

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.19 of 2013

Arising Out of PS. Case No.-6 Year-2004 Thana- C.B.I CASE District- Patna

Bindeshwar S/o Late Dharam R/o Sherpur, P.S. Vidyapatinagar, District -
Samastipur

... .. Appellant/s

Versus

The State of Bihar through C.B.I.

... .. Respondent/s

with

Criminal Appeal (SJ) No. 37 of 2013

Arising Out of PS. Case No.-6 Year-2004 Thana- District- Patna

Munilal @ Muni Lal Paswan S/o Ram Chandra Ram Resident of Sangatkala,
P.S- Gajipur, District- Gajipur (U.P) the then Chief P.W-I, East Central
Railway, Samastipur (Bihar)

... .. Appellant/s

Versus

State through C.B.I.

... .. Respondent/s

Appearance :

(In Criminal Appeal (SJ) No. 19 of 2013)

For the Appellant/s : Mr. Akhileshwar Prasad Singh
Mr. Sudish Kamal

For the Respondent/s : Mr. Bipin Kumar Sinha, SC/ CBI

(In Criminal Appeal (SJ) No. 37 of 2013)

For the Appellant/s : Mr. Ravindra Kumar

For the Respondent/s : Mr. Bipin Kumar Sinha, SC/CBI

**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

CAV JUDGMENT

Date : 24-09-2018

Heard learned counsel for the appellants and
learned Standing Counsel for the C.B.I. on these criminal
appeals.

2. The aforesaid criminal appeals have been



preferred against the judgment and order of conviction and sentence dated 21.12.2012 passed by Special Judge, C.B.I.-III Patna in Special Case no. 2 of 2004 arising out of R.C. Case no. 6(A) of 2004, whereby the learned trial court convicted the accused namely, Munni Lal Paswan for the offence punishable under Sections 7/ 120B, 13(2) of the Prevention of Corruption Act and accused Bindeshwar for the offence punishable under Sections 7/ 120B, 12, 13(2) of Prevention of Corruption Act and sentenced both the accused persons to undergo R.I. for three years and also slapped them with a fine of Rs. 10,000/- each and in default of payment of fine to further undergo S.I. for two months under Section 13(2) of the Prevention of Corruption Act and further sentenced them to undergo R.I. for two years and slapped them with a fine of Rs. 5,000/- each and in default of payment of fine to further undergo S.I. for one month under Section 7 of the PC Act read with Section 120B of the Indian Penal Code. All the sentences were directed to run concurrently.

3. The factual matrix of the case is that R.C. Case no. 6(A) of 2004 was instituted under Sections 120B of the Indian Penal Code and Sections 7 and 12 of the Prevention of Corruption Act against accused Munni Lal and Bindeshwar



on the basis of written complaint dated 20.02.2004 filed by Tilak Mahto addressed to S.P., C.B.I. ACB, Patna with the allegation, in succinct that he is working as a gang man fitter-cum-trolley man at Dalsingh Sarai. Bindeshwar, who happens to be trolley man of Chief PWI Sri Munni Lal realizes Rs. 400/- to Rs. 700/- from him and his colleagues as graft each month on the date of payment of salary and in case of not obliging him, their salaries are slashed and their attendance are stricken out in the next month. The attendance register checked by PWI, Dalsingh Sarai at the end of each month on 27th and forwarded to chief PWI, Samastipur for preparation of salary. He has withdrawn his salary for the month of January, 2004 from salary office, Barauni on 17.02.2004 in advance. Bindeshwar had asked him to give Rs. 600/- as bribe to him on 21.02.2004 in the salary office, Dalsingh Sarai for Munni Lal, Chief PWI, Samastipur else his next month salary will be slashed. He has prayed to take legal action against trolley man Bindeshwar and Chief PWI, Munni Lal as he does not want to give graft to Bindeshwar.

4. On receiving the aforesaid complaint petition, S.P., C.B.I. got the veracity of the allegation verified by its officer, namely, H. Hemrom, Inspector, C.B.I., Patna and after



verification, F.I.R. was lodged against the aforesaid accused persons. Thereafter, the charge of the case was given to Shri Pushpendra Saxena, Inspector, C.B.I., Patna for laying down a trap and investigation. On 21.02.2004, a trap team was constituted comprising five personnel of C.B.I. and two independent witnesses, namely, Raj Kumar Singh and Parmanand Singh, both employee of the telephone office, Dalsingh Sarai. Out of them, Raj Kumar Singh was directed to act as shadow witness and demonstration formalities was carried out in the post office of Dalsingh Sarai and complainant was asked to produce sum of Rs. 600/- whereupon he produced the same consisting of twelve currency notes each of Rs. 50/- denomination. The description and number of the said currency notes was noted down in the preliminary memorandum. Said currency notes were treated with phenolphthalein powder and were given to the complainant with a direction to hand it over to the accused only on demand and a preliminary memo was prepared. Thereafter, on the same day, the trap team proceeded to the store of PW 11, Dalsingh Sarai located adjacent to Dalsingh Sarai Railway Station, where, Bindeshwar demanded and accepted tainted money of Rs. 600/- besides money collected



from other class-IV, employees for Munni Lal in presence of C.B.I. team and independent witnesses. Thereafter, the complainant and Bindeshwar left Dalsingh Sarai and advented at the resident of Munni Lal at Samastipur. The team members followed them from a suitable distance. Bindeshwar handed over the collected money from the complainant and other class-IV employees to Munni Lal on demand. Munni Lal accepted the same and then both Munni Lal and Bindeshwar were caught red handed for demanding and accepting the aforesaid money. The tainted GC notes of Rs. 600/- besides other Rs. 6000/- were recovered from the physical possession of Munni Lal. The hand washes of both the accused persons as well as the pocket wash of Bindeshwar were also collected for chemical examination by the expert and both the accused were apprehended.

