

IN THE COURT OF THE SPECIAL JUDGE (CBI), COURT
NO.IV, BHUBANESWAR.

P R E S E N T : Shri S.K.Mishra, O.S.J.S.,
Special Judge (CBI),
Court No.IV, Bhubaneswar.

T.R.Case No.09/2011
(Arising out of RC No.20(A)/2010)

Republic of India Prosecution.

-Versus-

Labanidhar Pruseth, aged about 64 years,
S/o. Late Sachidanand Pruseth, resident of
Tharkaspur, PO-Loisingh, PS-Brajarajnagar,
District-Jharsuguda., At present residing at
Mahaveer Nagar Colony, PS-Orient Colliery,
Jharsuguda.

.... Accused.
(ON BAIL)

For the Prosecution : Sri A.K.Singh, Spl.P.P.,C.B.I.
For the Defence : Sri L.Das & associates,
Advocates.

Date of argument : 11.02.2016

Date of judgment : 18.2.2016

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

J U D G M E N T

The accused stands charged U/s.13(1)(d) read with Sec.13(2) and U/s.7 of the Prevention of Corruption Act, 1988 for obtaining pecuniary advantage of Rs.10000/- (rupees Ten thousand) out of the demanded bribe amount of Rs.30,000/- by illegal means during his incumbency as Clerk, Mine No.3, MCL Orient Sub Area, Brajrajnagar, Jharsuguda from the complainant Bhagwan Khadia, as bribe, to get one certificate that his father is medically unfit.

2. The prosecution case in brief is that Shri Fagual Khadia (father of the complainant) was an employee of MCL, Jharsuguda. He was suffering from acute kidney problem and was unable to serve the department any more for which he had applied to his department to get himself declared medically unfit, as per scheme, so that Shri Bhagwan Khadia, his son the complainant would get a job in MCL. Thereafter, the application of the Fagual Khadia along with the treatment papers were processed at various levels in the office of the Colliery Manager, Mine No.3, Orient Sub-Area and the matter of medical unfitness of the father of complainant was under consideration. At the time of such process, accused L.D. Pruseth was working as Clerk, dealing with CMPF (Coal Mines Provident fund) and medical reimbursement matters. For quick disposal of the matter, the complainant contacted with the accused on 09.11.2010 and the accused demanded a bribe of Rs. 30,000/- from the complainant. As the complainant expressed his inability to pay such huge amount, the accused directed the complainant to pay Rs.10,000/- at his residence on 12.11.2010 and to pay the remaining amount of Rs.20,000/- within seven days of his (complainant)

appointment in MCL. Being aggrieved, the complainant lodged a written complaint with SP, CBI, Bhubaneswar on 10.11.2010, on the basis of which, the instant case was registered on 11.11.2010 against the accused and the investigation of this case was entrusted to Shri S.B. Mishra, Inspector, CBI. Basing on the above complainant, a trap team led by Inspector S.B. Mishra was constituted, which included two independent witnesses namely Ishwar Chandra Rout, AG-I (Depot), FCI, FSD, Balijhoree, Jharsuguda and Shri Sarat Kumar Mishra, Telephone Mechanic, Telephone Exchange, Jharsuguda, was formed.

3. The entire trap team including the complainant and the independent witnesses assembled at about 7.00 a.m. on 12.11.2010 at Officers' Rest House, S.E. Railway, Jharsuguda to observe pre-trap formalities in course of which the independent witnesses were shown the copy of the written complaint of the complainant and all the witnesses were satisfied about the genuineness of the complainant. Shri S.B. Mishra, Inspector C.B.I. gave a detailed description of the process of laying a trap. Thereafter, on being asked, the complainant produced Rs. 10,000/- i.e. four number of 1000 rupee G.C. notes and twelve number of 500 rupee G.C. notes and the numbers and denominations of the currency notes were noted down and were treated with phenolphthalein powder. Independent witness Sarat Kumar Mishra handled the said tainted GC notes by his hands and then dipped. The fingers of both his hands in sodium carbonate solution which turned pink. Then the tainted GC notes of Rs.10,000/- were kept in the left side shirt pocket of the complainant with an instruction to hand over the said tainted notes to the accused L.D. Pruseth only on demand of bribe and not otherwise. A

pre-trap memorandum vide Ext.14 was prepared at the spot in which all the witnesses signed. Witness I.C. Rout was instructed to accompany the complainant and to see the transaction of bribe money as well as to overhear the conversation between the complainant and accused.

