

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.515 of 2015

Arising Out of PS.Case No. -5 Year- 2008 Thana -C.B.I CASE District- PATNA

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1. Satyendra Singh @ Satyander Son of Sri Rampratap Singh Resident of village -
Bherarhiya, P.S. Bela, District - Sitamarhi

.... Appellant/s

Versus

1. The State of Bihar through CBI

.... Respondent/s

with

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Criminal Appeal (SJ) No. 543 of 2015

Arising Out of PS.Case No. -5 Year- 2008 Thana -C.B.I CASE District- PATNA

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1. Satya Narayan Mahto age 42 years S/o Late Ram Kewal Mahto Accountant Head
Post Office Sitamarhi and Resident of Veerta Musharniya, P.S. Sitamarhi, District
Sitamarhi.

.... Appellant/s

Versus

1. The Union of India through CBI.

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.515 of 2015)

For the Appellant/s : Mr. Kanhaiya Pd. Singh, Sr. Advocate
Mr. Pushpendra Kumar Singh, Advocate,
Smt. Divya Bharti, Advocate,

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

(In CR. APP (SJ) No.543 of 2015)

For the Appellant/s : Mr. Laxmi Narayan Das, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 22-06-2018

Appellant, Satyendra Singh @ Satyander [Criminal Appeal
(SJ) No.515 of 2015] has been found guilty for an offence punishable
under Section 8 of the PC Act and sentenced to undergo RI for 2
years as well as to pay fine of Rs. 10,000/- in default thereof, to
undergo SI for six months additionally, under Section 13(2) read with
13(1)(d) of the PC Act, and sentenced to undergo RI for 3 years as



well as to pay fine of Rs. 10,000/- in default thereof, to undergo SI for six months additionally, while appellant, Satya Narayan Mahto [Criminal Appeal (SJ) No. 543 of 2015] has been found guilty for an offence punishable under Section 7 of the PC Act and sentenced to undergo RI for 2 years as well as to pay fine of Rs. 10,000/- and in default thereof, to undergo SI for six months additionally, under Section 13(2) read with Section 13(1)(d) of the PC Act and directed to undergo RI for 3 years as well as to pay fine of Rs. 10,000/- and in default thereof, to undergo SI for six months additionally, with a further direction to run the sentences concurrently vide judgment of conviction and order of sentences dated 30.07.2015 passed by Special Judge, CBI-2 Patna in Special Case No. 10/11 arising out of R.C. Case No. 5(A)/08, on account thereof, have been heard analogously and are being disposed of by a common judgment.

2. Daya Shankar Mishra (PW 6) filed written report before the Superintendent of Police, CBI on 25.03.2008 disclosing therein that with regard to calculation of arrear of family pension belonging to his mother, Sudama Devi, he has approached, Satya Narayan Mahto, Accountant, Head Post Office, Dumra, Sitamarhi who, insisted for Rs. 1000/- as bribe and further stated that without payment of the same, Bill which has already been prepared, would not be sent to the officials. Because of the fact that he does not want to



pay the bribe so, requested to take necessary action against the delinquent officials. The aforesaid allegation was verified followed with registration of case and then thereafter, pre-trap demonstration was carried out in presence of the witness. Subsequently thereof, as per plan aforesaid Daya Shankar Mishra along with witness Jai Mukherjee had gone inside the head Post Office, Dumra, Sitamarhi at the counter occupied by Satya Narayan Mahto being closely watched by the CBI officials, who seeing him had disclosed that work was being finalized, so come after some time. Accordingly, they left and revisited the place. Seeing one stranger, Satya Narayan Mahto directed Daya Shankar Mishra to instruct the stranger to leave the place who, accordingly, obeyed. Then thereafter, Satya Narayan Mahto asked for whether he has brought the amount and getting nod at the end of the complainant, Daya Shankar Mishra, Satya Narayan Mahto called one person from inside the office and directed him to procure the amount whereupon, he along with aforesaid person came out from the office where they found Baleshwar Prasad standing by the side of the door. They got down to ground floor followed by Baleshwar Prasad, shadow witness and there the aforesaid person, Satyendra Singh (later on disclosed) asked for Rs. 1000/- which was, accordingly, paid by him having been properly witnessed. The aforesaid currency (denomination of Rs. 500/-) was duly treated since



before, was counted and then kept by Satyendra Singh. The other CBI officials who were actively putting vigilance over the activity approached on getting signal and the aforesaid Satyendra Singh was apprehended by CBI official, R.P. Pandey who caught his right hand and Ajay Kumar caught his left hand and then thereafter, Satyendra Singh was challenged. He was taken to office of Superintendent of Post Office where the amount was recovered by Jai Bandopadhyay at the instance of R.P. Pandey, the notes were tallied with G.C. notes, prepared during course of pre-trapping memorandum which was kept in an envelope and duly sealed. Then thereafter, the post-trap eventualities were properly exercised and memorandum thereof, were duly prepared. The wash off of both hands of Satyendra Singh was taken, sealed. It has further been disclosed that during course of search from the drawer of accused Satyendra Narain Mahto, the calculated arrear, family pension belonging to Sudama Devi was also recovered and for that, search cum seizure list was separately prepared. It has further been found that taking benefit of din, Satya Narayan Mahto managed to escape therefrom.

3. Accordingly, investigation commenced and after completing the same, charge-sheet was submitted against both the accused persons facilitating the trial, meeting with the ultimate result, subject matter of these appeals.