5. The aforesaid case was investigated by the I.O. and after conclusion of the investigation, the I.O. submitted chargesheet against the aforesaid accused persons. On receiving the chargesheet, learned Special Judge, C.B.I.-III, Patna took cognizance of the offence against the aforesaid accused persons.

6. Charge against accused Bindeshwar was



framed under Section 120B of the Indian Penal Code read with Section 7 of the PC Act, Sections 7, 13(1)(d) punishable under Section 13(2) and Section 12 of the PC Act while against Munni Lal under Section 120B of the Indian Penal Code read with Section 7 of the PC Act, Sections 7, 13(1)(d) punishable under Section 13(2) of the PC Act. Charge was read over and explained to the accused persons by the court to which they pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether ten prosecution witnesses namely, Rashid Parvaiz Kaushar as PW-1, Murli Manohar Prasad as PW-2, Bimal Kishore Srivastava as PW-3, H. Hemrom, Inspector C.B.I. as PW-4, complainant Tilak Mahto as PW-5, Raj Kumar Singh as PW-6, Parmanand Singh as PW-7, Bimal Chandra Purkait, who happens to be senior scientist officer, CFSL Kolkata and had conducted the chemical examination of sodium carbonate solution as PW-8, Pushpendra Saxena, Inspector, CISF Dhanbad as PW-9 and Subhash Kundu I.O. of the case as PW-10. Out of the aforesaid witnesses, PW-1 and PW-2 happen to be sanctioning authorities of Munni Lal and Bindeshwar respectively. PW-3, happens to be formal witness, who has proved letters, pay



sheet and attendance sheet while PWs-6 and 7 turned hostile. In documentary evidence, the prosecution has filed and proved several documents in the case.

8. The statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence. The accused persons have also adduced three witnesses, namely, Abdul Salam as DW-1, Milendra Kumar Shukla as DW-2 and Diwakar Prasad Vidyarthi as DW-3 in ocular evidence. They have also filed and proved several documents by way of documentary evidence in buttress of their case.

9. After hearing the parties and perusing the record, the learned trial court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict Bindeshwar has preferred Criminal Appeal (SJ) No. 19 of 2013 and convict Munilal @ Muni Lal Paswan has preferred Criminal Appeal (SJ) No. 37 of 2013.

11. The point for consideration in this case is, as



to whether the prosecution has been able to bring home the charges levelled against the appellants beyond all reasonable doubts or not.

12. It is submitted by learned counsel for the appellants that the complainant Tilak Mahto has some grudge and animosity with the appellant Munni Lal Paswan as at once upon a time he had caught the complainant sleeping during the duty hour and the said appellant had conducted inquiry against him and submitted chargesheet. Consequently, his one pass was slashed and due to aforesaid animosity, the complainant has falsely implicated the said appellant in the case through the appellant Bindeshwar. The complainant happens to be man of dubious character and is not a truthful witness and cannot be relied upon. It is further submitted that there is no allegation of any other employee regarding demand of bribe by the appellants or by the complainant preceding to the aforesaid complainant and the aforesaid demand of bribe by Bindeshwar on behalf of Munni Lal Paswan does not stand corroborated by any class-IV employee. Thus, the genesis of the occurrence also does not stand proved by the prosecution. It is further submitted that the verification report was not appended with the FIR and moreover the allegation made by



the complainant has not been verified by the C.B.I. official, namely, H. Hemrom. As as per his account itself, the complaint was lodged at C.B.I. office, Patna at 10:00 AM on 20.02.2004 and after receiving the FIR of complainant and as per the direction of his officer, he proceeded to Dalsingh Sarai in verification of the matter and arrived there at 4:00 PM & it took 5:30 hours in arriving to Dalsingh Sarai from Patna. In Dalsingh Sarai, he verified the matter and then regressed to Patna and submitted his verification report. The aforesaid verification report was received in C.B.I. office, Patna at 8:00 PM. The aforesaid aspect of the case creates serious doubt about the verification of the matter by the aforesaid person as had he arrived at Dalsingh Sarai from Patna by the bus taking 5:30 hours at 4:00 PM and verified the matter at Dalsingh Sarai which would have taken at least one hour in verification and then regressed to Patna further taking 5:30 hours, he would have arrived at Patna at around 11:00 PM, but the verification report was received in the C.B.I. office, Patna at 8:00 PM on 20.02.2004 creating serious doubt about the sanctity of the aforesaid verification. The aforesaid aspect of the case indicates that actually no verification was made by the said official rather the same was table work. It is further



submitted that the prosecution case does not stand corroborated by any independent witness of the occurrence as PWs-6 and 7, who are said to be independent witnesses of the aforesaid occurrence of demand, acceptance and recovery had turned hostile and not supported the prosecution case. There is also no corroboration of the story of demand, acceptance and recovery by the aforesaid independent witnesses. It is further submitted that as per the prosecution case and witnesses account, the tainted money was recovered from the hand of the appellant Munni Lal Paswan on the door of his quarter allegedly given to him by the appellant Bindeshwar. But, as per the account of PW-6, the said money was recovered from the table of Munni Lal Paswan which creates serious doubt about the prosecution case and recovery of the tainted money from the possession of the appellants. As had the money was seized from the hand of Munni Lal Paswan on the door of his quarter immediately on receiving the same by him from Bindeshwar. How, the said money was recovered from the table lying inside the room of his quarter? Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case against the appellants beyond all reasonable doubt by adducing trustworthy and reliable evidence. Hence,



the impugned judgment and order of conviction and sentence passed against the appellants by the learned trial court is liable to be set aside and the appellants are entitled to be acquitted.

