IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.492 of 2015

Arising Out of PS.Case No. -19 Year- 2009 Thana -C.B.I CASE District- PATNA

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1. Rajesh Kumar @ Rajesh Kumar Gupta son of late Jagdish Prasad, resident of Mohl. Sardar Patel Path, North Sri Krishna Puri P.O + P.S.- Sri Krishna Puri H. No. 21 (Kanti Sadan), Patna-800013.

.... Appellant/s

Versus

1. The State of Bihar
2. The C.B.I Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjay Kumar Tiwari, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 07-09-2018

Appellant, Rajesh Kumar @ Rajesh Kumar Gupta has been found guilty for an offence punishable under Section 7 of the P.C. Act and sentenced to undergo RI for 3 years as well as to pay a fine of Rs. 6000/- in default thereof, to undergo RI for 4 months additionally, under Section 13(2) read with under Section 13(1)(b) of the P.C. Act and sentenced to undergo RI for 3 years as well as to pay fine of Rs. 6000/- in default thereof, to undergo RI for 4 months additionally with a further direction to run the sentences concurrently by the Special Judge, CBI-1st, Patna in Special Case No. 77/2011 arising out of R.C. No. 19(A) 2009 vide judgment of conviction and order of sentence dated 22.07.2015.

2. Ashok Kumar Sahu (PW 6) filed a written complaint before Superintendent of Police, CBI on 15.07.2009

divulging the fact that he happens to be a retired Army Personnel whereupon, he had gone to SBI Kochas Branch for getting his pension finalized, wherefrom, he was directed to inquire from Sasram Treasury. He had gone there and inquired and during course thereof, he was informed that relevant pension papers have already been transmitted to the SBI Kochas Branch and the same has already been received on 20.05.2009. Then thereafter, he revisited SBI Kochas Branch and during course thereof, the concerned Clerk, Rajesh Kumar @ Rajesh Kumar Gupta asked for Rs. 2000/- as bribe for getting the pension finalized. He does not want to pay the bribe and so, prayed for taking necessary action. Superintendent of Police, CBI-Patna directed for verification of the allegation which was conducted by Rahul Priyadarshi (PW 5) who found the allegation true whereupon, R.C. Case No. 19(A)/2009 was registered. During course of verification, the deal was finalized over Rs. 1500/- and complainant was instructed to come on 23.07.2009 with the amount. Accordingly, complainant, Ashok Kumar Sahu was directed to come with Rs. 1500/- who visited the CBI Office on 23.07.2009. At that time, presence of two witnesses, Postal Employee, namely, Rajiv Ranjan (PW 3) and Harsh Wardhan (PW 4) were procured in whose presence pre-trap demonstration was finalized and then thereafter, the trap team along with the complainant and the aforesaid two witnesses came at

SBI Kochas Branch on 23.07.2009. As per instruction, Rajiv Ranjan stood as a shadow witness. After arrival at the SBI, Kochas Branch, the complainant along with Rajiv Ranjan had gone to the table of appellant, Rajesh Kumar @ Rajesh Kumar Gupta, talked with him and on demand, complainant handed over tainted money to the appellant who counted the same and then kept in the drawer of his table. As per planning, the shadow witness signalled whereupon CBI sleuths encircled the appellant, caught hold of his both the hands and as directed by the team leader, Harsh Wardhan (PW 4), another witness opened the drawer, took out the money. After having serial number tallied, the post trap exercise accomplished. Almirah of the appellant was also searched out wherefrom original pension papers relating to complainant was found and for that, search-cum-seizure list was prepared. Accordingly, the accused along with all the documents, materials, outcome of post trap exercise were taken to CBI office, got the accused remanded followed with an investigation as well as submission of the charge-sheet, facilitating the trial, meeting with the ultimate result, the subject matter of instant appeal.

3. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. Furthermore, it has also been pleaded that appellant/accused has been planted in this false and concocted

case on personal score of CBI officials

4. In order to substantiate its case, prosecution had examined altogether 10 PWs out of whom PW-1, Shyam Prasad Singh, PW-2, Tribhuvan Ram, PW-3, Rajeev Ranjan, PW-4, Harsh Wardhan, PW-5, Rahul Priyadarshi, PW-6, Ashok Kumar Sahu, PW-7, Bimal Chandra Purkait, PW-8, Amitabh Ranjan, PW-9, Ashok Kumar Jha and PW-10, R. R. Tripathi. Side by side had also exhibited Ext-1, Sanction order (3 sheets), Ext-2, Seizure memo, Ext-2/1, documents related to pension, Ext-3, GC note dated 20.08.2009, Ext-4 to 4/13, signature of witnesses on DW envelop, TPP envelop of receiving sodium carbonate, preliminary memorandum, RHW, LHW, Ext-4/14, signature of witnesses on D. Wash, Ext-4/15, signature of witness on sodium carbonate envelop, Ext-4/16, Signature of witness on envelop of TPP, Ext-4/17, signature of witness on envelop of phenolphthalein powder, Ext-4/18 to 4/20 signature of witness on pre trap memo, Ext-4/21, Signature of witness on GC note envelop, Ext-4/22 Signature of witness, Ext-4/23, Signature of witness on LHW, Ext-24 to 4/25, Signature of witness on search list, Ext-4/26 to 4/28, Signature of witness on recovery notes, Ext-5, verification report, Ext-6, Complaint petition, Ext-4/29, Signature of witness on FIR, Ext-4/30 to 4/36, Signature of witness on DWTPP, envelop, sodium carbonate pre memo, Ext-4/37 to 4/41, Signature of witness on RHW bottle,

LHW envelop of GC notes recovery memo, Ext-4/42 to 4/44, signature and seal of expert on RHW, LHW, Ext-7, opinion with forwarding, Ext-4/45 to 4/51, signature of witness Amitabh Ranjan on DW Bottle, envelop, TPP pre trap memor, Ext-4/52 to 4/58, Signature of witness on GC note, envelop RHW, LHW sketch map and recovery memo, Ext-4/59 to 4/62, Signature of witness on Ashok Kumar Jha on DW bottle envelop of TPP etc, Ext-8, Preliminary memo, Ext-4/63 to 4/65, Signature of witness Ashok Kumar on envelop, RHW and LHW, Ext-9, recovery memo, Ext-10, arrest memo, Ext-11, search list, Ext-12 Site map, Ext-13, forwarding report, Ext-6/1, endorsement of complaint Ext-6, Ext-14, Formal FIR.