4. Defence case as is evident from the mode of cross-examination as well as statement of both the accused recorded under Section 313 CrPC is that of complete denial. Then there happens to be independent plea on behalf of each of the accused. So far Satya Narayan Mahto is concerned, it has been pleaded that he has been victimized on account of prevailing politics in the office. It has further been pleaded that he was not at all present on 27.03.2008, the date on which prosecution had alleged trapping and that happens to be the reason behind that he was not at all arrested at the spot nor from the office. In likewise manner, it has also been pleaded that there was no occasion for demand of bribe with regard to calculation of arrear of family pension of Sudama Devi as, the same was already, calculated, ordered and communicated to Sheohar sub-post office wherefrom payment had already been made before the alleged date i.e. 27.03.2008.

5. In the aforesaid facts and circumstances of the case, there was no occasion for him to ask for bribe to facilitate the calculation as well as payment of arrear relating to family pension of Sudama Devi, mother of complainant.

6. The other co-accused, Satyendra Singh had pleaded that he has been made scapegoat, otherwise from the prosecution case itself, it is apparent that neither informant had an occasion to meet



with him, nor he was anyway entrusted under the official capacity to do anything relating to interest of the informant, never demanded bribe nor came forward to demand but, as there was commotion in the office on account of appearance of CBI sleuths which was resisted by the postal staffs whereunder appellant stood at front line, whereupon, in revengeful activity, the CBI sleuths got him implicated. Furthermore, on behalf of appellants 4 DWs have also been examined along with exhibits of documentary evidences.

7. The prosecution in order to prove its case had examined altogether 11 PWs who are PW-1, R.N. Mishra, PW-2, Rakesh Kumar Singh, PW-3, Prabhat Kumar, PW-4, Baleshwar Prasad, PW-5, B.C. Purkat, PW-6, Daya Shankar Mishra, PW-7, Jay Bandopadhyay, PW-8, Kameshwar Chaudhry, PW-9, R.P. Pandey, PW-10, Rahul Priya Darshi and PW-11, B.B. Bahat. Side by side had also exhibited Ext-1, the sanction order for prosecution, Ext-2, Certificate issued by Kameshwar Chaudhry, Sr. Postmaster, HPO, Sitamarhi in which he certified that Sri Satya Narayan Mahto was present in the office on 27.03.2008 but he did not sign up on the attendance register, Ext-2/1 is the letter of Kameshwar Choudhry to Supdt. Of Post office, Sitamarhi through which he informed that Sri Satya Narayan Mahto had attended the office on 27.03.2008 but he left the office without informing, Ext-2/2 the forwarding of leave application of Satya



Narayan Mahto, Ext-2/3, the leave application of Satya Narayan Mahto. Ext-3 to 3/46, the series of signatures of prosecution witnesses on different exhibits, Ext-4, the CFSL report, Ext-5, the complaint of Daya Shankar Mishrah, Ext-6, the arrear calculation of Sudama Devi by Satya Narayan Mahto on application of Sudama Devi, Ext-7, the duly certificate of Satya Narayan Mahto, Ext-8, the Formal FIR, Ext-9 to Ext-9/20, the series of signatures of prosecution witnesses over sealed material of pre-trap, Ext-10, pre-trap memorandum, Ext-11, the post-trap memorandum, Ext-12, seizure of documents related to pension of arrear bill of Sudama Devi from the drawer of the table of Satya Narayan Mahto, Ext-13, verification report of demand. Besides the documentary evidence, prosecution has also proved material exhibit which are M.Ext-I, the demonstration wash, M.Ext-II, tainted piece of paper, M.Ext-III, envelope containing phendolphthalein powder, M.Ext-IV, sample of sodium carbonate, M.Ext-V, R.H wash solution, M.Ext-VI, L.S. wash solution, M.Ext-VII recovered G.C. notes.

8. Appellants/accused entered into defence and have produced oral as well as documentary evidence. Four DWs have been examined by way of oral evidence who are DW-1, Ganga Prasad, DW-2, Ram Nath Mahto, DW-3, Awadhesh Prasad and DW-4, Shiva Shankar Ram and as a documentary evidence, proved Ext-A, Arrest



memo, Ext-B, prescription of doctor, Ext-C, certified copy of bill, Ext-D, information regarding complaint against Satya Narayan Mahto, Ext-E, counter signed photo copy of pension received by Sudama Devi, Ext-F, counter signed photo copy of attendance register of the employee of Head Post office, Sitamarhi, procured under Right to Information Act.

9. Learned counsels representing both the appellants conjointly as well as independently raised their plea in order to defend these appellants. They commonly challenged the finding recorded by the learned lower court on the score that on account of failure at the end of the learned lower court in properly appreciating the circumstances visualizing from the record itself blurring the prosecution version, makes the finding unsustainable in the eye of law whereupon is fit to be set aside. It has been submitted on behalf of appellant, Satya Narayan Mahto that virtually prosecution had miserably failed to make out any allegation and in likewise manner, they are deficient in their framework. To substantiate such plea, it has been submitted that it is an admitted fact that appellant happens to be postal employee. Now, absence of appellant is also not under controversy. The prosecution had tendered that when informant and Baleshwar Prasad had gone inside the postal office, they had gone to counter occupied by the appellant and then there happens to be



common way of allegation and then, it has been alleged that after trapping when they have gone to the table of the appellant, he was bound absent. It has purposely been introduced just to explain his absence but, the fact happens to be otherwise. There was an application for grant of C.L. as, the appellant had fallen ill since before and on that very score, DWs have been examined who properly substantiated the same is also found corroborated with the prescription issued by the doctor, an exhibit of the record.

