

**IN THE COURT OF THE SPECIAL JUDGE,C.B.I. COURT NO.I,
BHUBANESWAR.**

P R E S E N T

**Sri M.K.Panda,
Special Judge, C.B.I.,Court No.I,
Bhubaneswar.**

**T.R. Case No. 12 of 2011.
Arising out of R.C. No. 21(A)/2010**

Date of argument ... **25.6.2014.**
Date of Judgement ... **28.6.2014.**

REPUBLIC OF INDIA

VERSUS

Purna Chandra Panigrahi, aged about 56 years,
s/o. Jagabandhu Panigrahi, vill. Anantapur,
P.S. Sora, Dist. Balasore.

... Accused.

Counsel for the C.B.I. ... Sri K.C.Mishra, Sr.P.P.

Counsel for the accused. ... Sri S.K.Mund & Associates, Advs.

J U D G M E N T

The accused Purna Chandra Panigrahi stands charged under Sections 7 and 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988. He pleaded not guilty to the charges and claimed to be tried.

2. Facts material for the prosecution case hold as follows: The accused was working as Field Officer, S.B.I. Kanika Branch in the district of Sundargarh on 16.11.2010. The complainant Sushant Kumar Nath of village- Kanika had applied for housing loan of Rs.5 lakhs from S.B.I. Kanika Branch and the loan was sanctioned on 15.11.2010 and on 16.11.2010 Rs.1 lakh was credited to his S.B. Account No.31386857261. It is further case of the prosecution that on 16.11.2010 the accused called the complainant to the Bank to his mobile No.9937543005 for which the complainant came to the

Bank and contacted the accused. It is the specific case of the prosecution that on the complainant's request the accused told the complainant for getting the loan sanctioned, the complainant had not paid him anything, even then he got the loan sanctioned and disbursed Rs.1 lakh to the account of the complainant and told the complainant that for further disbursement of rest of the loan amount, he (complainant) will have to pay him Rs.20,000/- and the complainant expressed his inability the accused got a loan of Rs.1,00,000/- sanctioned and credited to pay any bribe to him. The accused compelled him to pay the bribe amount on 18.11.2010 during morning hour in the Bank premises and since he was not willing to pay the illegal gratification to the accused and after discussing with his father he reported the matter to D.S.P. C.B.I. Rourkela Unit on 16.11.2010. On the basis of such report, the case was registered and the Inspector C.B.I. Rourkela, Sri K.P.Tripathy was directed to investigate into the case by laying a trap. The Inspector C.B.I Sri Tripathy procured two official witnesses through official procedures for the purpose of witnessing during the trap. On 18.11.2010 at about 8.45 A.M the C.B.I. officials and two witnesses namely Narahari Seth and Raji Jashua assembled at MCL Guest House Basundhara and also the complainant arrived there after sometime. The complainant was introduced to the witnesses by Inspector C.B.I. and shown the copy of the F.I.R and subsequently both the witnesses asked the complainant about the contents of the F.I.R and he disclosed about the demand of bribe made by the accused for expenses of sanctioning his loan. According to the prosecution the complainant produced ten numbers of government currency notes of the five hundred rupees each of 500 rupee denomination. The serial numbers of the government currency notes were treated with phenolphthalein powder and were given to the complainant with an instruction to pay the accused on his specific demand. The witness Narayan Seth was directed to

accompany the complainant and to hear the conversation between the complainant and the accused. A pre-trap memorandum was prepared and all the witnesses present signed there. Prosecution case reveals that the complainant and shadow witness left the S.B.I. Kanika Branch in the motor cycle of the informant and parked the vehicle inside the bank premises and other team members took their respective positions. Thereafter the informant went to the accused followed by shadow witness and on seeing the complainant the accused enquired from him whether he had brought the amount of Rs.5000/- to which he replied in the affirmative and then the former asked the latter to wait near the main gate of the Branch. Prosecution case also reveals that the accused asked the complainant to go towards the left corner of the Bank after which the complainant went towards that direction of that Branch where the accused asked the complainant to pay money stretching his right hand. The complainant handed over the tainted government currency notes to the accused who counted with his hands and kept in his left side pant pocket. According to the prosecution when the accused was about to return and since the transaction was going on in the open field, Inspector K.P.Tripathy other C.B.I officials and independent witness rushed to the accused. The Inspector K.P.Tripathy disclosing his identity & identification of others, challenged the accused to have accepted the bribe money from the complainant, but the accused though became silent initially, but refused to have accepted the money from the complainant. The constable Sri Palai caught hold of the wrists of the accused and took the accused to his seat where the hand wash and pocket wash were taken separately by sodium carbonate solution which turned to pink in colour and the pink coloured solution was preserved in two clean glass bottles duly sealed. No less specific is the prosecution case that the tainted G.C. notes of Rs.5000/- were recovered from the accused and the witness Raji Jashua was asked to verify and

compare the said G.C notes who verified the said notes and found that they tallied. Thereafter those tainted government currency notes were seized and kept in an envelope duly sealed and signed. Inspector K.P. Tripathy prepared post-trap memorandum and all the trap team members, witnesses and complainant signed there. After observing all the formalities of post-trap proceedings the team members left the spot with the accused. Exhibits were sent for chemical examination and sanction order was obtained. On completion of usual investigation, the Investigating Officer of C.B.I. submitted charge sheet against the accused resulting in the present case.

3. Defence plea is one of complete denial of complicity of the accused in the alleged crimes.

4. Points for determination are:

(i) Whether on 18.11.2010 the accused Purna Ch. Panigrahi, Field Officer, S.B.I. Kanika Branch being public servant functioning in the above capacity demanded and accepted Rs. 5000/- from the complainant as illegal gratification other than legal remuneration for sanctioning of his loan.

(ii) Whether on 18.11.2010 the accused being public servant functioning Field Officer, SBI, Kanika branch by corrupt and illegal means abusing his official position as such public servant obtained for him pecuniary advantage to the tune of Rs.5000/- from the complainant for sanctioning his loan.

5. Prosecution in support of its charges against the accused has examined as many as nine witnesses whereas defence has adduced no evidence to substantiate its plea.

6. The important point for determination is whether demand and acceptance of illegal gratification or bribe money by the accused have been proved. There is no denying that the accused Purna Ch. Panigrahi was the Field Officer, S.B.I. Kanika Branch on 18.11.2010. Undoubtedly, the most important witness for the prosecution is none other than the complainant. This witness appearing as P.W.5 has deposed that he was running a brick -kiln business and he had applied for a loan of Rs.5 lakh in the S.B.I. Kanika branch. He has further deposed that the loan was sanctioned on 15.11.2010 and on 16.11.2010 he got a message over phone from the accused P.C.Panigrahi to come to the branch and intimated him that the loan had been sanctioned and demanded an amount of Rs.20000/-. His assertion in the evidence is that when he expressed his inability for payment of Rs.20,000/- , the accused told that Rs.1 lakh had been credited to his savings account and asked him to pay Rs.20,000/- withdrawing from that account. His further assertion in the evidence is that he impressed upon the accused to tell after discussing the matter with his father, but the accused insisted to pay Rs.5000/- and balance of Rs.15,000/- would pay within a month failing which the accused would cancel the loan. The complainant has specifically testified that the accused told him to pay Rs.5000/- on 18.11.2010 during morning hours in the bank premises. P.W.5 has further testified that as he was not willing to pay the demanded bribe money, he reported the matter in writing to the D.S.P. C.B.I. Rourkela Unit on 16.11.2010. The relevant written report has been marked Ext.17 and Ext.17/1 is the signature of the complainant. According to P.W.5, the Inspector Sri Kabi asked him to come to the MCL guest house Basundhara on 18.11.2010 at 8.45 A.M with Rs.5000/- and accordingly he reached in MCL guest house, Basundhara and met Inspector C.B.I. Mr.Kabi, where Inspector Sri Tripathy, constables Palei, Nayak and official witnesses namely Narahari Seth and Raji

