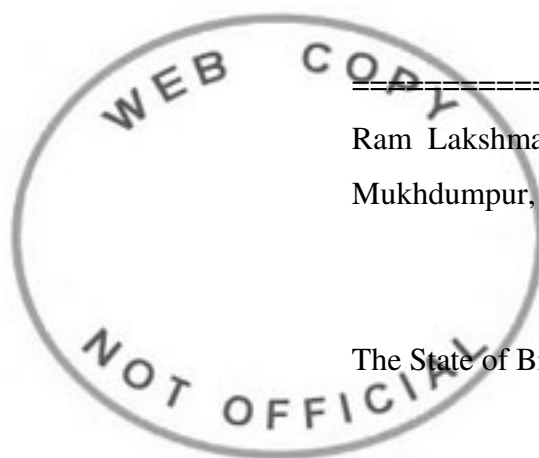




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.356 of 2014

Arising Out of PS.Case No. -2 Year- 2002 Thana -C.B.I CASE District- PATNA

Ram Lakshman Prasad, son of late Deoraj Prasad, resident of Kanshara, P.S.- Mukhdumpur, District-Jehanabad.

.... Appellant

Versus

The State of Bihar through S.P. Vigilance, Patna

.... Respondent

With

Criminal Appeal (SJ) No. 383 of 2014

Arising Out of PS.Case No. -1 Year- 2002 Thana -C.B.I CASE District- PATNA

Sideshwar Prasad @ Siheshwar Prasad, son of Late Ram Charitra Sah, resident of village- Murutpur, P.S.- Desari, District- Vaishali

.... Appellant

Versus

The State of Bihar, through Vigilance

.... Respondent

With

Criminal Appeal (SJ) No. 391 of 2014

Arising Out of PS.Case No. -1 Year- 2002 Thana -C.B.I CASE District- PATNA

Ram Kishore Pandey, S/o Late Kapil Deo Pandey, R/o Moldiar tola, Mokama, P.S.- Mokama, District-Patna.

.... Appellant

Versus

The State of Bihar to the Vigilance Investigation Bureau

.... Respondent

With

Criminal Appeal (SJ) No. 397 of 2014

Arising Out of PS.Case No. -1 Year- 2001 Thana -C.B.I CASE District- PATNA

Jindalal Mahto, S/o Late Deni Mahto, Resident of Villag- Mathopur, P.S.- Motipur,
District- Muzaffarpur.

.... Appellant

Versus

The State of Bihar through S.P. Vigilance, Patna

.... Respondent

Appearance :

(In CR. APP (SJ) No.356 of 2014)

For the Appellant/s : Mr. Sanjeev Kumar Mishra, Advocate

Mr. Piyush Saurav, Advocate

Mr. Jitendra Kumar, Advocate

For the Respondent/s : Mr. Ramakant Sharma, Sr. Advocate

Mr. Rakesh Kumar Sharma, Advocate

(In CR. APP (SJ) No.383 of 2014)

For the Appellant/s : Mr. Rakesh Kumar Soni, Advocate

For the Respondent/s : Mr. Ramakant Sharma, Sr. Advocate

Mr. Rakesh Kumar Sharma, Advocate

(In CR. APP (SJ) No.391 of 2014)

For the Appellant/s : Mr. Shivendra Kishore, Sr. Advocate

Mr. Akhileshwar Prasad Singh, Sr. Advocate

Mr. Amrit Anunay, Advocate

For the Respondent/s : Mr. Ramakant Sharma, Sr. Advocate

Mr. Rakesh Kumar Sharma, Advocate

(In CR. APP (SJ) No.397 of 2014)

For the Appellant/s : Mr. Ajay Kumar, Advocate

For the Respondent/s : Mr. Ramkant Sharma, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 16-09-2016

Heard Akhileshwar Prasad Singh, learned Senior

Advocate appearing for the appellant in Cr. Appeal (SJ) No. 391 of



2014, Mr. Sanjeev Kumar Mishra, learned Advocate appearing for the appellant in Cr. Appeal (SJ) No. 356 of 2014, Mr. Rakesh Kumar Soni, learned Advocate appearing for the appellant in Cr. Appeal (SJ) No. 383 of 2014 and Mr. Ajay Kumar, learned Advocate appearing for the appellant in Cr. Appeal (SJ) No. 397 of 2014 and Mr. Ramakant Sharma, learned Senior Advocate appearing for the Vigilance.