13. On the other hand, learned Standing Counsel for the C.B.I. advocating the correctness and validity of the impugned judgment and order of conviction and sentence, submitted that all the witnesses examined by the prosecution have supported the prosecution case intoto and the ocular evidence also stands corroborated by the documentary evidence filed by the prosecution, and learned trial court correctly appreciating the facts and evidence on record has rightly passed the impugned judgment and order of conviction and sentence which is liable to be upheld and these appeals are shorn of merit and are liable to be dismissed.

14. From perusal of statement of the complainant, it appears that the said witness in paragraph 26 of his cross-examination has stated that he had filed written complaint in the C.B.I. office, Patna on 20.02.2004 at 10:00 AM, but from perusal of the FIR, it appears that the aforesaid written complaint was received in the C.B.I. office, Patna on 20.02.2004 at 8:00 PM which creates serious doubt about the prosecution case.



15. From perusal of record, it appears that FIR was not appended with the verification report while written complaint was received in the C.B.I. office, Patna on 20.02.2004 at 8:00 PM. The veracity of the allegation made in the compliant petition was allegedly verified by the Inspector C.B.I., namely, H. Hemrom PW-4. The said witness has stated in paragraph 7 of his cross-examination that he had verified the allegation on the date of receiving complaint in the C.B.I. office, Patna. He had made verification arriving at Dalsingh Sarai from Patna by bus and it took 5:30 hours in arriving Dalsingh Sarai from Patna. In paragraph 8 of his cross-examination, he has further stated that he had submitted verification report in C.B.I. office, Patna while PW-5 Tilak Mahto in paragraph 26 of his cross-examination has stated that Hemrom *sahab* had arrived at Dalsingh Sarai at around 4:00 PM by his own vehicle. The aforesaid evidence of PW-5 and PW-4 indicates that PW-4 H. Hemrom had arrived Dalsingh Sarai at 4:00 PM on 20.02.2004 in verification of the allegation made by the complainant in his written complaint, but as the said complaint was received in the C.B.I. office, Patna on 20.02.2004 at 8:00 PM, so there was no occasion to PW-4 for proceeding to Dalsingh Sarai and arriving there at



4:00 PM in the verification of the allegation made in the written complaint by the complainant as by that time, no complaint was received in the C.B.I. office, Patna. The aforesaid testimony of PW-4 and PW-5 indicates that PW-4 had arrived at Dalsingh Sarai on 20.02.2004 at 4:00 PM and he might have taken at least one hour in verification of the matter and then he would have regressed to Patna taking at least 5:30 hours, which means he would have arrived at Patna at around 11:00 PM, but PW-9 Pushpendra Saxena has stated in paragraph 13 of his cross-examination that he had received verification report from the inspector H. Hemrom PW-4 on 20.02.2004 at 08:00 PM. The aforesaid aspect of the case also creates serious doubt about the prosecution case and verification of the matter by H. Hemrom PW-4 as how the PW-9 Pushpendra Saxena would have received the verification report at 08:00 PM on 20.02.2004 while PW-4 H. Hemrom might have arrived at Patna at around 11:00 PM. The aforesaid aspect of the case also goes to indicate that there was no verification of the veracity of the allegation levelled by the complainant vide his written complaint before lodging the FIR.

16. From perusal of testimony of complainant



Tilak Mahto PW-5, it appears that the said witness has stated in paragraph 22 of his cross-examination that inquiry was conducted against him finding him sleeping during duty hour. In paragraph 23 of his cross-examination, he has further stated that after submitting inquiry report, his one pass out of three was cancelled. In paragraph 25 of his cross-examination, he has also stated that Munni Lal had filed chargesheet against him on 19.02.2003 and on the basis of the aforesaid chargesheet, the matter was inquired and he was found guilty and was punished. From perusal of Ext-B filed by the defence, it appears that Munni Lal Paswan had filed chargesheet against Tilak Mahto on 19.02.2003 finding him sleeping on the Bench during duty hour at Najirganj Station in inspection. The aforesaid evidence of the prosecution and the defence goes to suggest that there was animosity between the complainant and the appellant Munni Lal preceding to the occurrence.

17. As per account of independent witness, namely, Raj Kumar Singh PW-6 given in paragraph 3 of his cross-examination it was Parmanand Singh PW-7, who was made to touch the phenolphthalein powder treated paper during course of demonstration. Thereafter, his hand was



washed in solution of sodium carbonate, solution turned pink and the wash of his hand was sealed. But, in quite contradiction to the aforesaid statement of the said witness, who was present at the time of demonstration and also took part in the aforesaid formalities, PW-9 Pushpendra Saxena has stated in paragraph 4 of his examination-in-chief that after treating paper with phenolphthalein powder, Raj Kumar Singh was asked to touch the same, who touched it, thereafter, solution of sodium carbonate was prepared in a glass and Raj Kumar Singh was asked to dip his finger in the said solution. On dipping finger, the aforesaid solution turned pink. His finger wash was sealed in a bottle. While from perusal of the preliminary report prepared by aforesaid Pushpendra Saxena PW-9 marked as Ext-6, it appears that in the said preliminary report, in quite contradiction to his aforesaid statement as given by him in his examination-in-chief before the court, he has adumbrated that witness Permanand Singh was asked to touch the phenolphthalein powder treated paper and he touched the said paper with his right hand. Thereafter, solution of the sodium carbonate was prepared in a clean glass tumbler and said witness was asked to dip his right hand finger in the said solution. Immediately, as the witness dipped