Jasua were present and Inspector Sri Tripathy introduced him with them. It is the specific testimony of P.W.5 that copy of the F.I.R was shown to the witnesses who went through the contents of it and enquired from him about the truthfulness of the allegation. He has deposed that Inspector Sri Tripathy asked him to produce Rs.5000/- and he produced ten numbers of five hundred rupee government currency notes before the trap team members and the serial numbers of the notes were noted down, some powder was mixed with those notes, the witness Mr. Jasua handled those tainted government currency notes after which the hand of Mr. Raji Jasua was washed with chemical solution which turned pink in colour and the pink coloured chemical solution was preserved in a separate bottle duly sealed. The bottle containing the solution has been marked MO.I. P.W.5 has further deposed that the tainted notes were kept in his left side shirt pocket with an instruction to hand over the notes to the accused only on his specific demand and to give signal by combing his head with his hands and Mr. Seth was instructed to accompany him to overhear the conversation between him and the accused. According to P.W.5, the Inspector Sri Tripathy prepared pre-trap memorandum which has been marked Ext.1 and Ext.1/3 is his signature.

7. No less important is the evidence of P.W.5 that the accompanying witness and he proceeded to the S.B.I. Kanika branch in his motor cycle and reached there at about 11 A.M. and parked his motorcycle near the main gate of the Bank. He has testified that Narahari Seth remained near the counter of the Bank while other trap team members took their respective position outside the Bank and he went to the accused. He has also deposed that seeing him the accused enquired whether he had brought the amount and when he replied in the affirmative, the accused asked him to wait near the main gate of the Branch. His further testimony

is that he came to the main gate followed by Mr. Seth and the accused came towards the main gate and asked him to go towards the left corner of the Bank. His further evidence is that he went towards the left corner of the Bank where the accused asked him to pay money stretching his hand after which he brought out the tainted government currency notes and handed over to the accused who counted the notes and kept in his left side pant pocket. It is the specific evidence of P.W.5 that since the above transaction was going on in the open field, other trap team members were witnessing the transaction. It is the evidence of P.W.5 that when accused P.C.Panigrahi was about to return, Inspector Tripathy challenged the accused to have demanded and accepted money from the complainant following which the accused became silent and refused to have accepted money from the complainant and thereafter constable Sri Palei caught hold of the wrists of the accused and proceeded towards the seat of the accused inside the Branch. He has testified that hand wash of the accused was taken separately by sodium carbonate solution which turned to pink colour and it was preserved in two separate clean glass bottles duly sealed. The bottles containing the solution have been marked M.O.II and III. He has further testified that on the direction of the Inspector Sri Tripathy, the accused brought out the tainted government currency notes from his left side pant pocket and independent witness Raji Jasua compared the numbers of the tainted government currency notes with the numbers of the notes already noted in the pre-trap memorandum which tallied. He has also testified and proved that the tainted government currency notes seized from the accused were kept in an envelope duly sealed as contained in M.O.IV. It is also the evidence of P.W.5 that a lungi was given to the accused for change of the wearing pant and pant pocket wash was taken by sodium carbonate solution which turned to pink in colour and it was preserved in a glass bottle duly sealed.

The bottle containing the solution has been marked M.O.V. He has deposed that the pant of the accused was seized and kept in a packet as contained in M.O.VI. He has further deposed that after observing all the formalities, Inspector Sri Tripathy prepared post-trap memorandum and it has been marked Ext.2 and the accused being arrested by the Inspector Sri Tripathy was taken to Basundhara Guest House.

8. No less attempt has been made by the defence to elicit certain admissions to discredit the evidence of P.W.5 who has stoutly denied a defence suggestion that he had assured the accused to arrange a person to look after his agricultural farm at Balesore for which he had taken an amount of Rs.5000/- from him. He has also denied the defence suggestion that he wrote the complaint to the dictation of Sri Kabi. His further admission in the cross- examination is that the F.I.R did not bear the signature of the S.P. C.B.I. P.W.5 has also denied defence suggestion that the accused came out of his room, asked him to follow him (the accused) and went towards the field. Defence cross- examination has also brought out admission in the evidence of P.W.5 that the accused demanded Rs.5000/- from him asserting that he had sanctioned the loan amount and on 16.11.2010 the first instalment was released and credited to his account. He has also denied defence suggestion that when the accused was urinating in the open field he forcibly inserted the tainted govt. currency notes of Rs.5000/- into his left side pant pocket. He has also denied defence suggestion that the place where the accused was standing was not visible from the hospital. His further admission is that he has not given any pre-arranged signal. It is pertinent to note that P.W.5 has been given a series of suggestions which have been stoutly denied by him. It is common legal proposition that suggestions however strong cannot take the place of proof. Nothing substantial has been

brought out in cross- examination of P.W.5 to discredit his evidence on material aspects of the case. His evidence appears to be quite clear, consistent, convincing, credible and above reproach. In fact P.W.5 has successfully stood the test of cross- examination. In effect his evidence suffers from no inherent, infirmity or improbability. I, therefore, find no cogent reason or ground to doubt the veracity of the complainant. The admissions brought out in cross- examination of P.W.5 are too trivial to discredit the otherwise clear and credible evidence of the complainant. It is common legal proposition that minor discrepancies and contradictions should be allowed to take away the intrinsic worth of the complainant's evidence. In essence, the evidence of the complainant has virtually remained unimpeached and inspires confidence. The evidence of the complainant P.W.5 has received ample corroboration from the testimony of P.W.1 Narahari Seth (decoy witness) P.W.2 Raji Joshua (independent witness) and P.W.8 K.P.Tripathy, Inspector of Police, C.B.I. (trap laying officer) regarding demand, acceptance of illegal gratification of bribe money by the accused and recovery of tainted government currency notes.