10. It has also been submitted that whatever allegation has been attributed happens to be farce. From the document along with evidence of DWs, it is apparent that before conduction of the trap calculation of arrear was already done. Order for payment of arrear was already communicated to the sub post office, Sheohar from where it was to be paid which was paid. That means to say, there was no occasion for the appellant to ask for demand of bribery and that being so, the whole paraphernalia whatsoever alleged is found shrewdly woven against the appellant on one pretext or other and so is to be acquitted by setting aside the judgment impugned.

11. Learned counsel representing Satyendra Singh has submitted that he has fallen victim of circumstance even as per prosecution version itself. There happens to be complete absence of the evidence at the end of the prosecution that appellant was any way



connected with the affair of the informant during discharge of his official duty. There happens to be absence at the end of the prosecution that appellant was ever seen in company of Satya Narayan Mahto since before. The prosecution is also silent over the conduct of the appellant. No allegation is there against the appellant with regard to had said anything or lured or promised or offered himself in getting the work done at the end of others against remuneration. Then in that circumstance, his presence for accepting Rs. 1000/- as bribe money on behalf of Satya Narayan Mahto is nothing but a ridiculous story having been propounded at the end of the prosecution and in the aforesaid background, would not attract the appellant to be convicted under Section 8 as well as Section 13(2) r/w Section 13(1) (d) of the PC Act, on account of absence of *mens rea*, the backbone of the prosecution under the PC Act. Consequent thereupon, the finding recorded by the learned lower court relating to appellant is not at all found in accordance with law and so, is fit to be set aside.

12. Learned standing counsel representing the CBI has submitted that whatever pleas have been raised on behalf of the both the appellants, are not tenable in the eye of law. To substantiate the same, it has been submitted that presence of appellant, Satya Narayan Mahto is found duly endorsed by the Superintendent apart from the



evidence of informant witness along with other CBI officials who witnessed conversation in between informant and Satya Narayan Mahto over the issue and the plea having been raised on behalf of appellant, Satya Narayan Mahto regarding his absence is nothing but an after thought story, fraudulently prepared by way of placing application, after the event of trapping. In likewise manner, It has also been submitted that whatever been asserted at the end of the appellant, Satya Narayan Mahto that calculation of arrear of Sudama Devi was already done and order was sent to sub-post office, Sheohar before trapping happens to be out and out a false plea because of the fact that the document in original was recovered from the drawer belonging to the appellant on the date of trapping itself. So, the opportunity was surviving and for that, an occasion was already present to ask for demand of bribery which, appellant, Satya Narayan Mahto had already advanced before the trapping. It has also been submitted at the end of learned standing counsel, CBI that 'birds of same feather flock together' and that happens to be reason behind that appellant Satyendra Singh who was a person of confidence of Satya Narayan Mahto was called upon by him and then, was instructed to accept the bribe amount on his behalf in order to ward off any kind of exigency and appellant, Satyendra Singh, as expected involved himself and had tried to perform to the best of his ability but,



unfortunately was apprehended red handed during course of trapping and the witnesses duly substantiated not only the pre-trapping exercise rather the trapping as well as post trapping exercise. Furthermore, it has also been pleaded that when the evidences of DWs are minutely been gone through inconsonance with the documents whatever exhibited, it is apparent that the plea of defence has fallen like house of cards and further, substantiated the prosecution case. Accordingly, the judgment of conviction and sentence recorded by the learned lower court happens to be fit for concurrence.

13. After analyzing the rival submissions as well as going through the evidences (oral as well as documentary) the following points have been found relevant for just decision of these appeals.

1. whether there was an occasion for the appellant, Satya Narayan Mahto to demand bribe.
2. whether on the date of trapping, Satya Narayan Mahto was present at his table and after trapping he managed his escape.
3. proper identification of the part having been played by appellant, Satyendra Singh whether justifies the finding recorded by the learned



lower court against him.

4. exercise having at the end of the prosecution
(a) pre-trapping, (b) during trapping, (c) after
trapping in accordance with law.

14. *Mens rea* plays pivotal role while adjudicating upon the prosecution, more particularly, relating to the cases arising out of trapping because of the fact that unless and until there happens to be an occasion for demand, mere recovery of tainted amount will not be suffice to record adverse to the accused and in likewise manner, presumption though rebuttable in terms of Section 20 of the PC Act will not be available and to that extent prosecution is under obligation to substantiate its case.

15. In *Sejappa v. State by Police Inspector Lokayukta, Chitradurga* reported in (2016) 12 SCC 150, it has been held as follows under para 18 :-

18. It is well settled that the initial burden of proving that the accused accepted or obtained the amount other than legal remuneration is upon the prosecution. It is only when this initial burden regarding demand and acceptance of illegal gratification is successfully discharged by the prosecution, then the burden of proving the defence shifts upon the accused and a presumption would arise under Section 20 of the Prevention of Corruption Act. In the case at hand, all that is established by the prosecution was the recovery of money from the appellant and mere recovery of money was not enough to draw the presumption under Section 20 of the Act.



