

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.4/2011
(Arising out of RC No.13(A)/2010).

Republic of India Prosecution.

-Versus-

.....
Tarapada Biswas, aged about 58 years,
S/o.Late Bhejal Biswas, permanent resident
of M. V. 98, Chitangpalli, Via-Saradhapalli, P.S.Kalimela,
Dist.-Malkanagari, At present : D.P. Camp,
Sunabeda-3, Dist. Koraput.

Accused.
(ON BAIL)

For the Prosecution: Sri K.L.Kar, Special PP, CBI.
For the Defence : Sri P.Pattnaik &
Associates, Advocates.

Date of argument: 18.7.2016
Date of judgment: 26.7.2016

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

J U D G M E N T

Accused stands charged u/s. 7 and Section 13(1) (d)
read with Sec. 13(2) of the Prevention of Corruption Act,1988
(to be referred hereinafter to P.C.Act) for having demanded and
accepted gratification of Rs.1000/- abusing his position as a
public servant.

2. Accusation leading to this prosecution runs thus:

The accused was serving as Post Master, OMP Line Sub Post Office, Koraput. The complainant Santosh Kumar Pattnaik was working as Branch Post Master, Kendar Post Office under OMP Line Sub-Post Office, Koraput. As Branch Post Master Sri Pattnaik used to disburse payment to the workers (beneficiaries of the villages) coming under Kendar Branch post office who had worked in the projects under NREGS. The workers from the villages are engaged in various works and payment to the said workers are sent to the concerned sub post office through cheque by the Block Office along with a list of the said workers for making the payments to them through Branch Post Office. The accused Tarapada Biswas, Post Master, OMP Line Sub Post Office, Koraput demanded bribe of Rs.1,000/- from the complainant for making payment of dues to the workers under NREGS, for which cheque had already been received by the OMP Line Sub Post Office from the Block Office. The payment was to be disbursed by Kendar Post Office after receiving the amount from OMP Line sub post office. The accused asked the complainant to give him the bribe of Rs.1,000/- at his office, at the OMP line sub post at 1 PM on 26.6.2010. Being aggrieved, on 25.6.2010 the complainant submitted a complaint to the SP, CBI, Bhubaneswar on 25.6.2010, basing on which, the present case was registered. On 26.6.2010 a trap team was formed by Shri S.B. Mishra including two independent witnesses namely Shri Anpa soren, Sr. TOA (G), office of the GMTD, BSNL, Koraput and Shri Arjun Marandi, SDE (FM), office of the GMTD, BSNL, Koraput was formed. All the trap team members, both the independent witnesses and the complainant Shri S.K. Pattnaik assembled at 11 a.m. on 26.6.2010 at Room No.309 in Hotel Raj Residency,

Koraput. A detailed description of the process of laying a trap was explained to the witnesses and the complainant. The complainant produced two numbers of 500 rupee GC notes which were treated with phenolphthalein powder. Shri Arjun Marandi handled the said notes and his hands were washed in the solution of sodium carbonate and water for demonstration. Thereafter, the phenolphthalein treated GC notes of Rs.1000/- was entrusted to the complainant with specific direction to hand over the said tainted notes to the accused only on demand and not otherwise. A pre-trap memorandum was prepared at the spot in which all the witnesses have signed. The trap party members including the complainant and both the witnesses reached near OMP Line sub post office, Koraput. The complainant contacted the accused inside the post office and requested him to make payment of NREGS dues of Rs.1,26,000/- as per the list received by him. There the accused demanded and accepted the bribe of Rs.1,000/- from the complainant, which was witnessed by witness Anpa Soren. Getting pre-arranged signal, other trap team members went inside. When Inspector Sri S.B.Mishra rushed to the spot and gave his identity, the accused trembled and remained silent. His both hand washes were taken in sodium carbonate solution which turned pink. Being asked by Sri Mishra, the accused brought out the said GC notes from his right side pant pocket and upon comparison by witness Sri Arjun Marandi, the notes were tallied and kept in a sealed envelope. The pant pocket wash of the accused was taken, which turned pink and the said solution was kept in a sealed bottle marked "P". A post trap memorandum was prepared at the spot, being all the witnesses present.

