

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.2 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

[Against judgment of conviction and order of sentence dated
12.12.2008 passed by the Special Judge, CBI, North Bihar, Patna, in
Special Case No.05 of 2002 arising out of R.C.16 (A) of 2002]

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Sangeet Kumar, son of late Mahendra Prasad Singh, PWI, Sonapur, resident of
village-Desura, P.S.-Ujiarpur, District- Samastipur.

.... Appellant/s

Versus

The Union of India through CBI

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajeev Kumar Verma, Sr. Advocate with
Mr. Rajneesh, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 02-05-2018

By judgment of conviction and order of sentence dated
12.12.2008 passed by the Special Judge, CBI, North Bihar, Patna, in
Special Case No.05 of 2002 arising out of R.C. 16(A) of 2002, the
sole Appellant has been convicted for the offence under Section(s) 7
and 13(2) of the Prevention of Corruption Act and sentenced to
undergo rigorous imprisonment for two years under both Sections
separately with fine of rupees one thousand each under both Sections
and in default of payment of fine to further undergo simple
imprisonment for six months. Both sentences were directed to run
concurrently.



2. Prosecution case is that a written complaint dated 24.09.2002 addressed to the Superintendent of Police, CBI, was submitted by the Complainant, Gulab Chandra (PW 4) against the accused, Sangeet Kumar, PWI, Sonapur, that he demanded a sum of Rs.500/- from the Complainant for forwarding his papers regarding increased salary. Veracity of the allegation made by the Complainant was got verified by R. K. Thakur (PW 1), ASI, CBI, Patna, who submitted his report confirming the allegation made by the Complainant of making demand of bribe by the accused. Thereafter, formal First Information Report of R. C. Case No. 16(A) of 2002 dated 26.09.2002 was drawn against accused, Sangeet Kumar, and a team was constituted consisting of the Officers of the CBI and two independent witnesses. The trap team of CBI on 27.09.2002 along with two independent witnesses assembled in the office of TDM, BSNL, Hajipur, and were introduced to each other and a practical demonstration was conducted by the CBI Police Officers. Thereafter, the GC Notes of Rs.500/-, which the Complainant had brought to use as bait money, was returned back to him after treating the Notes with Phenolphthalein Powder with specific instruction to use the same in case of demand only and not otherwise. The witnesses were also requested to remain alert and try to overhear and see the transaction if it takes place. A pre-trap memorandum dated 27.09.2002 was



prepared signed by all the members and thereafter trap team left for the venue of transaction. Further case of the prosecution is that trap reached at the office of the accused, Sangeet Kumar, where he was not present. Thereafter, the trap team reached at his quarter. The accused arrived from his office at his residence along with the Complainant. Harish Chandra Prasad, who was a shadow witness, also followed them. Sri Gulab Chandra and Sri Harish Chandra Prasad after sometime came out and gave pre fixed signal, then all the team members reached towards quarter. Accused, Sangeet Kumar, was found present in the 1st room at the entrance of the quarter. Sri R. K. Thakur, ASI and Sri B. K. Singh, Inspector, had caught right and left hand of the accused. Leader of the trap team challenged the accused, Sangeet Kumar, after introducing himself and asked whether he has taken any bribe from Gulab Chandra. Upon this, accused, Sangeet Kumar, became perplexed and kept mum for sometime. Leader of the trap team again requested with the accused to give answer on which the accused replied “*HUJUR KOI GHOOS NAHI LIYE HAI. MITHAI KE LIYE PAISA LIYE HAI*”. On being asked about the money, the accused pointed towards his left side upper pocket of his shirt. Shri Yogendra Rai, independent witness was asked to take out the tainted money from his pocket, who recovered the tainted GC Notes from the pocket of the accused.



Thereafter, recovered tainted notes were tallied with the numbers written on the pre-trap memorandum. Thereafter, trap team proceeded for keeping the same in safe place at Sonepur P.S. along with accused as other persons had assembled at the place of occurrence. After arrival at the police station, a separate place was given to them by the staff of the Police Station. Solution of sodium carbonate with water was prepared in a glass and the accused, Sangeet Kumar, was asked to dip and wash his right hand fingers upon doing so milky solution turned into pink. The solution was preserved in a separate bottle, sealed and marked as R.W. Thereafter, accused, Sangeet Kumar, further dipped and washed his left hand in separate solution of sodium carbonate, which also turned into pink, which was preserved in a separate bottle, sealed and marked as LW. Left side upper pocket of the shirt of accused was also washed in a separate fresh solution of sodium carbonate and after doing it turned pink, which was preserved in a separate bottle, sealed and marked as PW. Shirt of the accused was also seized separately. Independent witness, Sri Yogendra Rai, was asked by the leader to produce the GC Notes recovered from the pocket of the accused, who produced the same, which were signed and sealed in a separate envelope. It is further alleged that accused, Sangeet Kumar, was asked as to why he had accepted the said money from the Complainant, Gulab Chandra,



then he replied that he never compelled the Complainant for the said money. Money was given to him for sweets.

3. A recovery memorandum was prepared signed by all the members of the trap team along with independent witnesses. Thereafter, the trap team reached in the office of the accused and two documents i.e. personal file including the service book of Sri Gulab Chandra, Gateman, PWI, Sonapur, and memorandum dated 16.08.2002 were seized from the office of the accused from the possession of Md. Anwar Alam, PWI, Sonapur. A seizure memo was prepared by the Inspector B. B. Bhatt in presence of two independent witnesses, namely, Harish Chandra Prasad and Yogendra Rai. The Inspector, CBI, B. B. Bhatt also searched the quarter of the accused on the same day in presence of above named two independent witnesses and seizure list was prepared in presence of the witnesses.

4. The CBI after completion of investigation submitted charge-sheet for the offence under Section(s) 7 and 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988, against the accused-Sangeet Kumar.

5. During course of investigation, expert report from CFSL and sanction report were obtained by the Investigating Officer. On receipt of the charge-sheet, cognizance of the aforesaid offence was taken by the Special Court and after appearance of the accused



Charge for the offence under Section(s) 7 and 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988, was framed against the accused, Sangeet Kumar, to which he pleaded not guilty and claimed to be tried.