16. In *State v. Anup Kumar Srivastava reported in (2017)*

15 SCC 560, it has been held as follows under paras 28, 29:-

28) Further, what constitutes illegal gratification is a question of law; whether on the evidence that crime has been committed is a question of fact. If, therefore, the evidence regarding the demand and acceptance of a bribe leaves room for doubt and does not displace wholly, the presumption of innocence, the charge cannot be said to have been established.

29) [In P. Satyanarayana Murthy vs. District Inspector of Police, State of A.P.](#) (2015) 10 SCC 152, this Court has held as under:-

22. In a recent enunciation by this Court to discern the imperative prerequisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Sections 13(1)(d)(i) and (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasised, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal



gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder.

Hence, the proof of demand has been held to be an indispensable essentiality and of permeating mandate for an offence under [Sections 7](#) and [13](#) of the PC Act which is absent in the case at hand.

17. In the case of *P. Satyanarayana Murthy v. District Inspector of Police* as reported in *AIR 2015 SC 3549*, it has been held as follows under paras 21, 22, 23:-

21. The proof of demand of illegal gratification, thus, is the gravamen of the offence under [Sections 7](#) and [13\(1\)\(d\)\(i\)&\(ii\)](#) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act.

22. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under [Sections 7](#) or 13 of the Act would not entail his conviction thereunder.

23. The sheet anchor of the case of the prosecution is the evidence, in the facts and circumstances of the case, of PW1-S. Udaya Bhaskar. The substance of his testimony, as has been alluded to hereinabove, would disclose qua the aspect of demand, that when the complainant did hand over to the appellant the renewal application, the latter enquired from the complainant as to whether he had brought the amount which he directed him to bring on the previous day, whereupon the complainant took out Rs. 500/- from the



pocket of his shirt and handed over the same to the appellant. Though, a very spirited endeavour has been made by the learned counsel for the State to co-relate this statement of PW1- S. Udaya Bhaskar to the attendant facts and circumstances including the recovery of this amount from the possession of the appellant by the trap team, identification of the currency notes used in the trap operation and also the chemical reaction of the sodium carbonate solution qua the appellant, we are left unpersuaded to return a finding that the prosecution in the instant case has been able to prove the factum of demand beyond reasonable doubt. Even if the evidence of PW1- S. Udaya Bhaskar is accepted on the face value, it falls short of the quality and decisiveness of the proof of demand of illegal gratification as enjoined by law to hold that the offence under [Section 7](#) or 13(1)(d)(i)&(ii) of the Act has been proved. True it is, that on the demise of the complainant, primary evidence, if any, of the demand is not forthcoming. According to the prosecution, the demand had in fact been made on 3.10.1996 by the appellant to the complainant and on his complaint, the trap was laid on the next date i.e. 4.10.1996. However, the testimony of PW1- S. Udaya Bhaskar does not reproduce the demand allegedly made by the appellant to the complainant which can be construed to be one as contemplated in law to enter a finding that the offence under [Section 7](#) or 13(1)(d)(i)&(ii) of the Act against the appellant has been proved beyond reasonable doubt.

18. In *A. Subair v. State of Kerala* reported in *2009 CrLJ*

3450, it has been held as follows under paragraphs 7, 8, 9, 10:-

7. The essential ingredients of [Section 7](#) are: (i) that the person accepting the gratification should be a public servant; (ii) that he should accept the gratification for himself and the gratification should be as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or disfavour to any person.

8. Insofar as [Section 13](#) (1)(d) of the Act is concerned, its essential ingredients are: (i) that he should have been a public servant; (ii) that he should have used



corrupt or illegal means or otherwise abused his position as such public servant and (iii) that he should have obtained a valuable thing or pecuniary advantage for himself or for any other person.

9. In the case of [C.K. Damodaran Nair v. Government of India](#)¹, this Court had an occasion to consider the word "obtained" used in [Section 5\(1\)\(d\)](#) of the Prevention of Corruption Act, 1947 (now [Section 13\(1\)\(d\)](#) of Act, 1988), and it was held:

"12. The position will, however, be different so far as an offence under [Section 5\(1\)\(d\)](#) read with [Section 5\(2\)](#) of the Act is concerned. For such an offence prosecution has to prove that the accused "obtained"

the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under [Section 4\(1\)](#) of the Act as it is available only in respect of offences under [Section 5\(1\)\(a\)](#) and (b) -- and not under [Section 5\(1\)\(c\)](#), (d) or

(e) of the Act. "Obtain" means to secure or gain (something) as the result of request or effort (Shorter Oxford Dictionary). In case of obtainment the initiative vests in the person who receives and in that context a demand or request from him will be a primary requisite (1997) 9 SCC 477 for an offence under [Section 5\(1\)\(d\)](#) of the Act unlike an offence under [Section 161](#) IPC, which, as noticed above, can be, established by proof of either "acceptance" or "obtainment"."

10. The legal position is no more res integra that primary requisite of an offence under [Section 13\(1\)\(d\)](#) of the Act is proof of a demand or request of a valuable thing or pecuniary advantage from the public servant. In other words, in the absence of proof of demand or request from the public servant for a valuable thing or pecuniary advantage, the offence under [Section 13\(1\)\(d\)](#) cannot be held to be established.

