

**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. 06 of 2009.
Arising out of R.C. No. 18(A) of 08**

Date of argument	...	23.6.2014.
Date of Judgement	...	25.6.2014.

REPUBLIC OF INDIA

VERSUS

Pramod Kumar Gadanayak, aged about 58 years,
s/o. Late Parsuram Gadanayak, vill. Lampte bahal,
P.S. Brajaranagar, Dist. Jharsuguda.

... Accused.

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

Counsel for the accused. ... Sri P.K.Sahu, Adv.

J U D G M E N T

The accused Pramod Kumar Gadnaik 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. The prosecution case in brief is as follows: The accused was working as Office Superintendent, in the Mines Office of Mines 1 & 2, Orient Area on 8.7.2008. The complainant Ram Saran Kurmi was a Line Mazdoor, of Orient Colliery Mines No. 1 & 2, MCL. The complainant wanted to be transferred from Mines No.1 & 2 to Samaleswari OCP for which he handed over his application to the accused Pramod Kumar Gadanayak. Subsequently when the complainant met the accused and wanted to know about the

position of his transfer application, the latter told the former that his application had been sent to the Head office. It is the specific case of the prosecution that on 5.7.2008 when the complainant met the accused and enquired about his transfer application, the latter asked the former to come alone to his residence situated at B-II, IRC Coloney, Lamty Bahal, Brajrajnagar in the evening. According to the prosecution on the same day in the evening the complainant met the accused in his residence but the latter told the former that Rs.15,000/- would be required for his transfer and when the complainant asked the accused about the expense, the latter told him that Rs.10,000/- would be paid in the Head Office and Rs.5000/- would be spent in Samaleswari OCP. It is the further case of the prosecution that when the complainant expressed his inability for payment of Rs.15,000/- as illegal gratification, the accused told him that his transfer would not be effected and Rs.5000/- was to be paid on 8.7.2008 in his residence at 8 A.M and the balance amount was to be paid on instalments. The complainant who was not willing to pay such a big amount, lodged a written complaint with the Superintendent of Police, C.B.I. Bhubaneswar through the D.S.P. C.B.I. Unit Office, Rourkela on 6.7.2008. On the basis of the above report, the case was registered and the Inspector C.B.I. Rourkela, Sri D.K.Kabi was directed to investigate into the case by laying a trap. The Inspector C.B.I Sri D.K.Kabi procured two official witnesses through official procedures for the purpose of witnessing during trap. On 8.7.2008 at about 06 A.M the C.B.I personnel, two official witnesses namely D.N.Choudhury and T.P.Adhikary assembled at Officers' Rest House, Jharsuguda Railway Station and after sometime the complainant also arrived there. The complainant was introduced to the witnesses and shown the copy of the F.I.R and 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 processing and facilitating his transfer and produced 100 nos. of government currency notes of the fifty rupees each of (Rs.50/-) denomination. The serial numbers of the notes were noted down on a separate piece of paper which was handed over to the witness Trinath Prasad Adhikari for future reference and the G.C notes were treated with phenolphthalein powder and were given to the complainant with an instruction to pay the tainted Government currency notes to the accused only on his specific demand and witness Debendranath Choudhury was asked to accompany the complainant and listen the conversation between the complainant and the accused. According to prosecution, after a chemical demonstration was given, a pre-trap memorandum was prepared and all the witness present signed there. Prosecution case reveals that the complainant and overhearing witness left the Officers' Rest House, Jharsuguda Railway Station in the motor cycle of the complainant for the residence of the accused and parked the vehicle near the gate of the residence of the accused and other team members remained away. The complainant proceeded to the house of the accused, knocked at the grill gate and after sometime the accused opened the grill gate after which the complainant entered the verandah and the overhearing witness was near the grill gate. Thereafter both the accused and complainant sat on chairs lying on that verandah. Prosecution case also shows that the accused asked the informant about the demanded money, to which the informant replied that he had brought the money and handed over the tainted government currency notes to the accused who counted with both his hands and kept them over the table lying near his chair and the accused also asked the complainant to pay the balance amount of Rs.10,000/- within a month on two instalments and assured that his (complainant) work would be done. According to the instruction of the Inspector, CBI, the

informant came out and gave the pre-arranged signal after which the trap team members led by the Inspector, C.B.I. Sri D.K.Kabi rushed to the spot and the Inspector of C.B.I. disclosed his identity and identity of other trap team members and challenged the accused to have demanded and accepted the illegal gratification of Rs.5000/- from the complainant and two constables of CBI caught hold of the wrist of the accused. Thereafter the accused became nervous and fumbled. On the instruction of the Inspector Sri Kabi, the constable P.K.Nayak prepared chemical solution of sodium carbonate and on the direction of the Inspector, the accused dipped his fingers of both the hands in solution separately which turned to pink colour and the pink coloured solution was preserved in two clean glass bottles duly corked, sealed and signed. No less specific is the prosecution case that the tainted government currency notes of Rs.5000/- were on the table by the side of the accused and the witness T.P.Adhikari on the direction of the Inspector. Verified and compared the said notes and found that they tallied. Thereafter those tainted notes were seized and kept in an envelope duly sealed and signed. Inspector D.K.Kabi 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. It is the specific plea of the accused that the complainant had asked him to ensure sanction of P.F. loan but the accused told the complainant that since audit was going on, it will take some time for sanction of the P.F. loan.

4. Points for determination are:

- (i) Whether on or about 8.7.2008 the accused Pramod Kumar Gadanayak , Office Superintendent, Orient Colliery Mine No. 1 & 2 being public servant functioning in the above capacity demanded and accepted Rs. 5000/- from the complainant as illegal gratification other than legal remuneration for processing and facilitating the transfer of the complainant to the Head Quarter of MCL.
- (ii) Whether on or about 8.7.2008 the accused being public servant functioning as Office Superintendent, Orient Colliery Mine No. 1 & 2 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 processing and facilitating the transfer of the complainant to the Head Quarter of MCL.