6. The prosecution has altogether examined twelve witnesses during course of trial. R. K. Thakur (PW 1), who has submitted verification report, Satish Chandra Jha (PW 2) has proved the sanction order, Anil Kumar Jha (PW 3) Inspector of CBI, Patna, and the member of the trap team, the Complainant, Gulab Chandra, (PW 4), Rajendra Ram (PW 5), Railway employee, Sunil Kumar (PW 6), Assistant Engineer of Railway, Bimal Chandra Purkait (PW 7), Junior Scientific Officer of CFSL, Vansh Narain Singh (PW 8), Senior Divisional Engineer, Railway, Yogendra Rai (PW 9) and Harish Chandra Prasad (PW 10) independent witnesses, Jay Prakash Mishra (PW 11), the Investigating Officer and Bharat Bushan Bhatt (PW 12) the member of the trap team, have been examined in the case.

7. Prosecution has also produced large number of documents, which include sanction order dated 27.03.2003 given by B. N. Singh, Senior Divisional Engineer/IEC Railway/Sonepur, marked as Ext.4. Exit.1 is the verification report dated 26.09.2002 submitted by R. K. Thakur (PW 1). Ext. 3 is the search list, which



was conducted in the house of the accused, Sangeet Kumar, on 27.09.2002 and prepared by B. B. Bhatt, Inspector, CBI, Patna. Ext.5 is the complaint petition submitted by the Complainant, Gulab Chandra, on 24.09.2002 before the Superintendent of Police, CBI, Patna. Ext.13 is the Pre trap memorandum dated 27.09.2002, Ext. 14 is recovery memorandum dated 27.09.2002, Ext.10 is the report of Junior Scientific Officer, Central Forensic Science Laboratory, Kolkata, dated 02.11.2002, Ext.11 is the seizure memo, the documents seized on 06.11.2002 from the offence of Sri Rajendra Ram, Office Superintendent, Office of Assistant Divisional Railway, Sonapur, Ext.15 is the personal search memo of accused-Sangeet Kumar.

8. Defence of the accused is complete denial of the allegation. Further case of the defence is that the Complainant, Gulab Chandra, Gate Man, was punished by the accused prior to this trap. Accused never demanded and accepted bribe money of Rs.500/- from the Complainant-Gulab Chandra. Prosecution produced only three documents i.e. arrest memo, medical certificate and the seizure list dated 27.09.2002 at the time of producing the accused before the Court on 28.09.2002. No other document was produced by the prosecution. Verification report was not produced by the prosecution on 28.09.2002, rather, it was produced by the prosecution on



27.01.2004 at the time of examination of PW 1. Further case of the defence is that on 27.09.2002, at the time of his personal search, Rs.2890/- was recovered from his possession along with other personal articles. Personal belongings of the accused were handed over to Shri Raj Kishore, the brother of the accused on 27.09.2002 in presence of PW 9 and 10, but Rs.2890/-, which was personal money, was not given to the accused or his brother-Raj Kishore. The accused was working since 1987 in the Railway and since then no complaint was made against the accused from any quarter with regard to his conduct. Several rewards and letter of appreciation were given to the accused by Railway Administration. No such verification was made by any Officer of the CBI or by PW 1. The defence has altogether examined three witnesses. DW 1, Md. Anwar Alam, is the Senior Tap Man, Railway, DW 2, Sudhir Kumar, is Physiotherapist in Railway and DW 3, Devanand Rai, is PWI, Sonepur Railway. Defence has also produced several documents. Ext. A is the notice regarding salary voucher dated 26.05.2003 issued from Sonepur Division N E Railway, Ext. B is the letter addressed to the Divisional Engineer, dated 05.03.2002, Ext. C is the Certificate issued from the office of Senior Section Engineer, NE Railway Sonepur, Ext. D is the input sheet for the month of August, 2002, with regard to the employees of the Railway including the Complainant, dated



06.08.2008, issued from the office of Senior Section Engineer, NE Railway, Sonapur, Ext. D/1 is also input for the month of October, 2002, with regard to the employees of the Railway including the Complainant issued from the office of the Senior Section Engineer, NE Railway, Sonapur. The Office Order No.60 issued from the office of the Divisional Railway Manager Personnel, Sonapur, was also marked as 'X' for identification. Another input sheet with regard to the employees of the Railway including the Complainant was also marked as 'Y' for identification.

9. The Court below on the basis of the evidence has convicted and sentenced the appellant in the manner as mentioned in the impugned judgment, which is under challenge in this appeal.

10. Following ingredients will have to be necessarily proved before the accused can be held guilty for the offence under Section(s) 7 and 13(2) read with 13(i) (d) of the Prevention of Corruption Act, 1988:

- I. The accused at the time of offence was a public servant,
- II. That he accepted from some person illegal gratification,
- III. Such gratification was not legal due to him,
- IV. The accused accepted the gratification as motive or reward for one of the following purposes:



- (a) during or for appearing to do an official act,
- (b) showing or for appearing to show favour or dis-favour to someone in the exercise of his official function,
- (c) rendering or admitting to render any service or dis-service to someone with any public servant.

11. It is not in dispute that accused, Sangeet Kumar, was a public servant posted as PW I, NE Railway, Sonapur at the time of trap.

12. Bharat Bhushan Bhatt (PW 12), Inspector of CBI, Patna, was the leader of trap team. He was entrusted to investigate the case by the order of Superintendent of Police, CBI. This witness has stated that he sent request to Zonal Office of Central Bank for sending two independent witnesses, who were sent by the Bank. He has directed the Complainant to meet in TDM Office, Hajipur. He along with members of the team and two independent witnesses assembled in the office of CBI and thereafter they proceeded for Hajipur. They reached in the Rest House of TDM Office at about 9.45 AM where the Complainant was present from before. A pre trap memorandum was conducted at Hajipur on 27.09.2002 at 9.45 AM. Signatures of both independent witnesses were obtained on a plain



paper which was treated with Phenolphthalein powder. Said powder was touched by Yogendra Rai, whose hand was dipped in the solution of sodium carbonate, which turned into pink from milky. Said solution was kept in a bottle and piece of paper was kept in an envelope. This witness has identified his signature on the said bottle and the envelope, which have been marked as Ext.2/65 and 2/66. He has also proved his signature on the said piece of paper, which has been marked as Ext.2/67. He also proved the piece of said paper, which has been marked as material Ext. XI. He has further stated that the Complainant, Gulab Chandra, was asked to produce Rs.500/-, each of one hundred whose numbers were noted and treated with Phenolphthalein powder and were kept in the pocket of the shirt of the Complainant with instruction to give the same to the accused on demand. This witness has proved his signature on the envelope in which rest Phenolphthalein powder was kept, which has been marked as Ext.2/68. The independent witness Harish Chandra Prasad was requested by him to remain with the Complainant as a shadow witness with instruction to give gesture after completion of transaction. Pre trap memorandum was prepared regarding demonstration, which is in his writing and signature. This witness has proved his signature, which has been marked as Ext.13. Thereafter, this witness along with members of the team reached at



