IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.327 of 2002

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

==

Ram Nath Ram, Son of Late Kargal Ram, Resident of Village – Imadpur, P.S.-Sahebganj, District-Muzaffarpur, presently employee as peon in the office of Accountant General, Bihar, Birchand Patel Marg, Patna-1

.... Appellant/s

Versus

State of Bihar (Through C.B.I.)

.... Respondent/s

With

==

Criminal Appeal (SJ) No. 354 of 2002

Arising Out of PS.Case No. -null Year- null Thana -null District- SAMASTIPUR

==

Dilip Paswan, Son of Late Chedi Paswan, resident of Village – Hasanpur Jitwarpur, P.O and P.S.-Samastipur, District-Samastipur, presently posted as Accountant, Pension-9 Section, Office of Accoutnant General (A&E) II, Bihar, Patna.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

==

Appearance:

For the Appellant/s	:	Mr. S. N. P. Sinha, Sr. Advocate.
		Mr. Rohit Kumar, Advocate.
		Mr. Rashmi Bharti, Advocate.
		Mr. J. N. Sinha, Advocate.
For the Respondent/s	:	Mr. Bipin Kumar Sinha, Advocate.
		Mr. Sanjay Kumar, Advocate.

==

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
C.A.V. JUDGMENT
Date: 08-09-2017

Both these appeals have cropped up from the common judgment and order of conviction & sentence dated 22.06.2002 passed by learned Special Judge (CBI), South Bihar, Patna in Special Case No.34 of 1993, arising out of S.P.E./C.B.I./Patna R.C. No.37 (A)/1993, whereby the learned lower Court convicted the appellants under Section 120B of the Indian Penal Code read with Section 7 of the Prevention of Corruption Act & Section 13(2) read with Section 13 (1) (d) of the Prevention of Corruption Act and sentenced them to undergo rigorous imprisonment for one year under Section 120B of the Indian Penal Code read with Section 7 of the Prevention of Corruption Act, 1988, for six months R.I. under Section 7 of the Prevention of Corruption Act and for one year under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. All the sentences have been directed to run concurrently.

2. The factual matrix of the case is that R.C. Case No.37 (A)/1993 was instituted on the basis of a complaint filed by one Bishwanath Pathak, son of Late Gopal Pathak, retired Hawaldar, Bengal Police to Superintendent of Police, C.B.I., Patna on 05.11.1993, with the allegation in succinct that he was posted as Hawaldar in the Bengal Police in the District Mednapur and superannuated on 01.07.1987. His pension was fixed at Rs.534 per month. Subsequently, the same was enhanced to Rs.668 vide order of Principal Accountant General, Bengal and addressed to Accountant General, Bihar for further action. With the aforesaid order, he arrived at the Accountant General Office on 05.11.1993 & after enquiry, he came to know that the Accountant who looks after the work of Bengal is Dilip Paswan. As general people cannot enter into the office without pass, he was standing at the gate of the AG Office, Patna. In the meantime, one person named Ram Nath Ram claiming to be employee of the said office approached him & demanded Rs.300 from him as a bribe to get his work done. On request to get him contacted with the Accountant of the office, he went in the office & came back with a person and introduced him as Dilip Paswan, Accountant of the office. The said Dilip Paswan also assured that letter will be sent to the Treasury Office, Chapra on payment of money as demanded by Ram Nath Ram. The complainant venting his financial crisis took time to come on 08.11.1933, after arranging the money. Thereafter, Dilip Paswan asked him to come between 12 O'clock to 1 PM at the Betel shop located near the gate of the office where Ram Nath Ram would meet him and call him. On receiving the complaint petition, the Superintendent of Police, C.B.I., Patna got the veracity of the allegation verified by an officer and then F.I.R. was instituted. Thereafter, a raiding party was constituted and after carrying out demonstration formalities trap was laid and accused persons were apprehended while demanding and accepting the bribe of Rs.300 from the complainant.

3. The case was investigated and the chargesheet was submitted. On perusing the same, the learned lower court took cognizance of the offence under Section 120B of the Indian Penal

Code and Section 7, 13 (2) read with 13(1)(d) of the Prevention of Corruption Act against the appellants.

4. The charge against the appellants was framed under Section 120B of the Indian Penal Code read with Section 7 of the Prevention of Corruption Act, 1988, Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. Charge was read over & explained to the appellants to which they pleaded not guilty and claimed to be tried.