5. Prosecution in support of its charges against the accused has examined as many as ten witnesses whereas defence has adduced the evidence of only one witness in substantiation of 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. Admittedly the accused Pramod Kumar Gadanayak was working as Office Superintendent, Orient Colliery Mines No. 1 & 2 of MCL. The most important witness for the prosecution is none other than the complainant. This witness appearing P.W.6 has deposed that he had filed an application addressing to the Mines Manager, Mines No.2 for his transfer from Mines No.1 & 2 to Samaleswari OCP and handed over that

application to the accused. He has further deposed that when he asked the accused about his transfer application, the latter replied him that his application had been sent to the Head Office. It is his further evidence that on 5.7.2008 he met the accused and enquired about his application after which the accused asked him to come alone to his residence situated at B-II, IRC Colony, LamtyBahal, Brajaraj Nagar in the evening. His further assertion in the evidence is that he went to the residence of the accused in the evening on the same day and the accused told him that Rs.15,000/- would be necessary for his transfer. The complainant has specifically alleged in his evidence that when he asked the accused about the expense, the accused told that Rs.10,000/- would be paid in the Head Office and Rs.5,000/- would be spent in Samaleswari OCP. He has also deposed that when he expressed his inability for payment of Rs.15,000/- , the accused told that his transfer could not be effected and subsequently the accused told that Rs.5000/- was to be paid on 8.7.2008 in his residence at about 8 A.M and the balance amount was to be paid on instalments. P.W.6 has also testified that as he was not willing to pay the demanded bribe money, he reported the matter in writing in the C.B.I. authorities at Rourkela. The relevant written report has been marked Ext.8 and his signature has been marked Ext.8/1. According to P.W.6, the DSP C.B.I. Rourkela asked him to come to the Railway Station Guest House, Jharsuguda on 8.7.2008 at about 6 A.M. with the demanded amount of Rs.5000/-. His evidence further reveals that on 8.7.2008 he came to the Railway station guest house, Jharsuguda and met Inspector C.B.I. Mr. Kabi who introduced him with all other witnesses. It is the specific testimony of P.W.6 that copy of the FIR was shown to the witnesses and he was asked about the contents of the F.I.R for which he disclosed about the demand of bribe made by the accused for processing his transfer application

and the Inspector Mr. Kabi discussed about the manner in which the trap would be laid and on being asked by the Inspector Mr. Kabi, he produced 100 nos. of government currency notes of 50 rupee denomination each and noted down the serial numbers of the Govt. currency notes in a separate sheet of paper after which the government currency notes were treated with chemical powder. He has also deposed that witness Mr. Adhikari handled the tainted government currency notes after which the hand of Mr. Adhikari was washed with chemical solution which turned pink in colour and the pink coloured chemical solution was preserved in a separate bottle duly corked, sealed, levelled and signed. The bottle containing the solution has been marked M.O.I. P.W.6 has also deposed that Constable Mr. Nayak kept the tainted government currency notes in his right side pant pocket and he was instructed to pay the amount of Rs.5000/- to the accused only on specific demand. It is also the evidence of P.W.6 that he was instructed to pass the pre-arranged signal by way of rubbing his head with the hands and witness Mr. Choudhury was instructed to accompany him to see the transaction of demand and acceptance of money by the accused. According to P.W.6, the Inspector C.B.I. prepared the pre-trap memorandum which is marked Ext.5 and Ext.5/3 is his signature.

7. No less important is the evidence of P.W.6 that the accompanying witness Mr. Choudhury and he proceeded towards the residence of the accused by a motor cycle and reached near the house of the accused. He has testified that he parked his motor cycle near the house of the accused and the witness Mr.Choudhury remained there and other trap team members took their respective positions. He has specifically deposed that he went to the house of the accused and knocked at the grill gate of the accused and after sometime the accused opened the door and he entered the

verandah where he along with the accused sat on chairs. His further evidence is that the accused asked the informant about the demanded money, to which the informant told that he had brought the money which he handed over to the accused who counted with both his hands and kept those on the table lying near his chair and the accused also asked the complainant to pay the balance amount of Rs.10,000/- within a month or two instalments and assured that his (complainant) work would be done. It is also the evidence of P.W.6 that he came out and gave the signal in response to which the trap team members led by the Inspector, C.B.I. Sri D.K.Kabi rushed to the house of the accused and the Inspector of C.B.I. disclosing his identity and of other trap team members, challenged the accused to have demanded and accepted the illegal gratification of Rs.5000/- from the complainant following which the accused became nervous, fumbled and thereafter two constables of CBI caught hold of the wrists of the hands of the accused. He has also testified that on the instruction of the Inspector Sri Kabi, the constable P.K.Nayak prepared solution of sodium carbonate and the accused dipped the fingers of his both the hands in solution separately which turned to pink colour and it was preserved in two separate clean glass bottles duly corked, sealed, labelled and signed. The bottles containing the solution have been marked M.O.II and III. According to P.W.6 as the tainted government currency notes of Rs.5000/- were on the table by the side of the accused, on the direction of the I.O. the witness T.P.Adhikari checked and compared notes with the serial numbers of government currency notes already mentioned in a separate sheet which tallied. He has also deposed that the tainted currency notes which were seized and kept in an envelope duly sealed and signed have been marked M.O.IV. He has further deposed and proved that after observing all the formalities, Inspector D.K.Kabi prepared post-