his finger as directed, the milky solution carbonate turned pink. The said pink colour solution was preserved in a phial. The complainant PW-5 has stated in paragraph 3 of his examination-in-chief that the personnel of telephone department was asked to touch the phenolphthalein powder treated paper and solution was prepared in a glass. When the finger of the personnel of telephone department was dipped in the solution, the solution turned yellow. Hence, the aforesaid statement of the said witnesses creates serious doubt about the sanctity of the demonstration process which is the basis of further process of trapping, recovery etc. Thus, the entire basis of the aforesaid process of trapping and recovery of tainted money from possession of the appellants stood shattered.

18. As per the written complaint Ext-8 filed by the complainant Tilak Mahto PW-5 and his statement that he has withdrawn the salary of month of January from the Barauni office on 17.02.2004 in advance and out of the aforesaid money, he had handed over Rs. 600/- to Bindeshwar on demand, but the aforesaid statement of the complainant does not appears convincing and appreciable as the salary was allegedly withdrawn on 17.02.2004. So, the said withdrawn



salary must not be of the month of January rather February 2004. Salary withdrawn on 17.02.2004, cannot be dubbed as advanced salary of January 2004 rather due salary of January, 2004 & advanced salary of month of February, 2004 instead of January, 2004. Moreover, in quite contradiction to the aforesaid written complaint, the complainant has stated in paragraph 29 of his cross-examination that he has not stated in his complaint petition that he had withdrawn the salary of month of January in advance in Barauni office. Again in paragraph 36 of his cross-examination, he has stated that he had written in his written complaint that he had withdrawn salary of the month of January in advance on 17.02.2004 visiting Barauni office. Thus, the complainant appears to have taken flip flop stand towards withdrawal of his salary for the month of January in advance and said attitude of the complainant creates serious doubt about his credential.

19. From perusal of Ext-2, which is a forwarding letter written by Shri B.K. Srivastava, Divisional Engineer-III, EC, Railway, Sonapur to Shri Subhash Kundu, Inspector C.B.I., ACB Patna, it appears that vide said letter, photocopy of the relevant pay sheet of Shri Tilak Mahto of January, 2004 paid in February, 2004 has been sent to the C.B.I. The



aforesaid letter candidly indicates that the salary of the month of January, 2004 of complainant Tilak Mahto was paid to him in the month of February, 2004 and not in advance. The aforesaid document of the prosecution also creates serious doubt about the prosecution case and goes to shatter very root of the prosecution case.

20. As per the prosecution case and preliminary memorandum marked as Ext-6, the aforesaid process of formalities of demonstration, and pretrap was conducted on 21.02.2004 at post office Dalsingh Sarai by Pushpendra Saxena PW-9. But, said Pushpendra Saxena PW-9 has stated in paragraph 3 of his examination-in-chief that on 21.02.2004 at around 5:00 AM, he proceeded to Samastipur along with trap team of C.B.I. by government vehicle and arrived at Samastipur at around 11:00 AM, where complainant Tilak Mahto and witnesses of the B.S.N.L., namely, Parmanand Singh and Raj Kumar Singh were present, who were introduced with the trap team and process of pretrap was embarked on in the room of post office. While as per the preliminary report, the member of the C.B.I., complainant and independent witnesses of the B.S.N.L. were congregated at the post office Dalsingh Sarai and after formal introduction the



formalities of demonstration and process of pretrap was conducted in the said post office. Thus, the aforesaid statement of the PW-9 creates serious doubt about the entire process of demonstration and pretrap and the sanctity of the aforesaid preliminary memorandum. As as per the prosecution case and statement of the complainant and the preliminary memorandum, the entire demonstration and process of pretrap took place in the post office, Dalsingh Sarai, but the said witness, who has himself prepared the preliminary memorandum has stated that it took place in the post office, Samastipur. Dalsingh Sarai is located 27 Km. from Samastipur and it takes around 44 minutes in arriving Dalsingh Sarai from Samastipur by road. Thus, the aforesaid contradiction between the statement of PW-9 and the prosecution case and the preliminary memorandum creates serious doubt about the sanctity of the formalities of demonstration and process of pretrap and preparation of the preliminary memorandum and thereby shattered and smashed very root of the prosecution case.

