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<u>HIGH COURT OF CHHATTISGARH, BILASPUR</u>

<u>Criminal Appeal No.889 of 2006</u>

<u>Judgment Reserved on : 23.3.2021</u>

<u>Judgment Delivered on : 24.5.2021</u>

Diwakar Prasad Gautam, son of Late Mahesh Prasad Gautam, aged about 45 years, occupation service, Senior Overman/Dispatch Incharge, Road Sell Office, Geora Project, S.E.C.L., Geora, District Korba, Chhattisgarh

---- Appellant

versus

Union of India through Central Bureau of Investigation, Jabalpur (MP)

--- Respondent

For Appellant : Mrs. Indira Tripathi, Advocate

For Respondent/CBI : Shri Ramakant Mishra, Assistant Solicitor General

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<u>Hon'ble Shri Justice Arvind Singh Chandel</u>

<u>C.A.V. JUDGMENT</u>

1. This appeal has been preferred against judgment dated 8.12.2006 passed by the Special Judge (CBI), Raipur (Chhattisgarh) in Special Criminal Case No.4 of 2004, whereby the Appellant has been convicted under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, but he has been sentenced only under Section 7 of the Act as under:

<u>Sentence</u>	
Under Section 7 of the Prevention of Corruption Act	Rigorous Imprisonment for 1 year and fine of Rs.5000/- with default stipulation

2. Facts of the case, in short, are that at the relevant time, the Appellant was posted as a Senior Overman/Loading Inspector in

South Eastern Coalfields Limited (SECL) at Geora. Complainant Brijesh Singh (PW2) was engaged in the business of coal lifting. According to the delivery order (Ex.P5) dated 8.5.2001, Firm Piyush Textiles, Ahmedabad was to lift 275 metric tonnes of coal of grade E-Stime from SECL within 45 days. Piyush Textiles, Ahmedabad authorised Complainant Brijesh Singh (PW2) for lifting of that coal vide Ex.P15. On 12.5.2001, Complainant Brijesh Singh submitted documents relating to lifting of the coal in the office of C.G.M., Geora. As directed, on 13.5.2001, Complainant Brijesh Singh met with the Appellant. Allegedly, the Appellant demanded bribe @ Rs.13 per metric ton, total amounting to Rs.3575 for lifting of total 275 metric tonnes coal. The Complainant again met with the Appellant at his quarter on 14.5.2001. At that time also, the Appellant demanded bribe at the old rate. Since the Complainant did not want to give bribe, he met with officials of the Central Bureau Investigation (CBI) at Hotel Central Point, Bilaspur on 15.5.2001 and submitted his written complaint (Ex.P16). Panch witnesses L.K. Trivedi (PW4) and Anjlus Xalxo (PW6) were called. They verified the complaint from the Complainant. A demonstration of trap proceedings was given to the Complainant and the panch witnesses. The Complainant had brought currency notes of total Rs.3575. Their numbers were noted and they were smeared with phenolphthelin powder. A memorandum (Ex.P17) of pre-trap proceeding was prepared. Thereafter, the trap party proceeded towards Geora. There, the Complainant and the panch witnesses went to the house of the Appellant. The Complainant gave bribe money to the Appellant at his house. On getting signal, the trap party reached to the Appellant and caught him red handed. His hands were washed into a solution of sodium carbonate on which colour of the solution turned into pink. A piece of paper (Ex.P24) on which the Appellant had written account of the bribe money was recovered and seized. Recovery memorandum (Ex.P18) was prepared. After return, First Information Report (Ex.P25) was registered. On completion of the investigation, a charge-sheet was filed. Charges were framed against the Appellant.

3. To bring home the offence, the prosecution examined as many as 9 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt, pleaded innocence and false implication. It was the defence of the Appellant that the Complainant was of criminal mind. He had threatened the Appellant that he will get the whole coal lifted in two days only instead of 45 days. The Appellant had prevented the Complainant and, therefore, the Complainant had threatened the Appellant of false implication. The Appellant has taken a further defence that neither he demanded bribe nor did he accept any money as illegal gratification. In his defence, the Appellant has examined two witnesses, namely, Kashi Prasad (DW1) who was a Loading Clerk of Geora Project and Avinash Shukla (DW2), who was a Senior Overman of Geora Project.

