

GAHC010177592022



2024:GAU-AS:10500

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./218/2022

DEBESWAR TAUKDAR
S/O LATE KAMESWAR TALUKDAR,
RESIDENT OF HOUSE NO. 16, UJJAL NAGAR, PS DISPUR, GUWAHATI,
KAMRUP M ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP ASSAM

2:SUSHIL PATOWARY
S/O SRI RATNESWAR PATOWARY

RESIDENT OF HOUSE NO. 11
NIZARAPARA PATH
HENGRABARI
GUWAHATI
KAMRUP M ASSAM 78103

Advocate for the Petitioner : MR. B K MAHAJAN, MR. D BORA, MR. N MAHAJAN, MR. P K DAS, MR. A CHAUDHURY

Advocate for the Respondent : PP, ASSAM,

:: PRESENT ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mr. B.K. Mahajan,
Advocate.

For the Respondents : Mr. D. Das,
Addl. P.P., Assam.

Date of Hearing : 08.08.2024.

Date of Judgment : 28.10.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. B.K. Mahajan, learned counsel appearing for the appellant. Also heard Mr. D. Das, the learned Addl. Public Prosecutor, Assam.

2. This is an appeal under Section 374(2) of the Code of Criminal Procedure against the judgment and order dated 16.08.2022 passed by the learned Special Judge, Assam in Special Case No.11/2018.

3. The informant Sushil Patowary wanted to purchase the 42 Seater Star Bus. Therefore, on 14th December, 2015 at about 4.30 P.M., he went to the office of the Transport Commissioner, Guwahati for getting an "Assurance Letter" for procuring road permit. Mr. Patowary met the present appellant who was working there as the Senior Assistant.

4. The appellant allegedly demanded an amount of ₹38,000/- as bribe for issuing the said "Assurance Letter".

5. The informant Mr. Patowary, therefore, 07.12.2015 approached the Anti Corruption Bureau (ACB) Police Station by filing a written complaint.

6. Police registered the ACB P.S. Case No.15/2015 under Section 7/13(1)(d)/13(2) of the Prevention of Corruption Act, 1988.

- 7.** Police laid a trap. Accordingly, on 07.12.2015, Mr. Patowary paid a cash amount of ₹8,000/- the appellant and the police team caught him red-handed.
- 8.** Police further recovered an amount of ₹7,09,470/- from the possession of the appellant. The appellant was arrested.
- 9.** Finally, on conclusion of investigation, the Investigating Officer filed the *charge sheet* against the appellant under Section 7/13(1)(d) and Section 13(2) of the Prevention of Corruption Act, 1988.
- 10.** The trial court framed charges under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 against the appellant.
- 11.** The prosecution side examined 16(sixteen) witnesses. The appellant examined 2(two) defence witnesses.
- 12.** Finally, on the basis of evidence, the trial court convicted the appellant under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988. He was sentenced to undergo rigorous imprisonment of 3 years and to pay a fine of ₹8,000/- with default stipulations. He was also sentenced to undergo rigorous imprisonment of 4 years and was sentenced to pay ₹10,000/- with default stipulations.
- 13.** Aggrieved by the aforesaid judgment, the present appeal has been filed.
- 14.** The primary ground of appeal is that the trial court failed to appreciate the evidence in its proper perspective. It has been pointed out that the PW.3 in his cross-examination has stated that the appellant never demanded money on his behalf though he used to issue the said "Assurance Letter".
- 15.** I have gone through the prosecution evidence as well as defence evidence.
- 16.** The first prosecution witness was Satyajit Das Choudhury. He is a constable. On 07.12.2015, he accompanied the police team who caught the appellant red-handed at the time of accepting a cash amount of ₹8,000/-. The aforesaid incident took place in front of his eyes.

17. At the time of his cross-examination, the appellant had suggested that he was not present at the time of occurrence. Apart from this suggestion which was denied by the witness, there is nothing relevant in his cross-examination.