trap memorandum as contained in Ext. 7 and his signature has been marked Ext.7/3. The evidence of the complainant has been sought to be discredited by way of eliciting certain admissions. The complainant P.W.6 has admitted that he has no knowledge about the procedure of transfer of the Line Mazdoor. His further admission is that an application for transfer is to be given to Narendra who is the P.A to Manager. No less candid is his admission that he has gone to Provident Fund Office many times in connection with Provident Fund account and he used to meet Sri Gadanayak at that time. It has been also elicited in the cross- examination of P.W.6 that he used to approach Gadanayak, P.F clerk in connection with any Provident fund matter. It is also his admission that he does not remember the exact date when he had given his application to the Manager through Sri Gadanayak. The complainant has also admitted that he has not made any complaint before any higher authority about the position and status of his application before filing complaint with the C.B.I and that he has also not informed any officer about the demand of illegal gratification by the accused. Merely because the complainant has not reported this matter to the higher authority of the accused could not be a discrediting factor to the extent of throwing his entire evidence overboard. The complainant 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. The decoy witness P.W.6 has successfully stood the test of cross-examination. The most that has been elicited in the cross-examination of P.W.6 is the previous enmity between the accused and the informant. But P.W.6 denied a defence suggestion that he had enmity with the accused because he had not forwarded the application for provident fund loan and that he has filed this false case because of previous enmity and for not taking any action on

his provident fund application. He has also denied a defence suggestion that since the application of complainant was not acted upon by the authority in view of the previous enmity he has filed this false case. The defence through the evidence of D.W.1 has also sought to prove the previous enmity. It is important to note that the enmity is a double edged weapon which as often constitutes the complainant's motive for false implication as often the ground of the defence to escape from criminal liability on that score. Nothing substantial has been brought out in the cross- examination of P.W.6 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, his evidence does not suffer from any inherent, infirmity and improbability. I, therefore, find no cogent reason or ground to doubt the veracity of the complainant.

8. The evidence of P.W.1 Smt. Sikha Chatterje, Sr. Personal Officer, MCL clearly shows the nature of work of the accused. This material witness appearing as PW.1 has deposed that the accused was the office Superintendent of Mines No1 & 2 from July,2007 and the superintendent is to supervise the administration of the establishment and administrative matters of all clerks. Her further evidence is that works relating to the establishment and administration of Mines are to be routed through despatch and receive section. She has also testified that if a worker wants to go from one area to another, he has to file an application to the controlling officer through despatch and receive section. It is the specific evidence of P.W.1 that the informant RamaSaran Kurmi was working as Line Mazdoor from 1986 and Manager Mines No.1 & 2 are the Controlling Officer of Sri Kurmi. Narendra Pradhan, the then Clerk of Orient Mines No.1 & 2 Jharsuguda appearing as P.W.2 has deposed that on 13.7.2007 transfer application of RamaSaran Kurmi

was presented by P.K.Gadnayak, Office Superintendent for despatch. P.W.2 has also deposed that he sent the above application in dak book to Manager Mines No.1 & 2 and after signature of Manager, the application was received by him. His specific evidence is that after making necessary entry in the despatch register, the accused P.K. Gadanayak asked him to hand over the Dak, but he refused to hand over the charge to him since entry has been made in the register. It is the testimony of P.W.2 that he had handed over the Dak finally as per the telephonic call from Sri Usmani, Union leader. The evidence of other witnesses of the prosecution shows that the informant has handed over his transfer application to the accused who in turn, had handed over the same to P.W.2 Narendra Pradhan, Clerk of the Despatch & Receive section and subsequently had taken the same according to the telephonic instruction of Union leader Mr. Usmani. It is, therefore, manifestly obvious that the accused in his capacity as office Superintendent of Orient Mines No.1 & 2 had control over the all ministerial staff working under him including P.W.2 Narendra Pradhan who was working as Clerk, Orient Mines 1 & 2 in despatch and receive section. It therefore follows a natural corollary that the accused had the scope, opportunity and occasion to show favour to the accused in official work. What is particularly significant in this connection is that in the capacity of a public servant to show favour to the complainant simply cannot be allowed to discredit the prosecution case. The evidence of D.W.1 Sri Kulamani Das should not be allowed to strain the credibility of the prosecution evidence in view of his clean admission in the cross-examination that he does not know the post of the accused where he was working. It is, therefore, abundantly clear that when the witness does not know the designation or the official capacity of the person concerned, he cannot say whether the accused has the capacity to favour the

complainant. Nothing substantial has been brought in the cross-examination to discredit her evidence on material aspects of the case. Her evidence appears to be quite clear, consistent, convincing, credible and above reproach. In fact P.W.1 successfully stood the test of cross-examination. In fact, his evidence suffers from no inherent, infirmity and improbability. I, therefore, find no cogent reason or ground to doubt the veracity of P.W.1.

9. No less important is the shadow witness Debendranath Choudhury, the then Jr. Telecom Officer, Jharsuguda Telecom Office. This material witness appearing as P.W.3 has deposed that on the order of his superior authority he had reported before the Inspector D.K.Kabi in Jharsuguda Railway Officers' Guest house at 6 A.M. According to P.W.3, S.D.O. T.P. Adhikari had accompanied him to that Guest house. His further evidence is that C.B.I. Officers Mr. Kabi, S.B.Mishra Inspector, constables P.K.Nayak, P.K.Palai, & T.K.Dutta and Ram Saran Kurmi (informant) were present there. According to P.W.3, the informant was introduced to all of them and they were informed that the complainant was working as Majdoor in Orient Mines, MCL, Brajarajnagar and he had applied for transfer to Samaleswari open cast mines. It is the specific allegation of P.W.3 in his evidence that he had approached the accused who was working as a clerk in Orient Mines, MCL in the matter who demanded bribe of Rs.5000/- for processing the file. P.W.3 has also testified that they ascertained from the informant about the allegation made in the F.I.R.. P.W.3 has also deposed that the informant disclosed that the accused had demanded total Rs.15,000/- and had asked him to pay Rs.5000/- at the first instance. His evidence further reveals that the informant produced 50 numbers of notes of 100 rupee denomination which he had brought for making payment to the accused. According to P.W.3 the serial numbers of the notes were noted in a separate piece of paper under Ext.4. P.W.3 has claimed in