4. On completion of the trial, the Trial Court convicted and sentenced the Appellant as mentioned in 1st paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellant submitted that the Trial Court has wrongly convicted the Appellant without there being sufficient evidence against him on record. It was argued that Complainant Brijesh Singh (PW2) has not supported the case of the prosecution and turned hostile. The Trial Court itself has arrived at a conclusion that the demand of bribe has not been established by the prosecution, but despite that, the Trial Court has convicted the Appellant, which is not sustainable. It was further argued that the Trial Court has arrived at a further conclusion that the recovery of tainted money is proved, but the Appellant had accepted that tainted money as illegal gratification, no evidence is available on record in this regard and, therefore also, the conviction is not sustainable. There are material contradictions and omissions in the statements of the panch witnesses and, therefore, their statements are not reliable.

6. Opposing the above arguments, Learned Counsel appearing for the Respondent/Central Bureau of Investigation (CBI) supported the impugned judgment. He argued that though Complainant Brijesh Singh (PW2) has not supported the case of the prosecution and turned hostile, both the panch witnesses, namely, L.K. Trivedi (PW4) and Anjlus Xalxo (PW6) have supported the case of the prosecution. Therefore, the Trial Court has rightly convicted the Appellant.

7. I have heard the rival contentions urged on behalf of the parties and perused the entire material available including the statements of witnesses with due care.

8. Present is a case of demand and acceptance of illegal gratification other than legal remuneration by misusing the office by a public servant/Appellant. A heinous offence relating to a public servant is sufficient for termination of his services. Degree/standard of proof of ingredients of the offence is high and the prosecution is required to prove the offence by adducing cogent evidence without leaving any room for doubt or ambiguity.

9. In case of an illegal gratification, there are three essential ingredients to constitute the offence. They are (i) demand, (ii) acceptance and (iii) recovery.

10. In **(2009) 3 SCC 779 (C.M. Girish Babu v. CBI, Cochin, High Court of Kerala),** the Supreme Court held thus:

> "**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."

11. Further, in **(2014) 13 SCC 55 (B. Jayaraj v. State of Andhra Pradesh),** it was held by the Supreme Court 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.

8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext. P-11) before LW 9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW 1 and the contents of Ext. P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13(1)(d)(i) and (ii) is concerned as 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 established.

9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent.”

12. Further, in **(2015) 10 SCC 152 (P. Satyanarayana Murthy v. District**

Inspector of Police, State of Andhra Pradesh), the Supreme Court held as follows:

> "**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* v. *State of A.P.*, (2014) 13 SCC 55, in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Sections 13(1)(d)(i) and (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasised, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.
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> **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."

13. In **(2015) 11 SCC 314 (C. Sukumaran v. State of Kerala),** it was held by the Supreme Court as under:

> "**13**. With reference to the abovementioned rival legal contentions urged on behalf of the parties and the evidence on record, we have examined the concurrent finding of the fact on the charge made against the appellant. It has been continuously held by this Court in a catena of cases after interpretation of the provisions of Sections 7 and 13(1)(d) of the Act that the demand of illegal gratification by the accused is the sine qua non for constituting an offence under the provisions of the Act. Thus, the burden to prove the accusation against the appellant for the offence punishable under Section 13(1)(d) of the Act with regard to the acceptance of illegal gratification from the complainant PW2, lies on the prosecution."

14. Reiterating the judgment of **B. Jayaraj case** (supra) and **P. Satyanarayana Murthy case** (supra), again, in **(2016) 3 SCC 108 (Krishan Chander v. State of Delhi)**, it was held by the Supreme Court thus:

> "**35**. It is well-settled position of law that the demand for the bribe money is sine qua non to convict the accused for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. The same legal principle has been held by this Court in *B. Jayaraj* v. *State of A.P.*, (2014) 13 SCC 55, *A. Subair* v. *State of Kerala*, (2009) 6 SCC 587 and *P. Satyanarayana Murthy* v. *State of A.P.*, (2015) 10 SCC 152 upon which reliance is rightly placed by the learned Senior Counsel on behalf of the appellant."

In paragraph 39, it was further held by the Supreme Court thus:

> "**39**. In view of the aforesaid reasons, the approach of both the trial court and the High Court in the case is erroneous as both the courts have relied upon the evidence of the prosecution on the aspect of demand of illegal gratification from the complainant Jai Bhagwan (PW2) by the appellant though there is no substantive evidence in this regard and the appellant was erroneously convicted for the charges framed against him. The prosecution has failed to prove the factum of demand of bribe money made by the appellant from the complainant Jai Bhagwan (PW2), which is the sine qua non for convicting him

> for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. Thus, the impugned judgment and order [*Krishan Chander* v. *State of Delhi,* 2014 SCC OnLine Del 2312] of the High Court is not only erroneous but also suffers from error in law and therefore, liable to be set aside."

