IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (SJ) No.184 of 2009

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BALKESHWAR PRASAD son of late Bhattu Mahto, Resident of Village-Rewa, PS. Masaurhi, Distt-Patna.

... ... Appellant/s

Versus

STATE OF BIHAR THROUGH THE VIGILANCE DEPARTMENT

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Gouranga Chatterjee, Adv.
For Vigilance	:	Mr. Anjani Kumar, Sr. Adv.
		Mr. Sanjay Prasad, Adv.
		Mr. Amit Kumar Jha, Adv.
		Mr. Shailendra Kumar Singh, Adv.
For the Respondent/s	:	Mr.Rakesh Kr.I/C Spl.Pp.Vig

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

11-04-2019 Sole appellant, Balkeshwar Prasad has been found guilty for an offence punishable under Section 7 of the P.C. Act and sentenced to undergo RI for 2 years as well as to pay fine appertaining to Rs. 1000/-, under Section 13(2) read with 13(1) (d) of the P.C. Act and sentenced to undergo RI for 2 years as well as to pay fine of Rs. 1000/- and in default thereof, to undergo SI for 3 months, additionally under both counts with a further direction to run the sentences concurrently vide order of sentence and judgment dated 21.02.2009 by Special Judge, Vigilance-1st, Patna in Special Case No. 65/1998 arising out of Vigilance PS Case No.43/88.

2. Allegationist, Anil Kumar of Village-Majhanpura casts an aspersion against the appellant/sole accused, namely, Balkeshwar Prasad, the then ASI of Dhanarua PS disclosing therein that local Chokidar, (his co-villager) has instituted one case against his brother, Sunil Kumar which has been communicated by the ASI, Balkeshwar Prasad. Accordingly, he got his brother bailed out and photo stat copy of the certified copy of the order has been sent to the aforesaid ASI, Balkeshwar Prasad through Chokidar, Rajendra Paswan. Subsequently thereof, the aforesaid ASI called upon his father who, on account of ill-health could not meet and in his place, he had

gone and met with Balkeshwar who demanded Rs. 1000/- as bribe and further threatened that in case of non payment, he will arrest his brother. He refused to pay whereupon, in the night of 04.09.1988, the aforesaid ASI arrested his brother at about 3:00 AM irrespective of the fact that he was shown with the order but, he did not pay heed to it and took away his brother and during course thereof, also thrashed. His father, out of affection followed who was also directed to pay Rs. 1000/-. Anyhow, his father had paid Rs. 400/- whereupon his brother was released. The aforesaid ASI again threatened that in case of non payment of residuary amount, his son will be re-arrested as well as he will be given a lesson over non payment of the residuary amount. He has further asserted that he does not want to pay the remaining amount of bribery but is also apprehensive over threatening of the ASI and for that, complaint before the DIG, Vigilance.

3. As per procedure, the allegation was verified and after having verification report, pre-trap exercise was duly performed and then, post trap event materialized during course of which, appellant/accused was apprehended from his house having tainted money kept by him in the 'Feta' of his cloth which he had accepted after having been counted.

4. Accordingly, Special Case No. 65/1988 was registered followed with investigation as well as submission of charge-sheet after facilitating the trial meeting with ultimate result, subject matter of the instant appeal.

5. 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. It has specifically been pleaded that neither any bribe was demanded nor any part thereof, was accepted. The pre-trap exercise, post trap exercise is nothing but an activity having been conducted by the officials who were hostile to the appellant/accused. C.C of relevant case has been adduced in defence.

6. In order to substantiate its case, prosecution had examined altogether 16 PWs out of whom PW-1, Anil Kumar, PW-2, Ram Nath Prasad, PW-3 Mahipal Singh, PW-4, Baleshwar Rai, PW-5, Deopujan Ram, PW-6, Shashi Shekhar, PW-7, Prem Nath Mishra, PW-8, Ganesh Pd. Singh, PW-9, Satyadeo Mistri, PW-10, Subrata Gupta, PW-11, Pradip Kumar Srivastava, PW-12, Md. Imteyazuddin, PW-13, Phanindra Narain Sinha, PW-14, Ram Ayodhya Singh, PW-15, Shashi Bhushan Pd. Sharma and PW-16, Hari Narain Sharma, as well as had also exhibited Ext-1, Complaint petition written by Anil

Kumar, Ext-2, Endorsement and signature of Anil Kumar, Ext-3, Sanction order, Ext-2/1 & 2/2, Endorsement and signature of Baleshwar Rai on Memo of GC note and search list respectively, Ext-4, Search list, Ext-2/3, Endorsement and signature of Shashi Shekhar on memo of GC note, Ext-2/4, Endorsement and signature of Shashi Shekhar on search list, Ext-5, Report of FSL, Ext-6, Verification report, Ext-2/5, Endorsement and signature of DIG, Ext-2/6, Endorsement and signature of O/C on verification, Ext-2/7, Endorsement and signature of Ganesh Pd. Singh on memo of GC note, Ext-7, GC note memorandum, Ext-2/8, Signature of Pradeep Kumar Srivastav on GC note memorandum, Ext-2/9, Signature of witness Pradeep Kr. Srivastav on search list, Ext-2/10, GC note memorandum, Ext-2/11, Endorsement and signature of accused on seizure list, Ext-2/12, Signature of witness Imteyazuddin on seizure list, Material Ext-I, note of Rs. 100, Material Ext-II,II/1, II/2, three notes of Rs. 50/-, Material Ext-III, III/1, III/2, three notes of Rs. 20/-, Material Ext-IV to IV/8, nine notes of Rs. 10/-, Material Ext-V-One Lungi, Material Ext-VI, a piece of paper whereupon powder of phenaphthaline was used for demonstration.