19. In *State of Kerala v. C.P. Rao* reported in 2012 CrLJ

2607, it has been held as follows under Para 10:-



10. In *C.M. Girish Babu Vs. CBI, Cochin*, High Court of Kerala reported in 2009(3)SCC 779, this Court while dealing with the case under the [Prevention of Corruption Act](#) 1988, by referring to its previous decision in the case of *Suraj Mal Vs. State (Delhi Admn.)* reported in 1979(4) SCC 725 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 conviction cannot be sustained.

20. In *State of Punjab v. Madan Mohan Lal Verma* reported in *AIR 2013 SC 3368*, it has been observed as follows:-
(Para-7).

7. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the Act 1988. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under [Section 20](#) of the Act 1988, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in [Section 7](#) of the Act 1988. While 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. However, before the accused is called upon to explain how the amount in question was found in his possession, the



foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person. (Vide: [Ram Prakash Arora v. The State of Punjab](#) AIR 1973 SC 498; [T. Subramanian v. The State of T.N.](#), AIR 2006 SC 836; [State of Kerala & Anr. v. C.P. Rao](#), (2011) 6 SCC 450; and [Mukut Bihari & Anr. v. State of Rajasthan](#), (2012) 11 SCC 642).

21. *In the case of Krishna Chander v. State of Delhi*

reported in (2016) 3 SCC 108, it has been held:- (para-35, 36, 37, 38).

35. It is well settled position of law that the demand for the bribe money is sine qua non to convict the accused for the offences punishable under [Sections 7](#) and [13\(1\)\(d\)](#) read with [Section 13\(2\)](#) of the PC Act. The same legal principle has been held by this Court in the case of B. Jayaraj (supra), A. Subair (supra) and P. Satyanarayana Murthy (supra) upon which reliance is rightly placed by the learned senior counsel on behalf of the appellant.

36. The relevant paragraph 7 from B. Jayaraj case (supra) reads thus:

“7. Insofar as the offence under [Section 7](#) is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under [Section 7](#) unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in [C.M. Sharma v. State of A.P.](#) and [C.M. Girish Babu v. CBI.](#)” (emphasis supplied)

37. In the case of P. Satyanarayana Murthy (supra), it was held by this Court as under:

“21. [In State of Kerala and another vs. C.P. Rao](#), this Court, reiterating its earlier dictum, vis-à-vis the same



offences, held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

22. In a recent enunciation by this Court to discern the imperative pre- requisites of [Sections 7](#) and [13](#) of the Act, it has been underlined in B. Jayaraj in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under [Sections 7](#) as well as [13\(1\)\(d\)\(i\)&\(ii\)](#) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under [Sections 7](#) and [13](#) of the Act. Qua [Section 20](#) of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under [Section 7](#) and not to those under [Section 13\(1\)\(d\)\(i\)&\(ii\)](#) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under [Section 20](#) of the Act would also not arise.

23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under [Sections 7](#) and [13\(1\)\(d\)\(i\)&\(ii\)](#) of the Act and in absence thereof, unmistakably the charge therefore, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under [Sections 7](#) or [13](#) of the Act would not entail his conviction thereunder.” (emphasis supplied)

38. Further, in the case of [Satvir Singh v. State of](#)



[Delhi](#)[8], this Court has held thus:

“34. This Court, in K.S. Panduranga case has held that the demand and acceptance of the amount of illegal gratification by the accused is a condition precedent to constitute an offence, the relevant paragraph in this regard from the abovesaid decision is extracted hereunder: (SCC pp. 740-41, para 39) “39. Keeping in view that the demand and acceptance of the amount as illegal gratification is a condition precedent for constituting an offence under the Act, it is to be noted that there is a statutory presumption under [Section 20](#) of the Act which can be dislodged by the accused by bringing on record some evidence, either direct or circumstantial, that money was accepted other than for the motive or the reward as stipulated under [Section 7](#) of the Act. When some explanation is offered, the court is obliged to consider the explanation under [Section 20](#) of the Act and the consideration of the explanation has to be on the touchstone of preponderance of probability. It is not to be proven beyond all reasonable doubt. In the case at hand, we are disposed to think that the explanation offered by the accused does not deserve any acceptance and, accordingly, we find that the finding recorded on that score by the learned trial Judge and the stamp of approval given to the same by the High Court cannot be faulted.” (emphasis supplied)

35. The learned Senior Counsel for the appellant has also placed reliance upon the case of Banarsi Dass referred to supra wherein it was held that: (SCC pp. 456-57, para 24) “24. [In M.K. Harshan v. State of Kerala](#) this Court in somewhat similar circumstances, where the tainted money was kept in the drawer of the accused who denied the same and said that it was put in the drawer without his knowledge, held as under: (SCC pp. 723-24, para 8)

‘8. ... It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly, there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then



there must be clinching evidence to show that it was with the tacit approval of the accused that the money had been put in the drawer as an illegal gratification.’...” (emphasis supplied)”