5. To substantiate its case in ocular evidence, the prosecution has been able to examine altogether fifteen witnesses. Ramsewak Singh as P.W.1, Yogesh Prasad Gupta as P.W.2, Pravin Kumar as P.W.3, Krishna Nandan Thakur as P.W.4, Indrajit Bodra as P.W.5, the complainant Bishwanath Pathak as P.W.6, Baliram Singh as P.W.7, Sanat Kumar Mukhopadhyay as P.W.8, Pokh Narain Prasad as P.W.9, Anil Kumar as P.W.10, Shashibhushan Sahay as P.W.11, Jagesh Upadhyaya as P.W.12, Ashesh Kumar as P.W.13, Yugal Kishore Jha as P.W.14 and Inspector C.B.I. Nagendra Prasad as P.W.15. In documentary evidence prosecution has filed and proved several documents.

6. The statement of the accused persons was recorded under Section 313 of the Cr.P.C. The case of the defence is the complete denial of the occurrence claiming to have been falsely implicated in the case. The defence did not adduce either any ocular or documentary evidence in support of its case.

7. After hearing the parties and perusing the record, the learned lower court convicted the accused persons under Section 120B of the Indian Penal Code read with Section 7 of the Prevention of Corruption Act and Section 13 (2) read with Section 13(1)(d) of the Prevention of Corruption Act and sentenced as detailed in the earlier paragraph.

8. Being aggrieved and dissatisfied with the impugned judgment and order of conviction and sentence, both these appeals have been preferred.

9. The point for consideration in this appeal is, as to whether the prosecution has been able to bring home the charges levelled against the appellants beyond all reasonable doubts or not.

10. It is submitted by learned counsel for the appellants that as per the account of prosecution witnesses, betel shop is located near the place of occurrence and beside that, a hotel, circuit house and sultan palace are located in the vicinity of the place of occurrence, but none of the independent witnesses of the locality has been examined by the prosecution instead two witnesses, namely, Krishna Nandan Thakur and Indrajit Bodra who happen to be the officers of the Allahabad Bank were examined by the prosecution claiming them to be the independent witnesses of the occurrence, but, in fact, they are pet witnesses of the C.B.I. It is further submitted that no recovery memo was prepared at the place of occurrence rather the same was prepared in the C.B.I. Office and the said recovery memo also does not bear signature of the appellants in utter violation of the Section 100 Cr.P.C. which creates serious doubt about the search, seizure and recovery of any money from the possession of the appellants. It is further submitted that the members of the trap team examined in this case are highly interested witnesses of the case. Neither the hands of the members of the trap team nor the hands of Indrajit Bodra who took out the graft money from the pocket of the appellant Ram Nath Ram was washed with the solution of the Sodium Carbonate which creates serious doubt about the prosecution case. It is further submitted that the demand and acceptance of the bribe at the public place is not acceptable and it is beyond the natural course of conduct. It is further submitted that neither the shirt of the accused Ram Nath Ram nor the G. C. Notes were produced before the Court. It is further submitted that the accused Ram Nath Ram had no concern with the preparation of the authority letter regarding the pension of the complainant. He simply happens to be a peon in the AG office, Patna. He was not posted in Pension-9 Section where the pension paper is dealt with rather he was posted in the Section located on the ground floor of the office to see the grievance of the public. He has been falsely implicated in the case, as he did not allow the complainant to go upstairs in the office without any pass leading to an altercation between them. It is further submitted that the appellant Dilip Paswan was not present in the office on 08.11.1993 i.e. on the date the trap is said to have been laid rather he was on leave as he had gone to Samastipur. The attendance register also indicates his absence in the office on the said date. So, there was no question of making any demand and acceptance of the graft by him from the complainant and recovery of the same from his possession. Appellant Ram Nath Ram had also not made any demand of graft and accepted it and nothing was recovered from his possession. It is further submitted by the learned counsel for the appellant that as per the evidence adduced by the prosecution, authority letter regarding the pension of the complainant was already prepared on 08.11.1993 preceding to the demand allegedly made by the appellants, so there was no occasion to make any demand by them from the complainant in lieu of preparation of the authority letter. It is further submitted by the learned counsel for the appellants that the sanction order for prosecution of the appellants has not been issued by the competent authority after perusing the entire materials on record and by applying its mind, so the sanction order is invalid and the trial stands vitiated for want of the valid sanction order. It is further submitted by learned counsel for the appellants that the verification report has not been sent to the court along with the F.I.R. rather it was produced before the Court on 07.04.2000 i.e. after hiatus of seven years as a concocted and after thought document and for want of the verification report, demand of graft by the appellants does not stand proved. It is further submitted by the appellants that there is vital contradiction between the testimonies of the witnesses examined by the prosecution. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case beyond all reasonable doubts against the appellants.

