated to the IO that the accused had enquired from the complainant if he had brought the demanded amount and the complainant gave the tainted money to him and the accused received the same and kept on his bed below his pillow etc. But the TLO (PW-11) in his evidence categorically stated that PW-10 during his examination had so stated to him.

15. Being cross-examined by the accused, PW-10 stated that he with others had signed on the preparation report and detection report (Exts.5 and 6) in the residence of the

accused being insisted by the vigilance officials. He stated in his evidence that he with PW-5 reached near the house of the accused and the complainant knocked at the door and wife of the accused opened the door and the complainant told to meet the accused and she asked the complainant to enter inside the room and sit on a sofa and she went to the roof of the house to call the accused where he was sleeping and during such talk he (PW-10) had already reached near the door. The complainant went inside and sat on the sofa and kept the notes below the bed-sheet over the bed. Then the accused came to the room followed by his wife. Seeing the complainant, the accused got annoyed and told as to why he (complainant) had come to his house instead of meeting him at the PS. Suddenly the complainant stood up, went to the accused, caught hold his hands and told as to why he was getting annoyed, when he (complainant) had come to talk with him. Thereafter, the complainant sat on the sofa lying towards pillow side and the accused sat on the bed on the other side and there was some talk between them which he (PW-10) could not hear. Then the complainant started coughing loudly and he (PW-10) gave signal and the raid party members reached at the spot. Being confronted by vigilance people, the accused told that he does not know anything about the money and the complainant stood and showed the spot where the money was kept. PW-10 also stated that in his presence both hand wash of the accused was taken which turned to pink colour and some documents were prepared at the spot.

16. PW-11 the TLO stated that on 21.5.03 as per direction of SP, Vigilance, he laid a trap and during preparation the complainant stated that on 7.5.03 while he with others were discussing with PW-4, there were exchange of some hot words and PW-4 lodged one complaint against them and on 19.5.03 the

accused called them to Saheed Nagar PS and they went there and in the police station IIC heard them and PW-4 and directed the accused to forward the complainant and his associates. The complainant further stated that the accused asked them for Rs.5000/- for releasing them on bail from the PS and on their request for time, the accused left them after keeping bonds with direction to pay the amount on the next day. On the next day the accused came to their office, demanded that amount and later on reduced the same to Rs.3000/- and asked them to pay that amount on 21.5.03 at his residence after 6 PM. PW-11 further stated that the complainant produced 6 numbers of 500 rupee G.C.Notes and its numbers were noted and the notes were smeared with Phenolphthalein powder and demonstration was shown about the reaction of Phenolphthalein in sodium carbonate solution. PW-10 was directed to accompany the complainant and to witness the transaction and to relay signal by focussing torch. The notes were given to the complainant with instruction to give the same to the accused on demand. PW-12 was selected as magisterial witness to compare the numbers of the notes after detection and a preparation report vide Ext.5 was prepared.

17. PW-11 also stated that they went to BDA Colony, Chandrasekharapur and the complainant with accompanying witness went to the house of the accused and other members stayed in the nearby locality. At about 8.30 PM getting signal, they went to the house of the accused and being asked the complainant told that on demand of the accused he had paid the tainted money of Rs.3000/- to the accused and he received the same and kept the same on the cot below the pillow. Both hand wash of the accused was taken separately in sodium carbonate solution which turned to pink colour. PW-12 brought out the

tainted money from the cot below the pillow and compared its numbers which tallied. The portion of the bed-sheet and the pillow cover were washed in sodium carbonate solution which turned to pink. The four fold paper, solution bottles, bed-sheet, pillow cover, copy of preparation report and the tainted money were seized and the detection report vide Ext.6 was prepared and a copy thereof was given to the accused on proper acknowledgment. PW-11 further stated that being asked, the accused told that he was investigating Saheed Nagar PS Case No.106 of 2003, but he had never demanded Rs.5000/- from the complainant, but the accused agreed to have received Rs.3000/- from the complainant during time of detection. He proved the tainted money M.O.-I, seized sample bottles M.Os.-II to VII, seized pillow cover M.O.-VIII and the seized bed-sheet M.O.-IX.