the office of PWI at 12.30 hrs. The Complainant and the shadow witness went to the office of the accused, Sangeet Kumar, who was present in his office. After lapse of some minutes, he came out from his office and proceeded to his quarter. The Complainant and shadow witness also followed him. Accused and the Complainant entered into the quarter and shadow witness stayed at his *Darwaja* and ASI R. K. Thakur stayed near window of his quarter. After sometime on getting signal given by the Complainant and shadow witness, trap team went to his quarter where the accused was sitting in his room on a chair wearing *Ganji*. Hands of the accused were caught by R. K. Thakur and B. K. Singh. The accused was challenged by this witness by giving his identification to the accused, then accused said nothing, but later on he told that he has taken money for sweets. The accused was asked about money, then he pointed out towards his shirt hanging in a peg (Khunti). Thereafter, witness, Yogendra Rai, recovered the tainted notes from his shirt and numbers of the said notes were tallied with the number of pre-trap memo which got tallied. In the meanwhile, nearby people assembled there. Thereafter the members of the trap team along with accused went to Sonapur Police Station for safety where solution of sodium carbonate was prepared. Both the hands of the accused were dipped in the said solution separately then colour of solution of sodium



carbonate turned into pink from milky, which were sealed in separate two bottles signed by this witness. This witness has proved his signatures marked as Ext.2/69 and 2/70. Pocket of the shirt was also dipped in the solution, which turned into pink, which was sealed in a separate bottle. Shirt of the accused was also sealed in an envelope, which has already been marked as material Ext.X. The recovered tainted GC Notes of rupees five hundred from the pocket of shirt of the accused were sealed in an envelope. The witness has identified his signature on the said envelope marked as Ext.2/71. This witness has stated that earlier marked as material Ext. IX, the envelope from which tainted GC Notes were missing from the custody of the Court and the same were not available in the said envelope. This witness has further stated he has prepared recovery memo, which is in his writing and signature marked as Ext.14. The accused was arrested and arrest memo was prepared. On being searched, from the possession of accused, Rs.2890/- and some documents were recovered and seizure memo was prepared thereof. This witness has identified the said personal seizure memo, which was prepared by B. K. Singh, Inspector, on his dictation signed by this witness marked as Ext.15. Thereafter, he went to the office of accused, Sangeet Kumar, and seized the document relating to the Complainant and prepared seizure memo signed by him. This witness has identified



the seizure memo and his signature, which has been marked as Ext.16. He has further stated that two documents were seized from the office of the accused, which were identified and marked Ext.8 and 9. He has stated that search was made in the house of the accused, but no objectionable article was recovered from his house. Search list was prepared thereof in the writing and signature of this witness, which has been marked as Ext.3. Thereafter, this witness went to the house of accused at Samastipur, where his house was under-construction. Search was not made there and from where he along with accused reached CBI Office, Patna, He recorded statement of the Complainant on the next day and after medical examination accused was remanded to custody. This witness sent the material exhibits to Forensic Laboratory, Kolkata, for examination. He handed over charge of investigation to J. P. Mishra, Inspector of CBI, on the order of Superintendent of Police.

During cross-examination on behalf of the defence, this witness has stated that after arrest of the accused he conducted personal search of the accused at Sonapur Police Station. Independent witnesses were present at the time of personal search. Brother of the accused, namely, Raj Kishore Singh, was also present at the Sonapur Police Station. In para 21 of his cross-examination, this witness has stated that Rs.2890/- was seized from the possession



of the accused, which was his personal money and deposited in the CBI Malkhana. This witness has stated in his cross-examination that at the time of forwarding report of the accused he had produced three documents in the Court such as arrest memo, medical certificate and house search list. He has stated that at the time of producing the accused in Court he did not submit the pre trap memo, verification report and recovery memo along with the accused. He has further stated in para 28 of his cross-examination that recovery memo was prepared, but copy of the same was not given to the accused. This witness has, however, after seeing the case diary has stated in the Court that accused had denied to take copy of recovery memo and to give acknowledge thereof.

13. Gulab Chandra (PW 4), the Complainant, has stated that on 24.09.2002 he submitted application in the office of CBI against accused Sangeet Kumar, who was demanding Rs.500/- as bribe for fixation of his pay and arrear bill of his salary. He has proved the Complaint Petition signed by him, which has been marked as Ext.5. He along with Officers of CBI and two independent witnesses had assembled on 22.09.2002 in the Telephone House at Hajipur. He has stated in his evidence about the pre trap demonstration as stated by PW 12. He has proved his signature on the sealed bottle in which solution was kept at the time of pre trap



demonstration. He also stated about the instructions given by the CBI. He has proved his signature on the pre trap memo. After pre trap demonstration, this witness along with members of the trap team went to the office of the accused where accused was not present. Thereafter, he went to the house of accused where accused demanded Rs.500/- from him. Thereafter, this witness handed over five notes to the accused, who after counting the same put in his pocket. Thereafter, this witness gave signal to the members of trap team as instructed by the CBI Officers at the time of pre trap demonstration. CBI Officer caught both hands of the accused and independent witness recovered the said Notes from his pocket. Number of the said Notes of Rs.500/- were tallied with the numbers of pre trap memo. Both the hands of the accused and pocket of his shirt were dipped in the solution. This witness has proved his signature on the sealed bottles in which RHW and pocket wash were kept marked as Ext.2/18 and 2/19. He has also proved his signature on the envelope in which said Notes of Rs.500/- were kept marked as Ext.2/20. He has also proved his signatures on the recovery memo marked as Ext.2/21 to 2/25. He has also proved the envelope in which shirt of the accused was kept, which has been marked as Ext.2/26.

During cross-examination, this witness has stated



that he has no knowledge as the accused was not present in his office on 03.09.2002. He further stated that from 24.09.2002 to 26.09.2002, accused was present in his headquarter. He has further stated that he has no knowledge as to whether the accused was present in his office or not on 24.09.2002.