11. On the other hand, learned APP for the State advocating the correctness and validity of the impugned judgment and order of conviction and sentence has submitted that the prosecution has fully substantiated the demand of graft of Rs.300/- and acceptance of the same by the appellant from the complainant in lieu of issuance of authority letter regarding the pension of the complainant to the Treasury Office, Chapra and recovery of the same from their possession by adducing consistent, trustworthy and reliable ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by the learned Trial Court is not suffering from any illegality, infirmity and impropriety and the same is liable to be upheld and the aforesaid appeals have no substance in it and are liable to be dismissed.

12. To establish the offence under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, the prosecution is required to substantiate three things, firstly, demand of graft by the government officials in lieu of any work to be done, secondly acceptance of the graft and thirdly recovery of the same from the possession of the accused beyond all shadow of doubt. Regarding the aforesaid ingredients, it is the case of the prosecution that the Complainant, namely, Bishwanath Pathak (PW-6) was a retired Hawaldar in the Bengal Police and his pension was enhanced and the pension paper was sent to the A.G. Office, Bihar from the Office of Principal Accountant General, West Bengal for issuing authority letter to the Treasury Office, Chapra for payment of the same to the complainant with a copy of the order to the complainant. Taking the said order the complainant Bishwanath Pathak arrived at A.G. Office, Patna on 05.11.1993 and he learnt that Dilip Paswan, Accountant of the A.G. Office deals with the pension matter of the State outside the Bihar pertaining to District Chapra. While he was standing at the gate of the said office, a person named Ram Nath Ram claiming to be employee of the said office approached him and demanded Rs. 300/- as graft to get his work done. On implore made by him to get him contacted with Dilip Paswan, he went in the office and came back with a person and introduced him as Dilip Paswan, Accountant of the A.G. Office. Dilip Paswan assured him to send the authority letter to the Treasury Office, Chapra on payment of graft as demanded by Ram Nath Ram. Thereupon, the complainant took time to arrange money and 08.11.1993 between 12 O'clock to 1 P.M. was fixed for meeting at the betel shop located near the gate of the office. Then the complainant approached the Superintendent of Police, C.B.I., Patna and lodged a complaint. On receiving the complaint petition, Superintendent of Police, C.B.I. got the veracity of the complaint verified by its officer and lodged an F.I.R. Thereafter, a trap team was constituted including two independent witnesses of the Allahabad Bank and after carrying out the formalities of the demonstration and taking the currency notes of Rs.300/- from the complainant and noting down its number and then treating it with Phenolphthalein powder, it was given back to the complainant with direction to hand over to the accused persons on demand and a preliminary report in this regard was prepared. Thereafter, trap was laid at the fixed place. The graft money was paid to Dilip Paswan by the complainant on demand which he handed it over to Ram Nath Ram in turn and he after counting the same kept in his left side pocket of his shirt in front of the shadow witness and other members of the trap team who were watching the transaction at a short distance from the place of occurrence. Then on pre-fixed insinuation made by the complainant, the trap team caught hold Dilip Paswan and Ram Nath Ram red-handed and another independent witness, namely, Indrajit Bodra took out the aforesaid money from the pocket of Ram Nath Ram. As the people started congregating at the place of occurrence after nabbing the accused persons, so to avoid any untoward happening, the trap team took the accused persons to C.B.I. Office where the hands of the accused persons and pocket of the shirt of Ram Nath Ram were washed with the solution of Sodium Carbonate which turned pink colour and the said wash was sealed in a bottle and then recovery memo was prepared. The said wash was sent to the CFSL, Hyderabad for its chemical examination. The said CFSL in its report opined that the said solution is the mixture of Phenolphthelin powder and Sodium Carbonate.