7. As stated above, Ext-A, B, C.C of FIR as well as charge-sheet of Dhanarua PS Case No. 88/99 has been exhibited

at the end of accused in his defence.

8. While challenging the finding recorded by the learned lower court, it has been submitted at the end of the learned counsel for the appellant that irrespective of the fact that the case suffers from inherent lacuna, the learned lower court convicted and sentenced overlooking the same. The first and foremost argument happens to be that during course of trial there happens to be specific disclosure at the end of the prosecution witnesses that it was a lime solution and not of the sodium carbonate (Phenapthalin) during course of so alleged post-trap event whereupon, the illegal activity of the prosecution is found duly exposed as well as it also cast doubt over the prosecution version regarding genuineness of post-trap exercise.

9. Then, it has been submitted that as per prosecution version, it has been alleged that after receiving Rs. 600/-, the appellant has counted the tainted money and then kept it in the fold of his lungi (feta) but, none had claimed to have unwrapped the same, took out the tainted money, took custody of the lungi of the appellant.

10. Apart from this, it has also been submitted that so alleged trap witnesses are none others than the persons whose

presence would not have been and so, brought one of the members of trap team to be the witness which smacks some sort of foul play at the end of prosecution, which found further substantiated on account of presence of inconsistencies amongst their evidences, in consonance with the evidence of other witnesses. That being so, the witnesses having so produced at the end of the prosecution are unreliable, untrustworthy whereupon, the judgment impugned would not survive. It has also been submitted that the story of verification is completely absurd not only on account of suffering sickness rather manner whereunder it has been projected. First of all, the improbability in the prosecution version, which if accepted, would not have allowed the allegationist to have interaction with the verifier and further, having Rs. 200/- paid by the allegationist at that very moment, is another circumstance, more particularly, when the prosecution is completely silent over having proper instruction to come with Rs. 200/- and further, instructed to pay the same during course of verification. If it was paid, why not appellant was arrested at that moment.

11. On the other hand, learned senior counsel representing the vigilance has submitted that from the evidence available on the record in consonance with the findings so

recorded by the learned lower court are being juxtapose to each other as well as speaks about its worthiness. It has also been urged that more or less, the whole event is found not only supported by the prosecution witnesses rather by the appellant/accused himself impliedly whereupon, the judgment impugned needs no interference. Consequent thereupon, appeal is fit to be dismissed.

12. Learned senior counsel representing the Vigilance has also referred these references i.e., AIR 1971 SC 520, [Serajuddin v. The State of Madras] 2011 CrLJ 1770 [Ashok Tshering Bhutia v. State of Sikkim] Cr. Appeal Nos. 775 & 776 of 2018, (2014) 2 SCC 1[Lalita Kumari v. Govt of Uttar Pradesh] and AIR 1974 SC 1516 [Raghubir Singh v. State of Haryana].

13. During course of properly identifying the status of the witnesses, it is evident that PW-1 is the allegationist, PW-2 is formal in nature who had simply exhibited the sanction order. PW-3 has been tendered. Pws-4, and 5 are the witnesses of pre-trap, post-trap and that happens to be the status of PW-6 (search list), PW-7 is also formal in nature, who had exhibited report of the FSC, PW-8 is the verifier. PW-9 is one of the members of the trap team, PW-10 is the FSL official. PW-11 is

the leader of the Trap Team, PW-12 is also one of the members of the trap team, on account of being the Special Magistrate, PW-13 is the part I.O., PW-14 is also formal in nature on account of having produced/exhibited tainted money, lungi, PW-15 is also formal witness who had exhibited formal FIR and PW-16 is also one of the members of the trap team. Now the evidence is to be discussed having at their end.

14. PW-1 had deposed that local Chowkidar, Rajendra Paswan had instituted a case against his brother, Sunil Kumar wherein accused Balkeshwar Prasad became Investigation Officer who at that very time, was ASI at Dhanarua Police Station. He had further stated that his brother got bailed out by the learned CJM and then photo copy of the certified copy of the bail order was transmitted to the I.O. through Chowkidar. Thereafter, the accused called his father through Chowkidar but as his father was not well, so he had gone there. After reaching at the police station, he met with the accused who demanded Rs. 1000/- as bribe in order to give benefit to his brother. Then thereafter, the accused came to his house and in the morning of 04.09.1988 (that means to say on 05.09.1988), arrested his brother and took him away. At that very moment also, he had shown the order of the CJM granting

