

IN THE COURT OF THE SPECIAL JUDGE, C.B.I.-II, BHUBANESWAR.

PRESENT :

**Dr. A.K.Mishra,
Special Judge, C.B.I.-II, Bhubaneswar.**

T.R.No. 4/4/18 of 2015/2014/11.

R.C. No. 1(A) of 2011.

Date of argument : 9.2.2016.

Date of Judgment : 11.2.2016.

Republic of India.

Versus.

Sri Jeevan Kumar Goyal, aged about 63 years,
s/o. late Banarasi Das, At- House No.225, Aastha Colony,
Barnala, P.O./P.S. Barnala, Dist. Barnala (Punjab)-148101.

... Accused.

For the prosecution : Sri A. Jaiswal, P.P. C.B.I.

For the Defence : Sri S.K.Mund & Associates, Advs.

Offences u/s. 7 and 13(2) read with Section 13(1)(d) of the
Prevention of Corruption Act, 1988.

JUDGMENT

Accused stands charged u/s. 7 and 13 (2) read with Section 13(1) (d) of the Prevention of Corruption Act,1988 (to be referred hereinafter to P.C.Act) for having demanded and accepted gratification of Rs.5000/- abusing his position as a public servant.

2. Accusation leading to this prosecution runs thus: That accused was serving as staff officer (E & M) MCL Basundhara Garjanbahal area, Gopalpur, district - Sundargarh. Complainant P.W.11 being authorized by contractor Kanhei Ch.Sahu (P.W.2) executed the work of "Drawing of 6.6 KVA

HT over head line 780 meters length from dozer maintenance shed to the 20 meters High Mast tower and installation of one lighting transformer for mine haul road and OB dump-yard lights of Kulda OCP of Basundhara Garjanbahal Area” on his behalf. On 25.12.2010 the work was completed. The Foreman Mr. D.K.Dandia (P.W.10) took measurement and made entries in the measurement book. He prepared and signed the bill on 23.1.2011. The Engineer (E & M) Kulda OCP and the contractor K.C. Sahu signed the bill on the same day. Thereafter, Shri V.A.Datta Sarma (P.W.9) Sr. Manager (E&M) Kulda signed the bill on 27.1.2011. The bill was then submitted to the accused who was competent to pass the same finally before payment as he had issued the work order for the said work. P.W.11 complainant met accused on 27.1.2011 with request to sign the bill, he asked him to come on the next day. Accordingly, P.W.11 met accused in his office on 28.1.2011 afternoon. Accused demanded 10% of the bill amount which was about Rs.22,000/- as the bill amount was Rs.2,36,766/-. The complainant expressed his inability. After bargain the amount was reduced to Rs.10,000/-. On the request of the complainant, accused agreed to sign the bill on receiving Rs.5000/- and to take the balance after payment of the bill. The accused also asked complainant to make payment of bribe on 31.1.2011 in his residence. Being aggrieved, the complainant submitted a complaint (Ext.30) before D.S.P.C.B.I. Rourkela. Basing upon that Supt. of Police, C.B.I. Bhubaneswar registered R.C. Case No.1 of 2011 and directed Sri S.B. Mishra (P.W.12) Inspector of Police, CBI for investigation.

Inspector Sri Mishra decided to lay a trap and made arrangement of two independent witnesses namely Sri Ananda Meher, Social Security Asst. E.P.F. Organization (P.W.6) and Sri Iswar Chandra Rout, A.G.-I Depot, F.C.I. Accordingly on 31.1.2011 at 10 A.M all the team members along with the independent witnesses as well as complainant assembled at Officers' Rest House S.E. Railway Jharsuguda. Pre-trap exercise was taken up there. The process of laying trap was explained. The complainant produced Rs.5,000/- in the form of five numbers of 1000 denomination of G.C notes and the notes were smeared with phenolphthalein powder. A pre-trap memorandum was prepared containing the number of G. C notes and complainant was instructed to hand over the money to the accused only on demand. Witness Mr. Ananda Meher was asked to accompany the complainant. Accordingly the complainant reached the residence of accused at about 1.30 P.M and requested him to sign the bill. Accused demanded and accepted bribe money Rs.5000/- from the complainant. On getting signal the raiding party including P.W.12 entered and caught the accused red handed. The hands and shirt of the accused were washed and the liquid turned pink. The accused was arrested and forwarded to court. The tainted money, shirt of accused and pink coloured solution were preserved. A post-trap memorandum was prepared and signed by all. The bottles containing the hand wash and shirt pocket wash liquid were sent to C.F.S.L. Kolkata for opinion. The chemical analyst report was received vide Ext.31. After obtaining sanction for prosecution of accused from the Chairman -cum- Managing Director, COAL India Ltd. Katakana (P.W.1), charge sheet was filed. Basing upon that cognizance was taken on 3.9.2011. Hence, this case.

3. Denial is the plea of accused to the demand and acceptance of bribe. In his statement u/s. 313 Cr.P.C in course of explaining the incriminating circumstances, accused has stated that on 31.1.2011

he had signed the bill in his office before launch and went to his residence at launch and while sitting in the drawing room with diary and pen keeping Rs.5000/- having one thousand rupee denomination G.C notes in his diary, complainant came and told him to make urgent discussion. By then he went inside for two minutes to attend a phone call and taking advantage of his absence, complainant had substituted the bribe money with the money he had kept in his diary. When on return he brought out his money and kept in his pocket, C.B.I officers came and did not allow him to say anything. He has also stated that complainant had grown a grudge as he insisted for payment of service tax, meter reading of hired vehicles, compensation to injured labourer as well as for canceling his L-1 tender and for that a false trap was orchestrated.