his evidence that Ext.4/1 is his signature. His specific evidence is that Mr. Adhikari kept the papers to compare the numbers in future and according to the instruction of Mr. Kabi, a chemical demonstration was given to show the use and effect of phenolphthalein powder with sodium carbonate and the government currency notes were treated with phenolphthalein powder. No less specific is the evidence of P.W.3 that Mr. Adhikari handled the tainted currency notes and his hand wash was taken & tested in solution which changed to pink colour. He has also testified that sample was taken in a dry clean bottle and was properly sealed by affixing a paper containing the signature of the trap party members and the sample bottle has been marked M.O.I. According to P.W.3, the constable P.K.Naik kept the tainted currency notes in the right side pant pocket of the informant and instructed him to hand over the tainted notes to the accused only on demand. It is further evidence of P.W.3 that the trap party members washed their hands in soap water and their personal search was taken after which no one was allowed to carry anything except Mr. Kabi carrying Rs.500/- to meet the incidental expenses. According to P.W.3 the informant was asked to give signal by combing his head with his hands and he was asked to accompany the informant and was instructed to oversee and over hear the transaction between the informant and the accused. The pre-trap memorandum was prepared and the witnesses signed on it after going through its contents. The above pre-trap memorandum has been marked Ext.5 and the signature of P.W.3 has been marked Ext.5/1. It is also the evidence of P.W.3 that at about 7.5 A.M they proceeded towards Brajarajnagar where the accused was residing in a quarters. According to P.W.3, he accompanied the informant in a motor cycle and others proceeded in a vehicle. P.W.3 also testified that he parked the motor cycle at a little distance from the residence of the

accused and the informant proceeded on foot to the residence of the accused followed by him (P.W.3). No less specific is the evidence of P.W.3 that the informant knocked at the door of the accused who opened the door after sometime and the accused sat on a chair lying in the enclosed verandah of his house. His evidence further reveals that the informant entered that enclosed verandah and sat on a chair and the informant enquired about the processing of his file relating to transfer. He has also testified that the accused enquired about the demanded money and the informant told that he had brought the amount and handed over the tainted government currency notes to the accused who counted with his both hands and kept them on the table which was lying near his chair. According to P.W.3 there was some talk between the accused and the informant in course of which the former asked the latter to arrange the balance amount of Rs.10,000/-. It is also the evidence of P.W.3 that the informant came out and gave the pre-arranged signal after which other members of the trap party immediately rushed to the residence of the accused where the Inspector Sri Kabi disclosed his identity and ascertained the identity of the accused who told that he was Pramod Kumar Gadnaik, Clerk Grade-I, Orient Mines, MCL. P.W.3 has categorically deposed that Inspector Sri Kabi challenged the accused to have demanded and accepted bribe money of Rs.5000/- from the informant upon which the accused fumbled. It is the specific evidence of P.W.3 that constable P.K.Naik caught hold of the wrists of the accused, sodium carbonate solution was prepared and the fingers of both the hands of the accused were dipped separately in the solution which changed to pink colour and samples were preserved separately in two bottles which were properly sealed affixing a paper bearing signatures of the trap party members. The sample bottles have been marked M.O.II and M.O.III. According to P.W.3, when the inspector enquired about the bribe

money, the accused pointed at the table where the notes were kept. The evidence of P.W.3 also reveals that Mr.Adhikari was asked to verify and compare the numbers of the notes which tallied with the serial numbers already noted in separate paper. According to P.W.3 the currency notes were seized and kept in an envelope which was duly sealed. The envelope containing the tainted currency notes has been marked MO.IV and the sketch map which was prepared has been marked Ext.6 and the signature of P.W.3 has been marked Ext.6/1. P.W.3 has also specifically deposed that the post trap memorandum was prepared and the contents were read over to the witnesses and trap party members. The relevant post-trap memorandum has been marked Ext.7 and the signature of P.W.3 has been marked Ext.7/1. P.W.3 has successfully stood the test of cross-examination. Nothing substantial has been brought in the cross-examination to discredit his evidence on material aspects of the case. Thus his evidence appears to be quite clear, consistent, convincing, credible and above reproach. In fact, his evidence suffers from no inherent, infirmity and improbability. In effect, his evidence has virtually remained unimpeached.

10. Besides, another material and independent witness is P.W.4 Trinath Prasad Adhikari, the then S.D.O. Phones, B.S.N.L. Jharsuguda. The evidence of P.W.3 has received ample corroboration from the independent witness. It is the specific evidence of P.W.4 that he collected the tainted government currency notes and compared the serial numbers with the serial numbers already noted in separate sheet which tallied. According to P.W.4 those government currency notes were kept in an envelope vide M.O.I. The post trap memorandum has been marked Ext.7 and Ext.7/2 is the signature of P.W.4. The evidence of this independent witness is sought to be discredited by way of eliciting certain admissions.

P.W.4 has admitted in his cross- examination that although he had received the written order to report before the Inspector, it was not available in the case record. His further admission is that he first met Inspector Kabi and no other trap party member was present when Inspector Mr.Kabi discussed about the manner of laying trap. P.W.4 has claimed in his evidence that he knew about the contents of the F.I.R from the Inspector Mr.Kabi before arrival of the complainant at that place and Mr. Choudhury was present by his side when Mr.Kabi was telling about the allegations of the complainant. His further admission is that he has no knowledge about the exact time taken for noting down the numbers and who had prepared the pre-trap memorandum and who wrote on the paper which was wrapped on M.O.I. His further admission is that there is no mention in the memorandum that the accused had asked the informant to pay the balance amount within a month. It is the admission of P.W.4 that he has no knowledge as to what was the conversation between the informant and the accused on that verandah. No less clear is his admission that he has no knowledge as to who prepared the post-trap memorandum and who wrote on the paper which were wrapped on the sample bottles. P.W.4 has denied the defence suggestion that the pre-trap and post-trap memorandum had been prepared in the C.B.I. office, Rourkela and their signatures had been procured there. He has also denied the defence suggestion that the accused has never demanded and accepted illegal gratification of Rs.5000/- from the informant and the informant had taken loan from the Provident fund and had gone to deposit the amount and that this case has been foisted at the instance of C.B.I. These are two trivial in nature to discredit the intrinsic worth of his evidence. P.W.4 has successfully stood the test of cross- examination. Nothing substantial has been brought out to discredit his evidence on material aspects of the case. His evidence

is quite clear, consisting, convincing, credible and above reproach. In fact his evidence suffers from any inherent, infirmity or improbability. I, therefore, find no cogent reason or ground to doubt his veracity. In fact, his evidence has virtually remained unimpeached.