5. Though no oral evidence has been adduced in defence but, two documents Ext-A, signature of Harsh Wardhan over arrest memo and Ext-A/1, Signature of appellant on arrest memo have been made.

6. Learned counsel for the appellant while assailing the impugned judgment has submitted that during course of recording such finding, the learned lower court had completely ignored the vital infirmities persisting in the prosecution case. Had there been proper appreciation of the same, the learned lower court would not have been in a position to record the finding of guilt. In order to justify the same, it has been submitted that complainant had gone *volte face* to the

prosecution and on account thereof, the backbone of the prosecution is found completely smashed. Further elaborating the issue, it has been submitted that none of the witnesses have claimed that they had paid alleged bribe amount, on the contrary, they have stated that it was the complainant who had handed over the tainted money to the appellant. During course of evidence, complainant PW-6 had completely disowned the same and that being so, the truthfulness in the allegation having been attributed at the end of the prosecution that bribe money was paid by the complainant to the appellant is found completely disrupted. Not only this, PW-6 also denied to oblige the prosecution in a way as he had not stated that there was demand against preparation of pension papers and so, the major ingredients to justify the prosecution under P.C. Act, demand as well as acceptance goes away. Even in worst case, the recovery of tainted money, for the present, only for argument's sake, not admitted, will not justify the finding recorded by the learned lower court. It has further been submitted that from the record, it appears that tainted money has been identified as denomination of Rs. 500/- two pieces while denomination of Rs. 100/- five pieces while from the evidence of PW-4, all the tainted money were having denomination of Rs. 100/-. PW-4 is the witness who had taken out tainted money from the drawer of the appellant, and so, he was the only competent person to say with regard to recovery of tainted money and, evidence coming out from his mouth as stated above completely demolishes the case of the prosecution as, certainly, the recovered cash was not at all tainted money used for the purpose.

7. It has further been stated that PWs-3 and 4, posed as independent witnesses were, actually, not an independent in the background of admission having at their end that they were vigorously used by the CBI officials and that happens to be reason behind that apart from this case, they happen to be witnesses on behalf of CBI in 5-6 trap cases instituted prior to the instant case. So, they were scapegoats of the CBI and further, their status would not be recognized as an independent witness. Because of the fact that they were readymade available as a stock witness, that happens to be the reason behind inconsistency amongst their evidences.

8. It has also been submitted that whatever been woven by the prosecution, happens to be a doubtful version in the background of the fact that on 23.07.2009 , there was presence of the prosecution party at Patna engaged in pre trap demonstration and after finalization of the same, they proceeded from Patna and reached at SBI, Kochas Branch at 11.30 AM. Though the distance has not surfaced but it happens to be more than 70 Kilometers whereupon, it was not at all possible to cover the distance within such short span of time. Therefore, the manner whereunder prosecution case has been

flashed was not at all probable. And that happens to be reason behind absence of appellant over recovery memo, being in utter violation of Section 100 of the CrPC. As it happens to be serious deformity persisting in the prosecution case, discarding the recovery, on account thereof, the learned lower court would have rejected the prosecution case in its totality.

9. Apart from this, it has also been submitted that when the evidence of PW-5, one of the CBI Officials who was entrusted with the verification of the allegation having been attributed at the end of PW-6, complainant is gone through, it speaks a lot putting question mark over his genuine conduct. If the evidence of other witnesses are taken together, it is apparent that the prosecution could not be able to substantiate its case. Consequent thereupon, the judgment of conviction and order of sentence recorded by the learned lower court is fit to be set aside.

10. On the other hand, learned Standing Counsel, CBI controverting the submissions, made on behalf of appellant, has submitted that mere declaring the complainant hostile is not going to axe upon the authenticity of the prosecution case in the background of the fact that the complainant had admitted earlier part of event as well as he had also shown his presence along with CBI sleuth at the SBI, Kochas Branch and so, mere subverting the intermediary event, will

not dent the prosecution version, more particularly, when demand has been substantiated followed with recovery of tainted money from the drawer of the appellant, which he accepted to facilitate the work that means to say, finalization of the P.P.O coupled with recovery of original pension papers from Almirah of the appellant. It has also been submitted that when allegation petition has been properly identified, pre trap demonstration has also been admitted along with presence at the SBI Kochas Branch along with CBI Officials including two trap witnesses before whom the pre-trap exercise was legally demonstrated, and further considering the evidence of the witnesses in its totality, more particularly, that of PW-3, shadow witness in whose presence demand was made, acceptance of tainted money, keeping the same in drawer after counting, wash of both hands of appellant in sodium carbonate solution giving positive results were properly established. In same spirit, it has also been submitted that evidence of PW-5 who made verification of allegation along with PW-6, complainant, and in whose presence deal was finalized over Rs. 1500/- by the PW-6 with the appellant, along with subsequent event, is additional circumstance supporting the genuineness of prosecution version. It has also been submitted that mere becoming witness in other cases also on behalf of CBI will not cause any sort of deficiency over the status of PWs 3 and 4 in the background of the fact that neither CBI Officials have got grudge against the appellant nor those witnesses have. So submitted that the case of the prosecution is found properly established whereupon, this appeal is fit to be dismissed.