14. Yogendra Rai (PW 9), who was independent witness, was present in the trap team of PWI Sangeet Kumar on 27.09.2002 on the order of his Regional Manager. He along with Harish Chandra Prasad reached in the office of CBI at 9.00 hrs. and proceeded for Hajipur with CBI team. They had assembled in the Rest House of BSNL, Hajipur. There were 6-7 members of CBI in the said team besides him. Complainant, Gulab Chandra, also met with him in the Rest House. They were identified and also told about the Complainant, Gulab Chandra, who had complained that accused, Sangeet Kumar, has been demanding Rs.500/- as bribe for fixation of his salary. This witness has further stated that a piece of paper was treated with Phenolphthalein powder, which was touched by him. Thereafter, his hand was dipped in the solution of sodium carbonate, which turned into pink. The said solution was sealed in a bottle signed by him. He has proved his signature, which has been marked as Ext.2/27. Tainted piece of paper was sealed in an envelope signed by him. He has proved his signature on the envelope, which has been



marked as Ext.2/28. He has also proved his signature on the tainted paper, which has been marked as Ext.2/29, used at the time of demonstration. Thereafter the complainant gave Rs.500/- each Note of rupees one hundred whose numbers were noted and the same were treated with Phenolphthalein powder which was kept in an envelope sealed and signed by him along with others. This witness has identified his signature marked as Ext.2/30. This witness has further stated that the complainant was given instruction that money will be given to accused, Sangeet Kumar, on demand itself. He was also given instruction that after transaction is being completed, he will give gesture by touching his beard. Harish Chandra Prasad was asked to become shadow witness. This witness has stated that pre trap memorandum was prepared in the Rest House at Hajipur, signed by him along with others. This witness has identified his signature on all the four pages which have been marked as Ext.2/31 to 2/34. After preparation of pre trap memorandum he along with members of trap team reached in the office of accused at 12.30 hours. The accused came out from his office. The complainant went to the residence of the accused with him. Other members stayed near the Railway line. Harish Chandra Prasad also followed them. The complainant went to the house of the accused and after some time he came out from the house and gave signal after itching his beard then Inspector Sahab



went inside the house rashly and other members also went there.

This witness has further stated that when he reached there, he saw both hands of the accused were caught by the Inspector, on whose direction this witness took away money from his pocket. Thereafter they went to the Sonapur Police Station, where both the hands of the accused and pocket of his shirt were dipped in solution separately which turned into pink. The solution were kept and sealed in separate bottles marked –R.W./L.W. The numbers of the notes were tallied and the same were sealed in an envelope. The said bottles and envelope were signed by the witnesses (members of the team). This witness has proved his signatures on the bottles and envelope marked Ext.2/35 to 2/38. This witness has proved his signature on the envelope in which shirt of the accused was sealed which has been marked as Ext.2/39. This witness has further deposed that on being asked the Complainant has stated that on demand he gave the said tainted notes to the accused. On being asked the accused has stated that he did not take bribe. The Complainant has given money for sweets. He has deposed that accused was arrested and a memorandum was prepared signed by the members of trap team. This witness has proved his signature on all five pages of said memorandum which have been marked as Ext.2/40 to 2/44. Thereafter this witness along with others went to the office of the



accused where search was made in the *Almirah* and C.B.I. Police seized 1-2 paper and seizure-list was prepared thereof in presence of this witness. This witness has identified his signature on the said seizure list marked as Ext.2/45. He has further stated that search was also made in the house of the accused from where no article was seized. A search list was prepared signed by him. This witness has proved his signature on the carbon copy of said search list marked as Ext.2/46. This witness has identified the accused present in the court.

During cross-examination, this witness has stated that he saw the Inspector Sahab catching both hands of the accused Sangeet Kumar. In para 15 of his cross-examination, this witness has stated that the said shirt from which money was recovered, was in the hands of the Inspector Sahab. The said shirt was sealed in an envelope at the police station. In para 17 of his cross-examination, this witness has stated that about Rs.3000/- was recovered from pocket of the *Pant* of the accused. A search-list was prepared thereof signed by him and Raj Kishore, which have been marked as Ext. A and A/1 respectively. In para 23 of his cross-examination, he has stated that he cannot say as to whether map of the place of occurrence was prepared or not.

15. Harish Chandra Prasad (PW 10) is also an independent witness and was doing work of shadow witness. He was



posted as Manager in Central Bank of India, Regional Office Patna. He had participated in the proceedings of trap with C.B.I. Police Officer on 27th September, 2002. When this witness reached in C.B.I. Office, Patna, as per direction of his Regional Manager, Yogendra Rai also reached there. He has stated that at about 9.00 A.M., he along with C.B.I. team proceeded for Hajipur and reached in the Rest House of BSNL, Hajipur at 10.00 hours. There were 7-8 officers of CBI including Inspector Bhatt, Upadhyay and Yogendra Rai present in the trap team. The Complainant also came there. They were informed by Bhatt Sahab in the Rest House about their assembly and were also informed about the complaint of the Complainant. This witness has stated about the practical demonstration held in the Rest House of BSNL, Hajipur. According to him a piece of plain paper was treated with chemical powder which was touched by Yogendra Rai and his hand was dipped in the solution whose colour turned into pink from milky. The solution was sealed in a bottle signed by him and others. This witness has proved his signature on the sealed bottle marked as Ext.2/47. The said piece of paper was sealed in an envelope signed by this witness and others. This witness has proved his signature on the sealed envelope, which has been marked as Ext.2/48 and also on the tainted paper, which has been marked as Ext. 2/49. He has further stated that as per direction



of team leader the Complainant, Gulab Chandra, gave Rs.500/- each note of Rs.100/- (one hundred) to Yogendra Rai, who noted the numbers of the same and got verified. The said notes were treated with chemical powder and returned to Gulab Chandra with instruction to give the same to the accused on demand only. Some instructions were also given to the Complainant by Bhatt Sahab. Rest powder by which Notes were treated, was sealed in an envelope signed by this witness and others. This witness has identified his signature on the said envelope which has been marked as Ext.2/80. This witness has stated that pre trap memorandum was prepared in the IB of BSNL signed by him and others. This witness has proved his signatures on all the four pages which have been marked as Ext.2/51 to 2/54. He has deposed that he along with members of the team proceeded to the office of the accused from IB, BSNL and reached there. Accused was present in his office. At about 12.45 P.M., the accused came out from his office and proceeded towards his residence with the complainant. Both were followed by this witness as well as by the members of the trap team. They reached near the Railway quarter of the accused. The accused entered his house then the complainant also went to his house and this witness stayed at the Darwaja of the accused. Thereafter, the accused demanded money from the Complainant upon which he gave