4. After completion of pre-trap proceeding, the entire trap team including the complainant and both the independent witnesses reached near Central hospital, MCL, IB Valley by two vehicles at about 8.15 a.m. on 12.11.2010 and parked the vehicles at a little distance away from the residence of the accused. The complainant with the accompanying witness I.C. Rout went near Mandalia Chowk and at that time, the accused who was taking tea at a road side tea stall at Mandalia Chowk called the complainant. While the complainant reached near the accused, he(accused) demanded the money by stretching his right hand towards the complainant. Thereafter, the complainant took out the tainted G.C. notes of Rs.10,000/- from his shirt pocket and handed over the same to the accused, who accepted the said tainted G.C. notes by his right hand, counted the same by both his hands and kept the same in his right side pant pocket and gave assurance to the complainant that his work would be done within a week. The transaction of demand and acceptance of illegal gratification by the accused was clearly seen and heard by the witness Sri I.C. Rout as well as the other team members. Immediately all the trap team members rushed to the spot and seeing the trap team, the accused took out the tainted GC notes from his pant pocket and threw the same on the ground, just near his feet. When Shri B.B. Mishra, Inspector introduced himself as well as other members of the trap team to accused and challenged him as to why he has demanded and accepted the bribe from

the complainant, he (accused) became nervous and fumbled and kept mum. Thereafter the hand wash of the accused was taken with sodium carbonate in water and the colour of said solution turned to pink. Both the hand washes of the accused were preserved in two glass bottles duly sealed, labeled and signed by all the trap team members. Witness Sri S.K. Mishra on being directed by Inspector S.B. Mishra collected the thrown GC notes from the ground and compared the numbers and denominations, which tallied with the nothings made in the pre-trap memorandum. The said tainted notes were kept in a sealed cover duly sealed and signed by all concerned. Thereafter, the inner linen of the right hand side pant pocket of the accused was also washed in another solution of sodium carbonate with water, which turned pink. The pocket wash was kept in a sealed bottle marked "P". Accordingly, a sketch map was prepared at the spot which was signed by all the witnesses and trap team members. A post trap memorandum was prepared at the spot in which all the witnesses signed.

During investigation the sample bottles were sent to CFSL, Kolkata for examination and opinion. The sanctioning authority passed sanction order for prosecution of the accused. On conclusion of the investigation, finding a prima facie case, the I.O. placed the final form against the accused U/s.7 and Sec. 13(1)(d) r/w Sec.13(2) of the P.C.Act,1988. Hence, the case.

5. The accused denied the charges and stated inter-alia that he has been falsely implicated in this case by the complainant. The accused in his statement U/s.313 Cr.P.C. stated that he has neither demanded nor accepted any bribe from the complainant.

6. The points for determination in the instant case are as to

- (i) Whether the accused is a public servant?
- ii) Whether the accused being a public servant has demanded illegal gratification of Rs.10,000/- (Rupees Ten Thousands) to get one certificate that his father is medically unfit, alleged?
 - iii) Whether the accused being a public servant has accepted the illegal gratification of Rs.10,000/- (rupees Ten Thousand) to do any official act in favour of the complainant, as alleged?

7. During the trial, the prosecution has examined eleven witnesses, out of whom PW.9 who lodged the written report Ext.21 is the complainant-decoy. PW.5 Sarat Kumar Mishra is a witness to the pre-trap proceeding, post-trap proceeding and the entire process of trap, P.W.8 one Inspector of CBI is also a witness to the alleged trap, P.W.10 another Inspector of Police, CBI is the TLO as well as investigating officer of this case, whereas P.W.1 is a witness to the seizure of certain official documents, P.W.2,3 and 4 are official witnesses of MCL Orient Area, P.W.6 is the chemical examiner, P.W.7 is the sanctioning authority who accorded sanction for prosecution, whereas P.W.11 is the Investigating Officer who after completion of investigation submitted Charge sheet. Besides this, the prosecution has relied on several documents vide Ext.1 to Ext.21 and exhibited material objects under M.O.I to M.O.VI. The accused has not adduced any evidence in his behalf.

8. In a case of trap, demand and acceptance of illegal gratification by a public servant with a motive to do any official act in favour of a person is vital. In this case the burden lies on the prosecution to prove the previous demand of bribe its acceptance and recovery of tainted money from the accused. Before scanning of the evidence adduced by the prosecution witnesses, it may be noted here that, mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Only on proof of demand and acceptance of bribe by the accused, the burden rests on the accused to displace the statutory

presumption raised under Section 20 of the Act, 1988, 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 referred to in Section 7 of the Act, 1988. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the standard of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the fundamental facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In the light of the aforesaid settled legal position, this court has to examine how far the prosecution has been able to establish by reliable evidence about such demand and acceptance of bribe by the accused from the complainant.

9. It is in the evidence of P.Ws.3 and 4 that the accused was working as Clerk and was dealing with PF matters. It is also the evidence of P.W.7 S. H. Singh that the accused was working as Clerk in MCL, Orient Brajaraj Nagar. The said version of the above P.Ws has also been proved by other witnesses P.Ws. 5 and 9. The said aspect has not been challenged by the defence. Therefore, it is proved that the accused was a public servant during the relevant period.

10. P.W.1 was working as Deputy Manager, Personnel and Manager Personnel in Orient Sub-Area MCL, Brajaraj Nagar from 13.5.2008. According to him the I.O. seized some documents on 15.12.2010 on his production vide seizure list Ext.1. He proved the letter dtd.30.6.2010 issued by him to the Area Personnel Manager forwarding proposals for medical examination of five employees vide Ext.2. He has also proved the letter dtd.25.6.2010 received by him from Superintendent Mines, Manager Mine No.III

relating to application for medical examination of two employees vide Ext.3. From the above evidence of P.w.1, it is forthcoming that the name of Fagulal Khadia has been proposed for medical examination as reflected in Ext.2 and 3. P.W.1 has also proved the copy of letter dtd.14.7.2003 . He has also proved the photocopy of application of Fagulal Kedia MSW addressed to Superintendent Mines Manager requesting for medical board examination vide Ext.6.