After completion of investigation and obtaining sanction order, charge-sheet was submitted against the accused. Charge Under Sec. 7 and Sec. 13 (1)(d) read with Sec.13 (2) of the Prevention of Corruption Act,1988 was framed against the accused to face his trial.

3. Denial is the plea of the accused to the demand and acceptance of the bribe. In his statement as D.W.1, accused has stated that the complainant kept Rs.52,453.70 paise and cash of Rs.4850/- in his hand, which he is not authorized to keep. He had directed the complainant to pay the excess amount kept by him and also reported the matter to the higher authorities. But he threatened me not to return and falsely faisted this case against him, so that he can escape from giving the official money to the accused.

4. To bring home the charge, prosecution has examined 12 witnesses in all. Out of them PW-10 is the complainant, PW-8 is the witness who has been directed to accompany P.W. 10 to over hear the conversation and to witness the transaction, PW-9 is the magisterial witness, PW-2 is the sanctioning authority who accorded sanction for prosecution of the accused, PW-3 is the Chemical Examiner, CFSL, Kolkata, PWs-1, 4, 5 and 6 are the seizure witnesses, PW-7 is an independent witness, PW-11 is the Trap Laying Officer and PW-12 is the CBI Inspector who seized some documents. The Investigating officer Sri D.K. Kabi could not be examined as he is dead. Thirty nine documents have been exhibited on behalf of

prosecution. Tainted notes, shirt of accused and the solution of hand and pocket wash have marked M.O.I to M.O.VI.

On the other hand to establish his plea, the accused has examined himself as D.W.1 in support of his plea. Ext. A to Ext.E have been exhibited by defence. No other witness has been examined on behalf of the defence.

5. The points for determination are :

- (i) Whether accused on 26.6.2010 being a public servant functioning as Post Master, OMP Line Sub-Post Office, Koraput demanded illegal gratification of Rs.1000/- from complainant P.W.10 as a motive or reward to hand over the cheque amounting to Rs.1,26,000/- to the complainant for payment of dues to the workers beneficiaries of village Jerity under NREGS scheme, as alleged ?
- (ii) Whether accused on the same day and time at OMP Line Sub-Post Office, Koraput accepted illegal gratification as a motive or reward for payment of the dues to the workers beneficiaries of village Jerity under Manbar Gram Panchayat of Koraput Block under NREGS for which cheque had already been received by the OMP Line Sub-Post Office from the Block Office, as alleged?
- (iii) Whether accused on the above date and place by corrupt and illegal means abusing his position as a public servant obtained Rs.1000/- from the complainant P.W.10 without any public interest, as alleged?

- (iv) Whether the sanction for prosecution of accused is valid?

6. ANSWER TO POINT NO.1.

The evidence of P.W.1 Bhabani Prasad Padhi, Asst. Superintendent of Post Offices, Koraput Sub-Divisionb, Koraput goes without any challenge and unequivocally proves that on 26.6.2010 the accused was posted as Sub-Post Master, OMP Line Sub-Post Office, Koraput. This evidence gets corroboration from the transfer and posting order of accused Tarapada Biswas vide Ext.23 and his joining report vide Ext.24. P.W.6 is the post Master of Koraput Head Post Office who has stated that the aaccused Tarapada Biswas was the Sub-Post Master of OMP line sub-post office and the complainant Santosh Kumar Pattnaik was the branch post master of Kendra Branch post office.