21. From perusal of the testimony of the PW-6 Raj Kumar Singh and PW-7 Parmanand Singh, who happen to be personnel of telephone department and independent



witnesses of the occurrence, it appears that the said witnesses have turned hostile. From perusal of the testimony of the PW-6 Raj Kumar Singh, it appears that though despite turning hostile, he has supported the alleged process of demonstration and preparation of the preliminary report barring touching of the phenolphthalein powder treated paper and dipping of the finger by the independent witness in the solution of sodium carbonate and turning it pink, as discussed by me hereinabove. But, he does not appear to have supported the occurrence of demand of money by Bindeshwar for Munni Lal from complainant Tilak Mahto, acceptance of money by Bindeshwar from him, demand of money by Munni Lal from Bindeshwar and recovery of money from the possession of Munni Lal. As in paragraph 8 of his examination-in-chief, he has stated that he arrived at Dalsingh Sarai railway platform, where salary was being distributed. He met Bindeshwar there. Bindeshwar was withdrawing his salary. Tilak Mahto and Bindeshwar interacted with each other, but he cannot divulge what conversation took place between them. Thereafter, they went into orchard located at some distance. On giving signal by Tilak Mahto, they rushed in the orchard. Tilak Mahto and Bindeshwar started proceeding further gradually. They



boarded on the jeep. He and Hemrom *Sahab* had also boarded on the jeep. Then the Jeep proceeded to Samastipur. In paragraph 9 of his examination-in-chief, he has further stated that in Samastipur, Tilak Mahto and Bindeshwar arrived at the quarter of Munni Lal. They also followed them. Tilak Mahto and Bindeshwar knocked the gate. Munni Lal opened the door and interacted with them. They were interacting about some money. But, he did listen nothing as he was at a distance. In paragraph 10 of his examination-in-chief, he has further stated that on the signal given by Tilak Mahto, they arrived near Munni Lal, Rs. 6,600/- was kept at the table of Munni Lal. The aforesaid money was recovered from the table. In paragraph 18 of his examination-in-chief, he has further stated that he had not seen as to whether Tilak Mahto gave money either to Bindeshwar or Munni Lal. Thus, from perusal of the aforesaid statement of PW-6, it appears that he had not seen any occurrence of giving money by Tilak Mahto to Bindeshwar and by Bindeshwar to Munni Lal. He had also not heard any interaction between Tilak Mahto and Bindeshwar at one hand and between Bindeshwar and Munni Lal at the other hand. As per the prosecution case, the money was recovered from hand of the Munni Lal, but the said



witness has stated that it was recovered from the table of Munni Lal PW-7 Parmanand Singh has not supported the occurrence of demand and taking money by Bindeshwar from Tilak Mahto and by Munni Lal from Bindeshwar and recovery of money from the possession of Munni Lal.

22. As per the statement of the complainant PW-5, Bindeshwar took tainted currency notes along with Rs. 6,000/- from him and after counting the same, he put it in his shirt pocket. Then, they proceeded Samastipur and arrived at the house of Munni Lal and Munni Lal demanded money from Bindeshwar and Bindeshwar handed over the said money to Munni Lal and Munni Lal hold the said money in his fist. Thereafter, he gave signal by dropping his *gamacha* and responding the same, member of the C.B.I. arrived there and caught hold both hands of Munni Lal and personnel of C.B.I. snatched money from Munni Lal containing the tainted money. The aforesaid statement of PW-5 candidly indicates that the money was recovered from the hand of Munni Lal. But, in quite contradiction to the aforesaid statement of PW-5, PW-6 has stated in paragraph 10 of his examination-in-chief that the money was recovered from the table to Munni Lal while PW-4 H. Hemrom has stated in paragraph 4 of his



examination-in-chief that Rs. 6,600/- was recovered from the house of Munni Lal. From perusal of recovery memo, marked as Ext-6/1, it appears that, it is adumbrated in the said memorandum that Rs. 6,600/- was recovered from the hand of Munni Lal. As per the prosecution case, on demand of money by Munni Lal, Bindeshwar handed him over Rs. 6,600/- including the tainted money of Rs. 6,00/-. But, PW-4 H. Hemrom, who happens to be member of the trap team has stated in paragraph 6 of his cross-examination that on demand by accused Munni Lal, Bindeshwar gave Rs. 200/- to him before him. The aforesaid contradiction between the prosecution case and the testimony of the aforesaid witnesses creates serious doubt about recovery of tainted money from possession of the appellant Munni Lal Paswan and the aforesaid recovery from possession of appellant Munni Lal Paswan does not stand established by the prosecution by adducing consistent, trustworthy and reliable evidence.

23. From perusal of testimony of the PW-4 H. Hemrom, who happens to be member of the trap team, it appears that the said witness in paragraph 6 of his cross-examination, has stated that he was present outside the fencing of the quarter of Munni Lal. *Baramdah* of 5-6 feet is located



at 20 feet from the fencing. PW-9 Pushpendra Saxena has stated in paragraph 7 of his examination-in-chief that shadow witness and H. Hemrom PW-4 was standing near fencing at a distance of 8-10 feet. In paragraph 21 of his cross examination, he has further stated that between the quarter of accused Munni Lal and road, there is a fencing of barbed wire which was fixed with the bush and due to the aforesaid reason, nothing could be seen from across the fencing. The aforesaid statement of the witnesses candidly indicates that H. Hemrom and shadow witness Raj Kumar Singh was present outside the fencing which is located at 26 feet from the quarter of Munni Lal and nothing was visible from across the said fencing as the aforesaid fencing was fixed with bush and it is also not possible to overhear the conversation taken place between Bindeshwar and Munni Lal regarding demanding bribe, which is generally made in low pitch of sound and in clandestine manner between the person giving and taking graft, from such distance. The aforesaid statement of the witnesses goes to eloquently indicate that the aforesaid shadow witness and H. Hemrom had neither overheard the conversation between Bindeshwar and Munni Lal regarding demand of money by Munni Lal from Bindeshwar and receiving money by Munni



Lal from Bindeshwar.