9. The next important witness Sri Kora Prasad Tripathy, the then Inspector of Police, C.B.I. Bhubaneswar who happens to be the Trap Laying Officer appearing as P.W.8 has deposed that on 17.11.2010 the S.P.C.B.I. Bhubaneswar basing on the written complaint of Susanta Kumar Nath drew up a formal F.I.R and registered the case and on the direction of the S.P. C.B.I. he took up investigation of this case. The formal F.I.R has been marked Ext.31 and the signature of J.N.Rana, the then S.P.C.B.I. In-charge, Bhubaneswar has been marked Ext.31/1. It is the specific evidence of P.W.8 that he constituted the trap team consisting of B.Ghosal, S.I. of Police C.B.I., J.R. Barik, S.I. of Police, C.B.I., three constables namely P.K.Palai, P.K.Nayak and Jitrai Singh of Rourkela Unit. His

further evidence is that he had requisitioned the service of independent witnesses namely Narahari Seth, Sr. Personal Asst. of G.. MCL Basundhara area and Sri Rajib Joshua, Sr. Officer (Excavation) Kulda OCP, MCL Basundhara. According to P.W.8, he had requested all the witnesses to assemble in the MCL Guest house Basundhara on 18.11.2010 at about 8.45 A.M and had asked the complainant to come with the demanded amount of Rs.5000/-. His evidence reveals that accordingly all the trap team members and witnesses including the complainant assembled in the Guest house at 8.45 A.M. with the demanded amount of Rs.5000/- of 10 numbers of 500 rupee notes. He has also testified that he showed the complaint petition of the complainant to the witnesses and there was interaction between them. His further testimony is that he gave the description of laying the trap and on his instruction constable P.K.Naik treated the government currency notes with phenolphthalein powder and prepared a chemical solution of sodium carbonate and water. It is also the evidence of P.W.8 that the witness Raji Joshua was asked to handle the tainted government currency notes with his hands and accordingly he handled the tainted government currency notes and his hand wash was taken with chemical solution which turned to pink in colour. P.W.8 has also deposed that the solution was preserved in a glass bottle duly sealed, labelled and signed by the witnesses. The bottle containing solution has been marked M.O.I. It is also the evidence of P.W.8 that Sri P.K.Naik kept the tainted government currency notes in the left side shirt pocket of the complainant with an instruction to pay the amount to the accused only on specific demand after ensuring that his pocket was empty before keeping the notes. He has also testified that all the trap team members washed their hands with soap and water. P.W.8 has testified that he had kept Rs.1000/- with him to meet the incidental expenses and other trap team members had no money with them. P.W.8 has categorically deposed that the

witness Narahari Seth was instructed to accompany the complainant to oversee and overhear the conversation between the complainant and the accused. P.W.8 has also testified that he had instructed other witnesses to take their respective positions in the vicinity of the spot and had instructed the complainant to pass pre-arranged signal by rubbing hair of his head with both his hands soon after the transaction was over. According to P.W.8, the complainant was also asked to accompany Narahari Seth in the motor cycle of former and others proceeded to the spot in a vehicle. P.W.8 has specifically deposed that pre-trap memorandum was prepared on the spot and it was read over & explained to the witnesses after which they put their signatures. P.W.8 has proved his signature which has been marked Ext.1/4.

10. The evidence of P.W.8 also discloses that they proceeded from MCL guest house and reached the spot i.e. S.B.I. Kanika Branch at 11 A.M and parked the vehicle which is just opposite to that branch. P.W.8 has also deposed that the complainant parked his motor cycle outside the building of the S.B.I. Kanika Branch and the complainant went inside the Bank closely followed by the witness Narahari Seth. P.W.8's evidence is that the complainant entered the room of the accused which is a cubicle whereas the shadow witness was standing about ten feet away from the seat of the accused. It is the categorical evidence of P.W.8 that the accused asked the complainant to wait outside and accordingly the complainant came out and waited near the entrance gate of the S.B.I. Branch and shadow witness Narahari Seth also returned with the complainant. No less specific is the evidence of P.W.8 that on the instruction of the accused the complainant followed him to the left side of the open field of the Bank compound and the shadow witness Narahari Seth stood at a distance of about three feet from the accused and the complainant.

P.W.8 has categorically alleged in his evidence that the accused asked the complainant whether he had brought the demanded money of Rs.5000/- to which the latter replied in the affirmative. It is the specific allegation of P.W.8 in his evidence that the accused demanded the amount stretching his right hand towards the complainant who brought out the tainted currency notes from his shirt pocket and handed over the amount to the accused who accepted in his right hand, counted the amount with both of his hands and kept in his left side pant pocket. According to P.W.8 the accused assured the complainant to ensure early disbursement of the loan amount which was closely monitored by the witness Narahari Seth and the rest of the trap team members including other witness. P.W.8 has specifically testified that without waiting for the pre-arranged signal, they immediately proceeded to the spot and he disclosed his identity and other witnesses and challenged the accused to have demanded and accepted the bribe money of Rs.5000/- from the complainant following which he became nervous, fumbled and kept mum and two constables caught hold of both the wrists of the accused and took the accused inside the Bank office. P.W.8 has categorically deposed that according to his instruction constable P.K.Nayak prepared chemical solution in a glass tumbler and the accused dipped his right hand fingers inside the glass tumbler which turned pink in colour which was preserved in a glass bottle duly corked, sealed, labelled and signed by the witnesses. The bottle containing the solution has been marked M.O.II. According to P.W.8 similarly left hand wash of the accused was taken in freshly prepared solution which also turned pink in colour and the pink coloured solution preserved in a glass bottle duly sealed, labelled and signed by the witnesses. This bottle has been marked M.O.III. P.W.8 has also specifically testified that he asked the accused to produce the tainted government currency notes after which he brought out the amount from his left side pant

pocket and the witness Raji Joshua compared the serial numbers of tainted government currency notes with the serial numbers of the notes already noted in the pre-trap memorandum which tallied. His evidence further reveals that P.K.Nayak kept the tainted government currency notes in an envelope duly sealed and it has been marked M.O.IV. It is also the categorical evidence of P.W.8 that the pocket wash of the accused was taken in a freshly prepared solution which turned pink in colour. His evidence also reveals that it was kept in another bottle duly sealed, labelled and signed by the witnesses. The said bottle has been marked M.O.V. According to P.W.8 he seized the pant of the accused and kept in an envelope which has been marked M.O.VI. P.W.8 has also testified that he prepared the sketch map of the spot and his signature on the sketch map has been marked Ext.3/4. His evidence further reveals that the specimen impression of the seal with which the exhibits were sealed was taken in a separate sheet of paper. P.W.8 has claimed in his evidence that he prepared the post trap memorandum at the spot which was read over to the witnesses. The signature of P.W.8 in post-trap memorandum has been marked Ext.2/4. According to P.W.8 he has made over the charge of investigation to the Inspector of Police, Manoj Kumar on the direction of the S.P.C.B.I. on 4.12.2010 and he had sent the seized bottles to C.F.S.L. Kolkata for chemical examination and opinion.