11. Before entering into the evidences of the other witnesses, it looks appropriate to go through the evidence of the complainant who has been examined as PW-6 first. During his examination-in-chief, he had stated that he was Nayak (Electrician) in the Army and superannuated on 31.03.2009. For receiving pension, he had opened a bank account at SBI, Kochas Branch. He had gone to Bank to inquire about his pension papers and during course thereof, he met with appellant, Rajesh Kumar who disclosed that relevant papers have not yet been received. Then thereafter, he had gone treasury office, Sasaram where he came across that his pension papers had already been transmitted on 20.05.2009. On 21.05.2009, he again visited the bank and met with Rajesh Kumar who admitted receipt of the pension papers whereupon, he requested him to get it done at an earliest, for that, Rajesh Kumar demanded Rs. 2000/-. He had shown his inability but he remained adamant. Lastly, he filed written report on 15.07.2009 before S.P., CBI (exhibited). Then as per instruction, he had gone to CBI Office, Patna on which date, one of the CBI Officials accompanied him to SBI, Kochas Branch where, they both

met with Rajesh Kumar and at that very moment also, he requested to finalize his pension but, he (Rajesh) remained adamant as a result of which, the deal was finalized over Rs. 1500/- and further, to come on 23.07.2009 along with money. Then thereafter, they both came out from the bank. He returned back to his house while CBI official had gone to Patna. He was again called on 20.07.2009 at CBI Office, Patna where Ashok Kumar Jha, CBI official disclosed him that case has already been instituted whereupon, he took his signature over the FIR (Exhibited). He was again instructed to come on 23.07.2009. on which date, all of them introduced themselves including two others who were outsider. Then, the CBI official read his complaint and then, detailed the pre trap demonstration. During course of pre-trap demonstration, the CBI officials demanded Rs. 15,00/- from him which he paid (2 notes of Rs. 500/- denomination) (5 notes of Rs. 100/-) over which, some powder were spread. After finalization of pre-trap demonstration, he was handed over with the tainted money which he kept in his pocket. He was further instructed to hand over the aforesaid amount to Rajesh Kumar only on demand. It was also instructed that out of two witnesses who were there, one will accompany him, who will give signal by itching his head after acceptance of the tainted money by appellant. (All the documents, signature relating to pre trap demonstration exhibited). Thereafter, they proceeded from Patna to SBI, Kochas Branch where they arrived at 11.30-12.00 AM. Only, CBI team had gone inside the bank while, he was directed to stay near the vehicle. He had not gone inside the bank. They caught hold of Rajesh Kumar, took out from bank premise and then got him identified by him. He gave nod. After 2.30-300 hours, he was called inside the bank premises where, took signature over 4-5 papers. Identified the accused. Then the witness was declared hostile, whereupon his attention was drawn up towards his previous statement as well as he was cross-examined.

12. During cross-examination by the prosecution at para-7, he had stated that he was called at CBI Office and then his signature was obtained. Then had denied to have made statement regarding subsequent event relating to post trap event though he had admitted his signature over the sealed solution of sodium carbonate kept in a bottle. He had shown ignorance relating to seizure of tainted money from possession of Rajesh and having it sealed in an envelop in his presence though had exhibited his signature over the same. On court's question, he had stated that CBI officials have gone to upper stair and then brought his pension papers which was shown to him. He had disowned to have sketch map prepared in his presence but had identified his signature over the same. He had denied with regard to preparation of recovery memorandum in his presence. However,

exhibited his signature. Then had denied the suggestion that in collusion with accused, he had deposed falsely. During cross-examination at the end of the accused he had stated that he is not knowing full name of Branch Manager of Kochas Branch. He had further stated that he is unable to say whether on recovery memo signature of accused is persisting or not. Then had stated that during course of returning from the Branch, he got down in the midst of way and then thereafter, he had not gone to the office of CBI.

13. PW-3 is the shadow witness. He had deposed that in the month of July 2009, he was office Assistant at the office of Superintendent, Post Office, Patna. Senior Superintendent, Postal Department had instructed him to participate during trap going to be conducted by the CBI along with Harsh Wardhan who was also employed there. Accordingly, on 23.07.2009, he had gone to CBI Office and then deposed with regard to pre trap exercise in presence of complainant as well as CBI officials. It has also been stated by him that after finalization of pre trap exercise, he along with Harsh Wardhan, complainant, Ashok Kumar Sahu, CBI Officials proceeded to SBI Kochas Branch where they reached at 11.30 AM and as instructed, he accompanied the complainant, Ashok to the table of Rajesh Kumar where Ashok had inquired from Rajesh as to whether his pension paper has been completed. Rajesh has said that uptil now