7. P.W.1 in his evidence has stated that as per Ext.2 Kendra Branch Post office is coming under OMP Line sub-Post Office. Under NREGS scheme relating to payment of wages, Branch Post office Kendra can collect maximum Rs.50,000/- from OMP Line Sub-Post Office. According to him there has been an agreement between the Chief Post Master and Principal Secretary, Govt. of Odisha for payment of wages under NREGS through post office Savings bank account and he proved the said agreement which is known as MOU Ext.3 and the Chief Post Master General had circulated the MOU to all post offices vide his letter dtd.6.6.2008 Ext.5. BDO-cum Programme officer is the key person in respect of the implementation of programme under NREGS. According to him OMP Line sub-Post Office had received 11 lists of workers along with cheques of different dates vide Ext.6 to 16 in which Ext.6 is in respect of 39 workers having a

cheque of Rs.1,26,000/- Ext.6/1. He has stated that accused Sub-post master had received the list along with cheque on 22.6.2010. On the very day Sub-Post master sent the cheque to the Head Post office and the matter has been reflected in S.O. Daily account vide Ext.6/2. It is in the evidence of P.W.1 that complainant Santosh Kumar Patnaik was Branch Post master in the year 2010 and on 23.6.2010 Kendra Branch Post office received copy of Ext.6 relating to payment of Rs.1,26,000/- for 39 workers. He (P.W.1) proved the Branch office Daily Account of Kendra Branch Post office vide Ext.18. From the B.O. Daily account, Kendra Branch, it appears that the complainant had made requisition for Rs.1 Lakh from OMP Line Sub-post office from 23.6.2010 to 26.6.2010, but cash of Rs.1 Lakh had not been made available to Kendra Branch Post office till 26.6.2010. According to him on 22.6.2010 Kendra Branch Post office had requirement to the tune of Rs.49,520/- towards payment of the wages of the workers under NREGS. Kendra Branch had requirement of Rs.1,75,520/- on 23.6.2010 after receipt of the list for Rs.1,26,000/-. P.W.1 proved the summary of Sub-office of Koraput Head Post office for the period 22.6.2010 to 31.7.2010 Ext.20. According to P.W.1 on 25.6.2010 Head Post Office, Koraput had remitted Rs.2 Lakh to sub-Post office OMP line towards payment under NREGS as per requisition of the accused which has been reflected in summary of HPO Koraput vide Ext.20/1 and S.O. slip vide Ext.21.

8. P.W.4 the Sr. Manager, Indian Overseas Bank, Koraput Branch, Koraput in his evidence has stated that on 19.10.2010 the cheque bearing No.90920 (Ext.6/1) was seized by the CBI from him as per seizure list Ext.28. The said cheque

was issued in favour of the Post Master, Head Post Office, Koraput for Rs.1,26,000/- and the said cheque was issued by the BDO, Koraput. P.W.5 has corroborated the above evidence stating that a total sum of Rs.1,26,000/- towards payment of wages to the labourers was sent to the OMP Line Post Office, Koraput in shape of cheque and the said cheque was received by the post office on 22.6.2010 as seen from the seal affixed on Ext.30 by the post office. According to P.W.6 during his tenure, accused was the Sub-Post master of OMP Line sub-post office and the complainant was the branch post master of Kendar Branch Post office. He has stated that on 27.7.2010 on his production, the CBI officer had seized some documents at Koraput Head post office as per seizure list Ext.32. He proved the requisition dtd.25.6.2010 (Ext.17) issued by the accused in his capacity as sub-post master. He also proved Ext.21 the sub-post office slip dtd.25.6.2010 by which a sum of Rs.2 Lakhs was sent to the sub-post office, OMP line sub post office in response to the requisition vide Ext.17. According to P.W.6, Ext.6/2 is the sub-office daily account for the date 22.6.2010 of sub-post office, OMP line and he also proved the carbon copy of memo of remittance dtd.23.6.2010 for Rs.1,26,000/- vide cheque No.435987 dtd.18.6.2010 and Rs.36,720/- vide cheque No.435989 dtd.18.6.2010.