13. Complainant Bishwanath Pathak examined in this case as PW-6 appears to have substantiated the prosecution case by stating in his examination-in-chief that his pension was enhanced by the AG office, West Bengal. Taking the paper regarding the same he arrived at A.G. Office, Patna on 05.11.1993 where he met with a peon Ram Nath Ram, who demanded Rs. 300/- from him in lieu of his work. On request to get him contacted with the Accountant, he assured him to get him introduced with the dealing clerk Dilip Paswan. He came back with a person and introduced him as Dilip Paswan. The said Dilip Paswan assured him that on payment of the money as demanded by Ram Nath Ram, he will send the pension paper to Treasury Office, Chapra. As he did not want to pay the graft in lieu of his work, he approached CBI office and filed complaint before the Superintendent of Police, C.B.I. Then the Superintendent of Police, CBI sent S.I. Pravin Kumar with him to the A.G. office for verification of the facts, but as Dilip Paswan did not meet them on the said date, they again went to AG office at 10 A.M. on 08.11.1993 and met the appellant Ram Nath Ram there and asked to call Dilip Paswan. Ram Nath Ram called Dilip Paswan and then Dilip Paswan asked him as to whether he has brought the money. On reply, he told that he has just arrived here to see as to whether he has come in the office or not and assured him to come with the money. Then, he along with Pravin Kumar went to C.B.I. office. Two witnesses from the Allahabad Bank, namely, Krishna Nandan Thakur (PW-4) and Indrajit Bodra (PW-5) were called in the office. He was introduced with the said witnesses who quizzed him about the demand of graft made by the accused persons. Thereafter, the formality of demonstration was made. Then the Inspector of CBI demanded Rs. 300/- from him. He handed over two currency notes each of Rs. 100/-

denomination and two notes each of Rs. 50/- denomination to him. Numbers of the said currency notes were noted down and thereafter it was treated with Phenolphthalein powder and the Inspector returned it to him with the direction to give it to Dilip Paswan on demand and, thereafter, to make insinuation by itching his head. Thereafter, preliminary memorandum was prepared. Independent Witness Krishna Nandan Thakur was deployed as a shadow witness with him. Thereafter, they went to the A.G. Office at 1 P.M. Ram Nath Ram was standing at the betel shop located in front of the A.G. Office. Another independent witness Indrajit Bodra and other officers of the C.B.I. were standing at a short distance while Krishna Nandan Thakur was with him. He asked Ram Nath Ram to call Dilip Paswan, then Ram Nath Ram took Dilip Paswan and on arrival, he asked him about bringing of money by him and on giving reply in affirmative, he told that the paper will be sent to the Treasury Office, Chapra on payment of money by him. Then he took out the aforesaid money from his pocket and gave it to Dilip Paswan and he gave it to Ram Nath Ram in turn and Ram Nath Ram put it in his left pocket. Then he gave pre-fixed insinuation and responding the same, the officials of C.B.I. rushed there and caught them hold red-handed. Inspector Nagendra Prasad searched their possession and the said Rs. 300/- was recovered from the pocket of Ram Nath Ram and number of the said notes was tallied and it was found same. As the people started congregating there and there was din there, the officers of the C.B.I. took the accused persons to the C.B.I. Office on the vehicle. Thereafter, hands of the accused persons were dipped in the solution of sodium carbonate which turned pink. Pocket of the shirt of Ram Nath Ram was also dipped in the solution of sodium carbonate which also turned pink. The aforesaid wash was sealed in bottle and the shirt and the aforesaid money was also sealed. Thereafter, a recovery memo was prepared which was signed by him and other witnesses. He has proved the same marked as exhibit-5. He was subjected to lengthy cross-examination by the defence, but nothing convincing and cogent has been elicited in his cross-examination warranting to rule out his aforesaid testimony.