4. To bring home charge, prosecution examined 13 witnesses in all. P.W.1 is the sanctioning authority while P.W.13 is the Chemical Analyst. P.W.11 is the complainant while P.W.6 is the independent witness to the trap. P.W.12 is the Trap Laying Officer (TLO). P.W.2 is the contractor while P.W.5, P.W.8, P.W.9 and P.W.10 proved the entrustment, estimation, execution of contract work as well as preparation of bill. P.W.3 and P.W.4 are the employees who proved seizure and zimanama of documents including the bill. P.W.7 is the Manager (Personal) of MCL who proved the personal file of accused. Thirty one documents have been exhibited on behalf of prosecution.

Three witnesses are examined on behalf of the defence including accused himself as D.W.3. D.W.1 and D.W.2 are the General Manager and Area Finance Manager of accused-office. Labour payment certificate dated 28.1.2011, letter dated 18.5.2015 of Asst. Commissioner as well as C.C.R of accused are exhibited vide Ext.A to Ext.D from the side of defence. Tainted notes, shirt of

accused and the solution of hand and pocket wash are marked M.O.I to M.O.VI.

5. The points for determination are :

- (i) Whether accused on 28.1.2011 at MCL Basundhara Garjanbahal Area demanded illegal gratification from complainant P.W.11 as a motive or reward for signing the bill?
- (ii) Whether accused on 31.1.2011 at his residence accepted illegal gratification as a motive or reward for signing the bill of P.W.2?
- (iii) Whether accused on the above date and place by corrupt and illegal means abusing his position as a public servant obtained Rs.5000/- from the complainant P.W.11 without any public interest?
- (iv) Whether the sanction for prosecution of accused is valid?

6. ANSWER TO POINT NO.1.

The evidence of P.W.7 Personal Manager in Executive Establishment Department, MCL goes without any challenge and unequivocally proves that on 15.4.2010 accused was posted as Staff Officer (E&M) in Basundhara Busy area of MCL. This evidence gets corroboration from the personal file Ext.23. P.W.8 was the D.G.M. / Staff officer (E & M) MCL. He proved that the tender was floated for the work of "Drawing of 6.6 KVA HT over head line 780 meters length from dozer maintenance shed to the 20 meters High Mast tower and installation of one lighting transformer for mine hall road and OB dump-yard lights of Kulda OCP. of Basundhara Garjanbahal area" and work order Ext.4 was issued to contractor Kanhei Ch. Sahu (P.W.2) under signature of accused. He has proved the seizure of authorization by contractor to complainant. His

evidence goes unchallenged. P.W.5 has corroborated the above evidence stating that on the approval of the General Manager, the work order Ext.4 was issued to contractor by accused. P.W.2 is the contractor who has stated that on 11.11.2010 he wrote a letter to the Staff Officer (E&M) MCL authorizing the complainant Ramakanta Lenka to execute the work and to submit the bill and he proved the said letter Ext.5. He has further stated that on 25.12.2010 the work was completed and measurement was done by Sri D.K.Dandia, the then Foreman in-charge on 26.12.2010. P.W.3 the Clerk of that office has stated that the authorization letter Ext.5 was received in his office on 11.11.2010 and though the letter was marked to him, it was retained by accused. The fact that accused as a competent authority had issued work order and the said work was executed by the authorized agent P.W.11 complainant stand proved. It is also proved that accused was the final authority to pass the bill for having issued work order before payment by finance section.

(6-a) P.W.10 was the Supervising Authority for the work. He has stated that complainant completed the work under his supervision on 25.12.2010 and he made measurement on 26.12.2010. He proved the measurement book Ext.28. He has also stated that thereafter he prepared the bill Ext.6 and P.W.9 B.B.Singh gave the certified copy of measurement book duly authenticated by him. In cross-examination he has admitted that after putting his signature in bill Ext.6 he handed over the same to complainant for getting the same signed from contractor Kanhei Ch. Sahu and after Rama Kanta Lenka returned the bill, it was kept in his office. He has admitted that on 23.1.2011 he and his superior Mr. S. U. Gourkar signed the bill. It is his evidence that there was no specific custodian of the bill in their office. P.W.9 corroborated the evidence of P.W.10 stating that after signing the bill Ext.6 he sent the bill

along with the measurement book to J.K.Goyal (accused) for final payment as he was the final authority to pass the bill. In cross-examination he has admitted that by the time he signed the bill Ext.6, the labour certificate was not available. With regard to labour payment certificate accused as D.W.3 has stated that the said certificate Ext.A was obtained on 28.1.2011 and bill became complete and it was presented before him on 31.1.2011 at forenoon. This part of prosecution evidence is not disputed and fact remains proved that complainant Rama Kanta Lenka after completion of work under supervision of P.W.10 got the bill signed by contractor and P.W. 9 had submitted the bill to the accused and as per accused, the bill was presented before him on 31.1.2011 at forenoon in his office.