11. Similarly P.W.2 Y. H. Kumar has stated that the M.C.L. headquarters had circulated a notice dated 6.5.2010 soliciting information relating to persons who were suffering from unfitness on medical grounds. According to him, there are specified six diseases and general debility, basing on which application can be submitted for retirement. He has further stated that there is a screening committee in the area to scrutinise the application and during such process, the screening committee had forwarded ten applications to the headquarters of the company for examination by the attached medical board. According to him, he had forwarded the application of ten persons on 31.7.2010 vide Ext.8 and the application of Fagulal Khadia under sl. No.9 had been forwarded under the above letter. According to him, the I.O., had seized the above letter Ext.8 from K.s. George under seizure list vide Ext.9.

12. P.w.3 another official witness has stated that on 22.6.2010 manager, Colliery received application of Fagulal Khadia along with treatment papers and those were marked to him and further the application after checking was put up before him on 23.6.2010. He proved the forwarding letter in which the application of Fagulal Khadia and Shyam Lal Khadia have been sent to Deputy Manager, MCL, Orient Sub-Area vide Ext.10. He has also stated that the accused was working in PF Section and was looking after the business of Provident fund and Medical Reimbursement and Personnel Section of Mine No.3. He has further stated that accused was the Secretary of DCM WU of Mine No.3. According to

him some documents were seized from his custody vide seizure list Ext.11.

13. P.W.4 who was working as Office Superintendent in Mine No.3 from 2008 has stated that Fagulal Khadia was working as MSW in Mine No.3. Labour Officer had marked the application vide Ext.6 of Fagulal Khadia to ascertain the correctness of the facts mentioned in it.

From the evidence of above P.Ws. it is forthcoming that the application of Fagulal Khadia, father of the complainant was processed for issuance of medically unfit certificate. Although, the above witnesses have stated that the accused was working as Clerk and was dealing with PF matters, but they have not stated anything about the role of the accused in dealing with the file and application of Fagulal Khadia. Their evidence is silent regarding any work of Fagulal Khadia pending with the accused.

14. Learned P.P. advanced argument on the point of demand of bribe by the accused and recovery of tainted money from his possession on the basis of evidence of the complainant as well as the other trap team members. It is the case of the prosecution that on 9.11.2010 when the complainant contacted accused, he had demanded bribe amount of Rs.30,000/- from the complainant for getting a certificate in favour of his father, an employee (Multi Skilled worker) in mine No.3, MCL, Orient Sub-Area, Brajarajnagar, Jharsuguda, declaring him as medically unfit and when the complainant showed his inability, the accused asked him to pay Rs.10,000/- out of the demanded bribe amount of Rs.30,000/- and told the complainant to pay the bribe money on 12.11.2010 at his residence located at Qrs. No.MQ-123, Mahabit Nagar, Brajarajnagar.

15. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other

interested witness. In a proper case, the Court may look for independent corroboration before convicting the accused, as held in the case of Ram Prakash Arora V. The State of Punjab AIR 1973 SC 498; T. Subramanian V. The State of Tamil Nadu, AIR 2006 (SC) 836; State of Kerala & another Vrs.C.P. Rao, (2011) 6 SCC 450; and Mukkut Bihari & Another V. State of Rajasthan (2012)11 SCC 642. In the light of the aforesaid settled legal position, this Court has to now examine how far the prosecution has been able to establish by reliable evidence about such demand and acceptance of bribe by the accused from the complainant.

16. The law was set to motion on the FIR (Ext.21) lodged by the complainant Bhagaban Khadia. The prosecution examined him as P.W.9. It reveals from his sworn testimony that his father was sick and was having kidney problem and was treated at Burla Hospital. He wanted that he should retire from service as MSW, MCL Orient Sub-Area, Brajaraj Nagar on the ground of disability and in his place, the complainant should get the said job. For that purpose, one application was given by the complainant to the Manager Sri Pradhan of the said Mines. Since no step was taken on the said application, in spite of his repeated approach, therefore, on the advice of Pramod Naik, the elder brother of his father-in-law, he (the complainant) lodged written complaint vide Ext.21 at CBI Office Rourkela. According to him, after 15 days of his said application, he accompanied CBI personnel along with Pramod Naik and his father-in-law Chandrasekhar Khadia and went to the office of Sri Pradhan, the Manager of that mines. The evidence of the complainant completely silent on the point that he was having any work with the accused for which, there was scope of demand of bribe by the accused.