Rs.500/- to the accused which was kept by him in the pocket of his shirt. Thereafter the Complainant came out from the room of the accused and gave signal, as stated earlier, then members of the trap team entered the quarter of the accused and CBI police caught his both hands. Accused was asked by CBI Inspector Bhatt Sahab about the money of Rs.500/- taken by him from the complainant Gulab Chandra, as bribe, he said nothing. On being asked about money by Bhatt Sahab, the accused pointed out towards the pocket of his shirt hanging in a peg. At that time accused was wearing *Ganji*. This witness has further stated that on the direction of Bhatt Sahab, Yogendra Rai took the money from the pocket of his shirt whose numbers were tallied with the numbers of pre trap memorandum. Thereafter accused was arrested and for safety they went to Sonapur police station, for further proceedings where Officer in-charge provided the place. Thereafter solution was prepared and both the hands of the accused were dipped in the solution separately which turned into pink from milky. The said solutions were sealed in two bottles signed by him. This witness has identified his signatures marked as Ext.2/55 and 2/56. Pocket of the shirt of the accused was also dipped in the solution which turned into pink and sealed in a bottle signed by this witness. This witness has proved his signature on the said sealed bottle marked as Ext.2/57. Shirt of the accused



was also sealed in an envelope signed by him. This witness has proved his signature on the said envelope marked as Ext.2/58. This witness has identified the shirt of the accused which has been marked as material Ext. X. The tainted notes of Rs.500/-, each of one hundred were also sealed in an envelope signed by him. He has proved his signature which has been marked as Ext.2/59. This witness has further stated that recovery memo was prepared signed by him. He has identified his signatures on all the five pages which have been marked as Ext.2/60 to 2/64. This witness along with others went to the office of the accused where personal file of the Complainant, Gulab Chandra, was given by Gang Man and one other file was also given by him. Seizure list was prepared thereof signed by this witness. He has proved his signature on the seizure-list marked as Ext.2/65. Thereafter, he along with members of the team went to the house of the accused where the CBI police prepared an inventory list, from where no document or article was seized. House of the accused was searched and search list was prepared signed by him. This witness has proved his signature, which has been marked as Ext.2/66. His statement was also recorded by CBI police. This witness has identified the accused present in the court.

During cross-examination in para 21, this witness has stated that he reached in the office of CBI at 8.30 A.M.



16. Jay Prakash Mishra (PW 11) is the Investigating Officer of this case. He has stated that he took over the charge of investigation of this case. During course of investigation, he recorded statement of the witnesses. He seized the documents. He obtained the report of CFSL and also received the sanction order from the competent authority against the accused and thereafter he submitted charge-sheet. He has proved the seizure memo dated 06.11.2002, which has been marked as Ext.11.

During cross-examination, this witness has stated that on 06.11.2002 documents were seized from Rajendra Ram with respect to the Complainant. Prior to this, on 27.09.2002, Inspector B B Bhatt also seized the documents from Gang Man from the office of PWI, Sonapur, with respect to the Complainant. He did not record the statement of said Gang Man Anwar Alam. This witness has further stated that he did not record the statement of Raj Kishore and other persons who were present in the quarter of the accused at the time of incident.

17. Anil Kumar Jha (PW 3) was also one of the members of the trap team being Inspector CBI, Patna. He has stated that Rs.500/- was recovered from the possession of the accused. After recovery the number of the notes was tallied with pre trap memorandum. All the five notes each of one hundred denomination



was kept in an envelope signed by him. He has identified his signature on the envelope, which has been marked as Ext.2/8 and recovered five notes were marked as material Ext. IX to IX/4. Notes were recovered from the pocket of the accused and his hand was washed then colour of the solution turned into pink. The solution was kept in a bottle upon which this witness has identified his signature, which has been marked as Ext.2/9. Both hands of the accused were also washed then colour of the solution turned into pink, which were kept in two bottles (Ext. V and VI) upon which this witness has identified his signatures which were marked as Ext.2/10 and 2/11. He was cross-examined by defence. He has stated that there is no signature of the accused on the recovery memorandum. The accused has denied to put his signature on the recovery memorandum.

18. Sunil Kumar (PW 6) was posted as Assistant Engineer from 06.09.2002 to 10.03.2005 at Sonapur Division. He has stated that on 27.8.2002, he received a letter from the accused regarding increase of salary of the Complainant Gulab Chandra. He has proved the endorsement and signature of the accused on the said letter, which has been marked as Ext.6/1. In cross-examination, this witness has stated that salary of the complainant, Gulab Chandra, was fixed on 16.09.2002.

19. Bimal Chandra Purkait (PW 7) was posted as



Junior Scientific Officer in CFSL, Kolkata on 22.11.2002. He has proved his chemical examination report, which has been marked as Ext.10.

20. Bansh Narayan Singh (PW 8) was posted as Senior Divisional Engineer- I, E.C., Railway, Sonapur on 27.03.2003. He has proved the sanction order (Ext.4). He had given sanction order against the accused, Sangeet Kumar, for prosecution.

21. Satish Chandra Jha (PW 2) was posted as Confidential Assistant to Senior Divisional Engineer-I,E.C. Railway, Sonapur. Sri B.N. Singh was the Senior Division Engineer-I. He had worked with him. He had typed the sanction order, which is against the accused Sangeet Kumar, on dictation of Sri B.N. Singh. He has proved the sanction order, which has been marked as Ext.4. In his cross-examination, he has stated that he has not signed the sanction order and there is no initial also on sanction order. He had taken dictation in short hand.

22. R.K. Thakur (PW 1) has submitted verification report. He has stated that he being ASI of CBI, Patna, was also a member of the trap team. He has proved the verification report which is in his writing and signature and marked as Ext.1. This witness has stated that paper was prepared in his presence. Tainted piece of paper was kept in an envelope which was signed by him and marked as



material Ext.I and the signature of witness has been marked as Ext.2. Demonstration wash was sealed in a bottle signed by him and marked as material Ext.II and signature has been marked as Ext.2/1. Phenolphthalein powder was also kept in an envelope signed by him. This envelope has been marked as material Ext. III and signature has been marked as Ext.2/2. Five notes each of one hundred as gratification were also kept in an envelope signed by him. Envelope has been marked as material Ext. IV and signature has been marked as Ext.2/3. He has proved right hand wash kept in a bottle signed by him, which has been marked as material Ext. V and his signature has been marked as Ext.2/4. Left hand wash kept in a bottle signed by him has been marked as material Ext. VI and his signature has been marked as Ext.2/5. Pocket wash was also kept in a bottle which is in the writing of A.K. Malviya, signed by this witness. Bottle has been marked as material Ext. VII and signature of this witness has been marked as Ext.2/6. Shirt of the accused was also kept in an envelope which is in the writing of Malviya Sahab signed by him (this witness) which has been marked as material Ext. VIII and signature is marked as Ext.2/7. This witness has also proved the search list, which has been marked as Ext.3.