11. The evidence of the Trap Laying Officer has been sought to be discredited by way of eliciting certain admissions in the cross- examination. P.W.8 has conceded the defence suggestion that in the preparatory meeting he had instructed the complainant to pass pre-arranged signal after the transaction was over and the complainant was required to come out the Bank and to pass the signal. P.W.8's further admission is that the case diary does not disclose that Rourkela C.B.I. Unit office has issued direction to the

complainant to report to him along with the bribe money for laying the trap and the D.S.P. C.B.I. Mr.Kabi had fixed Basundhara Guest house as the place of preparation for laying the trap. It has also been elicited in his cross- examination that no other officer of C.B.I. was present in the guest house. P.W.8 has denied his knowledge as to if any other official witnesses had left the compound of Basundhara Guest house during the course of preparatory meeting. His further evidence in the cross- examination that the accused had demanded bribe money from the complainant on 16.11.2010 and that he has not ascertained the exact time of demand, the name of the person who were present in the Bank at the relevant time before trap. No less specific is the admission of P.W.8 that the preparation report does not disclose the name of the officer who has dictated the pre-trap memorandum. He has also admitted that the conversation between the complainant and the accused was already over by the time he reached at the spot. P.W.8 has denied a defence suggestion that when the accused was urinating inside the compound of the Bank, the complainant forcibly inserted the tainted government currency notes into his pocket and that the accused has neither demanded nor accepted any money from the complainant. Nothing substantial has been brought in the cross-examination to discredit his evidence on material aspects of the case. His evidence appears to be quite clear, consistent, convincing, credible and above reproach. In fact P.W.8 successfully stood the test of cross- examination. In fact, it suffers from no inherent, infirmity and improbability. He has successfully stood the test of cross- examination. What cannot be lost sight of in this connection is that the admissions brought out by the defence in the cross- examination of P.W.8 are too trivial to affect the essential credibility of the prosecution. In effect the evidence of P.W.8 with regard to demand and acceptance of bribe money has virtually remained unimpeached. The whole exercise by the defence to

discredit the evidence of P.W.8 is futile. It is common legal proposition that the intrinsic worth of the evidence of a witness cannot be allowed to be taken away merely because of certain admissions in the cross-examination which do not strike at the root of the prosecution case. The evidence of P.W.8 with regard to acceptance of bribe money inside the open compound wall of the Bank has not been discredited. It may be that acceptance of bribe money in an open field sounds improbable, but on the face of overwhelming and unimpeached evidence that the accused accepted the bribe money in the open field while urinating has remained unimpeached. In view of the unimpeached evidence of P.W.8 with regard to the allegation of acceptance of bribe money in the open compound wall of the Bank the contention of the learned defence counsel is too tenuous to be tenable. Therefore, the contention of the learned defence counsel that the whole prosecution case is highly improbable hardly carries any legal conviction. The circumstances under which the bribe money has been accepted by the accused should not be allowed to render the whole prosecution case vulnerable. It is interesting to note that there is no fixed procedure, modality or practice that the bribe money will be only accepted by the accused in total seclusion of a room. Instances are not rare when the transaction of demand and acceptance of bribe money has been well carried out quite openly in the full gaze of public at large to the detriment of none. Quite understandably, it is the attitude and the circumstances which finally compelled the accused to accept the bribe money either in an open place or in a closed room. But merely because he has accepted in an open place does not necessarily lead to the conclusion that the entire prosecution case is improbable and unacceptable. This is a circumstance of real consequences which can hardly be brushed aside as in consequential. The admissions

brought out by the defence in the cross- examination are too innocuous to strain the inherent worth of the evidence.

12. The first and foremost argument of the learned defence counsel is that the allegation of demand of bribe made by the accused is wholly improbable in view of the evidence of the complainant that the accused demanded the bribe money for the first time in the open field in presence of many persons. Therefore, it has been pointed out that such an allegation does not stand to reason. But such an argument is wholly contrary to and inconsistent with the evidence on record. P.W.5 Suresh Kumar Nath (complainant) has categorically deposed: "When I came to the branch, P.C. Panigrahi, Field Officer told that loan had been sanctioned and demanded expenditure to the tune of Rs.20,000/-. When I expressed my inability for payment of Rs.20,000/-, P.C. Panigrahi told that Rs.1 lakh had been credited to my saving account and asked me to give him Rs.20,000/- withdrawing from the Savings account. I impressed upon P.C.Panigrahi to tell after discussion with my father. P.C.Panigrahi told to pay Rs.5000/- and balance of Rs.15,000/- within a month, failing which he would cancel the loan. P.C. Panigrahi told to pay Rs.5000/- on 18.11.2010 during morning hours in the bank premises". This piece of evidence of none other than the complainant has not been discredited in the cross- examination by the defence. It is not understandable why, how and under what circumstances the defence has advanced such a contention that the accused made the demand for the first time on the open field in the presence of many persons on the face of overwhelming and unimpeached evidence that demand of bribe money had already been made by the accused from the complainant as already pointed out. Therefore the contention of the learned defence counsel that the demand of bribe by the accused is wholly improbable carries no legal conviction at all. The learned

defence counsel in support of his contention has relied on a decision reported in A.I.R. 1987 S.C. 2402 (G.V.Nanjundiah –v- State (Delhi Administration) wherein it has been held: “When it is found that no demand was made by the accused and the prosecution has given a false story in that regard, the Court will view the allegation of payment of bribe to and recovery of the same from the accused with suspicion”. This decision is not at all applicable to the present case for the simple and obvious reason that the accused had specifically made demand of bribe money from the complainant on 16.11.2010. The argument is not only factually misconceived but also legally unsustainable.

13. The learned defence counsel in course of his submission has pointed out that there was no occasion at all either for demand of bribe by the accused or for promise of payment of the same by the complainant. The defence has relied on the evidence of P.W.6 who is the General Manager of S.B.I. is that the accused had no power to cancel the loan and in case of refusal by the accused, the Branch Manager was competent to release the amount. He has thus argued that the demand allegedly made by the accused becomes suspicious. True it is that and fact remains that the accused had no power to cancel the loan and in case of refusal by the accused, the Branch Manager is competent to release the amount. It is as much inconceivable as unusual that the complainant who is an ordinary business man is expected to know who is the competent officer of the S.B.I. to cancel the loan amount or to release the amount. Therefore, he had no reason to disbelieve that the accused who has convincingly so impressed upon him. In the perspective the contention of the learned defence counsel that the alleged demand of bribe money by the accused becomes suspicious hardly carries any legal conviction. His submission that there was absolutely no occasion for the accused either to demand

bribe or for the complainant to pay for the same is not at all acceptable being far removed from reality. In support of his contention he has relied on a decision reported in AIR 1954 SC 637 (Madan Mohan Singh –v- State of Uttar Pradesh) where it has been held: “A public officer has no right to demand any bribe but when he is hauled up before a criminal court to answer a charge of having taken illegal gratification, the question whether any motive for payment or acceptance at all existed is certainly a relevant and material fact for consideration”. But the learned defence counsel has lost sight of the discernible motive for payment or acceptance of bribe money writ large in the whole prosecution case. Therefore, the cited decision is not applicable to the present case.