17. In the present case, the complainant did not support the prosecution case in so far as demand of bribe by the accused as well as acceptance of bribe money. The complainant-decoy disowned what he had stated in the FIR. Although the prosecution asked leading questions to him, still then nothing has been elicited from him by the prosecution which could help the case of the prosecution in any manner. The complainant has gone to the extent of saying that he does not know the accused. He has further deposed that he does not know the contents of Ext.2 and he wrote the same as per the instruction and being dictated by Pramod Nayak, who is the brother of his father-in-law. He could not say if Ext.21 was actually presented at Rourkela or not. He has categorically stated during his cross-examination that the accused had never demanded any money from him and he (PW-9) had never given any money to the accused. He has also stated that signatures vide Exts.14/3, 16/3 and 17/3 were taken on blank papers by the CBI Officer, by assuring him that his work will be done. He has also categorically stated that he had not accompanied the CBI staff to any place.

At this stage, this court should scrutinise the evidence of other witnesses including the accompany witness.

18. Further, prosecution had cited a star witness Shri I. C. Rout who was selected as an accompanying witness. But the said witness could not be examined by the prosecution as he was dead. He was a vital witness who, as claimed by the prosecution, was present at the time when the money was allegedly handed over to the accused by the complainant, pursuant to any demand made by the accused. When the complainant himself had disowned what he had mentioned in the complaint Ext.21 and further when the most vital witness

Shri I.C. Rout has not been examined, the evidence of P.W.9 the complainant is required to be scrutinized with the evidence of other prosecution witnesses, who were present at the time of pre-trap proceeding and post-trap proceeding.

19. Coming to the evidence of P.W.5 Sarat Kumar Mishra, it is forthcoming that on 12.11.2010, he met Inspector CBI Shri Mishra at about 7 a.m. in the Officers Guest House, S.E. Railway, Jharsuguda and was introduced with the complainant. Shri Mishra told that the accused was demanding an amount of Rs.30,000/- from the complainant as bribe to give a certificate to the effect that his (complainant) father was medically unfit and the complainant lodged a complaint with the S.P. CBI. He has further stated that the complainant told him that the accused was demanding an initial amount of Rs.10,000/- as bribe to pay him in his house on the same day. According to him, the complainant produced Rs.10,000/- i.e. four notes of one thousand rupee denomination, twelve notes of five hundred rupee denomination to CBI constable Sri Pradhan who noted down the serial numbers of the currency notes in the pre-trap memorandum. Sri Pradhan treated the currency notes with chemical powder and on instruction, he (P.W.5) handled the notes. According to him a chemical solution was prepared and when his hands were dipped with the chemical water it turned to pink colour. The chemical solution was preserved in a separate bottle M.O.-I and same was corked, sealed and signed by witnesses. The tainted notes were kept in the shirt pocket of the complainant with instruction to pay the said tainted notes to the accused only on demand. According to him, Shri I.C. Rout was instructed to accompany the complainant to the house of accused with further instruction to over hear the conversation between the

complainant and the accused and to see the transaction. According to him, a pre-trap memorandum vide Ext.14 was prepared in which he has signed with all the trap party members. He has also stated that after pre-trap proceeding, the complainant along with Rout Babu proceeded to the residence of the accused through Mandalia Chhack and they were following them. When they reached at the spot, at that time the accused was taking tea in a road side tea stall and he (accused) called the complainant and asked him whether he has brought the demanded money. When the complainant answered in affirmative and brought out the tainted GC notes from his pocket and paid the amount to the accused, the accused stretched his hand and received the GC notes and counted the same by both of his hands and also kept the amount in his right side pocket with assurance that the work of the complainant will be done within a week. According to him, the Inspector Sri Mishra went to the accused and introduced himself as CBI Inspector and also wanted his identity. When, they were approaching the accused he dropped the G.C. notes out of fear. Then, Inspector Shri Mishra challenged the accused to have demanded and accepted the bribe money, he gave no answer and became nervous and two of the constables of CBI caught hold of the hands of the accused. Constable Sri Pradhan prepared a solution in glass tumbler and both the hands of accused were washed with chemical solution separately and were kept in separate bottles vide M.O.II and II. As per instruction of Shri Mishra, he collected the money from the ground and compared the serial numbers already noted in pre-trap memorandum and the same tallied. Inspector Shri Mishra seized the tainted GC notes and kept in a sealed envelope vide M.O.IV. Thereafter, constable Sri

Pradhan washed the pocket of the accused with chemical solution which turned pink in colour and it was kept in a glass bottle vide M.O.V and the pant of the accused was kept in an envelope vide M.O.-VI which was sealed. During cross-examination, he has stated that he has not heard the conversation between the accused and the complainant. He has further stated that, the tainted money was not seized from the possession of the accused.