18. During cross-examination PW-11 could not say if any preliminary investigation was taken up by the SP,Vigilance or the OIC,Vigilance or PW-13, but the same is not material. After receiving the FIR on the allegation of demand of bribe coupled with the version of the complainant that he was going to pay bribe money to the accused against his will on the very day evening, the ordinary line of action would be to lay a trap. Holding a preliminary investigation about the genuineness of the allegations of FIR at that stage would have been counter productive. PW-11 stated that he had not examined the IIC nor verified any record of Saheed Nagar PS to ascertain if the complainant and his associates were released on bail in the criminal case. He stated that on that date after detection he informed PW-13 and at about 1.30 AM of 22.5.03 PW-13 came to the spot i.e. the residence of the accused. He stated that he had not seized the requisition of SP for procurement of independent

witnesses. But the same is insignificant when both Pws-10 and 12 stated that being directed by Tahasildar, they had been to vigilance office. PW-11 also stated that he had not enquired from the complainant as to how 6 numbers of 500 rupee G.C.Notes were collected from five persons. He categorically stated in his evidence that while they rushed to the spot, he found PW-10 was standing near the complainant in the drawing room and the complainant was sitting on a sofa and the accused was sitting on the bed and one pillow was there on that bed. He categorically stated in his evidence that the complainant told that the accused had kept the money below the pillow and independent witness PW-12 being asked, brought out the money there from. In his evidence he stated that he had not seized that torch light used for giving signal. But, it may be mentioned here that PW-10 who had turned hostile stated in para 8 of his cross-examination that in the vigilance office vigilance official gave him a torch. So, the fact of non-seizure of the torch is insignificant.

19. PW-12 stated that on 21.5.03 being directed by the Tahasildar he with PW-10 reached vigilance office and during preparation the complainant disclosed that there was some dispute in IPICOL and for that the manager had lodged one complaint at Saheed Nagar PS and the accused was enquiring that matter. The complainant further told that the IIC had directed the accused to demand Rs.5000/- from the complainant and his associates and his supporters or else to forward them to Court and on 19.5.03 they met the accused and the accused asked them to pay Rs.3000/- on 21.5.03 at his residence at Chandrasekharapur. The complainant brought 6 numbers of 500 rupee G.C.Notes and its numbers were noted and those notes were smeared with Phenolphthalein powder, kept in a white

paper and given to the complainant and PW-10 was directed to accompany the complainant and he (PW-12) was asked to go to the spot after receiving signal from PW-10. They went to Chandrasekharpur, reached near the house and the complainant and PW-10 went to the 1st floor and others remained in the ground floor. Getting signal they went to the 1st floor and being asked if he had taken the money from the complainant, the accused denied and the complainant told that the money was kept below one pillow and he pointed out that place. He (PW-12) brought the money and tallied the numbers and both hand wash of the accused, so also the wash of the bed-sheet, pillow cover as well as hand wash of PW-12 were taken separately which turned to pink. He also stated that the DSP seized the tainted money, bed-sheet, pillow cover, wash bottles, white paper and he (PW-12) took the brass seal M.O.-X in his zima. He proved the seizure lists and zimanamas.

In cross-examination he admitted that the contents of the preparation report were not explained to him at vigilance office. During cross-examination he stated that they got signal by focussing torch from the 2nd floor and after signal the DSP went first and they followed him. The wife of the accused was present in the house. He further stated that the complainant was sitting on a sofa and being asked by the DSP, he (PW-12) brought out those notes and he does not remember if the DSP had asked anything to the accused after recovery of the tainted money or if the accused had told anything in response. He further stated that in that very night they went to Saheed Nagar PS and the vigilance people verified some papers. But he does not remember if they had seized any document from the PS. He denied the suggestion that he had not gone to the spot and being

a stock witness of Vigilance Department, he had signed on all the papers being asked by them.