14. It has been next contended that there is no evidence in proof of allegation that the amount paid by the complainant to the accused is bribe money. Therefore, another important point for consideration is whether there is evidence of the accused accepting illegal gratification. P.W.5 the complainant in his evidence has deposed that in the open field the accused asked for the money by stretching his right hand and received the same. This evidence has received corroboration from P.W.1, P.W.2 and P.W.8. The learned defence counsel has strenuously pointed out that there is absolutely no evidence that the money which was handed over was the bribe money. In support of his contention he has relied on a decision reported in A.I.R. 1952 Orissa 267 (The State –v- Minaketan Patnaik) where it has been held: “Mere passing of money without proof that it was intended to be accepted as illegal gratification would not be enough to establish the ingredients of the offence under Section 161 I.P.C or Section 5(1)(d) of the P.C.Act, 1947”. It is common knowledge that when any person pays illegal gratification or bribe money to any government official he does it in total secrecy or in seclusion. It appears from the argument of the learned

defence counsel that the complainant would have shouted in the public that he was paying bribe money to the accused. This hardly stands to common sense much less reasoning. There is ample evidence on record to show that the money paid by the complainant was intended to be accepted as illegal gratification. He has also relied on another decision reported in AIR 1960 SC 548 (C.I.Emden –v- State of U.P.) where it has been held : “The use of the word gratification emphasizes that it is not the receipt of any money which justifies the raising of the presumption, something more than the receipt of the money has to be proved. It must be proved that the money was received by way of bribe”. The evidence of the complainant in this connection assumes greater significance. He has categorically alleged in his evidence that the accused demanded an amount of Rs.20,000/- and when he expressed his inability to pay the amount, the accused told that Rs.1 lakh has been credited to his savings account and asked him to give Rs.20,000/- withdrawing from the savings account. His further allegation in the evidence is that the accused P.C. Panigrahi asked the complainant to pay Rs.5000/- and balance amount of Rs.15,000/- within a month failing which he would cancel the loan.

15. The accused had taken a specific plea in his statement u/s. 313 Cr.P.C that on 16.11.2010 while he was on duty inside the office room, the complainant came and told him that the loan has already been sanctioned on 15.11.2010 and on that day the complainant took him to R.C.P.C. Sundargarh as a pillion rider in his motor cycle for creating equitable mortgage. His further plea is that on 16.11.2010 he asked the complainant to sign on the reverse of debit voucher which will be credited to his savings account and then he went to counter where he transferred Rs.50,000/- to some other account and on 18.11.2010 the complainant asked him to come outside and he came out of the Bank and when he was

urinating in the bank compound , the complainant forcibly inserted the amount into his pant pocket. He has also taken another plea that he had acquaintance with the complainant from June, 2010 and he had taken an amount of Rs.5000/- from the accused as advance for arranging labourer and as he asked for the amount, the complainant filed this false case. The complainant has also denied a defence suggestion that he does not know whether the accused belong to Balesore district and that he had assured the accused to arrange a person who would look after his farm at Balesore for which he had taken Rs.5000/- from him.

16. The learned Senior Public Prosecutor while contending that presumption can be drawn against the accused with regard to demand and acceptance of amount as illegal gratification has drawn the attention of this court to a decision reported in Supreme Law Narendra Champaklal Trivedi –v- State of Gujurat where it has been held: “it is also settled in a law that there is a statutory presumption under Section 20 of the Act which can be dislodged by the accused bringing on record some evidence, either direct or circumstantial that money was accepted by other than the motive or reward as stipulated under Section 7 of the Act. It is obligatory on the part of the Court to consider the explanation offered by the accused under Section 20 of the Act and the consideration of the explanation has to be on the anvil of preponderance of probabilities”. True it is that when the ingredients that the accused is a public servant and that he must be shown to have obtained from any person any gratification are proved by the evidence, a rebuttable presumption arises in respect of the third ingredients and in absence of proof of first two ingredients the presumption does not arise. On mere recovery of certain money from the person of the accused without proof of demand or on behalf of such person to whom favour was to be shown the presumption cannot arise.

What is particularly important in this connection is that the prosecution is bound to establish that there was an illegal offer of bribe and acceptance. In the absence of cogent and convincing evidence of demand and acceptance of amount as illegal gratification recovery alone would not be a ground to convict the accused. More importantly, the only condition for drawing the presumption under Section 20 of the Act is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. In this connection reliance can be placed on a decision reported in 2008 SCC- 571 Madhukar Bhaskar Rao Joshi – vrs- State of Maharashtra where it has been held : “ The premise to establish on the facts for drawing the presumption is that there was payment and acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted as motive or reward for doing or forbearing to do any official act.” The learned Public Prosecutor has also drawn attention of this court to the observation of the Hon’ble Supreme Court in the decision Nrendra Champak Lal Trivedi –v- State of Gujaraj (Supra) to the effect that corruption at any level does not deserve either sympathy or leniency. There could be no two opinions that corruption has eaten into the vitals of the social fabrics and has hugely corroded our economy. The decision relied on by the learned Public Prosecutor has clear application to the present case in as much as the prosecution has proved the demand and acceptance of bribe money by cogent and convincing evidence. In other words the evidence of the prosecution witnesses with regard to demand and acceptance of bribe is free from blemish and above reproach. I, therefore, find ample force in the submission of the learned Senior Public Prosecutor.

17. True it is that the standard of proof for the defence is not as rigid and high as in case of the prosecution. But that does

not mean that the defence will rest content only with one witness which does not stand the test of cross- examination. In other words cross- examination by the prosecution has entirely demolished the defence evidence. I have therefore, every reason to believe that the defence has not discharged the onus on it. The argument of the learned defence counsel is that no presumption under Section 20 of the Act is available. In support of his contention he has relied on a decision reported in 2013 (Vol.2) Orissa Law Reviews 308 (Para-9) Antaryami Bihari –v- State of Orissa where it has been held: “When there is no reliable evidence that the appellant demanded money and accepted the same from the complainant, no presumption under Section 20 of P.C.Act is available and benefit of doubt should be extended in favour of the appellant. But in the present case the evidence with regard to demand and acceptance of bribe money has been proved by credible, cogent and convincing evidence. Nothing substantial has been brought out in the cross- examination of the witnesses to discredit their evidence on material aspects of the case. Therefore, their evidence appears to be quite clear, consistent, convincing, credible and above reproach. In effect their evidence suffers from no inherent infirmity and improbability. In the perspective the contention of the learned defence Counsel in this regard is not only legally untenable but also factually misconceived.

18. In the present case the evidence on record has not only proved the demand of bribe money but also its acceptance by the accused. The preponderance of probability does not tilt in favour of the accused in as much as a semblance of attempt which has been made by the defence to prove the plea is abortive. It is common legal proposition that suggestions however strong cannot take the place of proof. The complainant has been given a series of suggestions which have been stoutly denied by him. This plea has also been suggested to the complainant in the cross-examination.

19. It is the next contention of the learned defence counsel that mere recovery of money from the accused does not prove the case. It is manifest from the evidence that the accused produced the tainted money by bringing out of his pant pocket and on comparison the numbers tallied. It is well settled in law that recovery by itself does not prove a charge for an offence under either Section 7 or Section 13(2) read with Section 13(1)(d) of the P.C.Act. In support of his contention he has placed reliance on a decision reported in A.I.R. 2006 SC 836 (T.Subramanian –v- The State of Tamil Nadu) where it has been held: “Mere receipt of money by the appellant will not be sufficient to fasten guilt under Section 5(1)(a) or 5(1)(d) of the Act, in the absence of any evidence of demand and acceptance of the amount as illegal gratification”. He has also relied on another decision reported in (2011) 6 SCC 450 (State of Kerala- v- C.P.Rao) where it has been held: “Mere recovery of tainted money, divorced from the circumstances in which it is paid, is not sufficient to convict the accused when the substantive evidence in the case is not reliable”. As already pointed out there is ample and unimpeached evidence on record as well as circumstantial evidence which is reliable to sustain the allegation of recovery of tainted money. I, therefore, find no force in the above contentions.