(6-b) Complainant P.W.11 has stated that on 27.1.2011 he met accused who advised him to come on the next day and accordingly he met him on 28.1.2011 when he demanded bribe of 10% of the bill i.e. Rs.22,000/-. He thereafter, talked to contractor Kanhei Ch. Sahu P.W.2 who refused him to pay money. But after discussion accused again told him to pay Rs.10,000/-, he refused but accused told him to pay Rs.5000/- first and to pay the rest amount after passing of the bill. Thereafter, he complained before the S.P. C.B.I. through D.S.P. C.B.I. Rourkela. He proved his written complaint Ext.30. He further stated that CBI DSP asked him to come on 31.1.2011 with Rs.5000/- to officers guest house, S.E.Railway Jharsuguda and to report Inspector S.B.Mishra. He further stated that he was introduced with two independent witnesses Anand Meher P.W.6 and Iswar Ch.Rout and also to C.B.I. staff. There he told the witnesses and staffs about demand of bribe by accused. He produced Rs.5000/- which were five numbers of one thousand rupee denomination. The said notes were smeared with chemical powder prepared by A.K.Pradhan. There Iswar Ch.Rout

handled the notes and touched his fingers in the solution which turned pink. Said solution was kept in a bottle marked Ext.D under sealed cover. He signed on the sample bottle which is M.O.I. Thereafter, A.K.Pradhan kept the tainted notes in his complainant's) right side pocket with a direction to hand over the same to accused on demand. A pre-trap memorandum was prepared at the spot which he proved vide Ext.17. He also proved his signature thereon Ext.17/1. In cross-examination P.W.11 has stated that he met accused on 27.1.2011 at about 5 to 5.30 P.M in his office and on the next day at about 4.30 P.M when nobody was present in his chamber. He stated to have made discussion with the accused for about 15 to 20 minutes and also intimated the accused that contractor Kanhei Babu refused to give the demanded amount. Thereafter, he again negotiated with the accused about the amount which continued for 10 minutes and the amount was finalized at Rs.10,000/- . Again he intimated the said fact to Kanhei Babu after coming out of the office and Kanhei Babu told him to make payment, if available with him. Thereafter, he telephoned Mr.Kabi Babu, C.B.I. officer at Rourkela and went to him at 6.30 P.M on the same day. He admits that distance between Rourkela and office of the accused is 140 K.Ms and after two hours he reached Rourkela in his own car. He has further stated in cross-examination that one Manoj Sharma scribed the report which was typed in C.B.I. office and Kabi Babu had corrected the written complaint. He denied the suggestion that Kabi Babu, C.B.I. officer had drafted the complaint. He has also stated in cross-examination that Manoj Sharma belongs to Sakhipada of Sambalpur and he called him at 4.30 P.M and he left C.B.I. office at about 7.30 P.M to 8 P.M. He admits that he was not registered for service tax. The evidence of the complainant P.W.11 gets corroboration from his complaint petition Ext.30.

P.W.6, the independent witness was a Social Security Assistant in the office of E.P.F Rourkela. He has stated that on 31.1.2011 he reported to S.B. Mishra, P.W.12 T.L.O in room no.2 of Officers' Rest House, South East Railway, Jharsuguda, where he was introduced to Iswar Ch.Rout and other C.B.I. officers. He has categorically stated that there S.B. Mishra introduced him to complainant and told him that accused was demanding Rs.10,000/- for signing the bill and showed him the complaint petition. In his presence there the complainant produced Rs.5000/- five numbers of one thousand rupee denomination and Iswar Ch. Rout noted the numbers of the same. Thereafter, Iswar Ch.Rout handled the notes and his hand wash was taken in the solution which turned pink and he signed in the bottle which he identified as M.O.I. He has also stated that he was directed to accompany the complainant to the residence of the accused and pre-trap memorandum was prepared vide Ext.17 in which he put his signature. In cross-examination this witness has stated that pre-trap memorandum was typed in the laptop and all the members of the trap were searched and the complainant had no money except Rs.5000/-. This evidence of P.W.6 gives corroboration to the evidence of P.W.11 and pre-trap memorandum Ext.17.

P.W.12 the trap laying Inspector has stated that on 30.1.2011 he was informed by S.P.C.B.I. about registration of case against accused and was directed to take up investigation. Thereafter, he constituted a trap team and talked with the complainant. He has further stated that accordingly they met at Officers' rest house S.E. Railway Jharsuguda on 31.1.2011 at 10 A.M where the formalities of laying trap was conducted. He has stated that he introduced the complainant with the witnesses and the trap team members and showed them the copy of the complaint petition. In cross-examination he has stated that he issued requisition to

independent witnesses on 30.1.2011 at about 5.30 P.M. Substantially this witness lends assurance to the testimonies of complainant P.W.11 and independent witness P.W.6. Nothing material has been elicited in cross-examination of these witnesses to discredit their testimonies.

(6-c) Learned defence counsel attributed the following infirmities to demean the testimonies of P.W.6, P.W.11 and P.W.12 with regards to demand of bribe by accused on 28.1.2011. The said short comings on being tested are found not potent to wash off reliability.