20. PW-13 stated that on 22.5.03 he took charge of the investigation of the case from PW-11, seized the FIR Book and Station Diary Book under Ext.11, left the same in zima vide Ext.12, arrested the accused and forwarded to Court. On 26.5.03 he sent the exhibits and on 16.6.03 he seized the service book of the accused vide Ext.9 and left the same in zima vide Ext.10. He obtained CE Report, examined some witnesses, held pre-sanction discussion with the SP and produced the relevant documents before him and he received sanction order vide Ext.2 and after completion of investigation, he submitted charge-sheet.

During cross-examination he stated that he had not investigated to ascertain the identity of the woman Sub-Inspector who had allegedly accompanied the accused to IPICOL Office or if they had called the informant and his associates to Saheed Nagar PS. He also stated that he had not examined any staff of Saheed Nagar PS regarding allegation of demand of bribe. He further stated that he had not ascertained from the complainant as to how 6 numbers of 500 rupee G.C.Notes were given though five persons including himself contributed Rs.600/- each. PW-13 stated that the accused and his wife were present in the house, but he had not examined the wife of the accused. He denied the suggestion that the complainant had kept the tainted money on the cot below the pillow without knowledge of the accused.

21. Learned defence counsel during course of argument placed reliance on a decision of the Hon'ble Supreme Court reported in **AIR 2013(SC) 3368 State of Punjab-Vrs.-Madan Mohan Lal Verma**. Para 11 of the judgment is extracted below :- "The law on the issue is well settled

that demand of illegal gratification is sine qua non for constituting an offence under the Act 1988. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe.”

Learned defence counsel further relied upon a decision of the Hon’ble Apex Court reported in (2009), **Vol.15, SCC 200 State of Maharashtra-Vrs.-Dnyaneshwari Laxman Rao Wankhede**. Para 16 of the judgment is extracted below :-

“Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence, viz., demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety.”

Learned defence counsel further relied upon a decision of the Hon’ble Apex Court reported in **AIR 2006 SC 836 T.Subramanian-Vrs.-State of Tamilnadu**. Para 13 of the judgment is reproduced below :-

“In Chaturdas Bhagwandas Patel v. The State of Gujarat (1976) 3 SCC 46: 1976 SCC Cri 351: AIR 1976 SC 1497), this Court held that the burden that rests on an accused to displace the statutory presumption that is raised under Section 4(1) of the Act, is not onerous as that cast on the prosecution to prove its case. But such burden has to be discharged, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by

him, other than as a motive or reward as is referred to in Section 161 IPC.”

22. Though the facts of the above cases are distinguishable from the facts of the present case, but there is no dispute to the position of law settled therein. Keeping in view such position of law, let me analyse the evidence on record as discussed above. So far prior demand, Pws-3,5,6,7 categorically stated that PW-4 lodged one FIR against them and one Ramakanta Singh vide Saheed Nagar PS Case No.106 of 2003 and the accused called them to the police station on 19.5.03, demanded a sum of Rs.5000/- to release them on bail and on the next day he came to their office, reiterated the demand, reduced the amount to Rs.3000/- or else to tear the bail bond and to forward them to Court. The accused has admitted that basing on the report of PW-4, Saheed Nagar PS Case No.106/2003 was registered and he was entrusted with the investigation of that case and he could ascertain from IPICOL Office that the complainant and his associates were creating disturbance in the office, abusing the authority and neglecting their duty and he searched for them, but could not get them. The TLO(PW-11) has categorically stated that during preparation the complainant had narrated before them about the previous demand. The narration in the preparation report also corroborates the fact of prior demand as stated by PW-5 during preparation.