2. These appeals are directed against the judgment and order dated 30.06.2014 passed by the learned Special Judge, Vigilance-II, Patna in Special Case No. 2 of 2002 whereby and whereunder the appellants have been convicted for the offences punishable under Section 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (for short 'PC Act, 1988') and Sections 420 and 120-B of the Indian Penal Code (for short 'IPC') and sentenced to undergo rigorous imprisonment for a period of three years under Section 420 of the IPC, rigorous imprisonment for a period of one year under Section 120-B of the IPC and rigorous imprisonment for a period of two years under Section 13(2) read with 13(1)(d) of the PC Act, 1988. All the sentences have been ordered to run concurrently. The period already undergone as under-trial prisoner has been directed to be set off under the provision of Section 428 of the Code of Criminal Procedure (for

short 'CrPC').

3. The prosecution case is based on written report of one Amrendra Prasad Kumar, Deputy Superintendent of Police, Cabinet (Vigilance) Department, Electricity Board Cell, Bihar, Patna submitted to the Officer-in-Charge, of the Vigilance Police Station, Patna, which, in short, is as under:-

(i) It is stated that Sri Narendra Singh, MLA, had written a letter dated 15th June, 2001 to the Chairman, Bihar State Electricity Board, Patna alleging therein that the Executive Engineer, Assistant Engineer and Junior Engineer of Jamui Division were demanding bribe for providing electricity connection from the consumers of Hansadih, Misain, Garo Nawada, Kumardih and other villages of Jamui. In the light of his complaint, an inquiry was handed over to him pursuant to which he is submitting his written report.

(ii) It is stated that one Awadesh Kumar and others of village-Hansadih had complained that they were harassed due to non-fulfilment of demand of Rs.12,000/- and each consumer was asked to pay bribe of Rs.300/-. They also alleged that since they did not fulfil the illegal demand of bribe, the electricity supply of their village was stopped and wrong billing was being made even without supply of electricity.

(iii) It is further stated that on 10th July, 2001



in course of physical verification, it came to light that 20 cement poles were lying in village Garo Nawada which were not fixed and the villagers in their respective statements disclosed that instead of Rs.15/-, Rs.50/- was taken by the Account Assistant, Babu Lal Yadav and when a complaint in this regard was made by the villagers, Sri Ram Kishore Pandey, the Electrical Executive Engineer, Jamui rebuked them and demanded Rs.10,000/- bribe in return for providing electricity connection to the consumers of village Garo Nawada.

(iv) It is further stated that when the informant went to village Misain and recorded statement of Md. Gayasuddin Ansari and others, they stated that they had approached Account Assistant, Babu Lal Yadav, who took Rs.50/- from all the applicants and collected Rs.4,000/- from 80 villagers. The amount was paid to him by the villagers on 16th June, 2000. They also stated that accused Babu Lal Yadav demanded Rs.200/-, as connection charge from each house, Rs. 550/-, as connection charge for flour mill and Rs.350/-, as connection charge for agriculture purposes. The amount so demanded was collected from the villagers and was paid to aforesaid Babu Lal Yadav. Seventy-seven consumers had made payment for domestic connection, one Saudagar Mian had made payment for flour mill and one Congress Yadav had made payment for agriculture purpose. Out of the aforesaid payment made by the



consumers, Mr. Babu Lal Yadav retained Rs.50/- deposited by each consumer as illegal gratification and issued receipt in their name for the remaining amount. When the villagers complained to Sidheshwar Prasad, the Junior Electrical Engineer, Khiara in this regard, he also stated that Babu Lal Yadav is doing the right thing and unless Rs.20,000/- bribe is paid, electricity connection would not be provided to the consumers. They also stated that in this regard, they made written complaint to the local MLA and, in course of inquiry, when the villagers were shown the representation submitted by them to the local MLA, they identified their signature.

(v) It is further stated that on 11th July, 2001 when the informant went to village Hansadih and met with Awadesh Kumar and other villagers, they disclosed in their statement that power supply is being provided to his village since last twenty years. On 30th April, 2001, the transformer was burnt, but despite no supply of electricity, bill was sent to the consumers for the month of May, 2001. They have also stated that the then Electrical Executive Engineer, Sri Ram Kishore Pandey, Assistant Electrical Engineer, Sri Jinda Lal Mahto and the Junior Engineer, Sri Ram Lakshman Prasad had demanded Rs.12,000/- for replacing the burnt transformer. When the said payment was not made, the electric poles were uprooted and the supply wires were removed.