11. The evidence of the complainant P.W.6 has also received sufficient corroboration from another important witness Inspector of Police, C.B.I. Subhransu Bhusan Mishra, P.W.7 who is one of the trap team members and was also present on the spot. The Trap Laying Officer, Sri D.K.Kabi, Inspector of Police, C.B.I is since dead. P.W.7 has deposed that after registration of the case it was entrusted to Sri D.K.Kabi, Inspector (C.B.I) for investigation and to lay the trap on the accused P.K.Gadanaya, Office Superintendent, Mines No.1 & 2, Orient Area while demanding and accepting bribe amount of Rs.5000/- from the complainant. He has further deposed that the Inspector D.K.Kabi, two constables and he reached the Officers' Rest House of Jharsuguda Railway station on 8.7.2008. He has further deposed that D.B.Choudhury, J.T.O. Jharsuguda (P.W.3), T.P.Adhikari, S.D.O BSNL Jharsuguda (P.W.4) and the complainant (P.W.6) arrived there. According to P.W.7, the complaint petition was shown to the trap team members and decided to lay the trap of the accused who was then working as Clerk, Mine No.1, Orient Colliery, MCL as the accused had demanded Rs.15,000/- from the complainant for ensuring the transfer of the complainant and demanded Rs.5000/- at the first instance on 8.7.2008 at his residence . It is the specific evidence of P.W.7 that Inspector D.K.Kabi gave out in detail the procedure of laying the trap on the accused and asked the complainant to produce the bribe money. He has also deposed that the complainant produced Rs.5000/- of one hundred numbers of

government currency notes of fifty rupee denomination. It is the testimony of P.W.7 that one of the witnesses recorded the serial numbers of the government currency notes in a separate sheet of paper contained in Ext.4 which was signed by all the members of the trap team. It is the further testimony of P.W.7 that the government currency notes of Rs.5000/- were treated with phenolphthalein powder and witness T.P.Adhikary was asked to handle the currency notes. P.W.7 has testified that the constable P.K.Nayak prepared a chemical solution of sodium carbonate after which T.P.Adhikary dipped his fingers with the solution which turned pink in colour and it was preserved in a clean bottle duly corked, sealed, labelled and signed by all. The bottle containing pink coloured solution has been marked M.O.I. He has further testified that the tainted government currency notes were kept in the right side pant pocket of the complainant with an instruction to pay the amount to the accused only on his specific demand. He has deposed and proved that the pre-trap memorandum which was prepared and signed by all the members of the trap team as contained in Ext.5 and Ext.5/4 is his signature on pre-trap memorandum and Ext.4/4 is his signature in the separate sheet of paper in which serial numbers of tainted notes were mentioned. P.W.7 has also testified that the complainant and the witness D.N.Choudhury proceeded to the residence of the accused in a motor cycle and other trap team members went there in a vehicle, reached at 7.50 A.M. and took their position. It is the evidence of P.W.7 that the complainant and accompanying witness knocked at the door of the accused who opened the door after sometime and at about 8.30 A.M the complainant came out of the house of the accused and passed pre-arranged signal by rubbing his head with his both hands after which D.K.Kabi, other trap team members, witness and he rushed to the room of the accused. It is the specific

evidence of P.W.7 that when the Inspector D.K.Kabi challenged the accused to have demanded and accepted illegal gratification of Rs.5000/- from the complainant, the accused kept quiet and the constables P.K.Nayak & T.K.Dutta caught hold of both the hands of the accused. It is further specific evidence of P.W.7 that both the hands of the accused were washed with the solution of sodium carbonate which turned to pink colour and it was preserved in two separate bottles duly corked, sealed labelled and signed which have been marked M.O.II and III. He has further deposed that Inspector D.K.Kabi recovered the tainted Government currency notes and asked the accused to produce the bribe money accepted from the complainant and the former showed that the amount was kept on his table. He has also testified that on the direction of the Inspector D.K.Kabi T.P.Adhikary matched and compared the serial numbers recovered tainted notes with the number of notes mentioned in a separate sheet of paper which tallied. His further evidence is that the recovered tainted Government currency notes were kept in an envelope which has been marked M.O.IV. He has deposed and proved that the Inspector D.K.Kabi prepared the post trap memorandum which has been marked Ext.7 and Ext.7/4 is his signature. Nothing substantial has been brought out in the cross-examination of P.W.7 to discredit his evidence on material aspects of the case. His evidence appears to be quite clear, consistent, convincing, credible and above reproach. His evidence suffers from no inherent, infirmity and improbability. In fact P.W.7 successfully stood the test of cross- examination. P.W.7 denied a defence suggestion that no pre-trap proceeding and post-trap proceeding were prepared and that all the documents such as pre-trap proceeding and post-trap proceedings have been prepared in the office of C.BI. It is to be noted that for lack of anything better P.W.7 has been simply given a series of suggestions which have been

stoutly denied by him. In effect, the evidence of this important witness has virtually remained unimpeached.