With regards to first infirmity that when the bill was not presented before accused by 28.1.2011, there was no occasion to demand bribe for signing the same. For this he relies upon the evidence of P.W.10 wherein it is stated that on 23.1.2011 P.W.10 signed the bill and handed over to Rama Kanta Lenka for getting signature of contractor Kanhei Ch. Sahu. According to learned defence counsel, P.W.11 has contradicted the same saying that on 27.1.2011 the bill was signed by B.B. Singh and the bill became complete only on issuance of labour certificate Ext. A which was issued by the Personal Manager on 28.1.2011. It is argued that the presentation of bill before the accused either on 27.1.2011 or on 28.1.2011 was highly improbable. On this point, it may be stated that P.W.10 has stated that on 23.1.2011 he signed the bill. On careful reading of the evidence of P.W.10 and Ext.A in the back drop of evidence of accused as D.W.3, it is clear that after issuance of labour payment certificate the bill was submitted to accused and as the labour payment certificate Ext.A was issued on 28.1.2011 it cannot be said that bill was not available on 28.1.2011 for signature of accused. The testimony of accused as D.W.3 in para-3 clarifies the dust of doubt raised by the defence.

On his second plank, it is pointed out that it was improbable on the part of the complainant and as well as the scribe to travel about 175 k.ms on 28.1.2011 to scribe the complaint as stated by complainant and non-examination of scribe is fatal to the prosecution. On careful reading of the evidence it is found that travelling of 175 K.Ms in a car and reaching in the C.B.I. office at Rourkela within two hours cannot be said improbable and for that Manoj Sharma being the scribe of the complainant, his non-examination is not material. When a witness is examined and cross-examined after four years, the error in time in the facts and circumstances of the case cannot be said abnormal. Arrangement of Rs.5000/- , use of car and telephonic communication do not falsify the lodgement of FIR on 28.1.2011. When independent witness and C.B.I staffs have no axe to grind against accused, the minor discrepancies with regard to time should be discarded.

It is pointed out that when P.W.2 contractor has admitted in cross-examination that the complainant R.K.Lenka had not told him about the demand of bribe by accused, the testimony of the complainant P.W.11 should be brushed aside. The totality of the testimony of P.W.2, if read, would indicate that in his examination-in-chief in para-3 dated 13.6.2014 he has stated that complainant had informed him that accused was demanding Rs.10,000/- for signing the bill and he advised him not to pay the amount. This part of evidence cannot be kept apart to discredit the complainant's evidence which is otherwise gets corroboration from the complaint Ext.30 filed on 28.1.2011.

(6-d) Learned defence counsel further urged that it was not possible on the part of T.L.O P.W.12 to arrange witnesses on 30.1.2011 after getting registration of F.I.R at 5 P.M because 30.1.2011 was a holiday being Sunday. In this regard learned defence counsel relied upon a decision reported in **(2013) 14 SCC**

153, State of Punjab -vs- Madan Mohan Lal Burma. This was a case where trap was laid on the date of demand and for that the joining of official witnesses in the trap being directed earlier was seen suspiciously. But, in the case at hand, no witness has stated that he was instructed by higher authority prior to 30.1.2011 to be a member of the trap party on 31.1.2011. Only because the issuance of requisition was found to be made on Sunday, it cannot be said that witness was instructed by his higher authority earlier. The communication of requisition and direction can now a days be made electronically within no time and holiday is not a bar to respond emergency on the part of a Govt. servant. Thus on careful scrutiny of the evidence with all natural probability, no substantial is found in the above submission of defence.

The testimony of P.W.11, P.W.6 and P.W.12 gets corroboration from the complaint Ext.30 and pre-trap memorandum Ext.17. The witnesses are found credible and wholly reliable. The minor discrepancies are normal in the ordinary course of life. From this, one can safely infer that the evidence of P.W.1 complainant is corroborated in material particular of demand by the reliable source and circumstances. Consequently, it is proved that accused had demanded bribe of Rs.10,000/- on 28.1.2011 to sign the bill.

7. ANSWER TO POINT NO.2.

Trap was laid on 31.1.2011 and pre-trap memorandum Ext.17 was prepared earlier on that day. Complainant P.W.11 has stated in his evidence that as decided, he and P.W.6 proceeded to the quarters of accused i.e. No. D-6 Basundhara Garjanbahal area in a motor cycle. Both of them went to the quarters. The other witnesses remained outside. On switching the calling bell, the accused opened the door and called him to the drawing room. Accused brought the bill and asked him for money. He brought out the tainted notes from his pocket and handed over to him. Accused

counted the notes in both of his hands. After accepting the notes in his right hand, he kept the money in his shirt pocket and signed the bill and handed over to him saying to deposit the same in the office. Thereafter, he (complainant) came outside and gave signal by wiping his face, the T.L.O and other witnesses entered into the quarters and gave their identity and asked the accused about the acceptance of bribe. Accused became nervous. Thereafter Mr. Pallai and other staffs caught hold of both the hands of the accused solution was prepared at the spot. The right hand of the accused was dipped in the solution which turned pink and said solution was kept in a bottle marked-R which is made M.O.II. Thereafter, the left hand of the accused was similarly dipped in the solution and solution became pink and it was kept in a sealed bottle vide M.O.III. Thereafter, the accused brought out the money from his pocket and gave the same to T.L.O. The number of notes were checked by Sri I.C.Rout. The bribe money was seized and kept in a sealed cover vide M.O.IV. Thereafter, the shirt of the accused was collected and the pocket was washed and the liquid was kept in a bottle M.O.V. The shirt of the accused is made M.O.VI having signature of the complainant. Complainant has proved the spot map Ext.18. He has also proved the post-trap memorandum Ext.19. In cross-examination he has stated that main gate was 200 feet away from the house of the accused and P.W.6 remained near the main gate and he went inside the quarters. He has further stated in cross-examination that the entrance was the dining hall and to its left there was a drawing room. He remained there for about 5 to 10 minutes. He could not remember if diary and pen was kept on the centre table of drawing room and accused went inside for about two minutes.