(vi) It is further stated that in course of inquiry when the informant went to village Kumardih on 12th July, 2001, the villagers made allegation that the bribe was demanded from them in return for providing electricity connection.

4. On the basis of the above written report submitted by above-said Amrendra Kumar, Vigilance P.S. Case No. 1 of 2002 was registered on 08.01.2002 under Section 120-B, 420 IPC and Section 7, 13(2) read with 13(1)(d) of the PC Act, 1988 against the Electrical Executive Engineer Ram Kishore Pandey, Assistant Electrical Engineer Sidheshwar Prasad, Junior Electrical Engineers, Jinda Lal Mahto and Ram Lakshman Prasad and Account Assistant Babu Lal Yadav.

5. On completion of investigation, the Investigating Officer submitted police report under Section 173(2) of the CrPC vide charge-sheet No. 20 of 2010 on 16th November, 2010 under Sections 120-B and 420 of the IPC as also section 7 and 13(2) read with 13(1)(d) of the PC Act, 1988 against all the accused named in the FIR.

6. On receipt of the police report, the learned Special Judge took cognizance of the offences under the aforesaid sections against the four accused persons who are appellants in these appeals. Since accused Babu Lal Yadav had died, the proceeding

against him was dropped vide order dated 16.11.2010.

7. On 11th August, 2011, the learned Special Judge read over and explained the charges to the accused persons under four heads, which read as under:-

**“1. Ravindra Nath Singh,
Special Judge, Vigilance-II, Patna
Hereby charge you:-**

- 1. Ram Kishore Pandey, Executive Engineer**
- 2. Jinda Lal Mahto, Assistant Engineer**
- 3. Sidheshwar Prasad, Junior Engineer**
- 4. Ram Laxman Prasad, Junior Engineer**

As follows:-

Firstly:- That you along with Baboo Lal Yadav now deceased in between or about the year 2000-2001 at Office of Bihar State Electricity Board, Supply Division, Jamui being a public servant posted as Executive Engineer, Assistant Engineer and Junior Engineer respectively in the Office of Bihar State Electricity Board, Electric Supply Division, Jamui directly demanded and accepted illegal gratification/money other than legal remuneration from the consumers and others of village Gora, Mimine, Hasidih, Kumar Dih, Ujandi and Hasidih Dakshinwari Tola and other for doing or for bearing to do an official act and thereby committed an offence U/s. 7 of P.C. Act 1988 and within my cognizance.

Secondly:- That you during the same



period, at the same place and on the same post and position by corrupt/illegal means obtained or attempted to obtain for your self for our other persons valuable thing/money for pecuniary advantage from consumers and other persons for fresh connection of Electric line/energy by abusing official post and position as public servant without any public servant and thereby committed an offence punishable U/s. 13(2) r/w 13(1)(d) of P.C. Act 1988 and within my cognizance.

Thirdly:- That you during the same period, at the same place and on the same post and position cheated consumers/applicants of B.S.E. Board and others by taking at the rate of Rs.50/- instead of Rs.15/- for application forms for electric line afresh and Rs.200/- instead of Rs.150/- from each of the applicants and issued receipt of Rs.15/- and Rs.150/- instead of Rs.50/- and Rs.200/- which you had taken to each of them respectively by dishonestly inducing them to deliver the said money belonging to them and thereby committed an offence as denied U/s. 419 of I.P.C. and punishable U/s. 420 I.P.C. and within and within my cognizance.

Fourthly:- That you during the same period, at the same place and on the same post and position along with several unknown persons in collusion and conspiracy with each other agreed to do or caused to be done an illegal act to wit took Rs.50/- instead of Rs.15/- and Rs.200/- instead of

Rs.150/- an illegal act by illegal means and you did some act in pursuance of the agreement to commit the offence U/s. 420 I.P.C. act punishable there under and thereby committed an offence punishable U/s. 120B I.P.C. and within my cognizance.

And I direct that you be tried by me for the said charges.”

8. The accused persons pleaded not guilty to the charges and claimed to be tried. Thereafter, in support of the charges, the prosecution produced and examined altogether seventeen witnesses, namely, PW-1 Amrendra Prasad Kumar, PW-2 Ashok Kumar, PW-3 Suresh Prasad, PW-4 Bharat Mishra, PW-5 Anjani Kumar Mishra, PW-6 Mohan Mishra, PW-7 Nageshwar Prasad Shah, PW-8 Gopal Shah, PW-9 Chandra Shekhar, PW-10 Subhash Kumar Singh, PW-11 Surendra Singh, PW-12 Ramchandra Mishtri, PW-13 Ganesh Narayan Roy, PW-14 Bhupendra Narayan Sinha, PW-15 Avinash Kujur, PW-16 Arun Kumar Sinha, PW-17 Shashikant Kumar.