As regards the demand at the spot, PW-5 stated that he with PW-10 went to the house of the accused and seeing him, the accused asked “KANA AANILE” and he replied in affirmative and the accused asked him to give the money and he gave the same to the accused who received the money, kept the same below the pillow. PW-10 who is the most material witness regarding the demand at the spot has turned hostile. Being cross-

examined by prosecution, PW-10 denied his statements made to the IO during investigation, but admitted his signatures on the preparation report and detection report vide Exts.5/2 and 6/2. Being cross-examined by the accused, he stated that when they reached at the house of the accused and the complainant knocked at the door, the wife of the accused opened the door, asked the complainant to sit on a sofa and went to the roof of the house to call the accused. The complainant went inside, sat on the sofa and kept the tainted money below a bed-sheet over the bed. Then the accused came to that room followed by his wife. He further stated that seeing the complainant, the accused got annoyed and asked him why he had come to his house and suddenly the complainant stood up and caught held his hands and told as to why he was getting annoyed. Then the complainant sat on the sofa and there was some talk between the complainant and the accused which he could not hear. It is pertinent to note here that the accompanying witness(PW-10) has been convicted in T.R.No.53/2005 on the allegation of accepting the illegal gratification and on that ground he was dismissed from service.

23. The TLO(PW-11) in his evidence stated that PW-10 had categorically stated before him about the demand and acceptance of the money by the accused from the complainant. PW-11 further stated that getting signal when they went to the house of the accused, the complainant told about the demand and acceptance of the bribe by the accused and further told that he had kept the same on the cot below the pillow. PW-12 stated that he with other staff entered inside the room and being asked by the DSP, the accused denied to have received any money and the complainant told that the money was kept below the pillow and pointed out that place and he

brought the money. The detection report Ext.6 fully corroborates the fact of demand and acceptance of the bribe money by the accused from the complainant at the spot.

24 As regards acceptance, PW-5 (complainant) categorically stated that the accused accepted the money and kept the same below the pillow cover. PW11(TLO) stated that during detection, PW-5 had stated so. So far hand wash of the accused, Pws-5, 11 and 12 even PW-10 who has turned hostile stated that the hand wash of the accused was taken and the same turned to pink colour. The evidence of PW-1 (Chemical Examiner) coupled with the CE Report shows that the sample wash bottles contained Phenolphthalein in sodium carbonate solution. As discussed earlier, the tainted money were smeared with Phenolphthalein powder during preparation. From a combined reading of such evidence, it emerges that the accused had handled the tainted money which were smeared with Phenolphthalein powder. Surprisingly, the accused during his examination u/s.313 Cr.P.C. while answering Question Nos.24, 56 and 71, admitted that his hand wash was taken, but stated that he does not know about change of colour. Even he stated that he does not know if wash of the bed-sheet and pillow cover were taken or not. Such evasive replies of the accused are additional circumstances to incriminate him.

25. Of course, PW-10 during his cross-examination by the accused has stated that the tainted money were kept concealed by PW-5 during absence of the accused. But such a plea was not raised by the accused before the TLO at the time of detection. Even no such suggestion was put to PW-5(complainant). Adding to that it sounds quite improbable that PW-5 who was an accused in the case which was being investigated by the present accused and when the accused was

searching for him (PW-5), would dare to go to his residence in the night hour to plant the money for trapping him. Moreover, the accused during his statement u/s.313 Cr.P.C. has stated that seeing the complainant in his house, he asked him “who are you”. Such a plea is unacceptable as because the accused himself has pleaded that he was searching for the complainant and his associates. That apart, if in fact the complainant had entered into his house during his absence and he(accused) got annoyed seeing him, then in usual course either the accused should have caught hold him or he should have driven him out of the house. But during cross-examination of PW-10 by the accused, it was elicited that the complainant caught hold both the hands of the accused and asked him as to why he was getting annoyed and thereafter both of them sat down and there was some talk between them which he could not hear. It is quite abnormal. Apparently, such a story was depicted by PW-10 to explain the reason for the hand wash of the accused turning to pink colour. Absolutely, there is no mention in the detection report about this fact. No such suggestion was put to PW-5 during his cross-examination. So such plea is not acceptable.