22. In the case of *Sahir Singh v. State of Delhi* reported in *AIR 2014 SC 3798*, it has been held :- (para 34)

34. We have examined the evidences on record as a whole, the said evidence is read along with documentary evidence of Exh.PW-1/DA, the contents of which are extracted above. The said document is written by PW-2 in the year 1989, therefore, reliance should be placed on the said evidence. The explanation which is sought to be elicited from the appellant by the prosecution to discard the said positive evidence in favour of the appellant would further support his plea that he has not demanded gratification from the complainant, PW-2. We are not at all impressed with the plea of the prosecution that the said letter was written by PW-2 under pressure as stated by him in his cross examination in the year 1993. If it is true that the letter was written by PW-2 under pressure, then he should have lodged the complaint in this regard with the jurisdictional police or to the higher officers at that relevant point of time or to the Trial Court when the case was pending. Therefore, the said portion of the evidence of PW-2 cannot be accepted by us as the same is untrustworthy. The black rexine bag containing the illegal gratification which was kept on the steel cot at the residence of the accused on 08.07.1989 was not recovered from the person of the accused. Therefore, neither acceptance nor recovery of illegal gratification from the appellant is proved. Further, the reliance placed upon the relevant paragraphs extracted above from the judgments of this Court by the learned senior counsel on behalf of the appellant applies aptly to the factual situation. Therefore, the demand, acceptance and recovery of the illegal gratification alleged to have been paid to the appellant is not proved by the prosecution. Thus, the Trial Court on overall appreciation of the oral and documentary evidence on record has come to the right conclusion and recorded its findings of fact and held that the demand, acceptance and recovery of gratification from the appellant is not proved, therefore there is no



presumption under Section 20 of the Act. The learned trial judge in his judgment has rightly held that presumption of innocence is in favour of the appellant and he was acquitted on merits.

23. On this score, two parallel stories are found available on the record inconsonance with the finding having at the end of the learned lower court but, proceeding ahead in order to filter the factual aspect first of all guiding sphere is required to be pin pointed. Father of informant, namely, Ram Ayodhya Mishra retired from the post of Deputy Superintendent, Post Office and on account thereof, was availing retiral benefit. He died on 17.04.2004 and before that, he lost his pension book. That being so, three kinds of prayer were made after his death by his widow Sudama Devi (mother of informant) the first one for getting pension book prepared (Duplicate), secondly, family pension be allowed and thirdly, arrears should be calculated and be paid. There happens to be no details from which date arrear was to be paid, might be, in the background of the recommendation of the Pay Commission. The other two maladies were cured while for the third one, the present controversy arose. It is not the case of the either of the party that in spite of preparation of pension book in duplicate, pension was not allowed to be withdrawn, then in that event, the arrear should be considered as the amount of entitlement minus the amount withdrawn, that means to say, the balance. It is



further evident that rival party had controverted their respective contention and for that, the prosecution exhibited the calculation of the arrear (original) seized from the drawer of table occupied by the appellant, Satya Narayan Mahto. Side by side, Ext-C, E, have been brought up on record by the side of the appellant. Ext-C, E, are details of payment received by Sudama Devi. Ext-C is the details which Sudama Devi was allowed to receive even in absence of original pension paper while Ext-E is the details of receiving of pension by Ram Ayodhya Mishra as well as Sudama Devi, after his death. After having minute scrutiny of the same, three dates are found to be relevant, the first one 17.03.2008 on which date, she received pension of two months i.e. January and February of the year 2008 and then 5.4.2008 of single month March and then 12.04.2008, arrear appertaining to Rs. 21,722/-. The occurrence is of dated 27.03.2008. On that date certainly, the amount was not paid. Moreover, seized original arrear Bill is Ext-6 and its seizure has not been controverted.

24. The relevancy of Ext-C and E and its reference before the evidence of PWs has been made with a significance as, the aforesaid documents were procured by the appellant, Satya Narayan Mahto in accordance with Right to Information Act as well as by having the aforesaid document adduced on his behalf, admitted authenticity of the aforesaid document, more particularly, when the



same has not been challenged during course of cross-examining the PWs as well as during course of examining the DWs and that being so, payment of arrear on 12.04.2008, that means to say after the alleged date of occurrence is found very much admitted at the end of the appellant. In the aforesaid background, now it has to be seen whether the appellants survived with an opportunity to ask for bribery. There happens to be consistent version at the end of the prosecution that original calculation chart relating to arrear belonging to Sudama Devi was found from the drawer of the table allotted to Satya Narayan Mahto and for that, seizure list was prepared on the date of occurrence itself and on that very score, PW-4, Baleshwar Prasad at para-5 (Examination-in-chief) had elaborated the same. When his cross-examination has been gone through, more particularly, para-8, it is apparent that he had been suggested that the arrear of pension bill had already been paid to Sudama Devi. In para-9, he had been suggested over absence of appellant, Satya Narayan Mahto due to illness, however, neither directly nor in ancillary way been cross-examined over the discloser regarding recovery of original arrear bill relating to Sudama Devi from the drawer of appellant, Satya Narayan Mahto.

25. PW-6 is the informant who under para-6 had stated that from the drawer of Satya Narayan Mahto original arrear bill



(pension) relating to his mother Sudama Devi was recovered. With regard to basis for arrear is concerned, that had already been disclosed under para-7. In para-8, he had asserted that officials of the CBI had recovered and seized relevant documents from the drawer of Satya Narayan Mahto. During course of further cross-examination, he was suggested that there was no signature of Satya Narayan Mahto in the attendance register on the alleged date of occurrence. He was further suggested that those documents were not recovered from the drawer of Satya Narayan Mahto rather were recovered from Superintendent, Post Office. He was also suggested that nothing was pending relating to arrear of his mother before Satya Narayan Mahto.