9. P.W.7 in his evidence has stated that he was working as sub-post master, OMP Line sub-post Office, Koraput from 1.7.2010 till august 2011 and was the successor of the accused. According to him Ext.30 is the wage list dtd.18.6.2010 for wage under NREGS for Rs.1,26,000/- in shape of cheque bearing No.435987 allotted to Kendar Branch Post Office and Ext.30 was

received at OMP line sub-post office Koraput on 22.6.2010 when accused was the sub-post master of that post office.

10. From the evidence, as discussed earlier it is proved that accused, as a competent authority who has received the cheque bearing No.435987 amounting to Rs.1,26,000/- Ext. 6/1 which has been allotted to Kendar Branch Post Office and he had also received Ext.30 i.e. wage list dtd.18.6.2010 for wage under NREGS for Rs.1,26,000/- while was working as Sub-post master, OMP Line Sub-Post Office. It is also proved that accused was the final authority to make payment of the cheque Ext.6/1 to the complainant who was working as Branch Post master, Kendar Branch Post Office.

11. ANSWER TO POINT NO.2.

Complainant P.W.10 has stated that on 23.6.2010 the list of beneficiaries under MGNREGS scheme was received by him being sent by the BDO, Koraput through SPM, OMP Line Sub-Post Office, Koraput. Then he submitted daily account showing detail of the transactions at their sub-post office. The said daily account was sent to Sub-Post office OMP Line. When he asked the accused for money for the beneficiaries under MGNREGS scheme on 23.6.2010, the accused asked him for cash of Rs.1000/- as bribe for release of the said money at his sub-post office. Again he met the accused at his sub-post office on 24.6.2010 and asked for the said money and assured him that he will give cash of Rs.1,000/-, but the accused did not release the said money. Being aggrieved he contacted the S.P. CBI, Bhubaneswar who told him to contact DSP Sri Kabi who was holding camp at Koraput and the SP CBI supplied the mobile telephone number of Sri Kabi. Then, he met DSP Sri Kabi in the

evening and discussed the matter with him. On 25.6.2010 he lodged the written complainant vide Ext.38 before Sri Kabi and he also proved his written complaint Ext.38. He has further stated that as per instruction of Sri Kabi he met Inspector Sri S.B. Mishra on 26.6.2010 by 11 A.M. at Hotel Raj Residency, Koraput. Accordingly, he went and met Inspector Sri Mishra on that day and discussed the matter with him. He has stated that he was introduced to two independent witnesses Shri Soren (P.W.8) and Arjun Marandi (P.W.9). On being asked by Shri Mishra, he produced Rs.1000/- which were in shape of two numbers of G.C. notes each of five hundred rupee denomination. On the instruction of Inspector Shri Mishra, P.W.9 Shri Soren noted down the serial numbers of the said two GC notes in one paper. The said notes were smeared with chemical powder by Shri Marandi and the hands of Sri Marandi were dipped in chemical solution mixed with water kept in one glass bowl after he handled the said GC notes and the colour of solution turned to pink. Said solution was kept in a bottle marked Ext.D. He signed on the paper wrapped around the sample bottle which is M.O.I. Thereafter, the tainted notes were kept in the right side pant pocket of the complainant with a direction to hand over the same to accused only on demand. A pre-trap memorandum was prepared at the spot, which he proved vide Ext.36/1. He also proved his signature thereon vide Ext.36/3. During cross-examination P.W.10 has stated that total two numbers of cases are pending against him. He has further stated that he had also filed written complainant against Sri Padhi as he used to demand bribe from him for release of money towards payment to beneficiaries under MGNREGS scheme. Further, he has stated