26. Learned defence counsel during course of argument contended that PWs-3,5,6 and 7 who are the employees of IPICOL were having adverse antecedent in their service career and their conduct was unbecoming on the part of a public servant. They are accomplices of the alleged crime. Moreover, there is no corroboration to the version of the complainant. So, their evidence should not be believed.

Learned Special PP placing reliance on a decision of the Hon'ble Supreme Court reported in **AIR 2011 SC 608 C.M.Sharma-Vrs.-State of A.P.** submitted that “a witness forced to pay on promise of doing or forbearing to do any

official act by a public servant, is not a partner in crime and associate in guilt and therefore cannot be said to be accomplice.”

The learned Special PP further placed reliance on a decision of the Hon'ble Supreme Court reported in **AIR 1984 SC 1453 State of U.P.-Vrs.-Dr. G.K.Ghosh** wherein it was held that “Ordinarily, it is only when a citizen feels oppressed by a feeling of being wronged and finds the situation to be beyond endurance, that he adopts the course of approaching the Vigilance Department for laying a trap. His evidence cannot therefore be easily or lightly brushed aside.” It was also held therein that “The court may therefore, depending on the circumstances of a case, feel safe in accepting the prosecution version on the basis of the oral evidence of the complainant and the police officers even if the trap witnesses turn hostile or are found not to be independent.”

Admittedly, some proceedings on the allegations of disobedience of order, negligence in duty and misconduct were initiated against these witnesses. Even if some proceedings were initiated against them, they can still be forced by the accused to pay bribe for not forwarding them to Court in the case which was initiated against them. The occurrence for which the present accused has been charged for taking illegal gratification has to be examined on its own merit. Nothing has been brought to record to show that PW-5 and his associates had any enmity with the present accused. Likewise there is also nothing on record to indicate as to why the Trap Laying Officer who is a responsible police officer would initiate a trap proceeding and depose lie against the accused. Equally, there is nothing on record to show why the SP (Vigilance) would initiate a case against the accused without any basis.

27. That apart, it is seen that PW-10 was confronted with his statement made to the TLO(PW-11) wherein he fully supported the prosecution case with regard to demand and acceptance of the bribe money and giving of signal and recovery of the money to which he denied. But the TLO(PW-11) stated that PW-10 during his examination had stated so to him. There is no material on record challenging the bonafides of the TLO(PW-11) who had no prior enmity with the accused. It is amply clear that PW-10 turned hostile during trial giving goodbye to his earlier statement made to TLO(PW-11) suppressing the truth with apparent intention to help the accused. It should not be forgotten that as admitted by PW-10, he was convicted in a trap case on the allegation of accepting illegal gratification and on that ground he was dismissed from service. PW-10 during his cross-examination by the accused added a new story that the wife of the accused called the complainant into the drawing room, asked to sit and went to the roof to call her husband. It is interesting to note that during cross-examination of PW-5, no such suggestion was put to him that he was called into the drawing room by the wife of the accused and she went to the roof to call her husband. Even there is no such mention in the detection report (Ext.6). Hence, such version of PW-10 does not inspire confidence. So also, the plea of the accused is incredible and unacceptable.

28. Learned defence counsel further contended that no bail bond has been seized in the present case. Obviously, the bail bond said to be obtained from the complainant and his associates must be with the accused. Being involved in a police case the complainant and his associates were naturally under an apprehension that being the IO of the case, the accused had the authority to forward them to court which fact is sufficient to

exhort money from them. So, non-seizure of any bail bond in PS Case No.106/2003 cannot be a ground to discard the prosecution case.