9. As noted above, PW-1 Amrendra Prasad Kumar is the informant of the case, whereas PW-2 Ashok Kumar, PW-3 Suresh Prasad, PW-13 Ganesh Narayan Roy, PW-14 Bhupendra Naryan Singh, PW-15 Avinash Kujur and PW-16 Arun Kumar Sinha are all police officers, who had investigated the case at some



point of time. PW-4, 5 & 6 are residents of village Garo Nawada, whereas PW-7, 8, 9, 10, 11 and 12 are residents of village Hansadih. PW-17 Shashikant Kumar is an Assistant attached with the Joint Secretary of the Bihar State Electricity Board. It would be relevant to note here that PW-9 Chandra Shekhar had been declared hostile by the trial Judge at the request of the prosecution during trial.

10. The prosecution has also produced and proved the following documents in support of the charges:- Ext-1 report of the Deputy Superintendent of Police, Vigilance Electricity Board. Ext-2 written report of the informant, Ext-2/1 letter dated 15.06.2001, Ext-2/2 letter dated 11.07.2001, Ext-2/3 and 2/4 memo No. 809 dated 12.07.2001 issued by the Executive Engineer, Jamui, Ext-3 formal FIR, Ext-4 file of investigation volume-I & II from page no. 336 to 519 of the investigation file, Ext- 6 sanction order against Ram Kishore Pandey (appellant in Cr. Appeal (SJ) No. 391 of 2014), Ext 6/1 sanction order against Jinda Lal Mahto (appellant in Cr. Appeal (SJ) No. 397 of 2014), Ext 6/2 sanction order against Sidheshwar Prasad (appellant in Cr. Appeal (SJ) No. 383 of 2014) and Ext-6/3 sanction order against Ram Lakshman Prasad (appellant in Cr. Appeal (SJ) No.356 of 2014)

11. PW-1, the informant of the case, has reiterated



the allegations made in the FIR. He has stated that he had made verification regarding the complaint on the direction of the Inspector General of Police, Cabinet (Vigilance) Department, Investigation Bureau, who had handed over the written complaint of Sri Narendra Singh, MLA to him. He has proved the written report, formal FIR, two letters of the villagers dated 15.06.2001, letter dated 11.07.2001 written by Awadhesh Kumar of village Hansadih and letter dated 12.07.2001 written by Utpal Kumar Mishra. He has also proved the memo No. 809 dated 12.07.2001 issued under the signature of the Electrical Executive Engineer, Jamui. He has stated that the Investigating Officer had examined him during investigation of the case. In cross-examination, he has stated that the departmental order to inquire about the complaint was made on the basis of letter of complaint dated 15.06.2001 written by the MLA, Narendra Singh. He has admitted that Sri Narendra Singh had written another letter on 16.07.2001, but denied having knowledge regarding the contents of the letter. He has admitted that the statement of Narendra Singh was not recorded during inquiry. He has further admitted that he did not record the statements made by the villagers of the four villages, who had made written complaint to Narendra Singh. He has admitted that no written complaint was made in his presence. He has also admitted that in



course of inquiry, he came to know that for taking electricity connection the consumers were required to deposit Rs.15/- as application money, Rs.50/- as security money and Rs.55/- as service charges. He has admitted that it came to his knowledge during inquiry that electricity supply to a particular village required deposit of charges and minimum thirty applicants. He has also admitted that in course of inquiry, he came to know that service charges were not deposited by the consumers of different villages. He has denied the defence suggestion that he had made perfunctory inquiry and no demand was made by the accused person from any consumer.

12. PW-2 Ashok Kumar has stated that though he had investigated the case for some time, he had not recorded statement of any witness.

13. PW-3 Suresh Prasad has stated in his deposition that on completion of investigation, he had submitted police report. In cross-examination, he has admitted that during investigation, he came to know that out of forty applicants of village Garo Nawada, only twenty-four had deposited the charges for electricity connection. He has also admitted that he had **given his opinion that no case is made out against the accused persons.**

14. As noted above, PW-4, 5 & 6, namely, Bharat Mishra, Anjani Kumar Mishra and Mohan Mishra respectively are



residents of village Garo Nawada. PW-4 Bharat Mishra has admitted in cross-examination that the rules regarding the initiation of work for providing electricity in a particular village **require deposit of application fee of Rs.15/-, security amount of Rs.150/-, service charge of Rs.155/- and minimum thirty applicants.** In his entire deposition, he has not alleged about any demand of bribe against these appellants.