24. As per the prosecution case, the graft money was demanded by Bindeshwar from Tilak Mahto and Rs. 6600/- was received by him from Tilak Mahto near store room at platform of Dalsingh Sarai railway station. But, from perusal of the testimony of PW-9, it appears that in paragraph 6 of his examination-in-chief, he has stated that after pre-trap, they departed to PW II store room located at Samastipur railway station on foot and on arrival there, the complainant approached to Bindeshwar in front of the store, who was recovering money from Class-D employees after disbursement of the salary, whereupon Bindeshwar asked the complainant to meet after 15-20 minutes and after 20 minutes, the complainant again approached Bindeshwar, who was followed by the shadow witness Raj Kumar Singh and C.B.I. inspector H. Hemrom keeping safe distance and on demand of money by Bindeshwar, complainant handed over the tainted money of Rs. 600/- to Bindeshwar, who after counting the said money put it in his pocket of the shirt. Thus, as per the prosecution case, complainant gave Rs. 6,600/- to Bindeshwar including tainted money of Rs. 600/-. But, in quite contradiction to the aforesaid prosecution case, Complainant (PW-5) in paragraph



9 of his examination-in-chief has stated that on demand by Bindeshwar, he took out Rs. 600/- from his pocket and gave it to Bindeshwar, who after counting it, put in the pocket of his shirt and PW-9 has stated in paragraph 6 of his examination-in-chief that complainant gave only tainted money of Rs. 600/- to Bindeshwar taking out from his pocket and after counting the same, Bindeshwar put it in his pocket of the shirt. From perusal of the statement of the PW-9, it further appears that as per his aforesaid statement, transaction of demand and receiving of the money by Bindeshwar took place in front of store room of PW II at Samastipur railway station. But, as per the prosecution case and the statement of the complainant it took place near the store room located at the platform of Dalsingh Sarai railway station. The aforesaid contradiction between prosecution case and statement of PW-5 and 9 regarding aforesaid material aspects of the case creates serious doubt about the demand acceptance and receiving of money by Bindeshwar from the complainant.

25. From perusal of the testimony of PW-9 Pushpendra Saxena as given by him in paragraphs 6 and 7 of his examination-in-chief that after taking tainted money by Bindeshwar and putting it in his pocket of the shirt from the



complainant, the complainant gave signal by removing gamacha from his shoulder and H. Hemrom divulged him the aforesaid transaction himself arriving to him, then he gave information of the occurrence to other team members in turn. Said witness in paragraph 6 of his examination-in-chief has further stated that shadow witness Raj Kumar Singh and C.B.I. Inspector H. Hemrom followed the complainant making safe distance when the complainant approached Bindeshwar. But, shadow witness Raj Kumar Singh PW-6 has stated in paragraph 8 of his examination-in-chief that Tilak Mahto and Bindeshwar interacted with each other, but he could not overhear the conversation taken place between them and thereafter both the persons went to the orchard located at some distance and on giving signal by Tilak Mahto, they rushed to him. In paragraph 18 of his cross-examination, he has further stated that he did not see as to whether Tilak Mahto gave money to Bindeshwar or Munni Lal. The aforesaid testimony of the said witnesses indicates that H. Hemrom was present with the shadow witness Raj Kumar Singh at some distance from Bindeshwar and Tilak Mahto and after some conversation, Tilak Mahto and Bindeshwar went to the orchard located at some distance and shadow witness could



not see any transaction between them. So, H. Hemrom present with the shadow witness at some distance also could not have seen the said transaction between Tilak Mahto and Bindeshwar. So, as he had not seen any transaction between Tilak Mahto and Bindeshwar, he would not have been in position to divulge any such transaction to the PW-9 and other members of the trap team.

26. As per the complaint petition, Bindeshwar used to demand graft ranging from 400/- to 600/- from the complainant and other Group-D employees for Munni Lal each month and on failure to oblige him, their salaries used to be slashed in the next month and their attendance used to be stricken out. But, the prosecution has not adduced any evidence either ocular or documentary regarding striking out the attendance of the complainant or of any of the Group-D employees or slashing their salaries due to not obliging them to pay the graft. Moreover, PW-10 Subhash Kundu, who happens to be C.B.I. Inspector and I.O. of the case has stated in paragraph 8 of his cross-examination that he had not taken any statement of Class-IV employees or any other employees regarding slashing of his salary and recovery of money from them. He cannot disclose as to whether Tilak Mahto was



given deducted salary ever earlier. There is no cutting in the attendance register of Tilak Mahto of the month of January. In the attendance register marked as Ext-4 and 4/1, attendance of Tilak Mahto was never stricken out. Moreso, no other Class-IV employees or any other employees made any complaint either in the department or with the C.B.I. about demand of graft by Bindeshwar from them putting them under coercion of slashing their salary and striking out their attendance and none of the aforesaid employees have been examined by the prosecution in substantiation of the aforesaid case. Though, PW5 Tilak Mahto has stated that Bindeshwar had demanded bribe several times, but he does not want to accord him bribe. But, if the Bindeshwar demanded bribe on several occasions against his will, then why the complainant PW-5 has not made any complaint on earlier occasion which also creates serious doubt about the prosecution case. PW-1 Rashid Parvaiz Kaushar, who happens to be Sr. DEW-I has stated in paragraph 2 of his cross-examination that except this case, he has got no other grievance against Munni Lal and except this case, he had not received any complaint against him. PW-2 Murli Manohar Prasad, who happens to be Assistant Divisional Engineer has stated in paragraph 2 of his cross-



examination that whenever he went in the inspection, he did not receive any complaint against Bindeshwar. While PW-3 Bimal Kishor Srivastava, who happens to be DEW-III has stated in paragraph 2 of his cross-examination that Tilak Mahto has never made any complaint of any sort with him. Besides Tilak Mahto, no other employees had made any complaint against Munni Lal. Munni Lal happens to be a good employee. Thus, the aforesaid evidence of the prosecution itself goes to rule out the genesis of the occurrence of taking graft from the complainant and other employees by Bindeshwar for Munni Lal under coercion of slashing their salary in the next month and striking out their attendance.