15. Recently, in **(2021) 3 SCC 687 (N. Vijayakumar v. State of Tamil Nadu),** reiterating the judgment of **C.M. Girish Babu case** (supra) and **B. Jayaraj case** (supra), it was held by the Supreme Court as follows:

> "**26**. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in *C.M. Girish Babu* v. *CBI*, (2009) 3 SCC 779 and in *B. Jayaraj* v. *State of A.P.*, (2014) 13 SCC 55. In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d) (i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court.
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> **27**. The relevant paras 7, 8 and 9 of the judgment in *B. Jayaraj* v. *State of A.P.*, (2014) 13 SCC 55 read as under: (SCC pp. 58-59)
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> > "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.

8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext.P-11) before LW9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW1 and the contents of Ext. P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13(1)(d)(i) and (ii) is concerned as 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 established.

9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is

> concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent."

The abovesaid view taken by this Court fully supports the case of the appellant. In view of the contradictions noticed by us above in the depositions of key witnesses examined on behalf of the prosecution, we are of the view that the demand for and acceptance of bribe amount and cellphone by the appellant, is not proved beyond reasonable doubt. Having regard to such evidence on record the acquittal recorded by the trial court is a "possible view" as such the judgment [*State of T.N.* v. *N. Vijayakumar*, 2020 SCC OnLine Mad 7098] of the High Court is fit to be set aside. Before recording conviction under the provisions of the Prevention of Corruption Act, the courts have to take utmost care in scanning the evidence. Once conviction is recorded under the provisions of the Prevention of Corruption Act, it casts a social stigma on the person in the society apart from serious consequences on the service rendered. At the same time it is also to be noted that whether the view taken by the trial court is a possible view or not, there cannot be any definite proposition and each case has to be judged on its own merits, having regard to evidence on record."

16. In the light of above view taken by the Supreme Court, I shall examine the facts and statements of witnesses of the present case. In the instant case, Complainant Brijesh Singh (PW2), in his examination-in-chief, has not supported the case of the prosecution. He has deposed that he had met with the Appellant for lifting of the coal. The Appellant expressed his little bit reluctance. On this, he thought that the Appellant was demanding money. He has further deposed that the Appellant had not demanded bribe, but he was expressing reluctance for lifting of the coal. Therefore, he lodged a complaint in the Central Bureau of Investigation that the Appellant was demanding bribe. In paragraph 4 of his examination-in-chief, this witness has further stated that Anjlus Xalxo (PW6) and he went to the house of the Appellant at the time of trap. After entering the house of the Appellant, this witness told to the Appellant that he wanted early lifting of the coal and, therefore, he may take money. Since the Appellant was going to take bath, this witness put the money on a table of the house of the Appellant and thereafter he came out of the house. This witness has been declared hostile by the prosecution. When this witness was cross-examined by the prosecution, he supported the case of the prosecution on some points. When this witness was cross-examined by the defence, again he supported the case of the defence. This witness has further admitted that on an earlier point of time also, he had made a complaint against an Engineer of Nagar Nigam, Bilaspur, namely, Ram Kumar Tiwari, which was found to be false. It has been further admitted by this witness that for making loot from truck drivers by showing himself to be an officer of the Crime Branch, a criminal case is pending against him. He has further admitted that different criminal cases are pending against him at Bilaspur and Katghora.

17. On a minute examination of the statement of Complainant Brijesh Singh (PW2), it is well established that he has a criminal background. Earlier also, he had made a false complaint against an Engineer of Nagar Nigam, Bilaspur Ram Kumar Tiwari. With regard to the Appellant also, he has made contradictory statements and, therefore, he has been declared hostile by the prosecution. Looking to the entire statement of this witness, the Trial Court has rightly arrived at the conclusion that this witness is not a credible witness and based on his statement, initial demand is not established.