15. PW-5 & 6 has deposed that they had deposited the required amount for connection with Account Assistant, Babu Lal Yadav. The aforesaid three witnesses have not made any sort of allegation against the appellants of these cases.

16. PW-7 Nageshwar Prasad Shah and PW-8 Gopal Shah, residents of village Hansadih, have deposed that they were told by co-villagers that the electricity connection shall be provided after deposit of Rs.300/-. They have also not made any allegation against the appellants of these cases.

17. PW-10 Subhash Kumar Singh and PW-11 Surendra Singh, residents of village Hansadih, have deposed that though the villagers had collected amount for electricity connection, they had not paid any amount. In cross-examination, they have categorically stated that the electric poles were uprooted by the villagers themselves.



18. PW-12 Ramchandra Mishtri, also a resident of village Hansadih, in his examination-in-chief, has deposed that there was electricity connection in the village since long and the officials of the Electricity Board never demanded money for providing electricity connection. He has further stated that money was demanded by the residents of village Srichand Nawada for electricity connection. He has stated that electric poles were uprooted, but has expressed his lack of knowledge regarding the fact that who uprooted the electric poles. In cross-examination, he has stated that the residents of Srichand Nawada used to demand money because the electric supply to the village came through that village.

19. PW-13 Ganesh Narayan Roy, one of the Investigating Officers of the case, has stated that he had got the charge of investigation on 15.05.2006 and continued in the same capacity till 30th November, 2006. In cross-examination, he has stated that he had not examined any witness.

20. PW-14 Bhupendra Naryan Sinha has deposed that being the Deputy Superintendent of Police, he was posted in the Electricity Board Cell during the relevant period. He had taken charge of investigation from one Ganesh Naryan Roy on 30.11.2006. In cross-examination, he has stated that he had taken

charge of documents relating to the case and examined them. He proved the file, which has been marked as Ext-4. He has further stated that he had given charge to one Suresh Prasad, who had submitted charge-sheet.

21. PW-15 Avinash Kujur is another Investigating Officer of the case, who has stated that he took charge of investigation on 5th September, 2002 and had taken statement of many persons, but all of them, except Surendra Singh, have not been examined by the prosecution during trial. He has admitted that he came to know in course of investigation that the villagers were required to deposit the application fee, security fee and service charges for getting electricity connection. He had admitted that he did not think proper to record the statement of Sri Narendra Singh, who had made complaint on which inquiry had commenced.

22. PW-16 Arun Kumar Singh is another Investigating Officer of the case, who has deposed that he took charge of investigation of the case on 18.10.2003 and handed over the charge to one Ganesh Narayan Roy on 15th June, 2006. He has proved the file containing papers of Bihar State Electricity Board, which have been marked as Ext-5.

23. PW-17 Shashikant Kumar, an Assistant attached to the Joint Secretary of the Bihar State Electricity Board, has

identified the signature of Sri Sameer Kumar Ghosh, Joint Secretary of the Bihar State Electricity Board, who had granted sanction to prosecute the accused persons.

24. Learned advocates appearing for the appellants have contended that it is a case of no evidence and the trial court has completely failed to appreciate the facts and law involved in the case. They have submitted that the evidences adduced during trial on behalf of the prosecution would themselves be sufficient to hold the appellants not guilty of the charges.

25. *Per contra*, Mr. Ramakant Sharma, learned Senior Counsel appearing on behalf of the Vigilance submits that the prosecution has been able to prove its case beyond all reasonable doubts by bringing cogent, oral and documentary evidence against the appellants. According to him, the court below has not erred either in appreciating the facts or the law involved in the case. He has submitted that there is presumption under Section 20 of the PC Act, 1988 against the appellants for the charge under Section 7 of the PC Act, 1988.

26. Having heard the parties and perused the evidence on record, it is to be seen whether or not the findings recorded by the trial court for convicting the appellants under Section 7, 13(2) read with 13(1)(d) of the PC Act, 1988 and for the

offences under Sections 420 and 120-B of the IPC are correct.

27. Section 7 of the PC Act, 1988 reads as under:-

“7. Public servant taking gratification other than legal remuneration in respect of an official act.-Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine”.