29. Learned defence counsel during course of argument submitted that IIC, Woman Sub-Inspector, other staff of Saheed Nagar PS and one of the associates of the complainant namely Ramakant Singh have not been examined and for that prosecution case should be discarded. As discussed earlier, the evidence of the complainant is well corroborated by the version of the TLO. So also, the contemporaneous documents, such as, preparation report, detection report, seizure lists etc. lend additional corroboration to their testimony. There is absolutely no material on record to show that the complainant, his associates or the TLO had any enmity against the accused. Hence, prosecution case cannot be discarded for non-examination of the aforesaid police officials.

30. Of course, there are some variations in the evidence of the witnesses. But the same are inconsequential as because the same do not affect the root of the case. Law in this regard is well settled as follows :- **In Rammi alias Rameshwar V. State of Madhya Pradesh(AIR 1999 SC 3544)**, it was held as follows :- “When eye-witness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But Courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as

between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.” **(Referred at Para-35 in 2012(3) Crimes Page-15 (SC), Jugendra Singh-Vrs.-State of U.P.).**

From the aforesaid discussion of evidence, it emerges that the accused being the IO of Saheed Nagar P.S. Case No.106 of 2003, demanded and accepted a bribe of Rs.3000/- from the complainant (PW-5) for releasing him and his associates on bail from PS and not to forward them to Court in that case. The evidence of Pws-3,5,6,7 and 11 has remained unshaken substantially. The FIR, Preparation Report, Detection Report, seizure of the tainted money and the fact of hand wash of the accused turning to pink colour lend corroboration to their version. The accused has failed to adduce satisfactory explanation as to why these witnesses are deposing against him. As discussed above, his plea that the tainted money was planted by the complainant without his knowledge, is not acceptable. The accused has failed to adduce satisfactory explanation as to how his hand wash turned to pink colour. On analysis of the entire evidence on record and keeping in view the settled position of law as discussed here-in-before and when the accused has failed to rebut the statutory presumption u/s.20 of the P.C.Act, I am inclined to hold that the prosecution has well proved its case that the accused being a public servant, demanded and accepted Rs.3000/- from the complainant(PW-5) for releasing him and his associates on bail from PS and not to forward them to Court and as such, he obtained pecuniary advantage by corrupt or illegal means abusing his position as a public servant.

In the result, I found the accused guilty of the offences u/s.7 and 13(1)(d) r/w 13(2) of the P.C.Act,1988 and

convicted him thereunder. Considering the nature of the offences, I am not inclined to extend the benefit of Probation of Offenders Act in favour of the accused.

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 the 25th day of September, 2014.

Special Judge(Vigilance),
Bhubaneswar.

HEARING ON THE QUESTION OF SENTENCE

Heard on the question of sentence. It is submitted by the convict that he is a retired Govt. servant and is an aged person and his wife is mentally imbalanced and his children are dependent on him, so, he prays for leniency. Keeping in view the submission of the convict and the facts and circumstances of the case, the convict is sentenced to undergo R.I. for one and half years and to pay a fine of Rs.2000/-(Rupees two thousand) in default to undergo R.I. for two months more for the offence U/s.13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and he is sentenced to undergo R.I. for one year and to pay a fine of Rs.1000/-(Rupees one thousand) in default to undergo R.I. for one month more for the offence U/s.7 of the Prevention of Corruption Act, 1988. The substantive sentences awarded under both the Sections would run concurrently. The period of detention undergone by the convict in this case be set off U/s.428 Cr.P.C.

The seized tainted money of Rs.3,000/-(M.O.-I) be returned to the complainant (PW-5) 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.3,000/-(M.O.-I) be confiscated to the State. The sample bottles (M.Os.II to VII), seized pillow cover(M.O.-VIII) and seized bed-sheet (M.O.-IX) be destroyed. The brass seal (M.O.-X) be returned to SP,Vigilance, Bhubaneswar. 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 the 25th day of September, 2014.

Special Judge(Vigilance),
Bhubaneswar.