bail to his brother but, the accused did not pay heed to the same. His brother was also assaulted by the accused during midst of way. He along with his father followed them to police station where, again accused demanded Rs. 1000/-. At that very time, he had paid Rs. 400/- and took time to pay the rest amount of Rs. 600/- At that very time, accused had instructed him to pay remaining Rs. 600/- by 14.09.1988 otherwise, they will have to face the consequence. Then he had filed complaint before Vigilance Department (Ext-A) whereupon, Ganesh Prasad, inspector contacted him over verification of the allegation. He along with Ganesh Prasad had gone to Dhanarua Police Station on 12.09.1988. They have gone to the residence of the accused who was residing in a rented house north to the police station. During course of conversation accused had demanded the remaining amount in presence of Ganesh Prasad whereupon, he had paid Rs. 200/- in presence of Ganesh Prasad. He had assured the accused that on 14.09.1988, he will pay remaining amount. Accused on that very score, instructed him to pay by 9.00 AM as he has to go somewhere. Accordingly, in the evening of 13.09.1988, he was instructed to visit the Vigilance headquarter where Dy. SP, Magistrate along with other officials (members of trap team) were present. As instructed, he had come along with Rs. 400/-, which he handed over. Then disclosed Rs. 400/-(disclosed denomination) of which numbers were noted down and then there was pre-trap exercise (detailed). Thereafter, the aforesaid amount was returned to him with an instruction that the amount should be paid to the accused only after having been demanded by him and then certain instructions have also been given relating to giving signal. Then he along with members of the raiding party proceeded on two jeeps in the early morning of 14.09.1988. They left the jeep near Dhanarua block and then, proceeded on bare foot. As directed, he along with Ganesh Prasad had gone to the house of the accused. Accused was present there. Accused had inquired about the money whereupon, he answered in affirmative. He demanded the money. He handed over the tainted money which he counted and then kept it in the Feta of his Lungi. As instructed, Ganesh Prasad signalled whereupon, members of the raiding party conducted raid, caught hold of the accused. Dy. SP and the Magistrate have disclosed their identity and then challenged the accused over acceptance of bribery. Then thereafter, two independent witnesses were called upon in whose presence search was made and during course thereof, from Feta of Lungi, aforesaid tainted amount of Rs. 400/- was recovered. After tallying the serial number, seizure list was prepared, money was seized. Thereafter, both the hands of the accused was washed and the solution were kept in respective bottles sealsed. Thereafter, Feta of Lungi was also washed and the solution was kept in third bottle, sealed. Identified the accused. During cross-examination at para-10, he had stated that Dy.SP and the Magistrate have arrived at the place of the accused within two minutes after arrival of the raiding party. Paragraphs-11, 12, 13 of the cross-examination relates with regard to activity of the Vigilance Department. In para-14, he had stated that he was not knowing the accused since before rather he knew him when he had gone to visit the Police Station (para-15). In para-17, he had stated that he had tendered application before the O/C of the police station but, he refused to accept the same. Then had stated that he had not sent a copy thereof to the Superior Police official. In para-19, he had stated that at the relevant time, he was residing at Postal Park, Patna on rent under the tenancy of Shivji Prasad where he had ascribed the application addressed to the Vigilance Department. In para-22, he had stated that he had tendered application before DIG, Vigilance. In para-25, 26, 27, he had stated that Chowkidar, Rajendra Paswan who was his co-villger had recorded the FIR but he is unable to say for which occurrence. Again disclosed that on account of sustaining of wound over hand of his brother, and for that a case was instituted. Then had denied the suggestion that his brother had sustained the injury during course of preparation of bomb. At that very time, his brother, Sunil Kumar was residing at his village and was engaged in cultivation along with his father. In para-35, he had stated that he used to do Pairvi in the aforesaid case. Then had stated that he is not re-collecting on which date, his brother was released on bail, on which date certified copy of the order was obtained. He had read the order but is not remembering the grounds over which, the bail was granted. Then Photo copy of the aforesaid order was obtained and a copy thereof, was transmitted to the police station but, he is not re-collecting the exact date. In para-38, he had stated that he had handed over the aforesaid photo copy of the order to the Chaukidar for giving it to the Officer Incharge as, at that very time, he (accused) was not present. Then had denied the suggestion that he had not handed over the bail order at the police station. In para-40, he had stated the his brother was not examined by the doctor. Then at para-43, he had stated that he is not remembering whether any medical report with regard to his brother was sent to the court or not.

The had denied the suggestion that it is not a fact that his brother was medically examined at the instance of the police. At para-44, he had denied the suggestion that his uncles were doing Pairvi relating to his brother. In para-45, he had stated that he is not remembering whether Choukidar was present in the villager or not on the date of arrest of his brother. He had further stated that he had shown the bail order to the accused at his house. As the court has not asked for the aforesaid order, on account thereof, he had not produced the same. In para-47, he had stated that while he was tendering application before O/C, he instructed to file before Investigating Officer. Then, he had contacted Dy.SP who disclosed that he will instruct the Officer Incharge. He had not furnished any application before CJM or before the Sessions Judge complaing against the police officials in not obeying the order of the CJM. In para-49, he had stated that he was not knowing since before that Ganesh Prasad was entrusted to verify the allegation. He is not remembering whether Ganesh Pd was orally instructed or there was any order. In para-50, he had stated that he was not knowing Ganesh Pd. from before. He met with Ganesh at the office itself and then knew him. Then at para-52, he had stated that he is not remembering on which date, he accompanied Ganesh Prasad for verification. In para-53, he had stated that he had suggested Ganesh Prasad to accompany him as his relative which he accepted. He was shown to be his maternal uncle. It was also agreed that Ganesh Prasad will only hear the conversation in between him as well as I.O/accused. In para-54, he had stated that he along with Ganesh proceeded to Dhanarua PS for verification but exact time he is not recollecting. They had gone by train. He is not remembering the fare of the ticket. They got down from the train at Taregna station and then by Bus to Dhanarua. He is not remembering whether bus fare was give by Ganesh or by him. At para-55, he had stated that they had reached at Dhanaura at about 12:00-12:15 PM. In para-57, he had stated that at that very time, he was possessing Rs. 200/- which he handed over to the accused. In para-58, he had stated that the aforesaid amount was carried by him from his place of residence. During course of verification when the accused demanded, handed over the money. The had denied the suggestion that he was not at all expected to pay during course of verification. He had also denied the suggestion that in order to expose, he had handed over the aforesaid amount before the official during course of verification. Then, had stated that he had not handed over the aforesaid amount as per instruction of the verifier rather he had paid the amount on demand by the accused. Then had volunteered that before the payment of the aforesaid 200/- he had already paid to him Rs. 600/-. He had further stated that he had not stated before anybody that in presence of the verifier, he had paid Rs. 200/-. He is not remembering the serial number of the aforesaid currency notes. In para-61 he had stated that at the time of verification, only he and the verifier were present. Then had denied the suggestion in para-62 that neither verification was done nor any payment was made during course of verification on demand by the accused. At para-63, he had stated that he along with verifier returned back to Patna. At para-64, he had stated that verifier had submitted his report. He had not gone through the same. Then the Vigilance Officials directed him to come along with Rs. 400/- on 13.09.1988, when he had gone to the place of Vigilance on 12.09.1988 and then after completing the formalities, he was instructed to come on 13.09.1988 with the currency notes. In para 67, he had stated that he reached at the Vigilance Office at 13.09.1988 but he is not remembering the exact time. In para-71, he had stated that he had not put powder over notes rather Vigilance Officials had spread over it. Then had stated that he is not remembering whether after spreading the powder the aforesaid notes were handed over to him or not. Then had stated that on 14.09.1988, he visited the Vigilance Office wherefrom he accompanied the Vigilance Raiding Party. Then had stated that they had proceeded from Patna at about 7.00 AM through the vehicle. In para-73, he had stated that before departure from Vigilance office, his body was searched. In para-74, he had stated that his hand were not washed rather, hands of accused as well as clothe of accused were put in the solution. Then had denied the suggestion that neither accused had demanded bribe, nor he paid bribe and that being so, there was no occasion for verification. There was no recovery of tainted money from his possession. The whole case happens to be false and frivolous. All the documents which the Vigilance Officials had prepared are fake, collusive.