18. The second prosecution witness is Bhagawan Das. He is also a police constable. He accompanied the police team on 07.12.2015 and witnessed the occurrence.

19. In his cross-examination, this witness has stated that he did not witness the appellant receiving the bribe from the informant.

20. The third prosecution witness is Sushil Patowary. He is the informant. By profession, he is a journalist. He narrated the prosecution story in his examination-in-chief.

21. In his cross-examination, Mr. Patowary has stated that on 04.12.2015, when he met the appellant for the first time, the appellant did not directly demand any money from him. The appellant reportedly informed this witness that in order to get the "Assurance Letter", he would have to spend some money. This witness agreed to bear the expenses. Accordingly, on 07.12.2015, Mr. Patowary paid ₹8,000/- to the appellant for meeting the said expenses. The appellant accepted the said money and at that time, a person called Jitu Talukdar was present there.

22. Mr. Patowary further stated that the appellant did not make any type of demand for issuing the "Assurance Letter".

23. The informant was re-examined. At that time, he had reiterated that the appellant demanded ₹38,000/- from him. He was also cross-examined by the defence counsel. In his cross-examination, Mr. Patowary has stated that he had the prior knowledge that whenever people ask for an "Assurance Letter", everyone paid ₹40,000/- in the said office. Mr. Patowary was inclined to pay the said money. Therefore, he bargained the said price with the Joint Commissioner and the Joint Commissioner, told him that he would tell the appellant to do the needful to that effect.

24. The fourth witness was Jitu Talukdar. At that time, he was working as a cameraman for a T.V. channel. He has stated in his evidence that the informant Sushil Patowary being a Senior Journalist, requested him to give him company on 04.12.2015 when he was going to the office of the Transport Commissioner. This witness accompanied Mr. Patowary to the said office.

25. The witness Mr. Talukdar has further stated that the appellant told the informant that an amount of ₹38,000/- will be required for issuing permit for a 42 Seater Commercial Bus, which was intended to be used in Goalpara to Guwahati route. Mr. Talukdar quoted the appellant as saying that he would have to share the said amount of money with his superior officers.

26. The remaining part of his examination-in-chief is the narration of the prosecution story.

27. In his cross-examination, Mr. Talukdar has stated that on 07.12.2015, Mr. Patowary had paid the money to the appellant and while the appellant was counting the money, he had signalled the waiting police team to step in. This witness has stated that police caught the appellant red-handed.

28. The fifth prosecution witness is Binoy Kalita. He is a Journalist working with a T.V. channel. He has stated in his evidence that on 07.12.2015, at about 1 P.M., he was asked by the informant Sushil Patowary and the witness Jitu Talukdar to come to the office of Vigilance & Anti-Corruption (V&A.C). He came to that office and learnt that the appellant had demanded an amount of ₹38,000/-. Mr. Kalita has submitted that police had laid a trap and he also accompanied the informant Sushil Patowary and the witness Jitu Talukdar to the office of the Transport Commissioner. At the relevant time of occurrence, this witness along with the other police officials were waiting outside when Sushil Patowary and Jitu Talukdar had entered into the office. Mr. Kalita had disclosed that Jitu Talukdar came out and gave them the signal. Accordingly, this witness along with police officials stormed into the office and caught the appellant

red-handed while the money paid by Sushil Patowary was still in the hands of the appellant. Mr. Kalita stated that he had taken back the money from the hands of the appellant.

29. In his cross-examination, the witness Mr. Kalita has stated that he did not notice who handed over the cash amount of ₹8000/- to the appellant.

30. The sixth prosecution witness was Bipulanda Pathak. On the day of occurrence, he was the Joint Commissioner of Transport in the office of the Commissioner of Transport. He has stated in his evidence that on 07.12.2015 between 4 P.M. and 5 P.M., two persons came to his chamber and introduced themselves to be officials of anti-corruption. They were also accompanied by some persons from the electronic media. The police officers informed him that they have caught the appellant red-handed while accepting bribe. According to this witness, police had seized 16 nos. of 500 rupee currency notes containing chemical signatures of the appellant.