you have not paid the amount. Without paying the same, how the work will be done. Then Ashok Kumar Sahu said that as per instruction he has brought Rs. 1500/- and then, he handed over the tainted money which was received by Rajesh by his right hand and then counted the same with both hands and then kept in his drawer. Then Rajesh said to Sahuji that now you have nothing to bother. Your work will be done. When the deal was completed, then, as per instruction he signalled facilitating the CBI team to come out of whom, Ashok Kumar Jha, Inspector disclosed his identity and inquired about the money which he took from the complainant whereupon, Rajesh Kumar said that he has not taken the money. Then Harsh Wardhan was instructed to inspect the drawer and during course thereof, the tainted money appertaining to Rs. 1500/- was seized. The number was tallied with the pre-trap memorandum. Then thereafter, Sodium Carbonate solution was prepared kept in two bottles, fingers of both the hand of Rajesh Kumar were put therein separately, as a result of which, solutions kept in both the bottles became red. The solutions were sealed having signature of all the concerned (exhibited). Seized tainted money was kept in an envelop and was sealed whereupon, apart from others, he also put his signature (exhibited). Then thereafter, Almirah of Rajesh was searched, during course thereof, pension papers relating to Sahuji was seized (exhibited). Thereafter, Rajesh was arrested at the spot and for that, arrest memo was prepared whereupon he also put signature (exhibited). Then post trap memorandum was prepared whereupon he had put his signature (Exhibited). CBI official had also recorded his statement after 7-8 days. Identified the accused. During cross-examination at para-10, he was questioned over issuance of order by the Superintendent, Postal Department, handing over the same to the CBI Official. He had further stated that CBI officials have not searched them (He along with Harsh Wardhan). In para-11, he had stated that on 23.07.2009 at about 11.30 AM, bank was open but he is unable to say how many staffs were on duty. He had further stated that he is not remembering whether other staffs were working contiguous to the table of accused. The chamber of bank Manager was located inside the bank premise itself. He had further stated that he is not remembering whether he along with Harsh Wardhan or any member of trap team had entered into the chamber of Branch Manager. He had further stated that all the members remained there for 3-4 hours. He is not remembering whether during aforesaid period any member of trap team had gone inside the chamber of branch Manager or not. In para-12, he had stated that he is not remembering whether recovery memorandum was prepared inside the bank premises or outside the bank premises. He is not remembering where preliminary memorandum was prepared. He had got no knowledge whether any bank officials had put their signatures over the aforesaid memorandum or not. He is not remembering whether a copy of recovery memo was handed over to the accused, Rajesh Kumar or not. In para-13, he had stated that he, Harsh Wardhan along with trap team came to Patna, along with accused but he is not remembering whether during midst thereof, copy of recovery memorandum was handed over to the accused or not. In para-14, he had stated that he had not made query from the complainant whether he had complaint to the Manager or not against the accused. He had further stated that he is not remembering whether the hands of Ashok Kumar or pocket of Ashok Kumar (complainant) was put under solution of sodium carbonate or not. He had further stated that no videography was done at the time of handing over the money to Rajesh Kumar nor conversation was recorded in a voice recording device. He is not remembering what kind of activity was done with regard to tainted money kept inside the pocket of the complainant. Then had denied the suggestion that accused had not demanded money nor the complainant had handed over the money to the accused. Then was suggested that he had not seen any occurrence. At the instance of CBI officials, he had falsely deposed. In para-17, he had further stated that he is not remembering whether any bank officials had disclosed to the CBI that this Almirah was allotted to the accused or not and in likewise manner, whether CBI Officials had inquired from any of the bank officials whether the aforesaid Almirah was allotted to the accused.

14. PW-4 is Harsh Wardhan who during examination-in-chief, had reiterated his presence as directed, the demonstration of pre trap exercise, then going to SBI Kochas Branch along with CBI team, Complainant, Ashok Kumar Sahu and Rajeev Ranjan, PW-3. He had further stated that Rajeev Ranjan was directed to accompany the complainant as shadow witness with an instruction that unless and until there happens to be demand, money should not be handed over to Rajesh. He was also instructed to signal as soon as money is received by Rajesh on demand. Rajeev Ranjan along with complainant gone inside the bank premises whereas he along with CBI officials began to loiter within their view. They have seen conversation in between complainant and Rajesh Kumar. Then thereafter, complainant took out money and handed it over to Rajesh Kumar who received the same and then kept in his drawer after counting the same. Then thereafter, they reached near Rajesh where A.K. Jha disclosed his identity. He was directed to open the drawer. When he opened the drawer, tainted money was found. He was directed to take out money and then, to tally with the number having scribed during the pretrap memorandum. He tallied the same and

found correct. Then thereafter, the money was kept in an envelop and was sealed having his signature along with others (exhibited). Then thereafter, the solution was prepared and kept in two jar. Rejesh was instructed to put his both hands in the solution separately, whereupon, the solution turned its colour to pink. Both the bottles were sealed having his signature with others (exhibited). Then thereafter, Almirah of Rajesh was searched and during course thereof, PPO of complainant was recovered and for that, seizure list was prepared whereupon he had also signed (exhibited). Accused was apprehended. Then thereafter, post-trap memorandum was prepared whereupon he had also put his signature (exhibited). Identified the accused.

15. During cross-examination at para-10 he had stated that he is unable to say whether on recovery memorandum there happens to be signature of Rajesh or not. He is not remembering whether CBI official had taken signature of Rajesh Kumar over recovery memorandum or not. Five persons were members of CBI, raiding party excluding complainant and two witnesses. There happens to be nine signatures over each page of memorandum. On the last page, there happens to be name of eight persons typed with date. In para-11, he had admitted that he happens to be witness on behalf of CBI in so many cases. In para-12, he had stated that after receiving summon, he had gone to CBI office where he got information