20. It is the submission of the learned defence counsel that in this case a presumption under Section 20 of the Act cannot be raised as prosecution has failed to prove the demand beyond reasonable doubt. In support of his contention he has placed reliance on a decision reported in AIR 2006 SC 894 (Om Prakash –v- State of Haryana) where it has been held: “Where demand of bribe not proved, Section 20 of the Act did not apply”. But the overwhelming evidence on record has amply proved the demand

and acceptance of illegal gratification by the accused. Consequently the cited decision hardly supports the defence stand.

21. It is well settled in law that if the reason for receiving the amount is explained and the explanation submitted by the accused is probable and reasonable, then the accused is to be acquitted. The explanation of the accused in the present case is that while he was urinating in the field by the side of the Bank, the complainant forcibly inserted the tainted government currency notes in his left side pant pocket and after urinating when he was about to return, he was nabbed by the C.B.I. team. The accused has explained in his statement u/s. 313Cr.P.C. that on 16.11.2010 while he was on duty inside the office room, the complainant came and told him that the loan has already been sanctioned on 15.11.2010 and on that day the complainant took him to R.C.P.C. Sundargarh as a pillion rider in his motor cycle for creating equitable mortgage. His further plea is that on 16.11.2010 he asked the complainant to sign on the reverse of debit voucher which will be credited to his savings account and then he went to counter where he transferred Rs.50,000/- to some other account and on 18.11.2010 the complainant asked him to come outside and he came out of the Bank and when he was urinating in the bank compound , the complainant forcibly inserted the amount into his pant pocket. He has also taken a plea that he had acquaintance with the complainant from June, 2010 and he had taken an amount of Rs.5000/- as advance for arranging a labourer and as he asked for the amount, the complainant filed this false case. The complainant has also denied a defence suggestion that he does not know whether the accused belong to Balesore district and that he had assured the accused to arrange a person who would look after his farm at Balesore for which he had taken Rs.5000/- from him. But this explanation is not at all acceptable being far from satisfactory.

It is significant to note that if the complainant had really taken an amount of Rs.5000/- from the accused to arrange a labour at Balesore, he would have happily repaid the amount as loan of Rs.5 lakh had already been sanctioned by the competent authority and Rs.1 lakh had already been credited to his savings account. Therefore, quite obviously and understandably this explanation is nothing short of a figment of imagination.

22. It is worthwhile to note that when a trap is laid for a public servant, marked currency notes used for the purpose of trap are treated with phenolphthalein powder, so that handling of such marked currency notes by the public servant can be detected by chemical process and the court does not have to depend upon the oral evidence which is some times of a dubious character for the purpose of deciding the case. Therefore, while considering the evidentiary value of chemical examination report, a presumption of correctness of conclusion arrived at by the chemical analyser is attached to such a report, unless the contrary is proved. The accused has not at all challenged the correctness of the report as contained in Ext. 16 with regard to his hand wash test in chemical solution at the time of trial. Quite obviously, the chemical examination as contained in Ext. 16 unmistakably proves the fact that the hand wash of the accused contained phenolphthalein powder. The scientific test has also clearly established the fact that the accused after handling the currency notes had kept the same in his left side pant pocket. Thus the prosecution has clearly proved that the accused had voluntarily and consciously accepted the tainted currency notes from the complainant.

23. No less striking is the fact that the accused has not at all challenged the correctness of the report as contained in Ext. 16 with regard to his hand wash test in chemical solution in course of

trial. Therefore, the chemical examination report as contained in Ext. 16 unmistakably shows that the hand wash of the accused contained phenolphthalein powder. In fact the scientific test has clearly proved that the accused after handling the Govt. currency notes (tainted money) had kept the same in his left side pant pocket. Thus the prosecution has amply established that the accused has voluntarily and consciously accepted the tainted government currency notes from the complainant. In effect, on the face of the overwhelming evidence coupled with chemical examination report, wash test it has been established that the accused has voluntarily accepted the tainted government currency notes from the complainant. What is all the more significant in this connection is that once the accused accepted the gratification from the complainant it shall be presumed that the accused has accepted the gratification as illegal remuneration. When the accused has failed in his attempt to rebut the legal presumption it shall be presumed unless the contrary is proved that there was demand for taking illegal gratification. Merely because there are certain contradictions and inconsistencies it cannot be said that the prosecution has not proved the guilt of the accused beyond all reasonable doubt. In contrast, the accused has squarely failed to discharge the onus that the money was accepted other than motive or reward. It, therefore, follows as a natural corollary that the contentions advanced by the learned counsel for the defence are wholly legally untenable and the decisions relied on by it hardly support the defence case. On the other hand, the oral as well as documentary evidence of the prosecution coupled with the circumstances leading to trap and recovery of the tainted government currency notes from the accused is a definite pointer to the conclusion that the accused had accepted illegal gratification or bribe money from the complainant.

24. The argument of the learned defence counsel that the evidence of decoy witness is not believable in as much as whereas he has deposed in the examination-in-chief that on 16.11.10 the accused demanded the money in the bank, his evidence in the cross- examination is that the demand was made on his way to home and he did not come to the Bank thereafter. It is common knowledge that in cases of this nature there are bound to be certain inconsistencies and contradictions. I have, therefore, reasoned enough to believe that these inconsistencies and contradictions should not be allowed to strain the essential credibility of the prosecution case on the face of overwhelming and unimpeached oral as well as documentary evidence that the accused has demanded and accepted the bribe money of Rs.5000/-. His further argument is that the trap laid by the Trap Laying Officer in this case is illegitimate. In support of his contention he has relied on the decision reported in AIR 1952 Madras 561 where it has been held: "Where the demand for bribe is not there, it would be a case of illegitimate trap and the persons taking part in the trap would be accomplices, whose evidence would have to be corroborated before a conviction can be had". In the cited decision there was no demand for bribe. But in the present case there is clear, credible, cogent and consistent evidence as to demand of bribe by the accused. Consequently, by no stretch of imagination can it be conceived that it is an illegitimate trap. The contention in this regard is, therefore, rejected being wholly devoid of merit.