He was cross-examined by defence. He has stated that the verification report has been produced in the court today for



the first time i.e. 27.1.2004. He has stated that there is no signature of any Officer on the verification report.

During cross-examination, he has further stated that below his signature there is overwriting with respect to the date in the verification report. He did not write any date in his verification report. In his cross-examination, in para 7 he has stated that he has no knowledge that the accused, Sangeet Kumar, was absent from his office on 24.09.2002, 25.09.2002 and also on 26.09.2002. In para 6 of his cross-examination, he also stated that he met with the Complainant at Sonapur station prior to verification. The PWI Office is far away about 2½ K.M. from Railway Station. This witness has further stated that Sri Hari Nath Mishra, was S.P., CBI, at the relevant time and his signature or initial is not on Ext.1. His signature is also not available on Ext. 3. According to this witness, giving and taking of bribe happened at Railway Platform, Sonapur. Railway quarters are at the distance of about 100 yards in the north from Sonapur Platform.

23. Rajendra Ram (PW 5) was posted in the office of Railway Sonapur in the year 2002. He has proved the letter dated 24.04.2002, which has been marked as Ext.6. This witness has stated that aforesaid letter was attested by Sunil Kumar, Assistant Engineer. He has proved input sheet and pay fixation sheet, which have been



marked as Ext.7 and 8 respectively. He has proved the personal service book of Sri Gulab Chandra, Complainant, which has been marked as Ext.9. He further deposed that the Pay fixation sheet from 16.09.2002 to 02.10.2002 was in the custody of accused, Sangeet Kumar, PWI, which was sent by him till 02.10.2002. He has further stated that CBI police had seized the documents from his custody. During cross-examination, this witness has stated that Assistant Engineer has got power of pay fixation.

24. On behalf of defence, altogether three witnesses have been examined.

25. Md. Anwar Alam (DW 1) has stated in his evidence that he knew the accused Sangeet Kumar and the Complainant Gulab Chandra. On 27.9.2002, the CBI police seized the documents relating to Gulab Chandra from his possession. The seized documents were service book of Gulab Chandra and memorandum of pay fixation, upon which seizure-list was prepared in presence of this witness. This witness has signed the same and copy of which has been given to him. This witness has identified his signature on the said seizure list, which has been earlier marked as Ext.16. This witness has stated that pay fixation of Gulab Chandra was made on 16.9.2002 according to ACP by Sunil Kumar, AEN, Sonapur. He has stated about the input sheet. This witness has stated



that no work of Gulab Chandra was pending before the accused till 27.9.2002. He has proved the letter dated 05.03.2002 in carbon copy, which has been marked as Ext. B.

26. Sudhir Kumar (DW 2) has stated that occurrence is of 27.09.2002 at noon. He is Physiotherapist. He had gone to the quarter of the accused to see his wife who was suffering from back pain. He has stated that CBI police entered into the quarter of the accused forcibly and caught his hands and took away to Sonapur P.S. This witness has stated in his examination-in-chief about the false implication of the accused Sangeet Kumar.

27. Devanand Rai (DW 3), PWI, Sonapur has stated that he knew the accused, Sangeet Kumar, as well as the Complainant Gulab Chandra. He has proved the certificate dated 06.08.2008, which has been marked as Ext. C. According to this witness, this certificate is with respect to salary of the Railway employees. He has stated about the input sheet, which has been marked as Ext. D. This witness has further proved the input sheet for the month of October, which has been marked as Ext.D/1. This witness has stated in his examination-in-chief that there was no complain against the accused Sangeet Kumar. He was given appreciation letter in the year 2002 by the General Manager, Gorakhpur Railway.



28. Learned counsel for the CBI has submitted that there are sufficient evidences, which are consistent and there is no illegality in the judgment of the Court below. Counsel for the CBI submits that when hands of the accused were dipped in solution the liquid turned pink evidencing the presence of Phenolphthalein powder on the hands of the accused. Counsel for the CBI further submits that from the evidence of the prosecution witnesses, it appears that when the agreed amount i.e. Rs.500/- was paid, he has accepted the said currency Notes and put the same in the pocket of his shirt. The raiding party arrived upon the pre agreed signal being given. It is not possible to believe that the Police Officer of CBI has formed from the beginning and conspired to rope the accused by hook and crook.

29. Counsel for the CBI has relied upon the judgment of the Supreme Court in the case of *State of U.P. vs. Dr. G. K. Ghosh* reported in *AIR 1984 SC 1453* and *Gian Singh Vs. State of Punjab* reported in *1974 Cr.L.J. 789*, wherein, Supreme Court has held that police officials cannot be discredited in trap case merely because they are police officials.

30. Counsel for the CBI has further argued that presumption under Section 20 of the Prevention of Corruption Act, 1988, shall always arise. It is obligatory on the Court to raise it in



every cases brought under Prevention of Corruption Act.

31. On the other hand, counsel for the appellant has submitted that there is no reliable evidence to show that bribe amount of Rs.500/- was given by the Complainant to the petitioner. Alleged bribe money was not produced before the Court at the time of evidence. Counsel for the Appellant has further submitted that at the time of producing accused on 28.09.2002 before the Court, the prosecution filed only three documents i.e. arrest memo, medical certificate and search list dated 27.09.2002 of the residential quarter of the accused with forwarding report dated 28.09.2002. No other document was produced by the CBI relating to this case at the time of producing the accused. Counsel for the Appellant has further submitted that the Appellant has neither demanded nor accepted bribe of Rs.500/- from the Complainant. Bribe amount was not recovered from conscious possession of the Appellant. Residential house of the Appellant was also searched on 27.09.2002 in presence of PW 9 and 10, but no document relating to this case was recovered. The trap team also did not find any objectionable document in the house of the Appellant. It is further submitted that on the same day in presence of PW 9 and 10, some documents such as personal file including service book of Gulab Chandra, the memorandum pay dated 16.09.2002 in four sheets were seized from DW 1, Anwar



Alam, Gang Man. Counsel for the Appellant has further submitted that no any work of Gulab Chandra was pending before the Appellant. Appellant has been working since 1987 and since then no complaint was made against him from any quarter with regard to his conduct, rather, several rewards and letters of appreciation were given to him by Railway Administration as stated by DW 3 in his evidence. Learned counsel for the Appellant has further submitted that no alleged verification was made by the Officers of the CBI or by PW 1. From perusal of evidence of PW 1, it would appear that no such verification was done prior to the alleged trap i.e. 27.09.2002. Counsel for the Appellant has further submitted that recovery memorandum (Ext.14) was not prepared on the date of alleged trap since the said document was not enclosed with the forwarding report dated 28.09.2002. Counsel for the Appellant has further submitted that there is vital contradiction in the deposition of prosecution witnesses. Learned counsel for the Appellant has further submitted that when Appellant reached in the railway quarter, he was wearing *Ganji* and *Pant*. Shirt of the accused was in the hand of the Inspector.