27. The verdict of Hon'ble Apex Court rendered in S.C. Goel v. State through CBI reported in AIR 2017 S.C. (Criminal) 55 to the effect that the evidence regarding demand and recovery of the hostile witness can be accepted if same is otherwise worthy of trust though he was declared hostile with regard to some aspects of evidence tendered by him. Marked currency notes recovered from pocket of jacket of the accused. Panch witness proved such recovery and also test conducted by dipping his fingers in



chemical of sodium bicarbonate. Demand and recovery thus, proved. Conviction of accused is proper, relied upon by the respondent is not applicable in the case under hand as in the case, PW-6 and PW-7 turned hostile. PW-7 has not at all supported any aspect of the case while PW-6 though has supported the formalities of demonstration and process of pretrap, but has not supported the occurrence of demand, acceptance and recovery of the tainted money from the possession of appellants as per prosecution case. **The verdict of Hon'ble Apex Court rendered in B. Hanumantha Rao Vs. State of A.P. reported in 1993 Supp (1) Supreme Court Cases 323** to the effect that when fact of demand and acceptance of bribe established beyond doubt then the alleged enmity between the accused and person paying the bribe, even if true, held, immaterial, relied upon by the respondent is not applicable in the case under hand as discussed by me hereinabove, the prosecution has utterly and miserably failed to establish the fact of demand, acceptance and recovery of tainted money by adducing consistent, trustworthy and reliable ocular and documentary evidence. The verdict of **Hon'ble Apex Court rendered in State of U.P. Vs. Zakaullah reported in (1998) 1 Supreme Court Case 557** to the effect



that testimony of the bribe giver does not call for outright rejection of his evidence at the threshold rather his evidence requires scrutiny with great care, relied upon by the respondent is not applicable in the case under hand as in the case under hand the complainant Tilak Mahto appears to have grouse and grudge against the appellant Munni Lal Paswan as he was caught sleeping during duty hour by the said appellant in the inspection, who conducted inquiry against him and submitted chargesheet and he was punished. Consequently, his one pass out of three was slashed. On careful scanning of the testimony of the said witness as discussed by me hereinabove, the testimony of the said witness regarding the occurrence of demand, acceptance and recovery proves to be false due to vital contradiction between his testimony and testimony of the other witnesses regarding the place of recovery, amount given to the appellant Munni Lal Paswan by Bindeshwar, time of receiving of complaint petition in the C.B.I. office, Patna, shadow witness, verification of the allegation made by the complainant, place of carrying out demonstration process and pretrap and not corroboration of the aforesaid prosecution case by any independent witness. The verdict of *Hon'ble Apex Court rendered in S. Dinesh*



Kumar v. State Th. Inspector and another reported in AIR 2015 SC (Supp) 62 to the effect that where illegal gratification proof, accused a Commercial Tax Inspector (Recovery) alleged to have demanded and accepted bribe of Rs. 1,000/- from complainant for removal of seal and there is no evidence showing that amount in question was received towards arrears of taxes and recovery of bribe amount from person or possession of accused firmly established, no two views are possible in matter since aspects of demand and acceptance established. Order of the High Court interfering with acquittal order passed by special Judge and convicting accused is proper, relied upon by the respondent is not applicable in the case under hand as in the case under hand prosecution has utterly and miserably failed to substantiate demand, acceptance and recovery of money from the possession of the appellants by adducing consistent trustworthy and reliable evidence. The verdict of ***Hon'ble Apex Court rendered in Kallappa Mallappa Kamble v. State of Karnataka reported in AIR 2015 S.C. (criminal) 1062*** to the effect that when twin requirements of demand and acceptance of illegal gratification of Rs. 1000/- was proved on the basis of evidence adduced by the prosecution against the appellant, the conviction and



sentence of accused is proper, relied upon by the respondent is not applicable in the case under hand as in the case under hand the requirement of demand and acceptance of illegal gratification does not stand established by the prosecution by adducing consistent trustworthy and reliable evidence. The verdict of *Hon'ble Apex Court rendered in Chaturdas Bhagwandas Patel Vs. The State of Gujarat reported in (1976) 3 Supreme Court Cases 46* to the effect that once it is established that the public servant accepted a gratification which was not his legal remuneration, the burden shifts on him to prove that money was not accepted as a motive or reward as is mentioned in Section 161 I.P.C. The burden which rests on an accused to displace this presumption, is not as onerous as that cast on the prosecution to prove its case. Nevertheless, this burden on the accused is to be discharged by bringing on record evidence, circumstantial or direct, which establishes with reasonable probability, that the money was accepted by the accused, other than as a motive or reward such as is referred to in Section 161 of I.P.C, relied upon by the respondent is not applicable in the case under hand because in the case under hand the acceptance of money by the appellants does not stand established by the prosecution