14. PW-4 Krishna Nandan Thakur and PW-5 Indrajit Bodra who happens to be the independent witnesses working as Manager in the Allahabad Bank have stated in their respective examination-in-chief that they went to the CBI office and they were introduced with the complainant. The complaint petition was read over to them and they became satisfied on quizzing the complainant. Then PW-5 was made to touch Phenolphthelin powder and his finger was dipped in the solution of sodium carbonate which turned pink. Thus formality of demonstration was made and preliminary memorandum was prepared and they put their signature on the same. They further stated that Rs. 300 i.e. two notes of each of Rs.100 denomination and two notes of each of Rs.50 denomination were taken from the complainant, Bishwanath Pathak which was treated with the Phenolphthalein powder by the inspector and then the same was returned back to the complainant with direction to give it on demand. Thereafter, they along with the complainant went to the AG Office at 12 P.M. Krishna Nandan Thakur was the Shadow Witness, while Indrajit Bodra & others were standing in the vicinity of betel shop. After a while Ram Nath Ram arrived near the betel shop and asked the complainant whether he has brought money, then Pathakji replied in affirmative & asked Ram Nath Ram to call Dilip Paswan. Ram Nath Ram went in the office and took Dilip Paswan within a short while and on quizzing by Dilip Paswan, Pathakji told him that he has brought Rs. 300/- and then Pathakji gave money to Dilip Paswan. Dilip Paswan took the money and gave it to Ram Nath Ram in turn. Ram Nath Ram put the money in the pocket of his shirt. After completion of the transaction of money, the accused persons were apprehended by the CBI personnel. Krishna Nandan Thakur took out the aforesaid money from the pocket of Ram Nath Ram and the number of the said notes was tallied as mentioned in the preliminary memorandum and was found same. As the crowd started congregating at the place of occurrence, the accused persons were taken to CBI office on the vehicle. Notes were sealed in the CBI office. Hands of the accused persons were washed with the solution of Sodium Carbonate and the wash was sealed in separate bottles. Shirt of Ram Nath Ram was washed in the solution of Sodium Carbonate and its wash was also sealed in a separate bottle. They put their signature on the seal. Thereafter, recovery memo was prepared and they put their signature on the same. The aforesaid witnesses were also subjected to lengthy cross-examination but nothing cogent and convincing has been elicited in their cross-examination warranting to rule out their testimonies. From the perusal of the testimonies of PW-4, PW-5 & PW-6, it appears that the said witnesses have supported the case of demand of the graft and acceptance of the same by the accused persons and recovery of it from their possession.

15. Pravin Kumar (PW-3), Jagesh Upadhyay (PW-12), Ashesh Kumar (PW-13) and Nagendra Prasad (PW-15) happens to be the personnel of the CBI. They also appear to have supported the aforesaid case of the prosecution regarding making the complaint by Bishwanath Pathak in the CBI office, on verification of the allegation made by him carrying out the formalities of demonstration, preparation of preliminary report, constitution of trap team, taking the currency notes of Rs. 300/- i.e. two notes each of Rs.100 denomination and two notes each of Rs.50 denomination from the complainant, treating the same with the Phenolphthalein powder and then returning the same to the complainant to hand over to the accused persons on demand, constituting the trap team, arrival at the AG office along with the PW-4 and 5 and the complainant, demanding of the graft of Rs. 300/- by the accused persons from the complainant, handing over the aforesaid money by the complainant to Dilip Paswan, handing over the same to the accused Ram Nath Ram in return by him, recovery of the same from the possession of Ram Nath Ram, tallying of the number of currency notes with the number as mentioned in the preliminary report and then apprehending the accused persons red-handed and taking them to the CBI office as the public started congregating at the place of occurrence and thereafter, washing the hands of the accused persons and pocket of the shirt of Ram Nath Ram with the said solution, turning of it pink colour, sealing of the aforesaid wash, sealing of the currency notes and shirt of the Ram Nath Ram by giving consistent statements regarding the aforesaid aspect of the case in their respective examination-in-chief. They were also subjected to detailed cross-examination by the defence but nothing cogent has been elicited in their testimonies having potential to rule out their testimonies. Though PW-15 in para-7 of his cross-examination has stated that the money was in the hand of Ram Nath Ram and he asked the witness to take it from his hand and get it tallied with the number as mentioned in the preliminary memorandum, but the said contradiction, in my considered opinion, does not appear to be material in view of the consistent testimony of the aforesaid witnesses regarding the recovery of the said money from the possession of the accused persons. As the occurrence is of 08.11.1993 and the deposition of the said witnesses was recorded after hiatus of around 7 years, so such contradiction is bound to occur in the testimony of natural witness by passage of time. The said statement is not going to shatter the prosecution case.