20. The evidence of P.W.5 is also corroborated with the evidence of P.W.8 an officer of CBI and also a member of trap team on some aspects. He has corroborated the evidence of P.W.5 with regard to pre-trap proceeding which has been held at Officers Guest House, SE Railway on 12.11.2010. His evidence also finds corroboration with regard to the demonstration and chemical solution of hand wash of Shri Pradhan as well as P.W.5. According to him, after pre-trap memorandum, all the trap team members went to the house of the accused while the complainant along with witness I.C. Rout went separately to the spot. He has also stated that when the accused asked whether the complainant has brought the demanded amount, the complainant gave the positive answer and handed over the tainted notes to the accused, who stretched his hand and accepted the demanded money, counted it and kept the same in his right side pant pocket. According to him, since he was at a distance place, he could not say what the accused told to the complainant. According to him, immediately Sri S.B. Mishra (PW-10) went to the spot and asked the accused about acceptance of illegal gratification. By seeing this, the accused threw the bribe amount to a near by place. He has also corroborated the evidence of P.w.5 with regard to his hand wash and pocket

wash and the manner of chemical solution. He has further stated that Sri Mishra (P.w.5) was asked by PW-10 the T.L.O. to collect the amount lying on the floor and to compare the serial numbers of the said GC notes in question. According to him, the house of the accused in the I.B. Valley colony was searched by all the trap team members and nothing incriminating was found and accordingly a search report was prepared.

In the cross-examination- this witness has stated that he had not gone through the contents of the complaint. He has further stated that the complainant has not told him anything in the guest house. He has further stated that they were not able to hear the conversation between the accused and complainant.

21. It is the evidence of P.W.10 the T.L.O. Sri S.B.Mishra that on 11.11.2010 he was informed by S.P.in-charge, CBI Bhubaneswar that a case has been registered against the accused on the allegation that he had demanded bribe of Rs.30,000/- from the complainant for getting his father an employee of Mine No.3, MCL, Orient Sub-area, Brajarajnagar medically unfit. The accused asked the complainant to pay him Rs.10,000/- out of the demanded money of Rs.30,000/- in the morning hours on 12.11.2010 at his residence located at Qrs. No.MQ-123. As per direction of SP, CBI this case was assigned to him for investigation. Therefore, he decided to lay a trap on the accused on 12.11.2010. According to him, a trap team was constituted under his leadership with other members of the trap team i.e. Sri K.P. Tripathy, Inspector, CBI, Sri B. Ghosal, SI, Sri J.R. Barik, S.I., Sri P.K. Palei, Constable, Sri A.K. Pradhan, Constable and Sri P.K. Pradhan, Constable with assistance of

two independent witnesses who were procured through official procedure from FCI, Jharsuguda and BSNL, Jharsuguda. Accordingly, all the trap team members assembled at Officers' Rest House, South Eastern Railway, Jharsuguda at about 7 a.m. on 12.11.2010. He introduced the complainant with the independent witnesses and the other trap team members, where the complainant stated that the accused has demanded Rs.10,000/- from him for getting his father declared as medically unfit. On his instruction, Sri A.K. Pradhan prepared the solution of sodium carbonate and water in a clean glass tumbler. As per his instruction, the complainant produced four numbers of one Thousand rupee G.C. notes and twelve numbers of five hundred rupee G.C. notes. On his direction Sri A.K. Pradhan applied phenolphthalein powder on the above said currency notes. He asked the witness Sri S.K. Mishra (P.W.5) to handle the said GC notes. After that on his direction, Sri Mishra washed both his hands in the solution of sodium carbonate and water, the colour of which changed to pink. Said hand wash was preserved in a clean glass bottle vide M.O.I. Sri A.K. Pradhan kept the said tainted GC notes of Rs.10,000/- in the left side shirt pocket of the complainant, with specific instruction to hand over the said G.c. notes to the accused only on demand and not otherwise. During pre-trap proceeding, Sri Iswar Chandra Rout was instructed to accompany the complainant to witness the transaction and over the conversation between the accused and the complainant. According to him a pre-trap memorandum vide Ext.14 was prepared at the spot, in which, all the trap team members have signed. It is the evidence of P.W. 10 that at about 8.55 a.m. they reached near the Mandalia Chowk and parked the vehicles near the Engineering School situated at a

distance of 50 meters of the above said Chowk. Thereafter, the complainant along with witness Sri I.C. Rout left for the house of the accused followed by other trap team members. When the complainant reached near the Mandalia Chowk. The accused at that time was taking tea in the said chowk and called the complainant and the complainant went near to him. Thereafter, the accused asked him for demanded money. Then, on this demand, the complainant brought the tainted GC notes from his left side chest pocket and handed over to the accused, who accepted the same by his right hand, counted by both his hands and then kept the said tainted GC notes in his right side pant pocket. As they were present very near the spot, it was clearly visible to him and also he was able to overhear the conversation between the complainant and the accused. So, without waiting for the pre-arranged signal to be given by the complainant, they rushed to the spot along with the witnesses and other trap team members. On seeing them, the accused brought out the tainted GC notes from his pocket and threw the same on the ground near his feet. When, P.W.10 challenged the accused as to why he has demanded and accepted bribe from the complainant, he became nervous and remained silent. As per his instruction, witness Sri S.K.Mishra collected the GC notes from the ground and on comparison, it was found to be the same G.C. notes of Rs.10,000/- produced by the complainant during pre-trap proceeding. Then, both the hands of the accused were washed in the solution of sodium carbonate with water and the colour of the solution changed to pink. Both the hand washes of the accused were kept separately in clean glass bottles vide M.Os.II and III respectively. Thereafter, the inner side of the pant pocket of the accused was washed in the solution of