15. PW-2 as stated above only exhibited sanction order whereupon, there happens to be no cross-examination. PW-4 is the search-cum-seizure witness who had stated that while he was going to Gaya from Patna, on account of mechanical failure of the bus, all the passengers got down from the bus near Dhanarua Police Station where they had seen presence of some persons near a house where, out of curiosity, he had also gone where he came to know that Jamadar Sahab

has been caught hold red handed by the Vigilance during course of accepting bribe. On the request of Dy. SP, he became ready to be a witness of search. The Dy. SP had shown one paper having serial number of notes ascribed over the same. Memorandum was prepared to this effect over which he put his signature. Then Jamadar Sahab was search out and during course thereof, the tainted money was recovered from the Feta of Lungi of Jamadar Sahab. Then serial number of aforesaid currency was tallied with the memorandum. Then search list was prepared over which he put his signature (Exhibited). Then three glasses of solution were prepared. Both the hands as well as lungi of Jamadar was washed in the solution which changed its colour as pink. Then it was sealed after keeping it in three separate bottle. Identfied the accused. During cross-examination at para-7, he had stated that he had obtained ticket but he is unable to say the names of driver and conductor of the bus. In para-9, he had stated that so many passengers had come at the PO. They remained there for 1 and ½ hours. In para-10, he had stated that he was not at all known to the officials of the Vigilance Department. He was also not identifying the Jamadar since before. At para-11, he had stated that members of the mob were saying that Jamadar has been caught hold red handed while accepting bribe. In para-12, he had stated that before his arrival, the official of the Vigilance Department had already caught hold of the accused. In para-14 and 15, he had admitted that he had not mentioned in the endorsement with regard to how much amount was recovered from the possession of the accused. Then had denied the suggestion that at the instance of Vigilance Department, he has become a witness. Then at para-18, he had stated that he was not knowing who was the allegationist.

16. PW-5 is another member of the trap team. He had named others out of whom Raghuvir Singh, Inspector and Parshuram Pandey, Inspector are dead. Ganesh Pd. had retired. Then had stated that at about 5:00 PM on 13.09.88, all the members of the raiding party had assembled at the vigilance office where, Dy. SP, P.K. Srivastava and Magistrate, Imteyaz Ahmad were present. During course thereof, pre-trap exercise was performed (memorandum was prepared) after having Rs. 400/- produced by the allegationist (denomination disclosed). Then had stated that serial numbers of the currency notes were noted down. Phinaphthalin Powder was spread over the same and then, the notes were returned back to the allegationist with an instruction that amount be given to the accuses only after having been demanded by him. As per schedule, all the

members of the raiding party including allegationist proceeded on two jeeps on 14.09.88 in the morning hour. About ½ kilometer away from Dhanarua Police Station, they got down. Complainant and the verifier Ganesh Prasad proceeded ahead followed by the other member of the raiding party. At about 9:00 PM they, after getting signal, conducted raid at the house of the accused. Before their arrival, Dy SP and Magistrate along with other members had already arrived. Thereafter, two independent witnesses were called on, in whose presence, accused was searched out and from the 'Feta' of Lungi of the accused, the tainted money (Rs. 400/) were recovered. Identified the accused. Then had stated that after recovery, the numbers were tallied. After having been matched, seizure list was prepared. Both hands of accused as well as Lungi were washed in the solution having prepared at the spot which turned to pink. One copy of the seizure list was handed over to the accused. Dy.SP and Magistrate along with witnesses are over the seizure list (exhibited). During cross-examination at para-6, he had stated that at the present moment, he is not recollecting from which side of Feta of Lungi of accused, money was recovered. In para-8, he had stated that he was directed to be members of the Vigilance Team by a written order dated 13.09.88 at 3.00

PM. In para-9, he had stated that the order was for conducting a raid at Dhanarua on 14.09.88. In para-11, he had stated that memo was not prepared in his presence. In para-13, he had stated that he is not knowing whether Dhanarua PS was running in a rented house. In para-14, he had stated that they have not reached the PS conjointly rather Dy.SP and Magistrate had arrived prior to him. Again corrected that all the members of trap team reached conjointly. In para-15, he had stated that he is not remembering serial number of the tainted money. In para-16, he had stated that he happens to be a member of trap team relating to so many cases. In para-17 and 18, there happens to be repetition. In para-20, he had detailed event whereunder they have proceeded towards the house of the accused. He had further stated that allegationist as well as verifier were leading, then he along with others including Magistrate, Dy. SP who were behind him. In para-21, he had stated that they had gone to the house of accused slowly. He had not earlier visited the place. His (accused) house was behind the police station. In para-22, he had stated that at the time of occurrence, people assembled. In para-23, he had stated that first of all allegationist as well as verifier had gone to the accused followed by them. In para-25, he had stated that all the documents were prepared at the place of accused itself. At that very time, accused was wearing Ganji and Lungi. In para-26, he had stated that accused was searched out. He had further stated that he had not put signature over the seizure list.