regarding the case, documents were shown, whereupon his signature happened to be. He had gone one day prior to the date. He had gone as, he was not remembering the exact case no. in the background of the fact that he happens to be trap witness relating to 3-4 incidents. He had further stated that case no. has been over preliminary memo as well as recovery memo. In para-13, he has stated that when Rajeev Ranjan and Ashok Kumar had gone inside the bank, he also followed. He stayed 30-40 meters away from the place where transaction took place. He had further stated that he is not remembering how many counters were in the bank. Accused, Rajesh Kumar was sitting at his counter. He is not remembering whether left or right to the counter of Rajesh, another counter was also there or not. Table was there. Accused was sitting there wherefrom he was arrested. There was a drawer affixed with the table. He is not remembering whether glass pans were affixed over counter or not. Then had stated that all activities took place over the table. Conversation in between Rajesh and Ashok took place, payment made by Ashok was received by Rajesh, keeping the money in the drawer, all materialized at the table itself where Rajesh was sitting since before. Transaction took place in between 12-12.30 hours. They all left bank at about 4 PM. During midst thereof, some time they sat, some time they moved. Rajesh remained in the bank itself up to 4.00-4.30 PM. He is not remembering whether Branch Manager was present or not. He is not remembering whether he had seen any chamber having been in the name of Branch Manager. He is not remembering how many people were present on that day. In para-14, he had stated that recovery memo was prepared in the bank itself (after giving a pause as recorded by the learned lower court). Again said that he is not remembering nor could definitely said where it was prepared. He is not remembering whether signature of any bank officials was taken on recovery memo or not. He is not remembering whether signature of accused Rajesh was taken or not. Then had said that a copy of recovery memo was handed over but he is not remembering whether the same has been incorporated or not. After seeing the recovery memo, this witness could not identify the signature of Rajesh and further, there happens to be absence of remark that a copy thereof has been handed to the accused. Recovery memo was prepared in three pages. Then had said that he had not seen whether any Almirah or drawer allotted to Rajesh Kumar was searched. PPO was seized from the Almirah kept at upper floor. Other papers were also recovered but he is not remembering whether that room was part and parcel of the bank or not. That PPO was seized in his presence as well as in presence of Rajeev Ranjan and for that paper was prepared whereupon he had put his signature but he is not in a position to identify the signature of Rajesh. He had further stated that Rajesh was searched but he is unable to say whether anything was recovered from his possession or not. No paper was prepared for the same. He is not remembering whether arrest memo was prepared or not. He is not remembering whether he had put his signature over arrest memo or not. On being confronted, he had stated that this arrest memo was prepared in his presence but he is not remembering where it was prepared. Then had said that there happens to be signature of Rajesh over the same (exhibited). Then had said that details having been made under column-5 thereof, were seized from the possession of Rajesh. He is not remembering the name of Inspector, CBI who had searched Rajesh. At para-15, he had stated that he had not talked with Rajeev and Ashok inside the bank. After the search and seizure, he had talked with Rajeev. They have talked formally. They have not talked relating to the occurrence. Then had stated that first of all Mr. Jha had entered followed by others. Mr. Jha had gone to the table of Rajesh where he stated that as he accepted bribe so his table is to be searched. Rajesh had disclosed that he had not taken bribe. He is not remembering whether Mr. Jha had interrogated him or Rajeev and Ashok. Then had denied the suggestion that there was no table in the bank where one could sit for discharging his job. Then had denied the suggestion that Rajesh was not arrested from that table. Then had shown ignorance with regard to location of the counter. Paragraph-16 happens to be cross-examination relating to post trap exercise, more particularly, regarding preparation of sodium carbonate solution. Then had denied the suggestion that as recovery memo was prepared at CBI office, on account thereof, there happens to be absence of signature of bank officials. Then he was specifically cross-examined by putting a question whether any document is there whereupon it could be inferred that recovery memo, left hand wash, right hand wash, GC note, sealed in the envelop were done at SBI Kochas Branch but the same was disallowed by the court. In para-17, there happens to be cross-examination with regard to written information having been given by the Superior Officials. In the last line of para-17, he had stated that all the notes appertaining to Rs. 1500/- were of Rs. 100/- denomination.

16. PW-1 is the Sanctioning Authority who had exhibited the same and during cross-examination it is evident that nothing substantial has been procured, more particularly, over his status. PW-2 was the then Branch Manager of SBI, Kochas Branch. He had stated that on 27.07.2009 as directed he handed over attested copy of the pension papers relating to Ashok Sahu after tallying with the original and for that, Inspector CBI had prepared seizure list whereupon he had put his signature (exhibited). After receipt of the same, original paper was returned back to him. Then had stated that

CBI had asked for duty chart relating to the accused, Rajesh, who was Customer Relationship Associate. The same was replied by him detailing the work allotted to him including that of regarding pension matters also (exhibited). He had further stated that PPO of Ashok Kumar Sahu was received at SBI, Kochas Branch on 21.05.2009. As, Rajesh Kumar was allotted to deal with the same, so the original papers were handed over to him. On 23.07.2009, the original papers were seized from Almirah of Rajesh Kumar. Then had deposed that it was expected at the end of Rajesh to transmit the pension papers to Central Pension Processing Centre, SBI, J.C. Road, Patna after verification. During cross-examination he had stated that without seeing record he is unable to say who had received pension papers relating to Ashok Kumar Sahu. On 21.05.2009, he was present at that Branch. After receiving pension papers by the Branch Manager, it was entrusted to Rajesh. In Ext-3, it has been incorporated that pension papers has been handed over to Rajesh Kumar but, there happens to be no date. He had further stated that over Ext-2, Seizure memo, there happens to be no signature of Rajesh even though it was seized from Almirah of Rajesh in the Branch. There happens to be no discloser to the effect the same was seized at the instance of Rajesh or in presence of Rajesh. Key was obtained from Rajesh Kumar but no seizure has been made relating to the key. Then had stated that he is not remembering where Almirah was kept at the Branch and whether the same was allotted to the employee or not. As no document was asked for relating to allotment of Almirah in favour of Rajesh so, it was not handed over to the CBI. Then had stated that he had not seen any document relating to allotment of Almirah in favour of Rajesh. He had further stated at para-4 that he had not taken steps against Rajesh for not doing official duty relating to pension of Ashok Kumar Sahu. He had further stated that he had not served such kind of papers to the CBI depicting complaint if any, against Rajesh at an earlier occasion. At para-5, he denied the suggestion that it is not a fact that all the original documents were furnished by him. He had further stated that CBI officials had not made inventory relating to other papers having been kept inside the Almirah. Then had denied the suggestion that in order to save himself, he took CBI officials in his confidence and shown recovery of original papers from Rajesh.

17. PW-5 is Rahul Priyadarshi, a CBI Inspector who had verified the allegation having been attributed to Rajesh Kumar, an official of SBI, Kochas Branch by Ashok Kumar and during course thereof, he had gone along with Ashok to SBI, Kochas Branch and in his presence, the conversation took place and during course thereof, demand of Rs. 2000/- at the end of Rajesh was settled at Ra. 1500/-. Accordingly, he submitted his verification report before SP, CBI.