List of witnesses examined for the prosecution :

P.W.1	Prasanna Kumar Acharya.
P.W.2	Arun Kumar Sarangi.
P.W.3	Abhiram Das.
P.W.4	Satyabrat Mohapatra.
P.W.5	Gopinath Barik.
P.W.6	Madhu Sudan Pradhan.
P.W.7	Bishnu Charan Pradhan.
P.W.8	Prana Krushna Mishra.
P.W.9	Dhiren Kumar Pattnaik.
P.W.10	Ajay Kumar Nayak.
P.W.11	Sumanta Kumar Mohapatra.
P.W.12	Subash Ch. Baliarsingh.
P.W.13	Debadutta Seth.

List of witnesses examined for the defence :-

None.

List of exhibits marked for the prosecution :-

Ext.1	CE Report.
Ext.1/1	Signature of PW-1 on Ext.1.
Ext.2	Sanction Order.

Ext.2/1	Signature of PW-2 on Ext.2.
Ext.3	Forwarding letter no.2989, dt.26.6.03.
Ext.3/1	Signature of PW-2 on Ext.3.
Ext.4	Report of PW-5.
Ext.4/1	Signature of PW-5 on Ext.4.
Ext.5	Preparation Report.
Ext.5/1	Signature of PW-5 on Ext.5.
Ext.6	Detection Report.
Ext.6/1	Signature of PW-5 on Ext.6.
Ext.7	Seizure list.
Ext.7/1	Signature of PW-5 on Ext.7.
Ext.8	Four fold paper.
Ext.8/1	Signature of PW-5 on Ext.8.
Ext.9	Seizure list.
Ext.9/1	Signature of PW-8 on Ext.9.
Ext.10	Zimanama.
Ext.10/1	Signature of PW-8 on Ext.10.
Ext.11	Seizure list.
Ext.11/1	Signature of PW-9 on Ext.11.
Ext.12	Zimanama.
Ext.12/1	Signature of PW-9 on Ext.12.
Ext.5/2	Signature of PW-10 on Ext.5.
Ext.6/2	Signature of PW-10 on Ext.6.
Ext.4/2	Endorsement with signature of the then SP(Vig.) on FIR.
Ext.4/3	Endorsement of Sri P.K.Ray on the plain paper FIR.
Ext.4/4	Formal FIR.
Ext.4/5	Endorsement with signature of Sri P.K.Ray.
Ext.5/3	Signature of PW-11 on Ext.5.
Ext.6/3	Signature of PW-11 on Ext.6.
Ext.7/2	Signature of PW-11 on Ext.7.
Ext.8/2	Signature of PW-11 on Ext.8.
Exts.13 to 17	Seizure lists,dt.21.5.03.
Exts.13/1 to 17/1	Signatures of PW-11 on Exts.13 to 17.
Ext.5/4	Signature of PW-12 in Ext.5.
Ext.6/4	Signature of PW-12 in Ext.6.
Ext.11/2	Signature of PW-12 in Ext.11.
Ext.13/2	Signature of PW-12 in Ext.13.
Ext.14/2	Signature of PW-12 in Ext.14.
Ext.15/2	Signature of PW-12 in Ext.15.
Ext.16/2	Signature of PW-12 in Ext.16.
Ext.17/2	Signature of PW-12 in Ext.17.
Ext.12/2	Signature of PW-12 in Ext.12.
Ext.8/2	Signature of PW-12 in Ext.8.
Ext.18	Zimanama.
Ext.18/1	Signature of PW-12 in Ext.18.

Ext.11/3 Signature of PW-13 on Ext.11.
Ext.9/2 Signature of PW-13 on Ext.9.
Ext.10/2 Endorsement with signatures of PW-13 on Ext.10.

List of exhibits marked for the defence :-
Nil.

List of M.Os. marked for the prosecution :-
M.O.-I Tainted money.
M.Os.- II to VII- Sample bottles.
M.O.VIII- Seized pillow cover.
M.O.-IX Seized bed-sheet.
M.O.-X Brass seal.

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

Special Judge(Vigilance),
Bhubaneswar.