that it has been alleged against him in the criminal case that he has misappropriated money towards payment to beneficiaries under MGNREGS scheme. In para -22 of his cross-examination, he has stated that from 15.2.2010 to 14.8.2010 he had spent total amount of Rs.7,350/- as conveyance allowance, without sanction of SPM and for the said reason allegation was made against him. Since, the accused has proved the motive of the accused regarding demand for payment of the dues to the workers beneficiaries of village Jerity under Manbar Gram Panchayat of Koraput Block under NREGS for which cheque had already been received by the accused Sub-Post Master, OMP Line Sub-Post Office from, the Block Office and had not handed over to the complainant for payment of wages to the workers, the plea taken by the accused that the complainant is entangled in several cases for misappropriation of government money, the filing of such cases and conduct of the complainant is no way helpful to the case of defence. He has denied the suggestion that he has filed the case falsely against the accused, since he (the accused) was repeatedly asking him to return excess cash, beyond the limit of Rs.5000/- and that in order to save himself from the said situation and in order to avoid return the said amount by him. He has also denied the suggestion given by the defence that he is deposing falsely due to pressure of the CBI. The evidence of the complainant P.W.11 gets corroboration from his complaint petition Ext.38.

12. P.W.8, the independent witness was a Sr. Clerk attached to the office of GMTD, BSNL, Koraput. He has stated that on 26.6.2010 he contacted CBI Inspector Sri S.B. Mishra who told him to meet him at Raj Residence in Room No.309 by

10 A.M. Accordingly, he along with Arjun Marandi (P.w.9) went to that room by 11 a.m. and there Sri Mishra introduced five members of the team with both of them. He has categorically stated that there S.B. Mishra introduced him to complainant and told him that accused was demanding Rs.1000/- for release of NREGS money from the said Sub-post office. In his presence there the complainant produced Rs.1000/- in shape of two numbers G.C. notes each of five hundred rupee denomination and and Sri Marandi was asked to note down the serial numbers of the same. Thereafter, Sri Arjun Marandi handled the said GC notes being instructed by the CBI personnel and his hand wash was taken in the solution which turned pink. He signed on the paper wrapped around the bottle which he identified as M.O.I. He has also stated that he was directed to accompany the complainant to the Sub-Post office. During cross-examination this witness has stated that except going through the written complaint of the complainant, he has not tried to ascertain about the authenticity of the allegations. This evidence of P.W.8 gives corroboration to the evidence of P.W.10 and pre-trap memorandum Ext.36/1.

13. P.W.9 another independent witness has fully corroborated the evidence of P.W.8 and 10 with regard to their presence at room No.309, Hotel Raj Residency, Koraput, production of Rs.1000/- by the complainant, process of demonstration of currency notes and preparation of pre-trap memorandum at the spot. According to him, constable Sri P.K. Nayak treated two GC notes with phenolphthalein powder and kept the tainted the GC notes in the right side pant pocket of the complainant, as per the instruction of Sri Mishra. There is minor

discrepancy found from the evidence of P.W.9 to that of the evidence of P.W.8 and 10 with regard to putting up of treated money with the right side pant pocket of the complainant. According to him Sri Anpa Soren (P.W.8) was instructed to accompany the complainant to overhear the conversation between the complainant and the accused and to witness the transaction.

14. P.W.11 the trap laying Inspector has stated that on 25.6.2010 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 Hotel Raj Residency, Koraput on 25.6.2010 at 11 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. During cross-examination he has stated that he had not issued any requisition to procure the attendance of independent witnesses. Substantially this witness lends assurance to the testimonies of complainant P.W.10 and independent witness P.W.8 and 9. Nothing material has been elicited during cross-examination of these witnesses to discredit their statement.