26. PW-7 is another seizure list witness who under para-2 had stated that after opening of drawer of Satya Narayan Mahto original document relating to arrear of Sudama Devi was recovered and seized over which he has put his signature (Ext-3/A) during cross-examination, it is evident that he had also not been cross-examined specifically on that very score save and except the suggestion. PW-8 is the witness who on the alleged date and time of occurrence was officiating Post-Master and during his examination-in-chief he had categorically stated that though, the calculation chart having in the pen of accused, Satya Narayan Mahto happens to be dated 14.03.2008 but it was not been produced before him for necessary orders till the



alleged date of recovery i.e. 27.03.2008. The aforesaid document in original was recovered from the drawer of the table of Satya Narayan Mahto and for that search-cum-seizure list was prepared. During cross-examination at para-3, he had admitted that part payment had already been received by the pensioner but, surreptitiously the date has not been suggested. He had further asserted that it is true that upto 27.03.2008, the aforesaid document was not placed before him for necessary orders. In para-4, he had denied the suggestion that whatever chart has been seized from the drawer of Satya Narayan Mahto happens to be duplicate copy while the original had already been transmitted to Sheohar Post Office much before 17.03.2008.

27. PW-9 is the CBI official who had commanded the whole eventualities. In para-5, he had deposed that drawer of table of Satya Narayan Mahto was opened and searched and during course thereof, relevant documents were seized and for that, recovery memorandum (search-cum-seizure list) was prepared and exhibited. During cross-examination, he has been tested under para-13 by way of suggestion that some part of arrear pension bill was already paid to Sudama from Sheohar Post Office. PW-10 at para-6 had also reiterated the same and further, during cross-examination, he had also been subjected in similar circumstance.

28. DW-1 had stated that accused, Satya Narayan Mahto



had not come to office and further, his drawer was locked and the same was never opened. In likewise manner, DW-3 had stated that he had seen the calculation chart of Sudama Devi wherefrom, it is evident that arrear was paid in pursuance of order dated 14.03.2008, however, during cross-examination had admitted that he was not posted there.

29. From the evidence available on the record, it has become crystal clear that prosecution had succeeded in substantiating that on the alleged date i.e. 27.03.2008, calculation chart (Ext-6) having been prepared by the appellant, Satya Narayan Mahto dated 14.03.2008 was seized from a drawer of his table and further, from the suggestion it is apparent that defence had not controverted the same rather it has been suggested at least to PW-6 informant, that the same was recovered and seized from the Superintendent, Post Office. The original document (Ext-6) was before the appellant at the time of cross-examination of relevant witnesses and at that very time, at least the postal employees would have been confronted with the document so seized was duplicate copy as on its perusal, did not justify. Although a bleak suggestion to the Post Master (PW 8) was given, but never stressed upon. Furthermore, when PW-8 was suggested that payment order had already been served to Sheohar Post-office much prior to 17.03.2008, then in that event, at least, when the accused was so



vigilant in getting the relevant document, at least, Ext-C, D, E under the Right to Information Act, would have obtained copy of issuing register to substantiate that vide letter no. so and so original order had already been served upon the sub- Post Office, Sheohar nor, he took proper steps in getting the original issuing register called for while cross-examining the sub Post Master (PW 8) and nor he was confronted with exhibit-6 in order to trace out the same to be duplicate copy, that means to say, the original calculated bill along with arrear was already executed upon. So, whatever been suggested on that very score happens to be for the sake of defence without any substance. That means to say the matter was still pending before the appellant, Satya Narayan Mahto. That means to say, there was persisting opportunity for demanding bribe.

30. Now coming to second aspect, admittedly, appellant, Satya Narayan Mahto has got no signature over the attendance register. It is further evident that plea of alibi has been taken up on account of illness and to justify the same, Ext-B, prescription issued by PHC, Sonbarsa Block has been made an exhibit. The first date is 26.03.2008. Prosecution had also exhibited application made by the accused for grant of C.L. (Ext-2/3) dated 27.03.2008. From the arrest memo Ext-A, it is evident that the accused was arrested on 27.03.2008 itself at 4:00 PM at the office of Superintendent, of head



Post office, Sitamarhi and during course of production nothing was averred at the end of appellant regarding his ailment.

31. In the background of aforesaid documentary evidence, it is apparent that the certificate granted by the doctor appears to be worthless as the doctor has not been examined, the prescription lacks signature of the doctor dated 26.03.2008. No timing is there. On 26.08.2018, he was in attendance at Head Post Office, Dumra, Sitamarhi. It was Wednesday. Then how he had gone to Sonbarsa and got prescription from PHC, is not at all explained.

32. On the other hand, apart from the evidence of the relevant witnesses, that is to say, PWs-4, 6, 7, 8, 9 and 10 who had substantiated presence of appellant, Satya Narayan Mahto on his table till the time of trapping and then thereafter, escaped therefrom seeing the co-accused, Satyendra Singh being trapped whom he had instructed to receive the bribe amount from PW-6 appertaining to Rs. 1000/-, the evidences of PW-8, Officiating Post Master is found relevant who was cross-examined at length on that score. It is needless to say that during his examination-in-chief, he had shown presence of Satya Narayan Mahto and had conversation with him. At para-3 of his cross-examination, he had stated that he has got no information that the department had not made payment to the accused Satya Narayan Mahto for the date 27.03.2008 treating him to be



absentee. He had further denied the suggestion that on account of raid conducted by the CBI, he could not get an opportunity to forward his application. He had further stated that accused came, performed his duty but, without putting signature over the attendance register and further left the office without taking permission from the Superior Officials, was a gross misconduct. He had got no information that on that very score, he was show-caused by the department. He had further shown ignorance with regard to absence report, if any, sent to the department relating to accused. Then had stated that rank of accused Satyendra Singh happens to be lower than that of Satya Narayan Mahto. In the aforesaid facts and circumstances and further after parallel scrutiny of the evidence produced on behalf of respective parties, it is found and held that prosecution has succeeded in proving the presence of Satya Narayan Mahto on the alleged date of occurrence who slipped from the office during course of trapping taking advantage of non putting his signature over the attendance register.