sodium carbonate and water, which changed to pink and the said solution was kept in a clean glass bottle vide M.O.V. According to him the accused was arrested at about 9.45 a.m. and the tainted G.C. notes were recovered from the accused and the same were kept in an envelope vide M.O.IV. The part of the accused was kept in an envelope vide M.O.VI. A post-trap memorandum vide Ext.17 was prepared at the spot and a sketch map vide Ext.16 was prepared by him at the spot. P.W.10 has further stated that the application of the complainant, his medical certificate, one letter of Mines Manager were seized on production of Sri Dinesh Kumar Suryabansi (P.W.3) , Welfare Officer as per seizure list vide Ext.11. He also seized one office copy of the letter dtd. 31.7.2010 sent by Mines Manager to Personal Manager, MCL Headquarters was seized on production by Sri K.s. George, Personal Manager vide seizure list Ext.9. According to him on 15.11.2010 he sent the sample bottles to CFSL, Kolkata for examination and opinion. On 1.12.2010 he handed the charge of investigation of this case to Addl. S.P. Sri P.K. Pandey for further investigation.

22. During cross-examination, this witness has stated that witness I.C. Rout was present at a distance of about four feet away from the complainant and no signal was given by the complainant since the transaction was visible to them. Further, in cross-examination he has stated that the hand wash of Sri S.K. Mishra was not taken at the spot. He has also stated that he has not sent the part of the accused for any chemical examination.

23. P.W. 11 the Addl. S.P., CBI Bhubaneswar took over the charge of investigation from P.W.10 on 15.12.2010 and during course of investigation, he examined the witness,

recorded their statements and seized four documents on 15.12.2010 from Smt. S. Chatterjee, Manager, Personal, Orient Sub-Area, MCL, Jharsuguda as per seizure list vide Ext.1. He has also stated that he seized the documents Ext.2,3,4 and 5 as per seizure list Ext.1. According to him, he had received the sanction order vide Ext.19 from the sanctioning authority and on completion of investigation, he submitted charge sheet.

During his cross-examination he has stated that he had not gone through the complaint of the complainant as he could not read Oriya language. He has also stated that he had not gone to the spot, but he ascertained the nature of the duty of the accused by examining witnesses namely Dinesh Kumar Suryabanshi and Harekrushna Khuntia.

24. Similarly, P.W.6 who is the chemical examiner has stated that he examined the contents of the four glass bottles from 1.12.2010 to 8.12.2010 by using suitable chemical tests and instrumental method of chemical analysis and he submitted his opinion vide Ext.18. He has expressed the manner of test and analysis of the chemical examination and nothing has been elicited from his mouth by the defence to discredit his testimony.

25. In this case the complainant did not support the prosecution case in so far as demand by the accused is concerned. The official witnesses P.Ws.1 to 4 though have stated that the accused was working as clerk and dealing with PF matter, their evidence remained silent about any work of the complainant was entrusted to him, for which the question of demand is doubtful. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Sec.7 of the Prevention of

corruption Act 1988. In the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.

26. So far as to prove the conduct of the accused, no official witnesses as well as the complainant-decoy have stated that there was any work of the complainant with the accused and for such reason, he has demanded illegal gratification from the complainant. Prosecution has also failed to prove the said fact from the mouth of any official witnesses of MCL, Orient Sub-Area, Brajrajnagar, Jharsuguda.

In this case, the accused has not admitted before any witness that he had demanded and accepted any bribe from the complainant. The tainted notes were also not seized from the exclusive possession of the accused rather the same have been collected from the ground. P.W.8 in his examination-in-chief has stated that since he was at a distance place, he could not say what the accused told the complainant. P.W.10 in his examination in chief has stated that the spot was clearly visible to him and also he could able to overhear the conversation between the complainant and the accused. But, P.W.5 in his cross-examination has stated that he had not heard any conversation between the complainant and accused and he had not gone to anyplace along with Sri rout of FCI. There is material discrepancies between the evidence of P.Ws.5, 8 and 10 with regard to hearing of conversation between the complainant and the accused. Since, all the trap team members claiming themselves to be remain present at a distance of seven feet away from the accused, such evidence of P.W.5 and 8 regarding presence at the spot is doubtful.

The witnesses P.Ws.5, 8 and 10 have not stated that the accused has admitted before them regarding any demand or acceptance of tainted notes.

27. Although it is in the evidence of PWs-5 and 8 that one constable Mr. Pradhan had treated the G.C.Notes with phenolphthalein powder during pre-trap proceeding, PW-8 on the other hand has stated that Sri Mishra the independent witness (PW-5) treated the G.C.Notes and handled the same. Sri Pradhan has not been examined in this case as a witness from the side of the prosecution. It is in the evidence of PW-5 that two CBI constables caught hold of the accused by his hands. He has not named the said two constables. PW-8 has stated that two police constables named Sri Palei and Sri Pradhan caught hold of both the hands of the accused. But during cross-examination he has stated that two constables out of three constables who were present, whose names he could not say, caught hold of the hands of the accused, after the bribe money was taken and the hand wash of the accused was taken by Constable Sri Pradhan. Surprisingly, PW-10 has not named the person or persons by whom the hand washes of both the hands of the accused were taken. Therefore, in the circumstances, non-examination of the constables Sri P.K.Pradhan, Sri P.K.Dalai, SI J.R.Barik, Inspector Sri B.Ghasal assumes importance and the same also arises doubt regarding the case of the prosecution.