P.W.6 has corroborated the testimony of complainant. He accompanied the complainant to the quarters of accused and

reached there by 1.30 P.M. He stated that he was on the opposite side of the door and nobody could see him. The complainant was inside the room and accused asked him whether he had brought money or not. There was a conversation between the complainant and the accused. Complainant brought out the tainted money from his right side pocket and handed over the same to the accused who accepted in his right hand. Then accused counted the notes and kept in the left side chest pocket and handed over the bill to the complainant after putting his signature. This witness has categorically stated that he had seen the transaction and heard the conversation. In cross-examination this witness admitted that the gate of the house was at a 100 meters distance from the parking place of their vehicle and both of them went inside the gate of the house and there was another gate approximately 20 meters away from the first gate. He has categorically admitted that when the complainant rang the bell and went inside, he remained outside of the house. He further stated that he had not seen the other trap party members when he was waiting near the gate.

(7-a) Learned defence counsel showing the situs of this witness in the spot map Ext.18 urged that the place where this witness was standing, the spot was neither visible nor audible. He banks upon the statement of P.W.6 that throughout he was standing near the gate. In this regard, on scrutiny it is found that when complainant and P.W.6 entered inside through the gate and none was there, the discussion between accused and complainant could be heard to the outside. The pitch of the voice and the position of standing do not make the matter inherently improbable. I would have accepted the contention of the defence as improbable to discredit the testimony of shadow witness, but accused has himself admitted in his evidence as D.W.3 that at 1.30 P.M when he reached in his residence, the calling bell from outside rang and when he

opened the door he found complainant standing and he asked him to sit in Sofa in the drawing room. In the face of above admitted facts, the credibility of P.W.6 cannot be questioned and fact remains proved that as 1.30 P.M on 31.1.2011 when accused was in his quarters, the complainant P.W.11 rang the calling bell and accused opened the door and asked him to sit in Sofa in the drawing room. Here the evidence of D.W.3 accused appears crucial. He has admitted that while complainant was in the verge of starting discussion, the telephone from his bed room rang and he holding the pen from the diary went inside. After two minutes he came back from the drawing room and complainant started discussion with him about the work of Kanika Railway siding. He told him to go office for such discussion and thereafter the complainant left the drawing room. Prior to that while he was sitting in the drawing room having a diary in his left hand and a pen in his right hand his wife had given him Rs.5000/- five one thousand denomination notes for booking railway tickets for his daughter and son-in-law. Taking advantage of his absence for 2 minutes from drawing room, the complainant had substituted the tainted money. He has further stated that without knowing the substitution of his money by tainted money, he brought out the notes from the diary and put in his left side pocket. Thereafter, C.B.I. officers entered inside and when they challenged to have taken bribe, he denied and then became puzzled and nervous and C.B.I officers conducted hand wash and pocket wash by some liquid. In cross-examination in para-19 D.W.3 has further admitted that when C.B.I officers challenged him, he became silence and nervous and on the asking of CBI officer he brought out the money from his shirt pocket. The evidence of accused on his own show proves the fact that complainant had entered inside the drawing room and the tainted money was found from the pocket of accused and he could not give

explanation then and there as to how the tainted money came to his pocket.

(7-b) The demarcating line is attempted to be drawn between the tainted five numbers of notes and the notes kept by accused in the diary. The money is recovered. The timing was launch hour of the office. The accused was available in his residence. The complainant, witnesses and trap party members came to the quarters, the calling bell rang, the accused opened the door, asked the complainant to sit in the drawing room. Accused says that he left to attend a phone call in another room and taking advantage of his absence , the accused substituted the notes with the five numbers of one thousand denomination notes kept in the diary and after two minutes he came and took the same to his pocket. The availability of the complainant in the drawing room and keeping of same denomination notes in the diary to advance the plea of substitution do not inspire confidence. There is no evidence that the wife of the accused had given money of same denomination in the drawing room to book railway tickets. Had it been true, the accused could have stated so before the raiding party. Normally in ordinary course of life, the accused could have asked the raiding party to search the complainant in his presence to find out that his five thousand money was stolen. The accused did not react at the spot in the manner expected from a house owner who had lost Rs.5000/- to a contractor present there. The plea is false being improbable. Eventually fact remains proved that complainant evidence gets corroboration from independent witness P.W.6 that Rs.5000/- was accepted as bribe by accused in his quarters at 1.30 P.M on 31.1.2011 and the same was seized by P.W.12. The chemical analyst report Ext.31 through P.W.13 corroborates the circumstance of recovery.

(7-c) The factum of acceptance of gratification is challenged on the basis that the complainant had strained relationship with accused earlier. In this regard it may be stated that when the plea of substitution of tainted money by complainant in the drawing room found is not believable, the recovery of the tainted money from the shirt pocket is itself proof of the fact that accused had accepted money from the complainant. If a person was inimically disposed of and accused had sufficient knowledge about that he could not have allowed him to enter the drawing room in the launch hour particularly when he would be available in the office soon thereafter. Natural way of reading the testimony is to probablise the ordinary human conduct. Once the money is found to have accepted on demand by accused, the presumption u/s.20 of the P.C.Act is available. The circumstances that accused was the final authority to pass the bill, the bill was available for his signature on 31.1.2011 and that accused was available in the residence at launch hour and the complainant was allowed to sit in the drawing room and rupees five thousand was recovered from his pocket are proof of the fact that accused had accepted gratification from the complainant as a motive or reward to sign the bill.