12. The first and most important submission of the learned defence counsel is that since the accused had no competency to process and facilitate the transfer of the complainant, the whole evidence is liable to be jettisoned. The only evidence in this connection relied on by the defence is of P.W.6. His specific evidence is that he used to approach Mr. Gadanayak, Provident Fund Clerk in connection with the Provident Fund matters and he was only working in the Provident Fund office. It has been pointed out that the allegation against the accused that he was functioning as Office Superintendent and was looking after the administration and establishment matter is not true but he was simply functioning as Clerk in the office of Provident Fund and was looking after the provident fund matters. His contention, in substance, is that the accused had no role to play or had got nothing to do with the transfer matter. It has been argued in course of submissions by the learned defence counsel that in view of the categorical evidence of the prosecution witnesses that the accused had no competency to process or facilitate the transfer of the informant, the whole evidence carries no legal conviction. The learned Sr. Public Prosecutor on the other hand, while refuting the above contentions has urged that incompetency on the part of the accused to process and facilitate the transfer of the complainant is legally untenable in as much as the essence of the offence in this regard is that the accused had made him believe that he would process and facilitate his transfer. In support of his contention he has placed reliance on a decision reported in AIR 1962 S.C. 195 (Dhaneswar – Vrs- Delhi Administration) where it has been held: "It is not necessary that public servant in question while misconducting himself should have

done so in discharge of his duty. It would be anomalous to say that a public servant has misconducted himself in the discharge of his duty. It is not necessary to constitute the offence that the public servant had done something in connection with his own duty and thereby obtained any valuable thing and pecuniary advantage. It is equally wrong to say that if a public servant were to take money from a third person, by corrupt or illegal means or otherwise abusing his official position, in order to corrupt some other public servant, without there being any question of his misconducting himself in the discharge of his duty, he has not committed an offence under Section 5(1)(d). It is also erroneous to hold that the essence of offence under Section 5(2) read with Sec. 5(1)(d) is that the public servant should do something in discharge of his own duty and thereby obtain a valuable thing or pecuniary advantage. It is well settled in law that action of a public servant gaining pecuniary advantage need not necessarily be connected with the performance of his official duty. Even if the public servant obtained some pecuniary advantage for himself by abusing his position as public servant he would come within the clutches of law. Therefore, in receiving the money from the complainant on the assurance that he would process and facilitate his transfer is clearly abuse of his position as office Superintendent”.

13. The next important defence argument is that the whole prosecution case is legally unsustainable in the conspicuous absence of the evidence of trap laying officer, Inspector D.K.Kabi. True it is that trap laying officer is an important witness for the prosecution. But other C.B.I. officials and independent witnesses have proved documents and materials which the trap laying officer would have proved had he been alive. Therefore non-examination of trap laying officer cannot be treated as fatal to the prosecution. It is

significant to note that in a case of bribery unimpeached evidence of the complainant and other witnesses is sufficient to sustain the prosecution case, even if the evidence of trap laying officer is not available to be acceptable. In this connection reliance can be placed on a decision reported in 1984 (SC) 1453 (State of U.P.- v- Dr. O.K.Ghosh) it has been held : “In case of offence of demanding and accepting illegal gratification depending upon circumstances of the case, the Court may feel safe in accepting the prosecution version on the basis of the oral evidence of the complainant and the Police officer, even if the trap witnesses are declared hostile or are found not to be independent. Besides such evidence there is circumstantial evidence which is consistent with the guilt of the accused and not consistent with innocence there should be no difficulty in upholding the prosecution case”. No less importance is the fact that every acceptance of illegal gratification whether preceded by demand or not would be covered by Section 7 of the Act. But if acceptance of an illegal gratification is in pursuance of demand by the public servant then it would also fall under Section 13 (1)(d) of the Act. It is equally important to note that though onus lies on the accused is not the same as that of the prosecution but the presumption which is obligatory under Section 7 of the P.C.Act is rebuttable not by mere explanation which seems to be plausible as is held by the Hon’ble Supreme Court in the case of T.Sankar Prasad- vrs- State of A.P. (2004-26 OCR (SC) 599).

14. It is the specific defence plea of the accused in his statement u/s. 313 Cr.P.C that the complainant had asked him to ensure sanction of Provident Fund loan but the former told the latter that since audit was going on it will take time for sanction of Provide Fund loan. Sri Kulamani Das appearing as D.W.1 has deposed that when he joined in M.C.L in the year 1984, the accused

P.K.Gadanayak was serving there. According to D.W.1 he was attendance clerk in Mines No.2 and his duty was to take the attendance of the workers in the register. His evidence further reveals that the informant Ram Saran Kurmi was also a line mazdoor at the relevant time and used to attendance before him. D.W.1 assertion in his evidence is that the accused was then working as a clerk in P.F. section. D.W.1 has specifically alleged in his evidence that the informant often used to remain absent from duty and was not at all sincere in his work. It is the specific evidence of D.W.1 that the informant filed an application to the Manager for availing leave for six months and requested the accused to clear up the matter. D.W.1 has also testified that the accused explained that he cannot help him in the matter as it was beyond his competence and jurisdiction. His further allegation in the evidence is that the informant abused the accused following by a tussle and on the intervention of the colleague the matter was resolved. D.W.1 has taken a plea in his evidence that the informant had submitted the application to the Manager complaining that the accused was demanding money from him. D.W.1 has explained in his evidence that there was no adverse report against the accused by higher authority whereas the informant had been warned several times for his negligence in duty and absence from work and the informant had no good relationship with other colleague. According to D.W.1 although he was residing in the house opposite to the house of the accused he had neither seen nor heard about any raid conducted by the C.B.I in the house of the accused. It is also the evidence of D.W.1 that it is the Manager and the General Manager who effect the transfer of the employees of line mazdoor and that the accused has got nothing to do with the transfer of mazdoors. It is also the evidence of D.W.1 that the accused often used to threaten the other workers. It has been materially elicited in the

cross- examination of D.W.1 that he does not find in the court the application filed by the informant seeking leave for six months. No less candid is his admission that he does not remember in which capacity the accused P.K.Gadanayak was serving in the month of July, 2007. His further admission reveals that he had not complained before his higher authority regarding the altercation between the accused and the complainant. D.W.1 has also admitted that he does not exactly remember the period during which the complainant had remained absent from his duty.