15. Learned defence counsel emphasized on the following infirmities in order to disbelieve the testimonies of P.W.8,9, 10 and 11 with regards to demand of bribe by accused on 24.6.2010. The learned defence counsel had submitted that the complainant was in jail custody on the allegation of a criminal case under Sec.420/IPC and another case under Sec.420,120-B/34 IPC and therefore there was no occasion to demand bribe

by the accused for handing over the cheque of Rs.1,26,000/- to him for payment of the same as wages of the beneficiaries under MGNREGS Scheme. For this he relies upon the evidence of P.W.10 wherein it is stated that the complainant has misappropriated money towards payment to beneficiaries under MGNREGS scheme. According to learned defence counsel, P.W.10 had spent total amount of Rs.7,350/- as conveyance allowance, without sanction of SPM from 15.2.2010 to 14.8.2010 and daily there used to be deficit cash of Rs.4850/- with him. It is argued that the payment of further cheque of Rs.1,26,000/- to the complainant is highly unjustified. On this point, it may be stated that mere pending of certain cases against the complainant for misappropriating some amount, non-payment of the Cheque of Rs.1,26,000/- towards payment of the amount to the beneficiaries who are entitled to receive the same cannot, itself be a ground to disbelieve his version given on oath in this case. On careful reading of the evidence of P.W.10, Ext.38 the complaint petition and Ext.A in the back drop of evidence of accused as D.W.1, it is clear that after issuance of cheque by the authority, it cannot be said that cheque vide Ext.6/1 was not due for issuance of the same to the complainant. D.W.1 has stated that when the complainant asked for remittance of shortage of cash of Rs.4850/- he had not paid the said amount. Therefore, he told him that unless and until he deposits the deficit amount of Rs.4850/- as per the instruction of the higher authority, then he will not make any remittance in his favour. Then on 26.6.2010 the complainant came to the office of D.W.1(the accused) and placed cash of Rs.1000/- on his hand. According to him being asked by him regarding rest portion of cash, the complainant told

him that the rest cash is with Laxman Jani, Mail Carrier known as GDSMC and he (complainant) will send the money through Laxman Jani. But due to the reason best known to the accused (DW.1) he has not whispered about it while his statement was recorded by this Court under Sec. 313 of Cr.P.C. D.W.1 has further deposed that thereafter, five to six persons came and told him that he was under arrest as he had taken bribe. He told those persons that he had not taken any bribe and that the complainant has given him cash of Rs.1000/- towards remittance. Rather, it has been clearly proved by the defence through D.W.1 that he has received Rs.1000/- from the complainant. In view of the discussions already made, it is seen that the prosecution on the other hand has clearly proved that the amount received by the complainant is the bribe amount. When independent witness and C.B.I staffs have no axe to grind against accused, the some minor discrepancies in their evidence cannot be a ground to disbelieve their statement.

16. Learned defence counsel further urged that it was not possible on the part of T.L.O P.W.11 to arrange witnesses on 26.6.2010 after registration of F.I.R. He has further argued by relying upon a decision reported in **2011 SAR (Criminal) 719 in case of P. Parasurami Reddy Vrs. State of A.P.** that there is no evidence to suggest as to what transpired between the accused and the complainant, when the accused was approached and no seizure of the treated currency notes has been made by the Investigating Officer for which, the seizure of tainted notes from the possession of the accused is not believable. But, in the case at hand, the I.O. recovered the bribe amount of Rs.1000/- from the possession of the accused and the

serial numbers of the GC notes were duly tallied and the said tainted GC notes were kept in an envelope vide M.O.V in sealed condition. P.W.11 in his cross-examination at para-21 has stated that no separate seizure list has been prepared for recovery of the tainted notes and the part of the accused. Simply because no seizure list was prepared cannot be a ground to disbelieve prosecution, when the money recovered from the possession of the accused was duly examined chemically and kept in an envelope by the I.O. as per M.O.V.

17. The testimony of P.W.8, 9, 10 and 11 get corroboration from the complaint Ext.38 and pre-trap memorandum Ext.36/1. The witnesses are found credible and wholly reliable. The minor discrepancies are normal in the ordinary course of life, when the witnesses are examined after lapse of so many years. This cannot find that the evidence of P.W.10 complainant is corroborated in material particulars regarding demand by the reliable evidence. Consequently, it is proved that accused had demanded bribe of Rs.1000/- on 26.6.2010 for payment of the cheque amounting to Rs.1,26,000/- to the complainant towards wages of the beneficiaries of MGNREGS as alleged.