Although PW-10 has stated that all the trap team members washed their hands by soap and water, the said aspect has not at all been deposed by PW-8, who is one responsible Inspector of Police. Therefore, mere change of colour of the solution to pink after taking hand washes of the accused, cannot be given much importance and when

reasonable doubt arises that the Phenolphthalein powder which Sri Pradhan had handled at the time of treating the tainted money might have come in contact with the hands of the accused, when Constable Sri Pradhan caught hold of both the hands of the accused. In this regard, there is evidence from PW-8 that one independent witness Sri Mishra treated the G.C.Notes with phenolphthalein powder. Thus, there are material discrepancies regarding the manner in which the pre-trap proceeding was conducted and doubt arises as to whether full proof method and safety was adopted while laying the trap, in order to avoid any possibility of Phenolphthalein powder coming in contact with the hands of the accused through hands of any member of the trap team. There are material discrepancies with regard to fact as to whether the conversation between the complainant and accused was heard by any member of the trap team. Since the person claimed to be present nearer to the accused and complainant i.e. PW-5 the overhearing witness has stated that he was not able to hear the conversation between them and so also, PW-9, therefore, the claim of PW-10 that he saw and heard the conversation between the complainant and accused and the transaction in question, has to be disbelieved. PW-5 during his cross-examination has stated that he had not gone to any place along with Sri Rout of FCI on the same day. The said statement of PW-5 assumes much importance in view of the claim made by the prosecution that Sri I.C.Rout was one member of the trap team and had witnessed laying of trap. It is pertinent to mention here that Sri Rout could not be examined in this case as he was dead.

28. P.Ws.5 and 8 who are the witnesses to the pre-trap and post-trap proceeding and examined to prove that the

accused had received the tainted money of Rs.10,000/- from the complainant has categorically stated that by the time, they reached at the spot, the complainant threw the money to the ground. During their cross-examination, they have also stated that, they have not heard any conversation between the complainant and the accused at the time of taking the said tainted notes. The evidence of the above witnesses could not be corroborated by the accompany witness Sri I.C. Rout who is declared to be dead.

29. Learned Sr. P.P. CBI had inter-alia submitted that once the recovery of money from the possession of the accused is proved, statutory presumption under Sec. 20 of the P.C. Act 1988 has to be drawn in the facts and circumstances of the case. It was further submitted by the learned Sr. P.P. CBI that there has been substantial corroboration in the evidence of prosecution witnesses regarding the charge made against the accused and discrepancies if any in their evidence, are minor discrepancies. He further submitted that the prosecution is not accepted to prove its case in mathematical precision. But it is seen from the evidence already discussed that there are material contradictions in the evidence of prosecution witnesses on vital aspect, which cannot be ignored on the ground that those are minor discrepancies. As demand and acceptance of bribe had not been proved beyond reasonable doubt, therefore, no presumption can be drawn under Sec.20 of the Act.

The learned Special PP, CBI has relied upon the decision decided on 15th February, 1980 in the case of Hazari Lal-Vrs.-Delhi Administration by the Hon'ble Supreme Court and another decision decided on 12.12.2000 in the case of N.Narsinga Rao-Vrs.-State of Andhra Pradesh by the Hon'ble

Supreme Court. This Court has gone through these two decisions. But the facts and circumstances of these cases, are distinguishable from the facts and circumstances of the present case. Hence, the said decisions are not applicable in the present case.

30. It is settled principle of law that demand of illegal gratification is sine qua non to constitute the offence under Sec.7 of P.c. Act and mere recovery of currency notes cannot constitute the offence under Sec.7 unless it is proved beyond all reasonable that the accused voluntarily accepted the money knowing it to be a bribe. In so far as the presumption permissible to be drawn under Sec.20 of the Act is concerned, such presumption can only be in respect of the under Sec.7 of the Act and not the offence under Sec.13(1)(d) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Sec.20 of the act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand.

Prosecution has failed to prove that the accused was dealing with the application of the complainant to declare his father medically unfit as per any scheme, reasonable doubt arises regarding any demand on the part of the accused. As the same is lacking in the present case and in view of the evidence already discussed regarding alleged demand and acceptance of bribe by the accused, the primary facts on the basis of which the illegal presumption under Sec.20 can be drawn are wholly absent.

31. On appreciation of the evidence, materials on record and on the touch-stone of the legal principles adumbrated here in above, leave no manner of doubt that the

prosecution in the instant case has failed to prove the demand of illegal gratification and acceptance of bribe by the accused and has failed to bring home the charge against the accused under Sec.13(1)(d) read with Sec.13(2) and under Sec.7 of the Prevention of Corruption Act, 1988.