32. This Court on perusal of the evidence of the witnesses as mentioned, in detail, above, finds that there is no eye witness to support the Complainant's allegation during evidence in



the Court that he paid an amount of Rs.500/- as bribe to the Appellant. Harish Chandra Prasad (PW 10) was a shadow witness. He has stated in his evidence that they reached near the railway quarter of the accused. Accused entered into his house, then Complainant also went inside the house. This witness stayed at the *Darwaja* of the accused. Thereafter, accused demanded money from the Complainant upon which he gave Rs.500/- to the accused, which was kept by him in pocket of his shirt. Thereafter, the Complainant came out from the room of the accused and gave signal and then members of the trap team entered into the quarter of the accused.

33. Similarly, Yogendra Rai (PW 9), who was independent witness and member of the trap team, has stated in his evidence that the Complainant went to the residence of the accused. Other members stayed near the railway line. The Complainant went to the house of the accused. After sometime, he came out of the house and gave signal by touching his beard. Then Inspector went inside the house rashly and other members also went there. This witness has further stated that when he reached there, he saw both hands of the accused was caught by the Inspector on whose direction this witness took out money from his pocket.

34. Bharat Bhushan Bhatt (PW 12) is the leader of the trap team. This witness has stated in his evidence that he along with



others reached at the office of the Appellant at 12.30 hours. The Complainant and the shadow witness went to the office of the accused, Sangeet Kumar, who was present in his office. After lapse of some minutes, he came out from his office and proceeded to his quarter. The Complainant and the shadow witness also followed him. The accused and the Complainant entered into the quarter and shadow witness stayed at his *Darwaja*. ASI, R. K. Thakur, stayed near window of his quarter. After sometime, on getting signal given by the Complainant and the shadow witness, the trap team went to his quarter where the accused was sitting in the room on a chair wearing *Ganji*. Hands of the accused were caught by R. K. Thakur and B. K. Singh. Accused was challenged by this witness by giving his identification to the accused, then accused said nothing but later on he told that he has taken money for sweets. Accused was asked about the money then he pointed towards his shirt hanging on a peg (Khunti). Thereafter, witness, Yogendra Rai, recovered the tainted notes from his shirt and number of the said notes was tallied with the numbers of pre trap memorandum.

35. The Complainant Gulab Chandra (PW 4) has stated in his evidence that after pre trap demonstration he along with members of the trap went to the office of the accused where accused was not present. Thereafter, he went to the house of the accused



where accused demanded Rs.500/- from him. Thereafter, he handed over five notes of Rs.100/- to the accused, who after counting the same kept in the pocket. Thereafter, this witness gave signal to the members of the trap team as instructed by the CBI Officers at the time of pre trap demonstration. CBI Officer caught both hands of the accused and independent witnesses recovered the said notes from his pocket.

36. Jay Prakash Mishra (PW 11) is the Investigating Officer of the case. He has stated that he did not record statement of any other persons, who were present in the quarter of the accused at the time of incident.

37. Sunil Kumar (PW 6) was posted as Assistant Engineer from 06.09.2002 to 10.03.2005 at Sonepur Division. He has stated that on 27.08.2002, he received a letter from the accused (Appellant) regarding increase of salary of the Complainant Gulab Chandra. He has proved endorsement and signature of the accused on the said letter marked as Ext.6/1. In cross-examination, he has stated that salary of the Complainant, Gulab Chandra, was fixed on 16.09.2002.

38. The case of the Complainant in the complaint dated 24.09.2002 addressed to the Superintendent of Police, CBI, is that Appellant was demanding sum of Rs.500/- from the



Complainant for forwarding his paper with regard to increase of salary, whereas, from the evidence of Sunil Kumar (PW 6), it is apparent that he has received the letter on 27.08.2002 from the Appellant regarding increase of salary of the Complainant, Gulab Chandra. He has proved endorsement and signature of the Appellant on the said letter marked as Ext. 6/1. In cross-examination, he has stated that salary of the Complainant, Gulab Chandra, was fixed on 16.09.2002 and letter for increase of salary of the Complainant was already received by PW 6 from the Appellant.

39. Learned counsel for the CBI has laid much emphasis on Section 20 of the Prevention of Corruption Act- Presumption where public servant accepts gratification other than legal remuneration. In this respect, Hon'ble Supreme Court has held in the case of *V. Venkata Subbarao vs. State* reported in **2007 Cr.L.J. 754 (SC)** that Section 20 provides for raising of a presumption only if a demand is proved. Furthermore, even in such a case, the burden on an accused does not have to meet the same standard of proof, as is required to be made by the prosecution.

40. The only condition for drawing a legal presumption under Section 20 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied



through direct evidence.

41. The Hon'ble Supreme Court in the case of *State of Maharashtra vs. Dnyaneshwar Laxaman Rao Wankhede* reported in **2009 Cri. L. J. 4425**, has held that standard of burden of proof on accused vis-à-vis prosecution would differ. Court is required to consider explanation offered by accused, if any, only on touchstone of preponderance of probability. The Hon'ble Supreme Court has further held that before the accused is called upon to explain as to how the amount in question was found in his possession, the fundamental facts must be established by the prosecution even by invoking the provisions of Section 20 of the Act. The Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.

42. The Hon'ble Supreme Court in another decision in the case of *C.M. Girish Babu vs. CBI, Cochin, High Court of Kerala* reported in **(2009) 3 SCC 779** has held that mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the



absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.

43. In the instant case, there is no reliable evidence to prove payment of bribe by the Complainant to the Appellant or to show that the Appellant voluntarily accepted the money knowing it to be bribe.

44. The motive as alleged by the Complainant that the Appellant made demand of bribe for forwarding papers for fixation of salary is totally demolished by the evidence of prosecution witness, namely, Sanjay Kumar (PW 6), who was posted as Assistant Engineer from 06.09.2002 to 10.03.2005 at Sonepur Division. He has clearly stated in his evidence that he has received a letter on 27.08.2002 from the accused (Appellant) regarding increase of salary of the Complainant Gulab Chandra. He has also stated that salary of the Complainant, Gulab Chandra, was fixed on 16.09.2002.