Exhibited all the concerned documents. During cross-examination, he had stated that on 15.07.2009 on which date complaint was made, he had not met with the complainant. Before coming to the bank, he had not met with the complainant. He had gone through the complaint on 16.07.2009. On 17.07.2009, he directly reached at the Bank. He had further stated that there happens to be no discloser of the mobile no. of the complainant in the complaint petition. He had further stated that there happens to be no discloser in the verification report how he met with complainant on 17.07.2009. There happens to be no discloser in the verification report how and by whom complainant was informed to be present at the Bank as CBI officials were expected to arrive for verification. He had further stated that mobile no. was supplied by the S.P. whereupon, he contacted but no mobile no. of complainant is disclosed in the report nor, he had disclosed to the I.O.. With regard to factual aspect, he had disclosed under para-4 that when he reached at the Bank, he met with the complainant as well as Rajesh. They talked inside the bank. He remained there for 15 minutes. When he had gone inside the bank, Rajesh was sitting at his counter. When the complainant had gone near him, he got up and then moved towards the corner. He is not remembering whether any staff was present either left or right side to the counter of Rajesh Kumar. He is not remembering whether the counter was opened or covered with glass. He had further stated that he has got no paper to substantiate his presence on 17.07.2009 at SBI, Kochas Branch in order to verify the allegation. There happens to be no reason assigned over non submission of report on 18.07.2009, 19.07.2009 though he was present at Patna. Then had denied the suggestion that the whole thing happens to be a paper work.

18. PW-7 is the Forensic Science Expert who had examined the solution and then prepared report. During cross-examination, nothing substantial has been explicitly found from his side over manner of examination save and except there happens to be no signature over typed report.

19. PW-8 is the member of trap team while PW-9 was leader of the trap team, PW-10 is the I.O. They have during course of their examination-in-chief substantiated that after registration of the case, trap team was constituted under the leadership of A. K. Jha (PW-9) and further detailed pre trap exercise as well as post trap exercise by way of substantiating the allegation. During cross-examination, PW-8 at para-10 had stated that there happens to be no endorsement to justify that a copy of recovery memo was handed over to accused Rajesh. There happens to be no signature of Rajesh over any page of recovery memo. They have not tried to take signature of any of the bank official or customer. He had further stated that he had

prepared rough sketch map flashing the interior arrangement of the Branch. He had further stated that there happens to be proper identification of sitting of Rajesh but, there happens to be no discloser whether there was cabin like structure or was open. Nothing has been shown with regard to presence of other staff whether they were contiguous to Rajesh or not. In likewise manner, there happens to be no description of the presence of Almirah, table, chair and drawer. He had further stated that Branch Manager was present. They have gone inside the chamber of Branch Manager. They have gone to inform the Branch Manager with regard to recovery to tainted amount as well as arresting of Rajesh. He had further stated that they have not informed any bank official with regard to conduction of raid. They have not taken signature of Rajesh over tainted money. They have not taken signature of Rajesh over respective bottles. He is not remembering whether signature of Rajesh has been taken over any document relating to search and seizure. Then had denied the suggestion that they have falsely implicated the accused, Rajesh Kumar.

20. PW-9 during cross-examination had stated that on 31.07.2009, he had handed over investigation to R.R.P. Pathak. He had further stated that on 24.07.2009, accused was produced in the court. He had further stated that Special Judge had put signature with date 24.07.2009 on the FIR. Why there was delay in sending FIR was

not investigated by him. In para-8, he had stated that there happens to be no signature of Rajesh over any page of recovery memo. There happens to be no discloser over recovery memo. A copy of the recovery memo was handed over to the accused. He had further stated that none of the bank officials, customers are witness over material exhibits. At para-9 he had stated on specific question relating to column no.6 of seizure memo that the file was seized from Almira of Rajesh through Tribhuwan Ram but the same is not incorporated therein. In likewise manner, he had stated that there happens to be no endorsement justifying the signature of accused over the same and in likewise manner, a copy having been served upon the accused. Then there happens to be answer to a question under para-12 that Tribhuwan Ram after taking key from Rajesh had opened the Almirah but the same is not mentioned in the recovery memo. There happens to be no signature of Tribhuwan Ram over recovery memo. He ha not prepared the inventory relating to other items kept in the drawer of the accused. Then there happens to be cross-examination under para-14 with regard to sketch map and the deficiency over which PW-8 had already been cross-examined. He had further stated that after preparation of recovery memo, accused was arrested. Then had stated that during course of preparation of recovery memo, Rajesh was removed from his counter. He had also stated that in the arrest memo, there is no description of tainted money, though personal belongings of Rajesh is detailed. Then had denied the suggestion that only he along with CBI officials had gone inside the bank. Then had denied the suggestion that after arrest of Rajesh, they have verified the documents and found no papers adverse to the interest. He had denied the suggestion that Tribhuwan had not produced any kind of document suggesting receipt of Rajesh concerning pension papers of Ashok Kumar Sahu. Then had denied the suggestion that accused has falsely been implicated in this case. Then had denied the suggestion that false and fake post trap demonstration was done.

21. PW-10, part Investigating Officer, during course of his examination-in-chief had simply stated with regard to recording of the statement of witnesses including complainant Ashok Kumar Sahu and further relevant portion of the evidence of PW-6, A. K. Sahu was confronted to him, procured duty chart from the Branch Manager, sent the sealed bottles containing sodium carbonate solution to FSL of examination, obtained sanction order and then submitted charge-sheet against the accused.

22. During cross-examination, he had denied the suggestion that Harsh Wardhan and Rajeev Ranjan happened to be stock witnesses of the CBI and then, he was cross-examined over the same. Then had stated that material exhibits were sent to FSL,

Kolkata by his predecessor. Then had denied the suggestion that FIR happens to be ante-dated.

23. From the evidence as discussed hereinabove, it could be bifurcated in three parts. The first one regarding status of the complainant, PW-6, the second aspect relating to pre-trap exercise and the third aspect relates to recovery of the tainted money from the possession of the appellant/accused followed with post trap exercise.