25. Yet another material witness for the prosecution is the shadow witness Narahari Seth, the then Sr.Personal Assistant in the office of the General Manager,MCL Basundhara. This important witness appearing as P.W.1 has deposed at Para-2 of his evidence that he followed S.K.Nath towards the counter of the Bank and waited there. He has also testified that the accused was sitting on

the left side of the counter in his office room at a distance of about 5 to 10 feet from the counter. According to P.W.1, S.K.Nath entered the chamber of the accused and conversation between them was audible to him and they were visible to him. His specific testimony is that when the informant met the accused, he was asked to wait near the gate of the Bank and accordingly he came towards the gate of the Bank followed by him. P.W.1 has also testified that after 3 to 4 minutes the accused came towards the gate of the Bank and saw the informant near the gate and asked him to follow. His evidence further reveals that the accused proceeded towards the left side corner of the bank along with the informant and he also followed them. P.W.1 has categorically testified that the accused enquired from the informant whether he had brought money to which the informant answered by nodding his head and the accused stretched his hand and asked the informant to hand over the money. His further testimony is that the accused brought out the tainted currency notes from his shirt pocket and handed over to the accused who counted with both his hands and kept the tainted currency notes inside his left side pant pocket which was being witnessed by the members of the trap party. P.W.1 has specifically alleged in his evidence that the trap party members immediately rushed to the spot seeing the payment and Mr. Tripathy disclosed his identity and of other trap party members and ascertained the identity of the accused who told that he was Purna Chandra Panigrahi, Field Officer-cum- Asst. Manager, Advance, S.B.I. Kanika Branch. According to P.W.1, Mr. Tripathy challenged the accused to have demanded and accepted bribe of Rs.5000/- from the complainant. His evidence further reveals that the accused fumbled and became nervous after which the constable Palai and Jitray Singh caught hold of the wrists of the accused who was brought to the Bank where he was asked to sit on a chair. He has also testified that sodium carbonate solution was prepared and the fingers of the

accused were dipped in the solution separately resulting in change of colour to pink. No less specific is the evidence of P.W.1 that pink coloured solution was preserved separately in two dry and clean bottles wrapped with papers bearing their signatures and were properly sealed. The bottles containing solution have been marked M.O.II and M.O.III. According to P.W.1, on the direction of Mr. Tripathy, accused brought out the tainted currency notes from his left side pant pocket and produced before them. His evidence further reveals that Raji Joshua was asked to compare the numbers of the government currency notes with the numbers of the government currency notes already noted in separate sheet of paper which tallied. According to P.W.1, the tainted government currency notes were seized and kept in an envelope which was sealed bearing their signatures. The envelope has been marked M.O.IV. It also appears in the evidence of P.W.1 that a lungi was collected from a nearby shop and the accused was asked to change his pant. It is also the evidence of P.W.1 that pant pocket wash was taken and tested in the solution resulting in change of colour to pink and sample was preserved in dry and clean bottle which was wrapped with a paper bearing their signatures and was properly seized. The sample bottle has been marked M.O.V and the pant of the accused was seized & kept in a packet which has been marked M.O.VI. It is the categorical evidence of P.W.1 that a post trap memorandum was prepared which was read over and explained to the trap team members who signed on it. The relevant post-trap memorandum has been marked Ext.2 and the signature of P.W.1 has been marked Ext.2/1.

26. The most that has been elicited in the cross-examination of P.W.1 is that the General Manager has not disclosed the purpose for which their service was requisitioned and by the time they reached Basundhara M.C.L. guest house, the trap team

members of C.B.I. was already present there. His further admission is that he did not know the complainant previously. P.W.1 has conceded a defence suggestion that the conversation in the cabin of the accused was not audible to the place where he was standing. He has also denied the defence suggestion that a person standing near the hospital cannot see the place where the accused was standing at the relevant time. He has also denied the defence suggestion that while the accused was urinating in the field, the complainant forcibly kept the tainted government currency notes in his pocket. Nothing substantial has been brought out in cross-examination of P.W.1 to discredit his evidence on material aspects of the case. His evidence appears to be quite clear, consistent, convincing, credible and above reproach and free from blemish. Besides, for lack of anything better P.W.1 has been given a series of suggestions which have been stoutly denied by him. It is common legal proposition that suggestions however strong cannot take the place of proof. P.W.1 has successfully stood the test of cross-examination. In effect, his evidence suffers from no inherent, infirmity or improbability. I, therefore, find no cogent reason or ground to doubt his veracity.

27. The evidence of P.W.2, Raji Joshua who happens to be the independent witness supporting the evidence of P.W.1 has deposed that the informant accompanied the accused towards left side of the Bank which was an open place followed by Narahari Seth (P.W.1). His further evidence is that there was conversation between the accused and the informant. According to P.W.2 the accused enquired from the informant whether he had brought the money and the informant replied in affirmative. P.W.2 has categorically supporting the testimony of P.W.1 has deposed that the accused stretched his right hand and the informant handed over the tainted notes which he had kept inside his pant pocket. P.W.2 has also

corroborated the evidence of P.W.1 has deposed that the accused assured the informant to disburse the loan. He has also supported the evidence of P.W.1 and has deposed that a post trap memorandum was prepared and read over and explained them after which they signed on it. The signature of P.W.2 on post trap memorandum has been marked Ext.2/2. Defence has sought to discredit the evidence of P.W.2 by way of eliciting certain admissions. P.W.2 has admitted that there was no written direction by the General Manager to appear before the C.B.I. Inspector in the M.C.L. guest house, Basundhara. But it is the explanation of P.W.2 in his evidence that on 17.11.10 at about 5.30 P.M. he was orally instructed by the General Manager and was asked to report by 8.45 A.M. on the next day. P.W.2 has denied his knowledge as to how the informant came to that guest house. P.W.2 has categorically asserted in his evidence that he ascertained from the informant that he had scribed the F.I.R. His further admission is that he cannot say the details of the allegation made in the complaint. It has been elicited in the cross- examination of P.W.2 that though there is allegation in the F.I.R that when the informant approached the accused for the work he had demanded bribe , but he does not remember the date when the informant had approached. These admissions are too trivial and inconsequential to discredit the essential credibility of the evidence of independent witness. Nothing substantial has been brought out in cross- examination of P.W.2 to discredit his evidence on material aspects of the case. His evidence appears to be quite clear, consistent, convincing, credible and above reproach. In fact the entire evidence of P.W.2 is wholly unblemished. His evidence does not suffer from no inherent, infirmity or improbability. I, therefore, find no cogent reason or ground to doubt the veracity of the complainant.

28. The evidence of P.W.3 Supul Lugun cannot be just wished away as inconsequential. On the contrary, he is an important witness for prosecution. Sri Supul Lugun, the then Branch Manager, S.B.I. Kanika Branch appearing as P.W.3 has deposed as to the procedure of sanction and disbursement of loan amount. He has categorically deposed that the accused was entrusted with the work of processing the loan application, documentation and also disbursement of the loan. He has proved the seizure of some documents on 18.11.10 and on 11.1.2001 i.e. office order book of SBI Kanika Branch from 1.1.2005 to 10.1.2011 (Ext.9), R.C.P.C. application sending register of S.B.I. Kanika branch from 5.2.09 to 5.1.11 (Ext.10), leave record of accused (Ext.11), debit voucher of loan account of S.K.Nath bearing No.31501245034 (Ext.12), absentee register of S.B.I. Kanika Branch from 1.4.09 to 16.10.10 (Ext.13), statement of account of S.K.Nath (Ext.14) and certified copy of procedure relating to sanction of House Building loan (Ext.15) and prepared seizure lists which have been marked Ext.6 and Ext.8 respectively. Nothing substantial has been brought out in cross-examination of P.W.3 to discredit his evidence on material aspects of the case. His evidence appears to be quite clear, consistent, convincing, credible and above reproach. In fact, he has successfully stood the test of cross-examination. To say the least, his evidence suffers from no inherent, infirmity or improbability. I, therefore, find no cogent reason or ground to doubt his veracity.