(7-d) In order to buttress the submission that mere acceptance is not sufficient to raise presumption u/s.20 of the P.C.Act and in absence of demand, offence cannot be proved, learned defence counsel has relied upon the following decisions.

AIR 2015 S.C 3549 P. Satyanarayan Murthy -v- Dist. Inspector of Police and another. AIR 1987 S.C.2402 G.V. Nanjundiah -v- State (Delhi Administration), AIR 1954 SC 637 Madan Mohan Singh -v- State of Uttar Pradesh, 1984 CrI.L.J. 392 Rabindranath Prusty -vrs- State of Orissa, AIR 2006 SC 836 T.Subramanian -v- The State of Tamil Nadu, (2011) 6 SCC 450 State of Kerala -v- C.P. Rao , AIR 2006 SC 894 Om Prakash -v- State of Haryana, AIR 1991

S.C. 2085 S.V. Kameshwar Rao & another -v- The State (A.C.B. Police), Karnool Dist. Andhra Pradesh, (2015) 11 SCC 314 C.SuKumaran -v- State of Kerala, (2014) 13 SCC 55 B.Jayaraj -v- State of Andhra Pradesh , AIR 2002 SC 486 Punjab Rao -v- State of Maharashtra and AIR 1952 Madras 561.

In **P. Satyanarayn Murthy** Case, the complainant was not available to be examined and for that the demand as an inferential deduction was held to be impermissible in law. In **G.V. Nanjundiah** case, the normal conduct of complainant in drawing money from bank with receipt to pay bribe was not accepted in as much as the money was offered in the presence of stranger. In that case it was observed that the question as to handing over money as bribe and recovery of the same from the accused should be considered along with the other material circumstances. In **Madan Mohan Singh** case, there was no occasion in the actual facts of the case to make demand of bribe. As per **Rabindaranth Prusty** case of our Hon'ble High Court, the evidence of bribe giver is required to be scrutinized with the sense of responsibility. The **T. Subramanian** case is distinguishable on the ground that there was no evidence that the payment was made as illegal gratification and the explanation of accused was accepted. In **State of Kerala case**, the complainant himself was not examined. In **Om Prakash** case, the probability of the presence of Police Inspector along with two constables in the early morning at the residence of the complainant to make trap was seen suspiciously. In **S.V. Kameshwar Ray** case no evidence was found regarding demand of bribe when complainant has admitted that he could not give any one of the names of the villagers from whom he collected Mamools. In **C.Sukumaran** case, the witness turned hostile and there was no evidence for verification regarding demand and acceptance. In **B.Jayaraj** case, similarly the complainant P.W.2 did not support the prosecution

case. In **Punjab Rao** case the defence plea was found to be probable.

The facts and circumstances of the cited cases are clearly distinguishable from the case at hand on the point of either the complainant was not available or turned hostile in course of trial. The same being not position here, the presumption u/s. 20 can be raised in the case at hand.

(7-e) On the other hand Hon'ble Supreme Court in the decision reported in **(2015) 62 OCR (SC) Page-316 Vinod Kumar -vrs- State of Punjab** after analyzing the impact of delay in cross-examination and importance of circumstances has reiterated that "it is not a case that there is no evidence barring the evidence of the complainant. On the contrary there are adequate circumstances which establish the ingredients of the offences in respect of which he was charged".

The circumstance that the bill was available on 1.2.2011 as per Ext.10 the despatch register vide P.W.3 proves that the bill was not available earlier in the office. It is undisputed that subsequently payment was made on the bill but that is after 31.1.2011. Suffice to conclude that the evidence of complainant, independent witness and the accused himself as D.W.3 coupled with the totality of the circumstance unerringly proves that accused had accepted gratification Rs.5000/- from the complainant on 31.1.2011 to sign the bill.

8. ANSWER TO POINT NO.III.

In the face of the specific and positive evidence of complainant P.W.11 and shadow witness P.W.6 getting corroboration from complaint Ext.30 and pre-trap and post-trap memorandum, it is proved beyond reasonable doubt that accused while holding office as public servant abusing his position demanded bribe of Rs.10,000/- from complainant on 28.1.2011 to pass the bill and on

31.1.2011 accepted Rs.5,000/-. The accused thereby obtained pecuniary advantage. The plea of accused that the prosecution case is fit to be rejected on the ground of improbability regarding demand of bribe does not appeal to the ordinary human reason. Learned defence counsel vehemently urged that for non-examination of Investigating officer, accused is deprived of getting clarification regarding registration of F.I.R and non-seizure of the bill from the spot and thereby defence is prejudiced. No material contradiction is brought out from the witnesses examined. In this nature of case the trap laying officer is material who is examined as P.W.12. The Investigating officer Sri D.K.Kabi who has filed charge sheet could not be examined for being dead. In the case of **State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede, (2009) 15 SCC 200** it has been held as:

"16. 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."