24. It is needless to say that mere recovery of tainted money would cast any kind of adverse inference against an accused unless and until there happens to be positive evidence on the score of demand as well as probability therefor. In ***V. Sejappa v. State by Police Inspector Lokayukta, Chitradurga*** as reported in ***(2016) 12 SCC 150***, it has been held as follows:-

> 10. In order to constitute an offence under Section 7 of the Prevention of Corruption Act, 'proof of demand' is a sine quo non. This has been affirmed in several judgments including a recent judgment of this Court in B. Jayaraj v. State of Andhra Pradesh (2014) 13 SCC 55, wherein this Court held as under:- "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.(2010) 15 SCC 1 and C.M. Girish Babu v. CBI (2009) 3 SCC 779." The same view was reiterated in P.Satyanarayana Murthy v. District Inspector of Police,

State of Andhra Pradesh and Anr. (2015) 10 SCC 152.

11. *****
12. *****
13. *****
14. *****
15. *****
16. *****
17. *****

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.

19. After referring to Surajmal v. State (Delhi Administration) (1979) 4 SCC 725, in C.M. Girish Babu v. CBI, Cochin, High Court of Kerala (2009) 3 SCC 779, it was held as under:- "18. In Suraj Mal v. State (Delhi Admn.) (1979) 4 SCC 725, this Court took the view that (at SCC p. 727, para 2) 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."

20. In State of Kerala and Anr. v. C.P. Rao (2011) 6 SCC 450, it was held that mere recovery of tainted money is not sufficient to convict the accused and there has to be corroboration of the testimony of the complainant regarding the demand of bribe.

21. While dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it illegal gratification and that the prosecution has a further duty to prove that what was paid

was an illegal gratification, reference can be made to following observation in Mukut Bihari and Anr. v. State of Rajasthan (2012) 11 SCC 642, wherein it was held as under:-

"11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when the 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 bribe.Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, 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 1988 Act. 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 as to 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 and in a proper case the court may look for independent corroboration before convicting the accused person."

25. At the present juncture, one could not lose sight of Section 20 of the Act prescribing presumption though rebuttable, against an accused. How it should be applicable, and in what manner there should be rebuttal, has been analyzed in ***State of Gujarat v.***

Navinbhai Chandrakant Joshi as reported ***in AIR 2018 SC 3345*** wherein it has been held as follows:-

> "11. So far as the presumption raised under Section 20 of the Act for the offence under Section 7 of the Act is concerned, it is settled law that the presumption raised under Section 20 of the Act is a rebuttable presumption, and that the burden placed on the appellant for rebutting the presumption is one of preponderance of probabilities.
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> In C.M. Girish Babu v. C.B.I. Cochin, High Court of Kerala (2009) 3 SCC 779, this Court held as under:-
>
> "21. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accuse charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence.......
>
> 22. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt..." Since it is established that the accused was possessing the bribe money, it was for them to explain that how the bribe money has been received by them and if he fails to offer any satisfactory explanation, it will be presumed that he has accepted the bribe."

26. In ***Mukut Bihari v. State of Rajasthan*** as reported in ***(2012) 11 SCC 642***, it has been held:-

> 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 the 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 bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but 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 as to 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 and 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; Panalal Damodar Rathi v. State of Maharashtra AIR 1979 SC 1191; Suraj Mal v. The State (Delhi Admn.) AIR 1979 SC 1408; Smt. Meena Balwant Hemke v. State of Maharashtra AIR 2000 SC 3377; T. Subramanian v. The State of T.N., AIR 2006 SC 836; A. Subair v. State of Kerela (2009) 6 SCC 587; State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede (2009) 15 SCC 200; C.M. Girish Babu v. CBI, Cochin, High Court of Kerala, AIR 2009 SC 2022; and State of Kerala and Anr. v. C.P. Rao (2011) 6 SCC 450)

27. It is evident from the evidence of PW 6 that so far his evidence is concerned, he had categorically stated with regard to his complaint before CBI on account of demand of bribe at the end of appellant/accused, Rajesh Kumar, a bank employee to initiate the step for the finalization of pension order which was at an earlier occasion of Rs. 2000/- reduced to Rs. 1500/- when the PW-5 accompanied him

on 17.07.2009 to the SBI, Kochas Branch during course of verification. From his evidence it is further evident that payment of bribe on demand by Rajesh Kumar followed with post trap event had not been supported by him on account thereof, he was declared hostile. However, during course of cross-examination at the end of prosecution, he had identified his signature over relevant documents during course of post trap exercise, but as is evident, he was not at all cross-examined at the end of appellant/accused over meeting demand. At the present moment, other kind of evidence is also to be seen. PW-4, one of the witnesses during course of cross-examination at the fag end, stated that the recovered amount was all in denomination of Rs. 100/-. That, as it appears might be on account of slip in the background of lengthy cross-examination, moreover, during examination-in-chief he had narrated correctly, as he was the person who taken out the money from drawer of appellant and is corroborated by all the remaining witnesses as well as by the relevant exhibit i.e. Ext-2, 3.

28. In ***Gian Chand & others v. State of Haryana*** reported in ***2013(4) PLJR 7 (SC)*** it has been held**:-**

11. The effect of not cross-examining a witness on a particular fact/circumstance has been dealt with and explained by this Court in ***Laxmibai (Dead) Thr. L.Rs. & Anr. v. Bhagwanthuva***

(Dead) Thr. L.Rs. & Ors., AIR 2013 SC 1204 observing as under:

> *"31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses."*
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> 12. The defence did not put any question to the Investigating Officer in his cross-examination in respect of missing chits from the bags containing the case property/contraband articles. Thus, no grievance could be raised by the appellants in this regard.