17. PW-6 is another seizure list witness who had stated that on 14.09.88 at about 9:00 AM while he was passing through, he had seen assemblage of persons near Dhanarua PS whereupon, he had also gone there out of curiosity. He along with one more were called upon to become witness. At that very time, they were disclosed that the members of the Vigilance Team has apprehended Jamadar red handed while accepting bribe. One paper was handed over to him which he read and then put his signature (Exhibited). Then, in their presence, Jamadar was searched out and during course thereof, from Feta of Lungi, Rs. 400/- was taken out. The serial number of tainted money was tallied with the serial number having ascribed since before over a paper. After matching the same, seizure list was prepared. Then solution was prepared. Both hands of Jamadar was washed. His Lungi was also washed. All the solution became pink. All the solutions were put in three separate bottles and sealed whereupon they had put their signatures (exhibited). Claimed identification. During cross-examination at para-7, he

had disclosed that at that very time, 30-40 persons had assembled there. In para-8, he had stated that he was not knowing Jamadar since before. In para-9, he had stated that some of the officials of the Vigilance team had instructed him to become witness whereupon, he became ready. In para-11, he had stated that before the aforesaid event, he had not participated in any kind of Vigilance activity. Then at para-12, he had stated how the solutions were prepared. Then at para-13, he had stated that he is unable to say why he has been requested to become a witness.

18. PW-7 is also a formal in nature. PW-8 is the verifier as well as also happens to be one of the member of the trap team. During examination-in-chief, he had stated that he was Inspector, Vigilance in the year 1988. In para-2 he had stated that on 9.9.88, he was handed over one complaint by the O/C for verification. The aforesaid complaint was made by one Anil Kumar. Accordingly, he proceeded with Anil Kumar to Dhanarua for verification of the allegation. They reached at about 12.30 PM. At about 1.00 PM, he reached at the place of accused where allegationist indulged in gossiping and during course thereof, the accused demanded Rs. 1000/- from the allegationist over which the allegationist disclosed that he had

already paid Rs. 400/- and today, he is going to pay Rs. 200/- and the rest amount of Rs. 400/- will be paid later on. Whereupon, the accused inquired, when? Then allegationist disclosed that on 14.09.88. Then accused had disclosed that as he has to go outside so, payment should be made uptil 9.00 AM. The accused also assured that after receiving the aforesaid amount, his work will be done. Then thereafter, they returned back. He had submitted verification report on 12.09.88 itself (Exhibited). He had also exhibited endorsement of the DIG relating to verification. Also exhibited different endorsement over the same. Subsequent thereto, under the leadership of Dy.SP, a trap team was constituted including he himself. On 13.09.88., as directed complainant came at the office where pre-trap exercise was done and during course thereof, as per instruction, complainant handed over Rs. 400/-(denomination disclosed), Serial Number of those currency notes were noted down. Phenaphthalin powder was spread over the same and then aforesaid notes were returned back to the allegationist with a proper instruction that only on demand the aforesaid amount be handed over the accused. On the other hand, he was also instructed how to give signal after acceptance of tainted money by the accused. Then, it was directed that tomorrow i.e. on

14.09.88 at morning hour, they will proceed. Accordingly, all of them proceeded from Vigilance office in the morning hour on 14.09.88 including the allegationist. They reached at Dhanarua. Then they got down. Then he was instructed by Dy. SP to remain along with allegationist and will hear the conversation in between allegationist as well as the accused and after acceptance of the bribe, he will give signal by putting his hand over his head. The he along with allegationist came to the place of accused whether allegationist had handed over the tainted money to the accused on demand who, received the same and then kept it in his Feta of Lungi. As instructed, he signalled whereupon, the other members of raiding party including Dy.SP and the Magistrate came. They disclosed their identity. They had also disclosed the accused that he had accepted bribe from Anil Kumar. Then in presence of witness, accused was searched out and from his possession Rs. 400/- was recovered. Numbers of the notes were tallied. After matching the same, seizure list was prepared. Then solution was prepared. Both hands of the accused as well as his lungi were washed, turning the colour of the solution as pink, kept in three separate bottles and sealed having signatures of the seizure list witnesses, copy thereof, was handed over to the accused and his signature was obtained (exhibited). Claimed identification of the accused. During cross-examination at para-15, he had stated that on 09.09.88, allegation petition was handed over to him for verification. But, he had not made any sort of endorsement over the same. In para-16, he had stated that he had not gone to verify allegation on 10.09.88 as well as 11.09.88. He had gone on 12.09.88. In para-17, he had stated that on 09.09.88 itself the allegationist was introduced to him and on the same day, the date was fixed on 12.09.88 for verification. The date was fixed by him. In para-11, he had stated that after arrival of the allegationist on 12.09.88, he proceeded along with him at about 11:00 PM. They had gone by bus. They had boarded at Chiraiyatanr Pul. He had further stated that at the present moment, he is not remembering actual fare. In para-19, he had stated that he is unable to disclose at which hour the allegationist talked with the accused but, he heard him. The talk was at the place of the accused. Conversation continued for 20-25 minutes. After returning, he had submitted report at 4.30 PM. Then had denied the suggestion that the story of verification happens to be false. In para-20, he had stated that 12-13 persons were members of the trap team. They had gone over two jeeps. They have reached Dhanarua at 8.45-9.00 AM. They got down about 100-150 yards before the place of accused and then Dy. SP properly instructed. In para-21, he had stated that after handing over money by the allegationist, accused kept in lungi whereupon, he had signalled and within a minute thereafter, the raiding party arrived. Parshuram Pandey and Sardar Mahipal Singh caught hold both the hands of the accused. He came out from that place. Money was handed over and accepted in a room adjacent to verandah. Then had denied the suggestion that he had not seen the accused accepting the amount nor keeping it in the lungi. Then had denied the suggestion that he had deposed falsely.