45. Therefore, in the circumstances, allegation made by the Complainant that on 24.09.2002 the accused made demand of Rs.500/- for forwarding his paper with regard to increase of salary got falsified. Besides this, there is vital contradiction in the deposition of the witnesses.

46. Yogendra Rai (PW 9) has stated in his evidence that when he entered in the quarter of the accused, he was wearing



Ganji and *Pant*. Shirt of the accused was in the hand of the Inspector. Leader of the trap team, Bharat Bhushan Bhatt, (PW 12) has stated in his evidence that when he entered into the quarter, accused was sitting in the room on chair wearing *Ganji*. Hands of the accused were caught by R. K. Thakur and B. K. Singh. The accused was challenged by this witness by giving identification to the accused, then accused said nothing. But, latter on, he told that he has taken money for sweets. The accused was asked about money then he pointed out towards his shirt hanging in a peg (*Khunti*). Thereafter, witness, Yognendra Rai, recovered tainted money from his shirt. Gulab Chandra (Complainant), PW 4, has stated in his evidence that he went to the house of accused where he demanded Rs.500/- from him. Thereafter, he handed over five notes of Rs.100/- to the accused, who after counting the same put in his pocket. Thereafter, the witness gave signal to the members of trap team as instructed by the CBI Officers at the time of pre trap demonstration. CBI caught both hands of the accused and the witness recovered tainted money from his pocket. PW 1, R. K. Thakur, has stated that giving and taking of bribe had happened at the Railway Platform.

47. Yogendra Rai, PW 9, who was also member of the trap team and independent witness, has stated in his evidence that the Complainant went to the house of the accused. After sometime,



he came out of the house and gave signal by itching his beard. Then Inspector went inside the house rashly and other members also went there. This witness has further stated that when he reached there, he saw both hands of the accused was caught by the Inspector on whose direction this witness took out money from his pocket. Thereafter, they went to the Police Station, Sonapur, where both hands of the accused were dipped in solution separately which turned into pink.

48. Harish Chandra Prasad (PW 10), who was a shadow witness, has stated in his evidence that when accused entered his house then the complainant also went to his house and this witness stayed at the *Darwaja* of the accused. Thereafter the accused demanded money from the Complainant upon which he gave Rs.500/- to the accused which was kept by him in the pocket of his shirt. Thereafter the Complainant came out from the room of the accused and gave signal and then members of the trap team entered the quarter of the accused and CBI police caught his both hands. Accused was asked by CBI Inspector Bhatt Sahab about the money of Rs.500/- taken by him from the Complainant Gulab Chandra as bribe, he said nothing. On being asked about money, the accused pointed out towards the pocket of his shirt hanging in a peg. At that time accused was wearing *Ganji*. This witness has further stated that on the direction of Bhatt Sahab, Yogendra Rai took the money from



the pocket of his shirt whose numbers were tallied with the numbers of pre trap memorandum. In this manner, there are vital contradictions in the evidence of the witnesses with regard to making payment of the money to the accused by the Complainant as well as recovery of money from the conscious possession of the Appellant.

49. PW 12, Bharat Bhushan Bhatt, who was team leader of the trap team, has stated in his evidence that earlier marked as material Ext. IX, the envelope, from which tainted GC Notes were missing from the custody of the Court, and the same were not available in the said envelope at the time of his evidence. This witness has stated that he has prepared recovery memo, which is in his writing and signature marked as Ext.14. The accused was arrested and arrest memo was prepared.

50. Anil Kumar Jha (PW 3) was also one of the members of the trap team. He has stated memorandum of recovery of notes was prepared but there is no signature of the accused on the recovery memorandum.

51. Jay Prakash Mishra (PW 11) is the Investigating Officer of this case. He has stated in his evidence during cross-examination that on 06.11.2002 documents were seized from Rajendra Ram with respect to the Complainant. Prior to this, on 27.09.2002, Inspector B B Bhatt also seized the documents from



Gang Man from the office of PWI, Sonapur with respect to the Complainant. He did not record the statement of said Gang Man Anwar Alam.

52. Aforesaid Anwar Alam was produced and examined by the defence as DW 1. He stated in his evidence that he knew the accused, Sangeet Kumar, and the Complainant Gulab Chandra. On 27.9.2002, the CBI police seized the documents relating to Gulab Chandra from his possession. The seized documents were service book of Gulab Chandra and memorandum of pay fixation, upon which seizure-list was prepared in presence of this witness. This witness has signed the same and copy of which has been given to him. This witness has identified his signature on the said seizure list, which has been earlier marked as Ext.16. This witness has stated that pay fixation of Gulab Chandra was made on 16.9.2002 according to ACP by Sunil Kumar, AEN, Sonapur. He has further stated about the input sheet. This witness has stated that no work of Gulab Chandra was pending before the accused till 27.9.2002. He has proved the letter dated 05.03.2002 in carbon copy, which has been marked as Ext. B.

53. Sudhir Kumar (DW 2) has stated that he is Physiotherapist. He had gone to the quarter of the accused to see his wife who was suffering from back pain. He has stated that CBI



police entered into the quarter of the accused forcibly and caught his hands and took away to Sonapur Police Station.

54. Devanand Rai (DW 3), PWI, Sonapur has stated that he knew the accused, Sangeet Kumar, as well as the Complainant Gulab Chandra. He has proved the certificate dated 06.08.2008, which has been marked as Ext. C. According to this witness, this certificate is with respect to salary of the Railway employees. He has stated about the input sheet, which has been marked as Ext. D. This witness has further proved the input sheet for the month of October, which has been marked as Ext.D/1. This witness has stated in his examination-in-chief that there was no complain against the accused Sangeet Kumar. He was given appreciation letter in the year, 2002 by the General Manager, Gorakhpur Railway.

55. Therefore, in the aforesaid facts and circumstances of the case and on the basis of unreliable evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe, as discussed above, this Court is of the view that the prosecution has failed to establish the guilt of the accused beyond all reasonable doubts that the Appellant has received any gratification.

56. Accordingly, impugned judgment of conviction



and order of sentence dated 12.12.2008 passed by the Special Judge, CBI, North Bihar, Patna, in Special Case No.05 of 2002 arising out of R.C. 16(A) of 2002, is hereby set aside.

57. The Appellant is acquitted of the charges levelled against him. He is discharged from the liabilities of his bail bond.

58. This Criminal Appeal is, accordingly, **allowed.**

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	09-02-2018
Uploading Date	03-05-2018
Transmission Date	03-05-2018