32. In the result, I hold the accused is found not guilty of the offence Under Sec.13(1)(d) read with Sec.13(2) and Sec.7 of the Prevention of Corruption Act, 1999 and he is acquitted from the said charge under Sec.248(1) Cr.P.c. He is discharged of his bail bonds forthwith and set at liberty.

The tainted GC notes of Rs.10,000/- under M.O. IV be confiscated to the State, the seized sample bottles under M.O.I to III and 1V and the sealed packet containing part of the accused be destroyed after four months of expiry of the appeal period, if no appeal is preferred and in case of any appeal, subject to result of the Appellate Court.

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

Dictated, corrected by me and is pronounced in the open Court on this the 18th day of February, 2016 under my hand and seal of the Court.

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

List of witnesses examined for the prosecution :

- | | |
|-------|---------------------------|
| P.W.1 | Sikha Chatterjee. |
| P.W.2 | Y. Hara Kumar. |
| P.W.3 | Dinesh Kumar Suryabanshi. |
| P.W.4 | Hare Krishna KHuntia. |

P.W.5	Sarat Kumar Mishra.
P.W.6	Baijayanta Mukhopadhyaya.
P.W.7	S.H.N.Singh.
P.W.8	Kora Prasad Tripathy.
P.W.9	Bhagaban Khadia.
P.W.10	Subhransu Bhusan Mishra.
P.W.11	Prasant Kumar Pandey.

List of witnesses examined for the defence :-

Nil.

List of exhibits marked for the prosecution :-

Ext.1	Seizure list.
Ext.1/1	Signature of PW-1.
Ext.2	Proposal for medical examination.
Ext.2/1	Signature of PW-1.
Ext.3	Application for medical examination.
Ext.3/1	Endorsement with signature of PW-1.
Ext.4	Letter.
Ext.5	Office Order dated 13.8.2008.
Ext.6	Photocopy of application of one Fagulal Kedia, MSW.
Ext.7	Office Copy of Form No.I and Form No.II along with photocopy of all the annexures.
Ext.8	Letter dated 31.7.2010.
Ext.8/1	Signature of PW-2.
Ext.9	Seizure list.
Ext.9/1	Signature of K.S.George.
Ext.6/1	Endorsement of PW-3.
Ext.7/1	Endorsement of S.K.Khuntia.
Ext.7/2	Endorsement of PW-3.
Ext.7/3	Endorsement of Colliery Manager.
Ext.10	Letter.

Ext.10/1	Signature of Manager.
Ext.10/2	Signature of PW-3.
Ext.10/3	Signature of Office Superintendent.
Ext.11	Seizure List.
Ext.11/1	Signature of PW-3.
Ext.12	Office Copy.
Ext.13	Form No.2.
Ext.13/1	Signature of PW-4.
Ext.13/2	Signature of Welfare Officer Mr. Subudhi.
Ext.13/3	Signature of Mr.Manik.
Ext.14	Pre-trap Memorandum.
Ext.14/1	Signature of PW-5.
Ext.15	Signature of PW-5 on M.O.-IV.
Ext.16	Sketch Map.
Ext.16/1	Signature of PW-5.
Ext.17	Post-trap Memorandum.
Ext.17/1	Signature of PW-5.
Ext.18	CFSL Opinion.
Ext.18/1	Signature of PW-6.
Ext.18/2	Signature of CFSL Director S.Babu.
Ext.19	Sanction Order.
Ext.19/1	Signature of PW-7 in Ext.19.
Ext.14/2	Signature of PW-8 on Ext.14.
Ext.20	Search Report.
Ext.17/2	Signature of PW-8 on Ext.17.
Ext.16/2	Signature of PW-8 on Ext.16.
Ext.21	FIR.
Ext.21/1	Signature of PW-9 on Ext. 21.
Ext.14/3	Signature of PW-9 on Ext.14.
Ext.16/3	Signature of PW-9 on Ext.16.
Ext.17/3	Signature of PW-9 on Ext.17.

Ext.14/4 Signature of PW-10 on Ext.14.
Ext.17/4 Signature of PW-10 on Ext.17.
Ext.16/4 Signature of PW-10 on Ext.16.
Ext.22 Search List.
Ext.23 Search List.
Ext.22/1 Signature of PW-10 on Ext.22.
Ext.20/1 Signature of PW-10 on Ext.20.
Ext.23/1 Signature of PW-10 on Ext.23.
Ext.11/2 Signature of PW-10 on Ext.11.
Ext.9/2 Signature of PW-10 on Ext.9.
Ext.1/2 Signature of PW-11 on Ext.1.
Ext.21/2 Formal FIR.
Ext.21/3 Signature of SP In-Charge J.N.Rana.

List of exhibits marked for the defence :-

Nil.

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

M.O.-I Bottle.
M.Os.-II & III Bottles.
M.O.-IV Envelope.
M.O.-V Bottle.
M.O.-VI Sealed packet.

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

Nil.

Special Judge (CBI),
Court No.IV, Bhubaneswar.