19. PW-9 is also one of the members of the raiding party. During his examination-in-chief, he had stated that after constitution of the raiding party on 13.09.88, they had assembled at the office in the chamber of Dy.SP where allegationist Anil was introduced followed with pre-trap exercise. Money was produced by the Anil. Serial numbers were noted down. After spreading powder over the same, the notes were returned to the allegationist with a direction that notes will be given only on demand by the accused. Ganesh Prasad was instructed to accompany the allegationist during the whole episode and after acceptance of the bribe money, he will give signal by way of putting his hand over his head. He along with

Harinarayan was instructed to follow Ganesh Prasad and allegationist. Then had exhibited pre-trap memorandum along with other documents. As per schedule, the members of the raiding party proceeded on 14.09.88 at morning hour. They reached at Dhanarua at about 8:00 AM. They got down approx ½ kilometer before the police station and then came near the police station. After getting signal, they had gone to the residence of the accused where Ganesh Prasad disclosed that the accused has accepted bribe of Rs. 400/- from the allegationist. He has counted the money and then kept it in Feta of his Lungi. After hearing this, accused became stunned. Dy. SP and Magistrate disclosed their identity. Mahipal Singh and Arun Kumar had caught hold of his hand. People assembled. Two persons out of them were called as a witness before whom memorandum was placed who after going through the same, put their signatures. Then thereafter, accused was searched, money was found, serial number of the same was tallied with the memorandum and after having duly matched, seizure list was prepared. Three bottles of solution were prepared. Both hands as well as Lungi of the accused were washed. Solution became red. One copy of the seizure list was handed over to the accused who put his signature. Then thereafter the solution was kept in three separate bottles, sealed after having signatures of the respective witnesses. During cross-examination at para-29, he had disclosed that pre-trap exercise was conducted on 13.09.88 and its memorandum was prepared at about 5:00 PM. In para-30, he had stated that the aforesaid money was given to the allegationist after powder was spread over the same. In para-33, he denied the suggestion that no powder was spread over the same nor the amount was given to the allegation. In para-35, he had stated that residence of accused happens to be north to the police station. Then there happens to be contradiction at para-36. In para-37, he denied the suggestion that the solution did not turn pink after washing both hands as well as Lungi of the accused. Then had admitted at para-38 that he had not put his signature over the seizure list.

20. PW-10 had stated that exhibits of Vigilance PS Case No. 43/88 was examined by him on 24.12.1988. The solutions were sent in sealed condition. He had examined the same which was lime water (sodium hydroxide) while at Sample (Gha) it was sodium carbonate. In para-5, he had stated that in subsequent ‘Ka’ ‘Kha’ and ‘Ga’ no phenaphthaline solution was rather it was sodium hydroxide. Exhibited his signature having counter signed by the Director. In para-7, he

had stated that phenaphthaline powder, if is mixed with sodium hydroxide,it disappears in few hours. During cross-examination, he had stated that there happens to be specific discloser in his report that the vials were properly sealed.

21. PW-11 is Dy. SP. During examination-in-chief, he had stated that on 13.09.88, there was constitution of a raiding party under his leadership. Syed Imteyazuddin was the special Magistrate. After constitution of the raiding party, SI Ganesh Prasad introduced the allegationist, Anil to the members of the raiding party. Then allegationist produced Rs. 400/- for which GC note memorandum was prepared on his instruction (Exhibited). Then there was pre-trap exercise and memorandum was prepared relating thereto. After spreading phenaphthaline powder over the aforesaid currency notes, the same was returned to the allegationist with an instruction that after demand made by the accused, the same be paid otherwise not. Then thereafter, all the members of the raiding party washed their hands. As per schedule, all the members of the raiding party along with allegationist proceeded on two jeeps on 14.09.88 at morning hour. When they reached at Dhanarua, they got down from the vehicle away from Dhanarua PS and then they proceeded along with allegationist toward destination.

Allegationist and verifier were sent to the police station. Perceiving the signal they conducted raid. When they came, the verifier disclosed that the person who was standing whose name is ASI, Balkeshwar Prasad, has accepted Rs. 400/- in lieu of bribe. Then thereafter, they had disclosed their identity. In presence of two seizure list witnesses, they have searched Balkeshwar Pd and from left side of Feta of his Lungi, tainted money was recovered. After recovery, serial numbers were matched and then seizure list was prepared. Solutions were prepared in three bottles, both hands were washed and Lungi was also washed. Solution became pink and then the same were sealed in three different bottles, copy of the seizure list was handed over to the accused who put his signature (Exhibited). Then the accused was taken to Patna. All the material exhibits have been deposited in the Maalkhana and then handed over to the I.O. Claimed identification. During cross-examination at para-30, he had stated that he had not tested with regard to phenaphthaline powder relating to seized tainted amount. In para-31, he denied the suggestion that recovered Rs. 400/- was personal money of the accused, so no phenaphthaline test was conducted. He denied the suggestion that no tainted money having phenaphthaline powder spread over it, was handed over to the accused. He denied the suggestion that on wash of both hands and Lungi, the solution had not turned pink. Then had denied the suggestion that they have prepared forged and fabricated document.

