

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRR No. 624 of 2019**

- Shivismurti Shukla S/o Late Rampyare Shukla, Aged About 50 Years, Senior Surveyor, Bagdeva, Underground Mines, DSB, Sub Area, S.E.C. L. Korba, Presently Residing at Qtr. No.B-9, S.E.C.L., Dhelwadih Colony, Post Dhelwadih, Post and Tahsil Katghora, District Korba, Chhattisgarh, District : Korba, Chhattisgarh

**---- Applicant**

**Versus**

- Central Bureau of Investigation Anticorruption Bureau (A.C.B.), Raipur, District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

**----Non-applicant/Respondent**

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For Applicant – Shri Tarendra Kumar Jha, Advocate.

For Respondent/C.B.I. – Shri Krishna Gopal Yadav, Advocate on behalf of Shri B. Gopa Kumar, A.S.G.

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**  
**Order on Board**

**06-11-2019**

1. This criminal revision has been filed challenging the order dated 04-04-2019 in which the trial Court has framed additional Charge under Section 11 of the Prevention of Corruption Act, 1988 (in short 'the Act, 1988) against the applicant.
2. It is submitted by learned counsel for the applicant that the trial Court has after filing of charge sheet framed charges under Section 7, 13(2) read with Section 13(1)(d) of the Act, 1988 on 16-07-2017. No objection was raised by the respondent side at the time of framing charges. However, after passing of about one year an application was filed by respondent under Section 216 of the Cr.P.C. for framing of charge under Section 11 of the Act, 1988.
3. It is submitted that the order of framing charge of the trial Court is erroneous, incorrect and illegal for the reason that there is no substance present in the charge sheet to make out offence under Section 11 of the Act, 1988.

Reliance has been placed on the judgment of Hon'ble the Supreme Court in the matter of **Central Bureau of Investigation Vs. Karimullah Osan Khan**, (2014) 11 SCC 538, in which it was held that any alteration or addition of charge can be made only on the basis of evidence which is recorded during the course of

trial. Hence, there being no substance in the charge sheet, framing of additional charge was totally uncalled for. Therefore, the petition be allowed.

4. Learned counsel for the C.B.I./respondent opposes the petition and submission made in this respect. It is submitted that there is substance to show that the applicant had made a demand of Rs.65,000/- as bribe money from the complainant and had received the same in the trap procedure. The charge sheet was filed mentioning the offence under Section 7, 11, 13(2) read with Section 13(1)(d) of the Act, 1988. However, the trial Court omitted to frame the charge under Section 11 of the Act, 1988, therefore, the application was filed by the respondent, which has been rightly allowed by the trial Court within its power under Section 216 of the Cr.P.C. Hence, the petition be dismissed.

5. Heard learned counsel for the parties and perused the documents.

6. According to the charge sheet filed the facts of the case is this, that the applicant/accused being a public servant made a demand of Rs.65,000/- from the complainant as bribe amount for some works executed by him. On the basis of the complaint filed, a trap was organized by the respondent in which the applicant was caught red-handed receiving the bribe money. On the basis of these facts the whole case has been investigated and the charge sheet has been filed.

7. Section 7 of the Act, 1988 mentions the word 'gratification other than remuneration'. Gratification has been explained in Explanation B of the same provision that the word "Gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money. It is pertinent to note here that in this case according to the prosecution, the applicant had made demand of money Rs.65,000/- and the same was paid to him by the complainant at the time of trap proceeding.

8. Section 11 of the Act, 1988 is reproduced here:-

**"11. Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant**

Whoever, being a public servant, accepts or obtains or agrees to accept or

attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.”

9. On plain perusal of the provisions under Section 11 of the Act, 1988 it is very clearly found that the word gratification has not been used in this provision, on the contrary word mentioned is 'valuable thing' receiving of which without consideration by a public servant has been made punishable. There is nothing to suggest on the perusal of whole charge sheet that the applicant had demanded and received any valuable thing without consideration from the complainant. The dictionary meaning of thing describes it as inanimate material object of any description. Therefore, there is clear distinction between gratification and thing. This being not a case of the respondent that the applicant had accepted any valuable thing without consideration from the complainant of this case, therefore, there was not substance for framing charge under Section 11 of the Act, 1988 against the applicant. Hence, on the basis of these discussions, it is found that framing of charge against the applicant under Section 11 of the Act, 1988 by the impugned order is contrary to the provisions of law, inappropriate and incorrect. Hence, for this reason, this revision petition deserves to be allowed, which is allowed and the impugned order passed by the trial Court is hereby set aside. The trial against the applicant shall continue for other offences in which he has been charged.

10. The petition stands disposed off.

Sd/-

**(Rajendra Chandra Singh Samant)**  
**Judge**