31. In his cross-examination, Mr. Pathak stated that the seized amount of ₹7,000,00/- did not belong to his office. He quoted, the appellant as saying to him that the said money belonged to the society of the employees of the office.

32. The seventh prosecution witness is Jitendra Chakraborty. At the relevant time of occurrence, he was working as the Deputy Superintendent of Police in the Anti Corruption Department. He narrated the entire prosecution story in his evidence-in-chief.

33. In his cross-examination he has stated that he did not produce the official letter by which the crack team was constituted. According to Mr. Chakraborty, the amount of ₹8,000/- was first handed over to him by the informant at about 11.30 A.M. on 07.12.2015. He mixed small quantity of a chemical powder with the currency notes. Mr. Chakraborty has disclosed that he did not accompany the police team who seized the money from the appellant on 07.12.2015.

34. The eight prosecution witness is Kamal Chandra Rajbongshi. On the day of

occurrence, he was working as an Inspector in the Anti Corruption Department. His evidence-in-chief is the narration of the prosecution story.

35. In his cross-examination, he has stated that on 07.12.2015, he had accompanied the police team to the place of occurrence. He has stated that when the shadow witness signalled them, they all entered into the office and apprehended the appellant red-handed.

36. The PW.9 is Dr. Rupali Bhattacharyya. She was the Scientific Officer at the Forensic Science Laboratory. She has stated in her evidence that on 19.12.2015 police sent one person through a special messenger to her office in connection with ACB P.S. Case No.15/2015. The said parcel contained three sealed glass bottles having 180 ml. each pink colour liquid and one sealed yellow envelope containing 16 nos. of 500 rupee currency notes.

37. The witness has stated that the liquids were examined and it was found that they were phenolphthalein, sodium (Na^+) ion, carbonate (CO_3^{2-}) ion and water (H_2O).

38. In her cross-examination she has stated that she did not conduct quantitative test rather she conducted qualitative test only.

39. The tenth prosecution witness is Pinaki Prasad Mitra. At that time he was the Inspector of Police. He has stated in his evidence that on 07.12.2015, he was informed by the Sri Karuna Bordoloi, the Dy. Superintendent of Police, Kamrup that a trap team was constituted and he was made one of the members of the said team. According to this witness, on that day at about 11 A.M. he along with the team assembled in the office of V&AC, Assam and at that time, he came to know from the Demonstrator Jiten Chakraborty that one Sushil Patowary had lodged the complaint on that day alleging that on 04.12.2015, the present appellant demanded ₹38,000/- from him for issuing "Assurance Letter".

40. According to the PW.10, when Jiten Chakraborty was telling him those things,

two independent witnesses namely, Jitu Talukdar and Binoy Kalita were present. Sushil Patowary gave this witness an amount of ₹8,000/- containing 500 rupee currency notes for using the same to trap the appellant. He noted down the serial number of the currency notes. In the meantime, Jiten Chakraborty had applied phenolphthalein powder in the currency notes.

41. At about 4 P.M. on that day, Sushil Patowary entered into the office chamber of the appellant. Jitu Talukdar had also followed him. This witness and other members of the team were waiting outside the chamber of the appellant. The other independent witness Binoy Kalita was also present there. At one point of time, Binoy Kalita signalled the team waiting outside and all of them entered into the office chamber of the appellant. The appellant was caught red-handed while accepting the bribe. Binoy Kalita took away the money from the hands of the appellant and this witness tallied the currency notes with the numbers which he had already recorded and found that those were the currency notes that were taken from the hands of the appellant.

42. The PW.10 has stated in his cross-examination that in the month of December, office hours was 9.15 A.M. to 4.15 P.M. When he and his team reached the office of the appellant, it was about 4 to 4.30 P.M. but the office was very busy at that time.