18. ANSWER TO POINT NO.III.

In the face of the specific and positive evidence of complainant P.W.10 and shadow witness P.W.8 which get corroboration from complaint Ext.38 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.1000/- from complainant on 24.6.2010 and thereafter on 26.6.2010 in order to hand over

money for the beneficiaries under MGNREGS scheme to the complainant. It is also proved that on 26.6.2010 the accused accepted Rs.1000/- from the complainant. 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 cannot be accepted in view of clear, cogent and clinching evidence adduced by the prosecution.

Learned defence counsel vehemently urged that for non-examination of Investigating officer Shri D.K. Kabi, accused is deprived of getting clarification regarding registration of F.I.R and non-seizure of the GC notes 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.11. The Investigating officer Sri D.K.Kabi who has filed charge sheet could not be examined for being dead.

The defence could have proved the omissions, if any, in the statement of witnesses recorded under Sec.161 Cr.P.C. by cross-examining P.W.11, as was acquainted with the handwriting and signature of Late D.K. Kabi, the I.O. of this case. 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."

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 principle scrutiny being applied here, and in view of the positive evidence from the mouth of wholly reliable witnesses, the non-examination of the Investigating Officer who is dead does not affect the prosecution case in any manner. 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 its case against the accused for the offence u/s.13(1) (d) P.C.Act read with u/s. 13(2) of the P.C.Act to the hilt.

19. ANSWER TO POINT NO. IV.

Validity of sanction as required u/s. 19 of the P.C.Act is proved through P.W.2. His competency is not questioned. He is not cross-examined by the defence in order to discard his testimony regarding his competency. He has proved sanction order Ext.26 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.26 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.26 is found valid.

20. To sum up, the complainant P.W.10 and shadow witness P.W.8 are found wholly reliable witnesses. Their evidence gets corroboration from complaint Ext.38, pre-trap memorandum and post-trap memorandum.. Their version as regards to demand of bribe on 26.6.2010 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.

21. 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.

The privilege of Probation of Offenders Act is not extendable u/s.18 of the Probation of Offenders Act, 1958.

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

Typed to my dictation and corrected by me. The Judgment is pronounced in the open court today this the 26th July 2016.

Special Judge,C.B.I.-IV,
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. V 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 IV, 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.-IV,
Bhubaneswar.

Dictated and corrected by me. Sentence is pronounced in the open court today this the 26th July, 2016.

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

List of witnesses examined for the prosecution :

PW-1	Bhabani Prasad Padhi
PW-2	Bhaja Gobinda Satpathy.
PW-3	Bimal Chandra Purukait.
PW-4	Mano Ranjan Sahoo.
PW-5	K. Harish Chandra Patra.
PW-6	Hadibandhu Hindware.
PW-7	Subash Chandra Nayak.
PW-8	Anpa Soren.
PW-9	Arjun Marandi.
PW-10	Santosh Kumar Pattnaik.
PW-11	Subhransu Bhusan Mishra.
PW-12	Manoj Kumar.

List of witnesses examined for the defence :-

D.W.1	Tarapada Biswas.
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List of exhibits marked for the prosecution :-