and prosecution has utterly and miserably failed to substantiate the acceptance of tainted money by the appellants. The verdict of *Hon'ble Apex Court rendered in Narendra Champaklal Trivedi v. State of Gujarat reported in AIR 2012 SC (Criminal) 1006* to the effect that where the accused alleged to have taken bribe for providing survey report, bribe money was recovered from possession of the accused by raiding party. There is clear evidence of shadow witness that there was demand and acceptance of bribe and no evidence adduced by accused to rebut presumption under Section 20, the conviction of accused is proper, relied upon by the respondent is not applicable in the case under hand as in the case under hand, the prosecution has utterly and miserably failed to substantiate the recovery of bribe money from the possession of the appellants and the shadow witnesses have also not corroborated the occurrence of demand and acceptance of graft by the appellants. The verdict of *Hon'ble Apex Court rendered in Chaitanya Prakash Audichya v. C.B.I. reported in AIR 2015 SC (Criminal) 1451* to the effect that where evidence of complainant and panch witnesses is completely consistent, establishing basic ingredients of demand and acceptance and tainted currency notes were found



on person of accused, the explanation given by accused soon after incident through letter is completely different from theory put forth while accused himself examined as defence witness. Not only demand and acceptance established but the presumption invocable under Section 20 of the Act also stood un rebutted. Hence, the conviction of accused is proper, relied upon by the respondent is not applicable in the case under hand as in the case under hand, the evidence of complainant and seizure list witness is quite contradictory to each other regarding demand, acceptance and recovery of money and recovery of the tainted money from possession of the appellants also does not stand substantiated by the prosecution. The verdict of *Hon'ble Apex Court rendered in Somabhai Gopalbhai Patel v. State of Gujarat reported in AIR 2015 SC (Criminal) 95* to the effect that where there is the demand and acceptance of bribe by accused and testimony of complainant fully corroborated by shadow witness and recovery of currency notes from possession of accused stood proved and the explanation by accused, Talati that he accepted said amount from complainant towards tax not substantiated, the conviction of accused not interfered, relied upon by the respondent is not applicable in the case under hand as in the



case under hand, the prosecution has utterly and miserably failed to substantiate demand, acceptance and recovery of money from possession of the appellants by adducing consistent, trustworthy and reliable evidence. The verdict of *Hon'ble Apex Court rendered in State of A.P. v. K. Punardana Rao reported in 2004 CRI. L. J. 4191 (Supreme Court)* to the effect that where the demand and acceptance of bribe is proved and tainted money is recovered from possession of accused in trap laid by department and Phenolphthalein test conducted on his hand, pyjama and bed cover proved to be positive, the explanation offered by the accused highly improbable and the evidence of defence witness is not reliable. There was not enmity alleged against the complainant. He is an independent witness having two business concerns and matters relating to tax come within jurisdiction of accused-officer for which bribe was demanded. There was perverse appreciation of evidence and serious miscarriage of justice by High Court and order of acquitting accused is erroneous. The accused is liable to be convicted, relied upon by the respondent is not applicable in the case under hand as in the case under hand as discussed by me hereinabove, the complainant is having animosity and grudge



with the appellant Munni Lal Paswan and prosecution has utterly and miserably failed to substantiate the occurrence of demand and acceptance of graft money by the appellants and recovery of graft money from possession of the appellants by adducing consistent trustworthy and reliable evidence. The verdict of *Hon'ble Apex Court rendered in The State of Gujarat vs. Navinbhai Chandrakant Joshi Etc. reported in 2018(3) PLJR (SC) 365* to the effect that to establish the offence under Section 7 and 13(1)(d), particularly relating to the trap cases, prosecution has to establish the existence of demand as well as acceptance by the public servant. Demand of the money by accused no. 1 and acceptance of the bribe amount by accused no. 2 at the behest of accused no. 1 proved. Further, under Section 20, the burden placed on the appellant for rebutting the presumption is one of preponderance of probabilities as the accused was possessing bribe money, it was for them to explain that how the bribe money was received by them and if he fails to offer any satisfactory explanation, it will be presumed that he has accepted the bribe, but the accused have not offered any explanation to rebut the presumption under Section 20. While appreciating the evidence, the High Court should have given



proper weight to the views of the trial court as to the credibility of all evidence of Pws. When the findings recorded by the trial court is based upon appreciation of evidence, the High Court was not right in reversing the judgment of the trial court, hence the impugned judgment is set aside and conviction affirmed, but sentence reduced from two years to one year considering the passage of time as occurrence was of about 27 years ago, relied upon by the respondent is not applicable in the case under hand as in the case under hand as discussed by me hereinabove, the prosecution has utterly and miserably failed to prove the demand and acceptance of bribe by the appellants and recovery of the aforesaid bribe from possession of the appellants and the learned trial court without correctly appreciating the ocular as well as documentary evidence adduced by the prosecution and defence in its right perspective has perversely passed the impugned judgment and order of conviction and sentence.

28. To establish the offence under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act 1988, the prosecution is required to substantiate three things firstly, demand of graft by the government official in lieu of any work to be done, secondly,



acceptance of graft and thirdly, recovery of the same from possession of accused beyond all shadow of doubt. But, as discussed by me hereinabove, the prosecution has utterly and miserably failed to substantiate all the aforesaid three things required for conviction of the accused under the aforesaid Sections beyond all reasonable doubts by adducing convincing, cogent, consistent and worth credence ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned trial court against the appellants is set aside and the appellants are acquitted of all the charges levelled against them. As the appellants are on bail, they are discharged from the liability of the bail bonds. Accordingly, the aforesaid two Criminal Appeals are allowed.

(Prakash Chandra Jaiswal, J)

rohit/-

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