16. PW-1 Ramsewak Singh happens to be Sr. Dy. Accounts Officer of AG office, Patna and PW-2 Jogesh Prasad happens to be Sr. Accounts Officer of AG Office, Patna. They have given sanction order for prosecution of Dilip Paswan and Ram Nath Ram respectively. They have proved the sanction order marked as Exhibit-1 and Exhibit-2 respectively. The appellants have assailed the aforesaid sanction order on two grounds, firstly that the person giving the said sanction order in respect of Ram Nath Ram is not competent authority to give the same and, secondly they have given aforesaid sanction order without perusing the material and documents available on record and without applying their mind. But from perusal of the Central Civil Service Rule, Part-IV, 1997 Edition, it appears that the sanctioning authority of Group 'D' post in the departmentalized account offices is the Pay and Account Officer. As PW-2 happens to be the Senior Accounts Officer in AG Office, Patna and has given sanction order in respect of the appellant Ram Nath Ram, he is quite competent to give the aforesaid sanction order. From perusal of the aforesaid sanction order and testimonies of the PW-1 and PW-2, it appears that after thoroughly and carefully examining the facts and circumstances of the case and finding the prima facie case made out against the appellants and applying their mind, they have given the aforesaid sanction orders. Hon'ble Apex Court in the case of **State of Maharashtra and Ors. Vs. Ishwar Piraji Kalpatri and Ors.** reported in **(1996) 1 SCC 542** has been pleased to rule that where sanction given by the sanctioning authority after fully examining the material before it and after considering all the facts and circumstance disclosed therein, being satisfied that the prima facie was made out against the accused persons and that it is necessary in the interest of justice that the accused persons should be prosecuted in the court, prima facie shows that there has been application of mind and that the material on record has been examined by the officer concerned before according sanction.

17. PW-7 Baliram Singh who happens to be the Sr. Accountant, AG Office, Patna has stated in his examination-in-chief that the appellant Ram Nath Ram was deployed as a peon in his office. He used to help the people in the disposal of the pension, pay slip and provident fund. He was present on duty in the office on 05.11.1993 and 08.11.1993. In his cross-examination, he has further stated that chaukidar was posted to prevent the persons from entering into the office without pass and sometime in case of rush, he used to send Ram Nath Ram there. From perusal of the aforesaid testimony of PW-7, it appears that he has proved that Ram Nath Ram was posted in the AG office as peon and he was on duty in the office on 05.11.1993 and 08.11.1993 i.e. on the date of occurrence. Though in Para-3 of his cross-examination, he has stated that he learnt 15 days later to the occurrence that on 05.11.1993, there was dispute between Ram Nath Ram and the complainant as he intercepted him to go upstairs in the office without pass and the defence has laid much emphasis on the said statement of PW-7 submitting that the said statement of PW-7 indicates that the accused persons were falsely implicated in the case as there was dispute between Ram Nath Ram and the complainant over preventing him from entering into office and going upstairs without pass. But in my considered opinion, the said defence does not appear to be convincing and appreciable, as for a petty dispute of preventing a person from entering in the office without pass, a person will not take such a pain to approach CBI Office and manipulate and concoct a case and taking the personnel of the CBI in collusion falsely implicate the person entering into petty dispute with him to satiate his grudge.

18. PW-9 Pokh Narain Prasad was posted as Senior Accountant in pension-9 section of the AG office, Patna at the relevant time. He has stated in his examination-in-chief that Dilip Paswan used to work as an accountant in the said section and he used to deal with the pension matter of other states. He has proved the certified copy of the revised pension pertaining to the complainant Bishwanath Pathak.

19. PW-10 Anil Kumar who also happens to be diarist of the AG Office, Patna has stated in his examination-in-chief that Dilip Paswan was accountant in the section-9 and he used to deal with the pension paper of the Treasury Office, Chapra. The pension paper of the complainant Bishwanath Pathak received from West Bengal was handed over to Dilip Pasan after making entry in diary as the said paper was endorsed to Dilip Paswan by Section Officer Shashibhushan Sahay and said Shashibhushan Sahay (PW-11) who happens to be the retired Accounts Officer, AG Office, Patna has stated in his examination-in-chief that at the relevant time of occurrence, he was posted in the pension-9 section as Assistant Accounts Officer. Dilip Paswan was accountant at that time and he used to deal with pension paper of the other states pertaining to six districts of the Bihar including Chapra District. The authority slip regarding the pension of Bishwanath Pathak was received from West Bengal. Dilip Paswan used to deal with the documents of the Chapra Treasury. The said document was received by him from account officer and he had sent it to the diary clerk. The authority slip is prepared by the accountant to whom it is entrusted and Dilip Paswan was to prepare the payment order of Bishwanath Pathak. Thus, from perusal of the aforesaid testimony of the said witnesses, it appears that the said witnesses have established that Dilip Paswn was posted in pension-9 section as accountant and he used to deal with the pension paper of Treasury Office, Chapra and the pension paper of the complainant was handed over to him after entering the same in the diary.