Ext.1	Seizure list.
Ext.1/1	Signature of PW-1.
Ext.2	Memo of authorized balance of O.M.P. Line Sub-Post Office.
Ext.3	Copy of M.O.U.
Ext.4	Modification of M.O.U.
Ext.5	Letter dated 6.6.2008.
Exts.6 to 16	List of workers of different dates.
Ext.6/1	Original cheque.
Ext.6/2	Entry in S.O. Daily Account.
Ext.17	Requisition.
Ext.18	B.O. Daily Account of Kendra Branch.
Ext.19	Branch Office Summery of O.M.P. Line Sub-post office.
Ext.20	Sub-Office summery of Koraput Head Post Office.
Ext.20/1	Entry dated 25.6.2010.
Ext.21	S.O. Slip.
Ext.22	Seizure list.
Ext.22/1	Signature of PW-1.
Ext.23	Transfer and posting order of accused.
Ext.24	Joining Report of accused.
Ext.25	Appointment order of S.K.Pattnaik, Branch Post Master of Kendar Branch Post Office.
Ext.26	Sanction order.

Ext.26/1	Signature of PW-2.
Ext.27	CFSL Report.
Ext.27/1	Signature of PW-3.
Ext.27/2	Signature of Dr. C.N.Bhattacharya.
Ext.28	Seizure list dated 19.10.2010.
Ext.28/1	Signature of PW-4 in Ext.28.
Ext.29	Seizure list.
Ext.29/1	Signature of PW-5 in Ext.29.
Ext.30	List of labour wage payment issued by the BDO on 18.6.2010.
Ext.31	Muster Roll comprising of eleven sheets.
Ext.32	Seizure list.
Ext.32/1	Signature of PW-6 in Ext.32.
Ext.17/1	Signature of Tarapada Biswas.
Ext.17/2	Signature of PW-6 in Ext.17.
Ext.33	Carbon copy of memo of remittance dated 23.6.2010.
Ext.34	Xerox copy of status of payment by Kendar Branch Post Master.
Ext.34/1	Signature of PW-7 in Ext.34.
Ext.35	Sketch Map.
Ext.35/1	Signature of PW-8 in Ext.35.
Ext.36	Signature of P.W.8.
Ext.37	Signature of PW-8.
Ext.36/1	Pre-trap Memorandum.
Exts.36/2-	Signature of PW-9 in Ext.36/1.
Ext.35/2	Signature of PW-9 in Ext.35.
Ext.37/1	Post-trap memorandum.
Ext.37/2	Signature of PW-9 in Ext.37.
Ext.38	Written complaint.
Ext.38/1	Signature of PW-10 in Ext.38.
Ext.36/3	Signature of PW-10 in Ext.36.
Ext.37/3	Signature of PW-10 in Ext.37.
Ext.39	Formal FIR.
Ext.39/1	Signature of Sri J.N.Rana in Ext.39.
Ext.39/2	Direction of SP I/C, CBI in Ext.39.
Ext.39/3	Signature of Sri J.N.Rana in Ext.39.
Ext.38/2	Endorsement with signature of D.K.Kabi in Ext.38.
Ext.36/4	Signature of PW-11 in Ext.36.
Ext.35/3	Signature of PW-11 in Ext.35.
Ext.37/4	Signature of PW-11 in Ext.37.
Ext.29/2	Signature of PW-12 in Ext.29.
Ext.28/2	Signature of PW-12 in Ext.28.
Ext.1/2	Signature of D.K.Kabi in Ext.1.
Ext.22/2	Signature of D.K.Kabi in Ext.22.
Ext.32/2	Signature of D.K.Kabi in Ext.32.

List of exhibits marked for the defence :-

- Ext. A Letter dated 19.5.2010 of accused to Head Post Office.
Ext. B Letter to Mani Sethi, Overseer.
Ext. C Copy of allegation made by S.K.Pattnaik against S.K.Padhi.
Ext. D Report of PW-1.
Ext. E Statement of Suchitra Behera, wife of S.K.Pattnaik.

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

- M.O.-I Sample bottle.
M.O.-II Sample bottle.
M.O.-III Sample bottle.
M.O.-IV Sample bottle.
M.O.-V Sealed envelope containing G.C.Notes.
M.O.-VI Pant of the accused.

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

Nil.

Special Judge (CBI)-IV,
Bhubaneswar.