29. In ***S.C. Goel v. State through CBI*** as reported in ***2017 Crl.L.J. 536***, the Apex Court was confronted with the situation whereunder complainant was declared hostile wherein, it has been

held as follows:-

> 4. We have read and considered the evidence of PW-5 in its entirety. So far as demand made by the accused is concerned, accused PW-5 is clear and categorical in stating that the demand of Rs. 10,000/- was made. Merely because PW-5 was declared hostile with regard to certain other aspects of the evidence tendered by him, the entire evidence cannot be discarded. The evidence tendered by the said witness with regard to the demand in question can be accepted if the same is otherwise worthy of trust. We are of the view that the evidence of PW-5 insofar as demand of bribe is concerned passes the aforesaid test and commends to us for acceptance.
>
> 5. Insofar as recovery is concerned admittedly the marked currency notes of the denomination of 1,000/-, 500/- and 100/- (amounting to Rs. 10,000/-) were recovered from the left pocket of the jacket of the accused. PW-9 (panch witness) had proved the aforesaid recovery and also the test conducted by dipping the fingers of the accused in chemical of Sodium Bicarbonate. Though in the statement made under Section 313, Cr.P.C., the accused had claimed that the sample of Sodium Bicarbonate was not taken in his presence, there is no cross-examination of PW-9 on the said point.
>
> 6. In such circumstances and taking into account the totality of the facts of the case, we are of the view that the prosecution in the present case had succeeded in proving the demand of bribe and the acceptance and recovery of the offending bank notes from the possession of the accused.

30. Reliability as well as acceptability of evidence of hostile witness is concerned, it has been settled at rest that mere a witness is characterized as a hostile witness, his evidence is not completely effaced. The said evidence remains admissible in the trial and there is no legal bar to base a conviction upon such testimony, if corroborated by other reliable evidence. Furthermore, the same can be

accepted to the extent it is found to be dependable on a careful scrutiny thereof, as has been held in the case of ***Bhagwan Singh v. State of Haryana*** as reported in ***AIR 1976 SC 302, Khujji @ Surendra Tiwani v. State of M.P*** as reported in ***AIR 1991 SC 1853, Rabindra Kumar Dey v. State of Orissa*** as reported in ***AIR 1977 SC 170, Syed Akbar v. State of Karnataka*** as reported in ***AIR 1979 SC 1848.***

31. Though PW 6, complainant had not disclosed with regard to having in possession of the tainted money, handing over to the appellant/accused and the same having been recovered from the possession of the appellant/accused and further the appellant/accused was arrested followed with post trap formalities. But he had not disowned his presence at the Kochas Branch on fateful day, arrest of Rajesh nor Rajesh had controverted the same. It is further more evident that remaining witnesses have duly corroborated the same. Presence of complainant over all the relevant documents are also not denied irrespective of his status. Apart from this, complainant had reiterated the earlier part of activity of Rajesh Kumar whereunder Rs. 2000/- was demanded as bribe for getting the P.P.O. finalized as well as subsequent presence along with PW-5 with regard to verification of allegation and in course thereof, demand was reduced to Rs. 1500/- at the end of Rajesh.

32. Appellant during course of his statement under Section 313 CrPC had denied out rightly with regard to demand as well as acceptance of the tainted money from PW-6, which he kept in drawer after counting the same, and its recovery followed with his both hands washed in sodium bicarbonate solution corroborated by the expert, PW-7. But from the evidence of PW-3 (Para 4), PW-5 (Para 4), PW-8 (Para 4), PW-9 (Para-4) and PW-10 (Para-2), it is evident that after recovery of the tainted money from the drawer of Rajesh Kumar, his signature was taken over the relevant document. There happens to be consistent evidence that recovery was there, both hands of the appellant/accused were washed which was sealed in two bottles (left hand, right hand) separately and which was examined by the expert, PW 7. Furthermore, apart from admission at the end of appellant/accused during course of statement under Section 313 CrPC that he was also entrusted with the pension work and further having admitted at the end of appellant/accused while cross-examining Branch Manager (PW 2) at para-5 that original pension papers were handed over by him (Branch Manager), from the seizure list as well as from the evidence of the PW 2, it is evident that the pensions papers (in original) were seized from an Almirah used by the appellant/accused. During course of cross-examination of PW-9 at para-9, he was specifically questioned as to whether the pension

papers were seized from the possession of Tribhuvan Ram or not, he answered that the files were seized from the Almirah of Rajesh Kumar through Tribhuvan Ram. He had further stated that in seizure list no such description is there. No signature of independent witnesses is on the seizure list. Signature of Rajesh Kumar was there. There happens to be no endorsement with regard to handing over a copy thereof, to Rajesh Kumar, no description of Almirah number has been furnished. And this part of evidence has been highlighted in order to discredit the prosecution case.

33. Only three Sections under P.C. Act, Section 17 which deals with identity of the Investigating Officer, Section 22 which deals with application of Sections 243, 309, 317 CrPC with certain modification and Section 23 which deals with mode of framing of charge, and during course thereof, proper application of CrPC has been identified. Save and except the same, there happens to be no application of CrPC with regard to other activities taken up at the end of prosecution. That means to say, there happens to be no application of Section 100 CrPC to guide the mode of search and seizure and further, a copy thereof, should be handed over to the accused.

34. Furthermore, status of PW-3 as well as PW-4 though challenged being the stock witnesses of the CBI has got no

adverse impact as they have got no grudge with the appellant nor they could be found interested in getting the appellant convicted. Furthermore, there happens to be complete absence of relevant material that for their activities, they were promised or allured.

35. In ***Swarn Singh v. State of Punjab*** reported in ***(2003) 1 SCC 240,*** it has been held:-

> "It is a rule of essential justice that whenever the appellant has declined to avail himself of the opportunity to put his case in cross-examination, it must follow that the evidence tendered on that issue ought to be accepted".

36. From the conduct of the appellant, it is evident that he instead of taking sincere effort at his end, stood at the mercy of complainant PW-6, who to the extent of later part of his evidence became hostile along with some sort of discrepancy visualizing in the evidence of PW-4 with regard to denomination of amount recovered.

37. After giving thoughtful consideration over the material available on the record, it is found and held that prosecution has succeeded in substantiating its case coupled with the fact that appellant failed to discharge his obligation in accordance with Section 20 of the Act, whereupon, instant appeal sans merit and is, accordingly, dismissed.

38. Appellant is on bail, hence his bail bond is

hereby cancelled directing him to surrender before the learned lower court within fortnight to serve out remaining part of sentence, failing which the learned lower court will proceed against him in accordance with law.

(Aditya Kumar Trivedi, J)

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