(8-a) Referring the above decision Hon'ble Apex court in the decision reported in **AIR 2011 S.C. 608 C.M.Sharma -vr- State of Andhra Pradesh** has reiterated that the circumstance in the entirety is to be considered for the appreciation of the evidence on record . The same scrutiny being applied here, the positive evidence from the mouth of wholly reliable witnesses cannot be said to have outweighed by non-examination of the Investigating Officer who did nothing but formal investigation. The non-examination of the I.O is not at all prejudicial to the accused. Regard being had to the above analysis, the prosecution is found to

have proved the offence u/s.13(1) (d) P.C.Act read with u/s. 13(2) of the P.C.Act to the hilt.

9. ANSWER TO POINT NO. IV.

Validity of sanction as required u/s. 19 of the P.C.Act is proved through P.W.1. His competency is not questioned. He is not cross-examined. He has proved sanction order Ext.1 accorded by him. He has stated to have perused all the relevant materials and after being satisfied on application of his mind to have accorded sanction. Ext.1 sanction order itself corroborates the same. No infirmity is ex-facie available.

In this regard law requiring previous sanction u/s. 19 of the P.C.Act is well enumerated in the decision reported **2014 Cri.L.J 930 (S.C.) C.B.I. -vrs- Ashok Kumar Agarwala.**

In the above decision Their Lordships have reiterated that Court must examine the issue regarding failure of justice in the true sense or a camouflage argument relating to sanction.

Tested in the touchstone of above law, the sanction order Ext.1 is found valid.

10. To sum up, the complainant P.W.11 and shadow witness P.W.6 are found wholly reliable witnesses. Their evidence gets corroboration from complaint Ext.30, pre-trap memorandum and post-trap memorandum.. Their version as regards to demand of bribe on 28.1.2011 is not shaken or shattered in cross-examination. From the chain of circumstances surfaced the charge is fully substantiated. The plea of defence is found false. The ingredients of the offences u/s. 7 and 13(1)(d) punishable with Section 13(2) of the P.C.Act are proved beyond all reasonable doubt.

11. In the result, accused is held guilty of the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the P.C.Act, 1988 and is convicted thereunder.

As per decision reported in **(2006) 11 S.C.C. Page-473, The State Rep. By Inspector Of ... vs A. Parthiban on 9 October, 2006**, the conviction of accused u/s. 7 and 13(1)(d) punishable u/s. 13(2) of the P.C. Act in one trial is permissible and privilege of Probation of Offenders Act is not extendable.

Special Judge, C.B.I.-II, Bhubaneswar.

Typed to my dictation and corrected by me. The Judgment is pronounced in the open court today this the 11th February, 2016.

Special Judge, C.B.I.-II, Bhubaneswar.

HEARING ON POINT OF SENTENCE.

Heard the convict and the learned counsels for both parties on the point of sentence. Leniency is prayed. The punishment prescribed prior to amendment by Act of 1 of 2004 with effect from 16.11.2014 of the P.C.Act is applicable. Regards being had to gravity of accusation and age of accused, it is thought proper to impose minimum sentence.

The convict is sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs.5,000/- in default to undergo rigorous imprisonment for one month for the offence u/s. 7 of the P.C.Act and sentenced to undergo rigorous imprisonment for one

year and to pay fine of Rs. 10,000/- in default to undergo rigorous imprisonment for two months for the offence under Section 13(1) (d) punishable u/s. 13(2) of the Prevention of Corruption Act, 1988. The substantive sentences awarded are to run concurrently.

The period undergone as UTP be set off u/s. 428 Cr.P.C.

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 along with the seized shirt of the accused contained in M.Os. I to III, M.O.V and M.O.VI be destroyed four months after the appeal period is over if no appeal is preferred and in the event of an appeal subject to the order of the Hon'ble Appellate Court.

Special Judge, C.B.I.-II, Bhubaneswar.

Dictated and corrected by me. Sentence is pronounced in the open court today this the 11th February, 2016.

Special Judge, C.B.I.-II, Bhubaneswar.

| LIST OF WITNESSES EXAMINED FOR THE PROSECUTION. | |
|--|----------------------------|
| P.W.1 | Nirmal Ch. Jha. |
| P.W.2 | Kanhei Charan Sahoo. |
| P.W.3. | Naresh Chandra Nayak. |
| P.W.4. | Babulal Amat. |
| P.W.5 | Vedula Ambika Datta Sharma |

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| P.W.6 | Anand Meher |
| P.W.7 | Bibhabasu Mishra. |
| P.W.8 | Suresh Kumar Sahoo |
| P.W.9 | Bharat Bhusan Singh. |
| P.W.10. | Dibya Kishore Dandia. |
| P.W.11 | Ramakanta Lenka. |
| P.W.12 | Subhransu Bhusan Mishra. |
| P.W.13. | B.Mukhapodhaya. |
| LIST OF WITNESSES EXAMINED FOR THE DEFENCE | |
| D.W.1. | Rabindra Kumar Jalan. |
| D.W.2. | Sunit Dutta. |
| D.W.3. | Jivan Kumar Goyal. |
| LIST OF DOCUMENS EXHIBITED FOR THE PROSECUTION. | |
| Ext.1. | Sanction order |
| Ext.1/1 | Signature of P.W.1. |
| Ext.2 | Copy of application dated 4.10.2010. |
| Ext.3 | Tender estimate |
| Ext.4 | Letter dt.10.11.2010. |
| Ext.5 | Letter dt.11.11.2010 of P.W.2. |
| Ext.5/1. | Signature of P.W.2 |
| Ext.6 | Bill |
| Ext.6/1 | Signature of P.W.2 |
| Ext.7 | Letter |
| Ext.8 | Seizure memo |
| Ext.8/1 | Signature of P.W.3. |
| Ext.9 | Zimanama |
| Ext.9/1 | Signature of P.W.3 |
| Ext.10 and 11 | True copy of despatch register and peon book register. |
| Ext.10/1 and 11/1 | Relevant entries. |
| Ext.6/2 | Signature of B.B.Singh. |