18. As argued by Learned Counsel appearing for the Respondent/CBI, Panch Witnesses L.K. Trivedi (PW4) and Anjlus Xalxo (PW6) have supported the case of the prosecution and from perusal of their statements, demand of bribe is established. I have gone through the statements of L.K. Trivedi (PW4) and Anjlus Xalxo (PW6) with utmost circumspection. According to the case of prosecution, at the time of trap, L.K. Trivedi (PW4) had stayed out of the house of the Appellant and from there he had heard the talks took place inside the house between Complainant Brijesh Singh (PW2) and the Appellant. Along with Complainant Brijesh Singh (PW2), Anjlus Xalxo (PW6) had gone inside the house of the Appellant and the Appellant had demanded and accepted the bribe from Complainant Brijesh Singh in presence of Anjlus Xalxo (PW6).

19. In his Court statement, Panch Witnesses L.K. Trivedi (PW4) and Anjlus Xalxo (PW6) have deposed that both of them went along with Complainant Brijesh Singh (PW2) to the house of the Appellant. Brijesh Singh (PW2) pushed the door bell of the house of the Appellant. The Appellant opened the door of his house. Brijesh Singh (PW2) and Anjlus Xalxo (PW6) went inside the house of the Appellant and L.K. Trivedi (PW4) stayed out and remained stood up near the door of the house of the Appellant. According to the statement of L.K. Trivedi (PW4), after returning inside his house, the Appellant made some calculation and told that it will be Rs.3575. On this, Complainant Brijesh Singh (PW2) took out sum of Rs.3575 and gave the same to the Appellant. Anjlus Xalxo (PW6) has also supported the above statement. According to the statement of L.K. Trivedi (PW4), he was standing out of the house of the Appellant and a curtain had fallen over the entry door of the house of the Appellant. In the circumstance, how L.K. Trivedi (PW4) witnessed the alleged activities of making calculation, demanding and accepting bribe took place inside the house has not been stated by him. This witness, in paragraph 27 of his cross-examination, has admitted the fact that when the proceedings were going on, he, with a view that he would be required to give evidence in the Court, had prepared a note and he made his statement in the Court according to that note. It appears that this witness is an interested witness. Therefore, his statement is suspicious. His statement does not inspire confidence of the Court to hold the Appellant guilty.

20. Now, I shall examine the evidence of Anjlus Xalxo (PW6) regarding demand and acceptance of the bribe money. According to the Court statement of this witness, he along with Complainant Brijesh Singh (PW2) went inside the house of the Appellant. Thereafter, Brijesh Singh (PW2) talked with the Appellant about lifting of the coal. Brijesh Singh (PW2) told to the Appellant that 275 metric tonnes of coal was to be lifted. On this, the Appellant made a calculation on a paper and told to Brijesh Singh (PW2) that it will be Rs.3575. Thereafter, Brijesh Singh (PW2) gave sum of Rs.3575 to the Appellant. It is the case of the prosecution that at the rate of Rs.13 per metric ton, initially, the Appellant had made demand of bribe of Rs.3575 for lifting of the total 275 metric tonnes coal. In his initial complaint, Complainant Brijesh Singh (PW2) has mentioned about demand of this amount of Rs.3575 and he had given this much amount only to the Central Bureau of Investigation for trap proceedings. In these circumstances, at the time of trap, when, according to the statement of Complainant Brijesh Singh (PW2), everything was already discussed, calculated and settled between him and the Appellant regarding the bribe money, in presence of Anjlus Xalxo (PW6), the Appellant would have again made calculation for lifting of the same quantity of 275 metric tonnes coal and thereafter would have demanded bribe of Rs.3575 from Brijesh Singh (PW2) appears to be suspicious. When the bribe money was already discussed, calculated and settled, in presence of Anjlus Xalxo (PW6), it was re-calculated and thereafter demanded appears to be doubtful.

21. On a minute examination of the evidence on record, it is clear that Complainant Brijesh Singh (PW2) is not a credible witness. It is the finding of the Trial Court that on the statement of this witness, initial demand is not established. L.K. Trivedi (PW4), as already discussed above, is an interested witness and, therefore, his statement is not reliable. The statement of Anjlus Xalxo (PW6) does not inspire confidence of the Court to hold the Appellant guilty. From the entire evidence adduced by the prosecution, demand of bribe, in any way, is not established. Though recovery of money is proved, the Appellant had accepted that money as bribe or illegal gratification is not established. On appreciation of the evidence adduced by the prosecution, the Appellant is entitled to get benefit of doubt.

22. As an outcome of the discussion made above, the instant appeal is allowed. The judgment of the Trial Court under challenge is set aside. The Appellant is acquitted of the charges framed against him.

Sd/-

(**Arvind Singh Chandel**)
JUDGE

Gopal