15. What cannot be lost sight of in this connection is that the evidence regarding the proof of the trap laying officer, Inspector C.B.I. D.K.Kabi who is since dead, has been well taken care of by the Inspector C.B.I. Shri Subhransu Bhusan Mishra (P.W.7). In fact presumption of law as contemplated under Section 4 of the Act is same as the legal presumption provided under Section 20(1) of the Prevention of Corruption Act. Section 4 of the Act enjoins that upon proof of certain premise it should be presumed unless the contrary is proved that he accepted the illegal gratification as a motive or reward. If the primary condition specified in the sub-section has been satisfied by the prosecution the Court is legally bound to proceed on the footing that the public servant (accused) has accepted the gratification as a motive or reward for doing any official work in exercise of official function. The burden stands shifted to the accused to prove the contrary. But such shifting would not be necessary until prosecution proves that the accused has accepted the gratification. It is manifestly obvious from the evidence on record that the plea or explanation offered by the accused has virtually remained unestablished. Not only that, the plea or explanation by the accused is not found to be probable, reasonable or acceptable. Besides, the accused has squarely failed

to prove his defence by preponderance of probability. Consequently the contentions raised by the learned defence counsel are wholly legally untenable. There could be no gainsaying the fact that the tainted government currency notes were recovered from the table of the accused. In other words there is overwhelming evidence on record to prove that the tainted government currency notes have been recovered from the conscious possession of the accused. It is pertinent to note that when 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 wholly depend upon the oral evidence which is sometimes of dubious character for the purpose of deciding the case. Therefore, while considering the evidentiary value of the chemical examination report a presumption of correctness of conclusion arrived at by chemical analyser is attached to such report, unless the contrary is proved. What cannot be lost sight of in this connection is the fact that the accused has not at all challenged the correctness of the report as contained in Ext.10 with regard to his hand wash test in chemical solution at the time of trial. Quite obviously, the chemical examination report as contained in Ext.10 unmistakably proves that the hand wash of the accused contained phenolphthalein powder. The scientific test has, thus clearly established that the accused had voluntarily and consciously accepted the tainted government currency notes from the complainant. Quite obviously, the explanations offered by the accused under Section 313 Cr.P.C and the evidence of D.W.1 are not acceptable. Reliance can also be placed in this connection on another decision reported in (2007) 36 OCR (SC) 47 B.Noha –v- State of Kerla and Another where it has been held: “When it was proved that there was voluntary and conscious acceptance of

money no further burden was cast on the prosecution to prove by direct evidence demand or motive. But in the present case the prosecution stands reinforced by unimpeached direct evidence.

16. Fact remains that the accused does not dispute the recovery of tainted government currency notes. I have already discussed at length the evidence of the prosecution witnesses. Their evidence cannot be wished away or discarded merely because there are certain inconsistencies or infirmities. It is striking to note the accused has not challenged the correctness of the report as contained in Ext.10 with regard to his hand wash test in chemical solution in course of trial. In effect, on the fact of the overwhelming evidence coupled with chemical examination report, hand wash test it has been established that the accused voluntarily accepted the tainted government currency notes from the complainant. What is all the more striking in this connection is that once the accused accepted the gratification from the complainant it shall be presumed that the accused has accepted gratification as illegal remuneration. When the accused has failed in his attempt to rebut the presumption it shall be presumed unless the contrary is proved that there was demand for taking illegal gratification. Merely because there are certain contradictions, inconsistencies and infirmities, it cannot be said that the prosecution has not proved the guilt of the accused beyond all reasonable doubt. In contrast, the accused has signally failed to discharge the onus that the money was accepted other than motive or reward.

17. It is just admitted position that the accused had promised the complainant to ensure sanction of Provident Fund loan after the audit work was over. This background fact is quite suggestive of the accused implicit demand of illegal gratification.

According to the defence neither there was demand of bribe nor there acceptance. C.B.I. officer entered into the verandah of the accused and challenged to have received the bribe amount of Rs.5000/- which was on the table by the side of the accused. Importantly, reliance can be placed in a decision reported in the case of Palalal-v- State of Maharashtra, A.I.R 1979 (SC) where it has been held : "There could be no doubt that the evidence of complainant in a trap case should be corroborated in material particulars".

18. The learned Senior Public Prosecutor appearing for the C.B.I. has submitted that the pre-trap memorandum Ext.5 which was not disputed by the accused and corresponds to notes produced in the court has concretized the case of the prosecution and that it can be conclusively inferred from all these materials coupled with the evidence of the independent witnesses that the accused demanded and accepted the same which was not his legal remuneration. Therefore, a presumption can be drawn against the accused that he has accepted illegal gratification from the complainant. The learned defence counsel on the other hand refuting the above contentions has urged that demand of illegal gratification being sine-quantum for constitution of offence under the Act and for the failure of the prosecution to establish the same in the presence the accused is entitled to an acquittal. Law is well settled that in a trap case the evidence of decoy has to satisfy a double test. The evidence must be reliable and if this test satisfied, it must be sufficiently corroborated. Since the evidence of the complainant is quite trustworthy supported by other witnesses, it inspires confidence and hence cannot be discarded.

19. It is common knowledge that where a trap is laid on a public servant that marked currency notes which are used for the purpose of trap are treated with phenolphthalein powder so that handling of such mark currency notes by the public servant can be detected by chemical process. The prosecution has placed reliance on the hand wash of the accused. It is common legal proposition that this alone cannot be sufficient to hold a person guilty of acceptance of bribe.