20. PW-14 Yugal Kishroe Jha who happens to be the retired Sr. Accounts Officer, AG Office, Patna has stated in his examination-in-chief that he was posted in the AG office in the year 1993. Dilip Paswan was posted as accountant in the AG office in the month of November, 1993. He has proved the authority letter marked as Exhibit-10 pertaining to Bishwanath Pathak prepared in the writing and signature of Dilip Paswan. He has stated that he had put his signature on the same on 08.11.1993 after preparation of the entire document. PW-14 in Para-5 of his cross-examination has stated that Dilip Paswan had not come to the office on 08.11.1993. He had crossed his attendance on the said date. The defence has made an abortive bid to cash the aforesaid statement of the aforesaid witness submitting that as as per the account of the aforesaid witnesses, Dilip Paswan was not present in the office on 08.11.1993, then how he would have demanded and accepted the graft from the complainant and the same was recovered from his possession. But the aforesaid submission also does not appear to be convincing and appreciable to me as PW-14 has himself stated that the pension paper was prepared by Dilip Paswan and after completion of the same, he has put his signature on it on 08.11.1993. From perusal of the Exhibit-10 which is the authority letter pertaining to Bishwanath Pathak, it appears that it was prepared by Dilip Paswan on 08.11.1993 and was signed by Yugal Kishore Jha (PW-14) on the same date on 08.11.1993. Thus, the aforesaid statement of PW-14 and the Exhibit-10 clearly indicates that Dilip Paswan was present in the office on 08.11.1993 and prepared the said authority letter. Moreover, he was apprehended by the personnel of CBI on the said date and the defence has not assailed his apprehension on the said date. The aforesaid statement of the said witness and the document also goes to indicate that Dilip Paswan was present in the office on 08.11.1993, but he had intentionally not put his signature on the attendance register on the said date with ulterior motive, keeping in mind that in the case of his implication for demanding and taking bribe from the complainant he would take the defence that he was not present in the office on the said date. The aforesaid step taken by Dilip Paswan appears to be pre-planned with *malafide* intention.

21. PW-8, namely, Sanat Kumar Mukhopadhyay, happens to be the Assistant Director, CFSL, Hyderabad. On perusal of his testimony, it appears that he has proved the CFSL report marked as Exhibit-7 and stated that on examination of the wash sent to him in the sealed bottles, he found the contents of each of the sealed bottles giving positive test for Sodium Carbonate and Phenolphthalein and prepared the report. Thus, on the chemical examination, the wash of the hand of the appellants and the shirt of Ram Nath Ram was found containing Sodium Carbonate and Phenolphthalein and it has proved the recovery of the aforesaid tainted money from the possession of the appellants.