28. The essential ingredients of Section 7 are that:-

- (i) the person who accepts gratification should be a public servant;
- (ii) he should have accepted the gratification for himself and the gratification should be as a motive

or rewards for doing or forbearing to do any official act or for showing or forbearing to show, in exercise of his official function, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person.

29. Section 13(1)(d) of the PC Act, 1988 reads as under:-

“13. Criminal misconduct by a public servant.-

(1) A public servant is said to commit the offence of criminal misconduct,-(d) if he,-

- (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
- (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
- (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.”

30. The essential ingredients of Section 13(1)(d) of the PC Act, 1988 are that:-

- (i) the person should be a public servant;
- (ii) he should have used corrupt or illegal means or otherwise abused his position as a public servant; and
- (iii) he should have obtained a valuable thing or

pecuniary advantage for himself or for any other person without any public interest.

31. Thus, it would be evident that demand of bribe is not *sine qua non* always to prove the offence under Section 7 of the PC Act, 1988, there may be or may not be demand of bribe by public servant under Section 7 of the PC Act, 1988. If the public servant accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification other than legal remuneration, the ingredients of the offence under Section 7 of the PC Act, 1988 would be attracted. However, demand or special efforts for obtaining bribe by the public servant is necessary under Section 13(1)(d) read with 13(2) of the PC Act, 1988.

32. In the present case, though there is evidence that the accused persons were public servants, there is no evidence that they have accepted gratification for themselves as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show in exercise of their official function, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person. There is also no evidence to suggest that the appellants used corrupt or illegal means or otherwise abused their official position as public servant and made

any illegal demand of gratification from any one.

33. Admittedly, the complainant Narendra Singh, on whose complaint the inquiry had commenced, was not examined by the police during investigation. The Investigating Officers examined during trial have admitted that they did not record the statement of Narendra Singh. It is also admitted that the complainant Narendra Singh had written another letter on 16.07.2001, but the Investigating Officers have failed to bring that letter on record. The prosecution has also failed to examine several other witnesses privy to the alleged offence.

34. P.W. 1 Amrendra Kumar Prasad, the informant of the case is at best a hearsay witness. His testimony has not been corroborated by any independent witness or any consumer from whom these appellants are alleged to have demanded illegal gratification. On the contrary, PW-4 Bharat Mishra, admitted in cross-examination that the rules regarding initiation of work for providing electricity in a particular village require deposit of charges under different heads and minimum thirty applicants. He had admitted that only twenty-four villagers of village Garo Nawada had deposited the application money. The evidence of the Investigating Officers would further corroborate that as per rule, minimum thirty applicants from a particular village were required to



deposit charges under different heads for supply of electricity connection to that village. Similar is the statement of PW-5 Anjani Kumar Mishra. There is no evidence that any extra amount was charged by the appellants from any consumer for electricity connection or bills were raised without supply of electricity or electric poles were uprooted by the officials of the Electricity Board. On the contrary evidence is that villagers of neighbouring village demanded money as supply line came through that village. Also, PW-10 and 11 have admitted that villagers themselves had uprooted the electric poles. Further, PW-12 Ramchandra Mistry has categorically stated in his deposition that the officials of the Electricity Board never demanded bribe. For the reasons best known to the prosecution, it has not requested the trial Judge to declare him hostile. Thus, his evidence, which completely falsifies the prosecution case, would be binding on the prosecution.

35. It would be relevant to record here that though PW-17 has identified the signature of the sanctioning authority on the sanction orders (Ext-6 series) for prosecution of the appellants, the author of the sanction order was not examined in the court.

36. Hence, this Court is of the view that the charges framed under Section 7 and 13(1)(d) read with 13(2) of the PC Act, 1988 were not proved during trial. Further, there is no evidence on

record to hold the appellants guilty of the charges under Section 120-B and 420 of the IPC.

37. Keeping in mind the discussions made, hereinabove, this Court is of the considered opinion that even if the entire evidence adduced on behalf of the prosecution during trial is accepted to be true, the appellants could not have been held guilty under any of the charges. The impugned judgment of conviction and order of sentence passed by the trial court is totally perverse and wholly unsustainable.

38. Consequently, these appeals are allowed. The conviction and sentence of the appellants are set aside. The appellants, who are already on bail, are discharged from the liabilities of bail bonds and sureties furnished by them in the court below.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	-----
Uploading Date	20.09.2016
Transmission Date	20.09.2016