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| Ext.12 | Seizure list. |
| Ext.12/1 | Signature of P.W.4. |
| Ext.13 | Zimanama. |
| Ext.13/1 | Signature of P.W.4 |
| Ext.14 | True copy of Civil bill Khata having relevant entry at Sl.no.666 |
| Ext.6/3. | Signature of J.K.Goyal. |
| Ext.2/1 | Signature of P.W.5. |
| Ext.3/1 and 3/2 | Signature of P.W.5 in Ext.3. |
| Ext.3/3 | Signature of J.K.Goyal General Manager |
| Ext.4/1 | Signature of J.K.Goyal. |
| Ext.7/1. | Signature of J.K.Goyal |
| Ext.7/2. | Signature of P.W.5 |
| Ext.15 | Bill |
| Ext.15/1 | Signature of p.W.5 |
| Ext.15/2 | Signature of J.K.Goyal |
| Ext.16 | Seizure memo dated 22.2.2011 |
| Ext.16/1 | Signature of P.W.5 |
| Ext.17 | Pre-trap memorandum. |
| Ext.17/1 to 17/5 | Signature of P.W.6 |
| Ext.18 | Sketch map of spot. |
| Ext.18/1. | Signature of P.W.6 |
| Ext.19 | Post-trap memorandum |
| Ext.19/1 to 19/4 | Signatures of P.W.6 |
| Ext.20 | Search list. |
| Ext.20/1 | Signature of p.W.6 on ext.20 |
| Ext.21 | Search list |
| Ext.21/1 | Signature of P.W.6 |
| Ext.22 | Seizure memo |
| Ext.22/1. | Signature of p.W.7 |
| Ext.23 | Personal file containing documents. |

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| Ext.24 | Estimate file containing documents. |
| Ext.24/1 | Relevant page of Et.24. |
| Ext.24/2 | Note sheet |
| Ext.24/3 | Signature of accused in Ext.24/2. |
| Ext.25 | Seizure memo dt.23.2.2011. |
| Ext.25/1 | Signature of P.W.8 |
| Ext.3/3 | Signature of accused |
| Ext.4/1 | Signature of J.K.Goyal |
| Ext.24/4 | Signature of P.W.9 |
| Ext.26 | Diagram of concerned work. |
| Ext.26/1 | Signature of p.W.9. |
| Ext.27 | Estimate prepaed by D.K.Dandia. |
| Ext.27/1. | Signature of p.W.9 in Extg.27 |
| Ext.28 | Relevant page regarding check measurement. |
| Ext.6/4 | Signature of P.W.9 |
| Ext.6/5 | Signature of accused |
| Ext.26/2 | Signature of P.W.10 |
| Ext.27/2 | Signature of P.W.10 |
| Ext.6/6 | Signature of P.W.10 |
| Ext.29 | Seizure memo |
| Ext.29/1 | Signature of P.W.10 |
| Ext.30 | Written complaint lodged by P.W.1 |
| Ext.30/1 | Signature of P.W.11 on Ext.30 |
| Ext.17/6 | Signature of P.W.11 |
| Ext.18/2. | Signature of P.W.11 |
| Ext.19/5. | Signature of P.W.11 |
| Ext.30/2 | Formal FIR |
| Ext.17/7 | Signature of P.W.12 |
| Ext.19/6 | Signature of P.W.12 |
| Ext.18/3 | Signature of P.W.12 |

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| Ext.20/2 | Signature of p.W.12 |
| Ext.21/2 | Signature of P.W.12 |
| Ext.8/2, 12/2, 16/2, 20/2, 25/2, and 29/2 | Signatures of D.K.Kabi in Ext.8, 12, 16, 22, 25 and 29 respectively. |
| Ext.31 | Chemical report. |
| Ext.31/1 and 31/2 | Signatures of P.w.13 in Ext.31 with seal. |
| Ext.31/3 | Signature of Director in Ext.31. |
| LIST OF DOCUMENTS EXHIBITED BY THE DEFENCE. | |
| Ext.A | Labour payment certificate dated 28.1.2011 issued by the personal Manager. |
| Ext.B | Letter dated 18.5.2015 of Asst. Commissioner. |
| Ext.B/1 | Copy of demand -cum- show cause notice issued by service tax department to Ramakanta Lenka. |
| Ext.C | Letter dated 13.11.2015. |
| Ext.D | C.C.R report annexed thereto in separate sheet. |
| LIST OF MATERIAL OBJECTS. | |
| M.O.I. | Solution bottle marked-A |
| M.O.II | Sealed bottle of liquid marked Ext.R. |
| M.O.III | Solution of left hand wash marked-L |
| M.O.IV | Tainted notes/ cover. |
| M.O.V | Pocket wash sealed bottle marked -P |
| M.O.VI | Shirt kept in sealed cover. |

Special Judge, C.B.I.-II, Bhubaneswar.