22. Submission of the appellants that search and recovery of money was not made in presence of the local witnesses rather officers of the Bank who are pet witnesses of the CBI. Hence, for want of local witnesses, serious doubt is created about the aforesaid aspect of the case. But the said submission does not appear to be convincing and plausible, as though the search and recovery of the currency notes was not made before the local witnesses, but PW-4 and PW-5 also happen to be independent witnesses of the occurrence and before them entire process of demonstration, trap, search of the accused persons and recovery of the currency notes was made and the defence has failed to prove the said witnesses to be pet witnesses of the CBI and also having any inimical term with the appellants. So the question arises as to why the aforesaid witnesses would depose against the appellants. Submission of the defence that the recovery and verification memo were not sent to the court along with the F.I.R rather was filed in the case during the course of trial i.e. after hiatus of seven years, hence said documents are concocted and after thought and creates doubt about the case of demand of graft made by the appellants, also does not appear to be convincing and acceptable because from the aforesaid testimonies of the prosecution witnesses, it appears that the prosecution has successfully substantiated the demand of money made by the appellants and the payment of the currency notes by the complainant to them on 08.11.1993 before the shadow witness PW-4 and other independent witness PW-5 and members of the trap team. So merely not sending the verification report to the court along with the FIR does not adversely affect the merit of the case. Further submission of the defence that recovery memo does not bear the signature of the appellants which creates serious doubt about the recovery of the currency note from their possession, also does not appear to be convincing and acceptable because as discussed by me hereinabove, the prosecution has successfully substantiated the recovery of the tainted currency notes from the possession of the appellant by adducing cogent, convincing and reliable ocular as well as documentary evidence. Moreover, the recovery memo also bears signature of the independent witnesses PW-4 and PW-5 and the members of the trap team. So, in my considered opinion, the latches of the prosecution in not taking the signature of the appellants on the recovery memo is not going to shatter the prosecution case. The defence has laid emphasis on the fact that the shirt of Ram Nath Ram and recovered currency notes were not produced before the Court in a bid to counteract the prosecution case, but the said effort of the defence also does not appear to be fruitful. As in view of the recovery of the tainted currency notes from the possession of the appellant and turning of the colour of Sodium Carbonate pink on dipping the shirt of Ram Nath Ram from where the tainted currency note was recovered and the hands of the accused persons as well as consistent ocular and documentary evidence regarding the recovery of the tainted currency note from the possession of the appellant, the said latches on the part of the prosecution, in my considered opinion, also do not shatter the prosecution case. Further submission of learned defence counsel that no recovery memo was prepared at the place of occurrence rather the same was prepared in the CBI office which creates serious doubt about the recovery of the tainted money from the possession of the appellants does not appear to be convincing and plausible. As from the perusal of the record, it appears that number of witnesses have stated that following the apprehension of the appellants at the place of occurrence, crowd started converging there, hence, to avoid any untoward happening at the place of occurrence and taking precaution, the trap team took the appellant to the CBI office where the recovery memo was prepared. The said step taken by the prosecution appears to be as per the natural course of conduct and in my considered opinion in no way it affects the merit of the case. Further submission of the defence that as per the witnesses' account, authority slip of the pension was already prepared on 08.11.1993 so there was no occasion of demanding graft for preparation of the pension paper from the complainant by the appellants as the bribe is demanded only to do the work and not after completing the work, also does not appear to be convincing as albeit as per the witness account, authority slip regarding the pension of the complainant was prepared on 08.11.1993, but it was not brought on record by the defence that the complainant was aware of the aforesaid fact preceding to the occurrence. The defence has also laid emphasis on his submission that Nagendra Prasad, Inspector was member of the trap team, he had lodged the F.I.R. and carried out the investigation of the case and had submitted the chargesheet. So the entire investigation and subsequent trial stands vitiated. But the said submission also does not appear to be convincing, appreciable and plausible, as nothing has been elicited in the cross-examination of the said witness to substantiate that he was personally interested to get the appellants convicted and the appellants also could not point out any circumstance that the Inspector was biased against them. **Hon'ble Apex Court in Vinod Kumar Vs. State of Punjab reported in AIR 2015 SC 1206** has been pleased to rule that where the investigating officer is the member of the raiding party and had sent the F.I.R. to police station and, thereafter himself carried out the formal investigation, the investigation is not vitiated and the trial would also not be vitiated as nothing has been proved against him that he was any way personally interested to get the appellant convicted.

23. From perusal of the evidence adduced by the prosecution, it appears that the prosecution has succeeded to prove the demand of bribe and acceptance of it by the appellants and recovery of the offending currency notes from the possession of the appellants. It is settled principal of law laid down by the Hon'ble Apex Court in number of decisions that once the demand and voluntary acceptance of illegal gratification knowing it to be the bribe are proved by the evidence, conviction must follow under Section 7 of the Prevention of Corruption Act against the accused. Indeed these twin requirements are *sine qua non* for proving the offence under Section 7 of the Act. No explanation has been given by the appellants as to how the tainted money came in their possession by bringing on record any evidence either direct or circumstantial.

24. On perusal of the evidence and keeping in view of the aforesaid principal of law in mind, I come to conclusion that the twin requirements i.e. the demand and acceptance of illegal gratification of Rs. 300 by the appellants have been proved cogent, consistent and trustworthy evidence adduced by the prosecution against the appellants. Hence, the appellant was rightly convicted and sentenced for the offence punishable under Section 120B of the Indian Penal Code and Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act by the learned lower court.

25. In view of the aforesaid facts and circumstances of the case and the evidence of the prosecution, I find and hold that the prosecution has fully succeeded to establish that the appellants in collusion of each other demanded graft of Rs. 300 from the complainant to get the authority slip of his pension sent to Treasury Office, Chapra and accepted the said money from the complainant in lieu of the said work and incriminating money was recovered from their possession by adducing consistent, convincing, reliable and worth credence ocular and documentary evidence. The impugned judgment and order of conviction and sentence passed by the learned lower court does not suffer from any illegality and impropriety warranting intervention of this Court. Accordingly, it is upheld and the aforesaid two appeals are dismissed. As the appellants are on bail, their bail bonds are cancelled and they are directed to be taken into custody.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	A.F.R.
CAV DATE	23.08.2017
Uploading Date	12.09.2017
Transmission Date	12.09.2017