29. Most importantly brazen contrivance, palpable subterfuge and tactics resorted to by the defence in a convoluted manner so as to ultimately render the evidence of main witness discrepant and contradictory cannot be lost sight of. Whether the prosecution witness eventually succumbs to it is altogether a different matter. But this practice and tactics have to be nipped in the bud. Be that as it may, defence has been resorting to this at his

own peril. The learned Senior Public Prosecutor submits that cross-examination of the witness by defence after long lapse of time admits of enough opportunity and scope in terms of inconsistencies and contradictions. I am in full agreement with submission of the learned Senior Public Prosecutor. This is undoubtedly a disquieting feature writ large in the way and manner cross-examination has been conducted. It is manifestly obvious from the evidence on record that although the examination-in-chief of P.W.1 was completed on 13.7.2012, the defence declined to cross-examine and again cross-examined the witness on recall on 10.6.2014 almost one year after the examination in-chief. Similarly although the examination in-chief of the witness P.W.5 was over on 10.1.2013 but the defence while declining to cross-examine again cross-examined the witness on recall on 10.6.2014 which is one and half year after the examination in chief. Ordinarily such a contrivance can pass off as a normal adjournment. Understandably, the fact of the matter is that this cross-examination has been conducted by the defence at such a belated stage as a subterfuge to negative the intrinsic worth of the prosecution witnesses. What cannot be lost sight of in this connection is that a witness who was deposed in the examination-in-chief would be obviously at a disadvantageous position to recall and depose in the cross-examination as correctly and meticulously as he could have testified in the examination-in-chief one year back i.e at the first instance. This is a circumstance of real consequence which weighs heavily against the defence. It is common knowledge that a witness or a person tends to forget the details of the facts and circumstances after lapse of more than one year to the positive advantage of the defence and to the detriment of the prosecution. The preponderance of oral as well as documentary and circumstantial evidence points to the irresistible conclusion that the accused Purna Ch. Panigrahi has demanded and accepted illegal gratification of Rs.5000/- from the complainant.

30. In ultimate appraisal of the totality of the evidence on record I am driven to hold that prosecution has proved its case against the accused beyond all reasonable doubt. I, therefore, find the accused guilty of the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the P.C.Act, 1988 and convict him thereunder.

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

Dictated & corrected by me and pronounced in
the open court today i.e. on 28th June, 2014.

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

S E N T E N C E

I heard the learned defence counsel as well as the learned Senior Public Prosecutor for the C.B.I on the point of sentence. While the learned defence counsel submits that the convict should be dealt with leniently because of serious distress in his family, total absence of criminal antecedents or complaint and adverse report against him during his entire service career, the learned Senior Public Prosecutor for the C.B.I, on the other hand, urges that the convict deserves exemplary punishment. However, considering the mitigating factors and extenuating circumstances in favour of the accused, I am of the view that he should be dealt with leniently. Therefore the convict is sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.10,000/- (Rupees Ten Thousand) in default to suffer rigorous imprisonment for one month for the offence under Section 7 of the P.C.Act, 1988 and to undergo rigorous imprisonment for one year and to pay a fine of Rs.15,000/- (Rupees Fifteen Thousand) in default to suffer

rigorous imprisonment for two months for the offence under Section 13(1)(d) read with Section 13(2) of the P.C.Act, 1988 with a direction that both the sentences shall run concurrently.

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 contained in M.Os. I to III, V & pant contained in 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 Appellant Court.

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

Dictated & corrected by me and pronounced in the open court today i.e. on 28th June, 2014.

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

List of witnesses examined for the prosecution.

- P.W.1 Narahari Seth.
- P.W.2. Raji Joshua.
- P.W.3. Supal Lugun.
- P.W.4. Baijayanta Mukhopadhyia.
- P.W.5. Susanta Kumar Nath.
- P.W.6. Bishnuchandra Bajpay.
- P.W.7. Anil Kumar Pradhan.
- P.W.8. Kora Prasad Tripathy.

P.W.9. Manoj Kumar.

List of witnesses examined for the defence.

None.

List of documents admitted for the prosecution.

- Ext. 1 Pre-trap memorandum.
- Ext.1/1. Signature of P.W.1.
- Ext.2. Post-trap memorandum.
- Ext.2/1. Signature of P.W.1.
- Ext.3. Sketch map.
- Ext.3/1. Signature of P.W.1.
- Ext.4. Search list.
- Ext.4/1. Signature of P.W.1.
- Ext.5. Seizure list.
- Ext.5/1. Signature of P.W.1.
- Ext.1/2. Signature of P.W.2.
- Ext.2/2. Signature of P.W.2.
- Ext.3/2. Signature of P.W.2.
- Ext.4/2. Signature of P.W.2.
- Ext.5/2. Signature of P.W.2.
- Ext.6. Seizure list.
- Ext.7. zimanama.
- Ext.8. Seizure list.
- Ext.9. Order book of SBI Kanika branch.
- Ext.10. R.C.P.C. application sending register.
- Ext.11. Leave record of accused.
- Ext.12. Debit voucher.
- Ext.13. Absentee register of SBI Kanika branch.
- Ext.14. Statement of account.
- Ext.15. Certified copy of procedure relating to sanction of House building loan.
- Ext.6/1. Signature of P.W.3.

- Ext.7/1. Signature of P.W.3.
- Ext.8/1. Signature of P.W.3.
- Ext.16. Report of P.W.4.
- Ext.16/1. Signature of P.W.4.
- Ext.17. Written F.I.R.
- Ext.17/1. Signature of P.W.5.
- Ext.1/3, Signature of P.W.5.
- Ext.2/3 Signature of P.W.5.
- Ext.3/3. Signature of P.W.5.
- Ext.18. RCPC sanction letter.
- Ext.19. E.C.
- Ext.20. Easy home loan chart.
- Ext.21. Rent receipt.
- Ext.22. Loan application.
- Ext.23. Pre sanction report.
- Ext.24. Opinion.'
- Ext.25. No due certificate.
- Ext.26. Borrowers declaration.
- Ext.27. Loan document.
- Ext.28. Sanction order.
- Ext.28/1. Signature of P.W.6.
- Ext.29. Photocopy of the rules of SBI Officers.
- Ext.30. Call details.
- Ext.30/1 to Ext.30/3. Signatures of P.W.7.
- Ext.30/4. Forwarding letter.
- Ext.30/5. Signature of P.W.7.
- Ext.31. formal.I.R.
- Ext.31/1. Signature of the then S.P. C.B.I. in-charge.
- Ext.3/4. Signature of P.W.8.
- Ext.2/4 Signature of P.W.8.
- Ext.4/3. Signature of P.W.8.
- Ext.6/2. Signature of P.W.8.

- Ext.8/2. Signature of P.W.9.
- Ext.32. Statement of account.
- Ext.33. Letter of S.B.I. Kanika branch.
- Ext.17/2. Signature of D.K.Kabi.
- Ext.17/3. Signature of P.W.9.

List of documents admitted for the defence.

Nil.

List of M.Os.

- M.O.I Bottle containing hand wash solution of R.Joshua.
- M.O.II Bottle containing hand wash of the accused.
- M.O.III. Bottle containing hand wash of the accused.
- Ext.IV. Envelope containing tainted G.C notes.
- Ext.V. Bottle containing pant pocket wash.
- Ext.VI. Packet containing pant of the accused.

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