20. 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 Gujarat 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 alone 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 Gujarat (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 in to the vitals of the special 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.

21. 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 with only 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 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.

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. 26 with regard to his hand wash test in chemical solution at the time of trial. Quite obviously, the chemical examination as contained in Ext. 26 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 on the table of his verandah. 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. 10 with regard to his hand wash test in chemical solution in course of trial. Therefore, the chemical examination report as contained in Ext. 10 unmistakably proves 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 on the table which was lying by the side of the accused. 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 striking 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 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. Importantly, to see these things other way round, had the accused not been the Superintendent of the office, it is difficult to believe that the complainant who ultimately became the victim could have been persuaded to pay the money to him. He has also placed reliance on another decision reported in (2013) OCR (S.C.) 76 (K.S.Panduranga – v- State) where it has been held: “The next limb of the said submission is that the accused was not in charge of allotment of work and hence could not have granted any benefit to the complainant and the allegation of the prosecution that he had shown an official favour to the complainant has no legs to stand upon. On scrutinizing the evidence of P.W.2 it is demonstrable that there had been demand of money from P.W.2 and acceptance of the same. As far as the official favour is concerned, though allotment of work was done by the Manager, it has come out from the evidence of P.W.4 that the immediate assignment of loads of contractors was

the responsibility of the accused. He had the responsibility for assignment of the loads and in that connection he had demanded bribe. It has also come out from Ext.P-11 that the responsibility of the accused was assignment or identification of lorries. In view of the said evidence it is difficult to accept the believe that he had no responsibility and, hence, he could not have granted any favour. It is well settled in law that demand and acceptance of amount as illegal gratification is sine-quantum for constitutes of an offence under the Act and it is obligatory on the part of the prosecution to establish that there was an illegal offer of bribe and acceptance thereof". Therefore, the cited decision has application of the present case.

25. The learned counsel for the accused in support of his contention has also relied on another decision reported in 2014 (I) OLR (SC) 1014 (B.Jayraj –v- State of A.P.) where it has been held: "In the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of his position as a public servant to obtain any valuable thing or documentary advantage cannot be held to be established". But in the present case there is overwhelming evidence in proof of the charge that the accused had demanded an amount of Rs.5000/- for processing and facilitating the transfer of the complainant from Mines No.2 to Samaleswari O.C.P. Therefore, the cited decision no way helps the defence stand. He has also relied on a decision reported in 2003(II) OLR-399 (Niranjan –v- State) where it has been held: "Demand of bribe by Dealing Assistant for processing application for sanction of loan and leave salary is of no avail to the prosecution for which demand of bribe as alleged is not free from doubt and not acceptable as on the date of trap was laid there is no work of the complainant pending with the appellant". But in the present case the work of the

complainant was still pending with the accused. Therefore, the decision relied on by the defence counsel in this connection does not help the defence stand.

26. 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 25th June, 2014.

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

SENTENCE

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 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 25th June, 2014.

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

List of witnesses examined for the prosecution.

- P.W.1 Smt. Sikha Chatterjee.
- P.W.2. Narendra Pradhan.
- P.W.3. Debendra Nath Choudhury.
- P.W.4. Trinath Prasad Adhikari.
- P.W.5. Ashok Kumar Patel.

- P.W.6. Ram Saran Kurmi.
 P.W.7. Subhransu Bhusan Mishra.
 P.W.8. Bimal Ch. Purohit.
 P.W.9. Nirmal Kumar Jain.
 P.W.10. Prasanna Kumar Panigrahi.

List of witnesses examined for the defence.

- D.W.1. Kulamani Das.

List of documents admitted for the prosecution.

- Ext. 1 Certified copies of service record.
 Ext.2. Seizure list.
 Ext.2/1. Signature of P.W.1.
 Ext.3. Despatch register.
 Ext.4. Paper containing numbers of G.C notes.
 Ext.4/1. Signature of P.W.3.
 Ext.5. Pre-trap memorandum.
 Ext.5/1. Signature of P.W.3.
 Ext.6. Sketch map.
 Ext.6/1. Signature of P.W.4.
 Ext.7. Post trap memorandum.
 Ext.7/1. Signature of P.W.3.
 Ext.4/2, 5/2 & 7/2. Signature of P.W.4.
 Ext.8. F.I.R.
 Ext.8/1. Signature of P.W.6 on Ext.8
 Ext.4/3. Signature of P.W.6 on Ext.4.
 Ext.5/3. Signature of P.W.6 on Ext.5.
 Ext.6/3. Signature of P.W.6 on Ext.6.
 Ext.7/3. Signature of P.W.6 on Ext.7.
 Ext.9. F.I.R.
 Ext.9/1. Signature of S.P.C.B.I.

- Ext.5/4. Signature of P.W.7.
- Ext.5/5. Signature of D.K.Kabi.
- Ext.4/4. Signature of P.W.7.
- Ext.4/5. Signature of D.K.Kabi.
- Ext.7/4. Signature of P.W.7.
- Ext.7/5. Signature of D.K.Kabi.
- Ext.6/4. Signature of P.W.7.
- Ext.6/5. Signature of D.K.Kabi.
- Ext.2/2. Signature of D.K.Kabi.
- Ext.10. F.S.L. report.
- Ext.10/1. Signature of P.W.8.
- Ext.10/2. Signature of P.W.8.
- Ext.10/3. Signature of Director C.F.S.L. Calcutta.
- Ext.11. Sanction order.
- Ext.11/1. Signature of P.W.9.
- Ext.12. Identity card of D.W.1 issued by MCL authority.

List of documents admitted for the defence.

Nil.

List of M.Os.

- M.O.I Bottle containing hand wash solution.
- M.O.II and III. Sample bottles containing hand wash solution.
- M.O.IV. Envelop containing tainted G.C notes.

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