43. The PW.11 is Sri Karuna Bordoloi, the Dy. Superintendent of Police, V&AC, Assam. He has stated in his evidence that on 07.12.2015 at about 11.30 A.M., Sushil Patowary lodged an FIR before the officer-in-charge of V&AC, Assam against the present appellant alleging that for issuing one "Assurance Letter" of permit for transport vehicle, he demanded ₹38,000/-. The ACB P.S. Case No.15/2015 was registered on that day. This witness has stated that he constituted a trap team and entrusted the Demonstrator Jiten Chakraborty to explain everything to the members of the trap team. In the meantime, Jitu Talukdar was selected to be a shadow witness and was asked to be with Sushil Patowary to witness the transaction with the appellant. The independent witness Binoy Kalita was entrusted with the duty to

monitor the activities of Jitu Talukdar.

44. This witness also accompanied the trap team. When the appellant accepted the money, he was apprehended immediately. The appellant was directed to wash his hand in water and the colour of the water turned pink because the currency notes were treated with phenolphthalein.

45. In his cross-examination, this witness has stated that though Sushil Patowary told him that the appellant wanted ₹38,000/-, he asked Sushil Patowary to pay ₹8,000/-. Accordingly, Sushil Patowary gave him a cash amount of ₹8,000/-. Thereafter, phenolphthalein was put upon all the currency notes.

46. The PW.12 is Santosh Kumar Chaudhury. He was an ASI of Police with V&AC, Assam. He was the member of the trap team led by Karuna Bordoloi. His evidence-in-chief is similar to that of Karuna Bordoloi.

47. In his cross-examination he has stated that he had seen the Demonstrator putting chemical powder upon all the 16 nos. of currency notes which were used to trap the appellant. He has stated that he did not witness the transaction that took place inside the chamber of the appellant. He only heard about that transaction.

48. The PW.13 is Derajuddin Ahmed. He was a constable of V&AC, Assam. He was the member of the trap team. His evidence-in-chief is also similar to that of Karuna Bordoloi.

49. In his cross-examination he has stated that after reaching the office of the Commissioner of Transport at Khanapara, he was waiting on the ground floor. He did not remember in which floor the office of the appellant was situated. Other team members head already towards the upper floors and he was asked to wait on the ground floor. The other team members told him that whenever they will call him then only he should come to the upper floor. The witness has stated that he was holding the box containing the chemical kit. At one point of time, somebody called him to the upper floors. At that time, it was about 5 P.M. The other employees of the office were

not present in the chamber of the appellant.

50. The PW.14 is Rakesh Kumar. He has stated in his evidence that on 05.02.2018, he was working as the Commissioner, Transport, Government of Assam. He has stated that on 31.10.2017, the Superintendent of Police V&AC wrote a letter to the Commissioner, Transport requesting him to accord prosecution sanction against the present appellant for taking bribe. This witness has stated that he accorded prosecution sanction.

51. In his cross-examination, he has stated that prosecution sanction was accorded on the basis of the documents furnished by the investigating agency. He has stated that he had examined all those materials before issuing the prosecution sanction order.

52. The PW.15 is S.S. Badwal. On 22.06.2018, he was working as the Assistant Director and Scientist in Central Forensic Science Laboratory, Urput, Kamrup, Assam. On that day, he received a sealed envelope through proper channel. The said envelope contained one USB Flash Drive. It contained a video. According to this witness, the video was examined using UFED extraction device and physical analyser software. The said USB file was examined by using other scientific methods. After examination, no sign of editing was found in the said video file. This witness has stated that the audio component of the video file could not be examined because of lack of facilities.

53. In his cross-examination, Mr. Badwal has reiterated that the audio component of the video file could not be examined for lack of tools.

54. The PW.16 is Lakhi Narayan Baruah. He was the Investigating Officer of the case. His evidence-in-chief is the narration of the entire prosecution story. He has stated that after getting the prosecution sanction, he filed the *charge sheet* and the additional *charge sheet* against the present appellant.