22. PW-12 is the Special Magistrate (Vigilance) who had deposed that on getting yellow sheet from the Vigilance DIG wherefrom he came to know that under the leadership of Dy. SP, a raiding party has been constituted whereunder he has also been nominated as Special Magistrate. As per information, he participated during course of pre-trap exercise having been participated by the other members of the trap team along with allegationist, Anil Kumar. The aforesaid allegationist also informed that ASI, Balkeshwar Prasad of Dhanarua had demanded bribe of Rs. 400/- and for that, the trap team has been constituted. During course thereof, Anil Kumar also produced Rs. 400/- of different denomination of which serial numbers were noted down and then there was exhibition of reaction in between phenaphthaline powder as well as sodium carbonate. Thereafter phenaphthaline powder was spread over the notes and then it was returned back to Anil Kumar with an instruction that it should be given to Balkeshwar only on demand, otherwise not. The verifier was also instructed to accompany the

allegationist and further, after acceptance of the tainted amount as bribe, he was directed to signal by touching his hair. Memorandum was prepared with regard to the GC Notes over which he had also put his signature (exhibited). On the following day, that means to say, on 14.09.88 in the morning hour, all the members including the allegationist assembled and then, they proceeded towards Dhanarua on two jeeps. At about 8.45 AM, they reached at Dhanarua. ½ kilometer before from Dhanarua PS, they got down from the vehicle. Anil and Ganesh proceeded ahead followed by the members of the trap team. They had gone to the residence of the accused. They had received signal at about 8.55 AM whereupon, they conducted raid. Disclosed their identity. Then two watchers caught hold each hand of the accused. Two independent witnesses were procured who were known to the fact. They were shown GC Memorandum over which, they had put their signatures. Then body of accused was searched and during course thereof, from the Feta of Lungi of accused, Rs. 400/- was recovered. Then thereafter, serial number was matched and found it correct. Because of the fact that they have not carried sodium carbonate, on account thereof, lime solution was prepared and then hands of the accused was separately washed. The solution became pink. Lungi was also washed and the same became pink. All the solutions were sealed in three different bottles over which they had put their signatures. Seizure list was prepared over which they had put their signatures. A copy thereof, was handed over to the accused who also put his signature (Exhibited). Accused was arrested and taken to Vigilance. During cross-examination at para-5, he had stated that Dy. SP had inquired from the allegationist in his presence. He had not directed to produce the accused directly before the court. In para-6, he had stated that he had not inquired from the allegationist that why not he had complained before the CJM against the activity of the accused on account of apprehension of his brother and keeping at Thana. He had further stated that Dy. SP had not inquired from the allegationist why not he had filed petition before the Dy. SP, SP regarding the misdeeds of the accused. In para-7, he had stated that it is not a fact that whatever amount has been recovered from the possession of the accused was his personal property. He had denied the suggestion that the search and seizure happen to be false, illegal. He had also denied the suggestion that neither the hands of accused was washed nor his Lungi was soaked with the solution. He had also denied the suggestion that this case has falsely been drawn up.

23. PW-13 is the IO. During examination-in-chief, he had stated that after having been entrusted with the investigation of the case, he had recorded the statement of the witnesses, sent the material exhibits to Forensic Science Laboratory for examination, recorded the statement of the accused, procured sanction order and then submitted charge-sheet. He had further stated that on account of Glucoma, he has lost his eyesight, blood pressure is fluctuating, met with an accident whereunder he has sustained injury over his head on account thereof, now he is suffering from weak memory. During cross-examination, he had stated that he had not found relevant order relating to bail from the accused, from the allegationist or from the police station. In para-4, he was confronted with the statement of the witness, Satyadeo Mistri wherein he had stated that Mistri had not disclosed regarding washing of Lungi in the solution. In para-5, he had stated that he received the bail order along with copy of the FIR. In para-6, he had stated that he had submitted all the relevant documents before the competent authority for grant of sanction but specific details thereof, for the present, is unable to disclose.

24. PW-14 is Inspector, Vigilance who had produced the case property (tainted money) recovered from the possession

of accused (denomination of Rs 100x1, Rs. 50X3, Rs. 20X3 and Rs. 10X9, total cash Rs. 400/-). Also exhibited the signature of the members of the raiding party having over the same. Also exhibited Lungi. He had also produced the residuary left out during course of pre-trap exercise. He had further stated that those items were deposited by K. B. Singh, the then Dy. SP of Vigilance. During cross-examination he had stated that he was not at all engaged in verification of the case.

25. PW-15 had exhibited the formal FIR. PW-16 is one of the members of the raiding party who during course of examination-in-chief had reiterated the version whatever been deposed by other members of the raiding party, recovery of the tainted money on search by the members of the trap team in presence of two seizure list witnesses which was matched with the memorandum followed with search-cum-seizure list. Also substantiated washing of both hands and Lungi in a solution which turned into pink. Preparation of seizure list handing over a copy thereof, to the accused and in token thereof, he had put his signature. During cross-examination, he had stated that he had not put his signature either during course of pre-trap exercise or post-trap. He had further stated that during course of statement before the IO, he had stated that the solution so

prepared was that of lime. Then had denied the suggestion that he had stated before the IO that solution of Sodium Carbonate was prepared Then had shown his inability to disclose the names of seizure list witness. Then had denied the suggestion that he was not at all member of trap team. He had also denied the suggestion that accused had not taken bribe. He denied the suggestion that neither hands nor Lungi of accused were washed in the solution. He denied the suggestion that he had intentionally deposed against the appellant.