33. Simultaneously, the plea of alibi taken by the appellant, Satya Narayan Mahto is not at all found duly substantiated. In *Sahabuddin v. State of Assam as reported in (2012) 13 SCC 213*, it has been held as follows:-

26. The plea of alibi was taken by the appellants and was sought to be proved by the statement of defence



witnesses, DW1, DW2 and DW3 respectively. These witnesses have rightly been disbelieved by the Trial Court as well as by the High Court. We also find no merit in the plea of alibi as it is just an excuse which has been put forward by the accused persons to escape the liability in law. There is a complete contradiction in the material facts of the statement of DW1, DW2 and DW3. According to the statements of DWs that none of the family members were present on the spot is strange in light of the fact that the deceased was so ill that she died after a short while due to her illness. If none of the accused, whom these witnesses knew were present, then it is not only doubtful but even surprising as to how they came in contact with the deceased at the relevant time. The falsity of the evidence of the defence is writ large in the present case. For these reasons, we find the conduct of the accused unnatural and the statement of these witnesses untrustworthy. The plea of alibi is nothing but a falsehood.

27. Once, the Court disbelieves the plea of alibi and the accused does not give any explanation in his statement under [Section 313](#) CrPC, the Court is entitled to draw adverse inference against the accused. At this stage, we may refer to the judgment of this Court in the case of [Jitender Kumar v. State of Haryana](#) [(2012) 6 SCC 204], where the Court while disbelieving the plea of alibi had drawn an adverse inference and said that this fact would support the case of the prosecution.

“51. The accused in the present appeal had also taken the plea of alibi in addition to the defence that they were living in a village far away from the place of occurrence. This plea of alibi was found to be without any substance by the Trial Court and was further concurrently found to be without any merit by the High Court also. In order to establish the plea of alibi these accused had examined various witnesses. Some documents had also been adduced to show that the accused Pawan Kumar and Sunil Kumar had gone to New Subzi Mandi near the booth of DW-1 and they had taken mushroom for sale and had paid the charges to the market committee, etc. Referring to all these documents, the trial court held that none of these documents reflected the presence of either of these accused at that place. On the contrary the entire plea of alibi falls to the ground in view of the statements of PW-10 and PW-11. The



statements of these witnesses have been accepted by the Courts below and also the fact that they have no reason to falsely implicate the accused persons. Once, PW-10 and PW-11 are believed and their statements are found to be trustworthy, as rightly dealt with by the Courts below, then the plea of alibi raised by the accused loses its significance. The burden of establishing the plea of alibi lay upon the appellants and the appellants have failed to bring on record any such evidence which would, even by reasonable probability, establish their plea of alibi. The plea of alibi in fact is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the place of occurrence and in the house which was the home of their relatives. {Ref. [Shaikh Sattar v. State of Maharashtra](#) [(2010) 8 SCC 430]}.”

34. So far remaining points are concerned, that is found duly substantiated from the evidence of PWs as referred hereinabove as well as considering the evidence of PW-9, who had elaborately dealt with pre trapping activity, event of trapping and further post trapping investigation was also found subject to lengthy cross-examination. Considering the suggestion given to the Officiating Post Master admitted conduction of CBI raid, the other things are being left out save and except identification of the appellant, Satya Narayan Mahto which was already perceived by the seizure witnesses along with PW-6, informant as well as PW-8, the officiating Post Master and further evidence of PW-10 who had verified the allegation as well as who kept close surveillance during commission of whole episode including apprehension of the Satyendra Singh by him as well as by



PW-9 which, from their cross-examination is apparent, the same has not been denied. Furthermore, it is apparent that on the alleged date of trapping, PW-6 along with Baleshwar Prasad (PW 4) had approached Satya Narayan Mahto, enquired whereupon he asked for whether amount has been brought and getting nod at the end of PW-6, directed him to come after some time whereupon the left, and revisited during course of which, Satya Narayan Mahto instructed to Satyendra to receive the amount which he did and was caught red handed followed with post trap formalities, is found duly narrated by the witnesses. Apart from evidence of PW-6, PW-4 and PW-7 are very emphatic on that score, which the defence could not be able to demolish.

35. The remaining witnesses are the persons who performed their duty during course of investigation that means to say, the employees of the FSL, Kolkata where wash was examined, seized notes were examined and further during cross-examination, it is apparent that nothing substantial has been procured in order to discredit the evidence of the prosecution.

36. Consequent thereupon, these appeals are found meritless. As such, the same are dismissed. Since appellants are on bail, their bail bonds are hereby, cancelled directing them to surrender within a fortnight failing which the learned lower court will be at liberty to proceed against them in accordance with law.

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AFR/NAFR	AFR
CAV DATE	17.04.2018

(Aditya Kumar Trivedi, J)



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