55. In his cross-examination, Mr. Baruah has stated that he never saw the appellant accepting the tainted currency notes from the complainant.

56. Sri Pradip Senapati is the first Defence Witness. He was a colleague of the appellant in the office of the Commissioner of Transport. He has stated in his evidence that whenever a new vehicle is purchased and the owner of the vehicle wanted the vehicle to run on the road, he has to take permission from his office and for that the owner has to pay official fees to get the permission. This witness has stated that on 07.12.2015, when the appellant was caught red-handed while taking money from the complainant, he was present in the office. He has stated that he never saw the appellant taking money. He had only heard about it. According to this witness, the appellant did not have any jurisdiction to issue permit for a new commercial vehicle.

57. In his cross-examination he has stated that at the time of issuing such a permit, the necessary file rolls over many tables including that of the appellant also. The appellant was duty bound to transfer the file to the Superintendent. If the file was not produced before the Superintendent, no permission would be granted.

58. The second defence witness is Guptajit Das. He was also a colleague of the appellant in his office. His office is in the first floor in the building and the chamber of the appellant is situated in the second floor. The witness Mr. Das has stated that he had heard about the said incident. He also reiterated that for issuing permit for commercial vehicle, the owner of the vehicle has to deposit fees in the office.

59. In his cross-examination, he has stated that the appellant was dealing with the files which contained applications for issuing permit.

60. The learned counsel Mr. Mahajan has submitted that the fact that the appellant had ever demanded money from Sushil Patowary was never proved in the trial court. In order to buttress his argument, Mr. Mahajan has relied upon *Neeraj Dutta v. State (NCT of Delhi)*, (2023) 4 SCC 731 where the Hon'ble Supreme Court has held as under:

“88. What emerges from the aforesaid discussion is summarised as under:

88.1. (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a *sine qua non* in order to establish the guilt of the

accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.

88.2. (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

88.3. (c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

88.4. (d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an *offer to pay by the bribe-giver* without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a *case of acceptance* as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, *if the public servant makes a demand* and the bribe-giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a *case of obtainment*. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Sections 13(1)(d)(i) and (ii), respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Sections 13(1)(d)(i) and (ii) of the Act.

88.5. (e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

88.8. (h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature.”

61. I have considered the submissions of learned counsel of both sides.

62. It is a settled position of law that demand for illegal gratification is *sine qua non* for establishing an offence under Section 7 of the Prevention of Corruption Act, 1988 [See (2022) 4 SCC 574]. It is established in this case that the appellant had accepted a cash amount of ₹8,000/- from Sushil Patowary. But except the evidence of Sushil Patowary, there is no other evidence to support the fact that the appellant had ever demanded an amount of ₹38,000/- from him for issuing permit. Whenever a Government official accepts cash amount from an individual, the presumption under Section 20 of the Prevention of Corruption Act cannot rise unless foundational facts are proved by reliable evidence. There is no evidence to support the allegation of Sushil Patowary that the appellant had demanded illegal gratification of ₹38,000/-. If ₹38,000/- was demanded, then why the appellant accepted ₹8,000/- only. No explanation has been given by prosecution.

63. There is no evidence in this case to prove the reason as to why the appellant accepted ₹8,000/- in cash from Sushil Patowary instead of ₹38,000/-. There is no evidence at all in this case to prove that the appellant ever demanded bribe of ₹38,000/-. The evidence of Sushil Patowary cannot be held to be sacrosanct unless it

is supported by reliable evidence.

64. For the aforesaid premised reasons, the judgment of the trial court requires to be interfered with. The offences under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 are not proved beyond all reasonable doubt against the appellant.

65. The appeal is allowed. The judgment and order dated 16.08.2022 passed by the learned Special Judge, Assam in Special Case No.11/2018 is set aside.

66. The appellant Debeswar Talukdar is found not guilty and he is acquitted from this case.

The criminal appeal is disposed of accordingly.

Send back the LCR.

JUDGE

Comparing Assistant