26. From the record, it is evident that no DW has been examined. It is further evident that certified copy of the FIR of Dharnarua PS Case No. 88/88 has been made as an Ext-A, Charge-sheet, Ext-B. It is further evident from the statement of the accused, more particularly, questionnaire no.3 that appellant/accused has admitted apprehension of Sunil Kumar, brother of allegationist, Anil Kumar in the night of 04.09.88 from his house relating to Dhanarua PS Case No. 88/88 and also admitted that after placement of bail order, he released him. The other questionnaire even relating to recovery of Rs. 400/- has been denied. It is needless to say that whatever answer is being given by the accused during course of statement recorded under Section 313 CrPC that could be taken against him as provided

under Section 313(4) CrPC. However, the aforesaid event could not be solely sufficient to draw an inference against the accused and for that, the evidence of prosecution is to be looked into in order to trace out whether prosecution has succeeded in substantiating its case. If so, then the conduct of the accused during course of statement under Section 313 of the CrPC would be an additional one coupled with the legal fiction so allowed in terms of Section 20 of the PC Act, though rebuttable. That means to say, there should also be proper appreciation whether the accused to the extent of preponderance, discharged his obligation.

27. When the evidences have been gone through, as discussed hereinabove, it is evident that there happens to be an admission at the end of the appellant by way of suggestion regarding recovery of Rs. 400/- from his possession and for that, he had claimed the aforesaid amount to be personal one. Moreover, as is evident during course of cross-examination of the witnesses, they were not at all questioned over the propriety of the seizure list and further, status of the seizure list witnesses who were quite strangers. Apart from this, it is also apparent from their evidences that they could not be tested, confronted and challenged. The allegationist and the verifier happen to be

consistent over each and every point right from demand to acceptance. Their testimony had not been demolished during course of cross-examination and so, the position whatever emerges out after filtering the evidence, that there was an occasion available to demand bribe which was demanded and for that, there was complaint, followed with pre-trap exercise, payment of illegal gratification on demand, followed by post trap exercise including recovery of tainted currency notes from the possession of the appellant. Some sort of discrepancies have been found in the evidence of allegationist as well as verifier but as the same happens to be superficial, and the appellant having failed to test on that score including that of PW-10, expert, hence failed to have impact of mistrust.

28. In ***Mukhtar Singh v. State of Punjab*** *as reported in* ***AIR 2016 SC 3100***, it has been held

> " It is a settled principle of law laid down by this Court in a number of decisions that once the demand and voluntary acceptance of illegal gratification knowing it to be the bribe are proved by evidence then conviction must follow under Section 7 of the PC Act against the accused. Indeed, these twin requirements are sine qua non for proving the offence under Section 7 of the PC Act.

29. M. K. Harsan v. State of Kerala as reported ***in AIR 1995 SC 2178***, it has been held,

> "………. in all these 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 from 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, the money had been put in drawer as an illegal gratification.

30. In ***Satbir Singh v. State of Delhi*** as reported in ***(2014) 13 SCC 143***, it has been held:-

> " It is rightly contended by the learned senior counsel on behalf of the appellant that the presumption of the guilt is not proved in the case in hand as the prosecution has failed to prove the ingredients of the provisions of Section 7 of the Act, is demand and acceptance of illegal gratification by the appellant, constitute of an offence alleged to have committed by him."

31. In ***Laxmikant v. State by Superintendent of Police*** as reported ***in 2015 (2) PLJR 263 (SC),*** it has been held as follows:-

> " It is a settled principle of law laid down by this Court in a number of decisions that once the demand and voluntary acceptance of illegal gratification knowing it to be the bribe are proved by evidence then conviction must follow under Section 7 of the PC Act against the accused. Indeed, these twin requirements are sine qua non for proving the offence under Section 7 of the PC Act."

32. In the case of ***K. S. Panduranga Vs State of Karnataka*** as reported in ***2013 CrLJ 1665***, it has been held as follows:-

> " It is well settled in law that demand and acceptance of the amount as illegal gratification is sine qua non for constitution of an offence under the Act and it is obligatory on the part of prosecution to establish that there was an illegal offer and acceptance thereof."

33. In ***STATE through Central Bureau of Investigation v. Dr. Anup Kumar Srivastava*** as reported in ***(2017) 15 SCC 560***, it has been held as follows:-

> 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.
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> 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 22 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.

34. ***In State of Gujarat v. Navinbhai Chandrakant Joshi*** reported in ***2018 Cr.L.J 3733***, it has been held as follows:-

"8. It is well-settled that to establish the offence under Sections 7 and 13(1)(d) of the Act, particularly those relating to the trap cases, the prosecution has to establish the existence of demand as well as acceptance by the public servant. In B. Jayaraj v. State of A.P., (2014) 13 SCC 55, it was 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."

9. ****

10. ****

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. 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.

35. As discussed above, it is crystal clear that the twin requirements as held by the Apex Court is found duly

substantiated whereupon, this appeal lacks merit and is, accordingly, dismissed.

36. Appellant is on bail, his bail bond is hereby, cancelled directing him to surrender before learned lower court within the fortnight failing which the learned lower court will be at liberty to proceed against him in accordance with law.

(Aditya Kumar Trivedi, J)

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AFR/NAFR	AFR
CAV DATE	28.01.2019
Uploading Date	12.04.2019
Transmission Date	12.04.2019