IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

C.R.A 12 of 2015

Sujit Kumar Pandey

Vs.

C.B.I

With

CRA 14 of 2015

With

CRAN 1 of 2015 (Old CRAN 384 of 2015)

CRAN 2 of 2021

Sunil Kumar Shaw,

since deceased represented by Legal Representative

Vs.

C.B.I

For the Appellant No.1:	Mr. Sudipto Maitra, Sr. Adv.,
	Mr. Vijay Verma, Adv.,
	Mr. Dwaipayan Biswas, Adv.
For the Appellant:	Mr. Sudhanshu S. Pandey, Adv.,
	Mr. Dipanjan Dutta, Adv.
For C.B.I:	Ms. Chandreyi Alam (Gupta), Adv.,
	Mr. Amajit De. Adv.

Heard on: 23.12.2021, 24.12.2021, 25.01.2022, 27.01.2022, 31.01.2022, 01.02.2022, 03.02.2022, 04.02.2022.
Judgment on: 02.03.2022.

BIBEK CHAUDHURI, J. : –

1. These two appeals are by two accused persons who stood trial in Special Case No.2 of 2004 initiated by the Central Bureau of Investigation, CBI for short. The appellant No.1 stand convicted and sentenced for committing offence found to be punishable under Section 7 and under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and the appellant No.2 stand convicted and sentenced for committing offence punishable under Section 120B of the Indian Penal Code with Sections 7 and 13(2) with 13(1)(d) of the Prevention of Corruption Act, hereinafter described as the said Act.

2. Charges were framed against appellant No.1 Sujit Kumar Pandey commission of offence punishable under Section 120B of the IPC, secondly, Section 7 of the said Act. Thirdly, Section 13(1)(d) of the said Act and fourthly, under Section 12 of the said Act. The appellant in CRA 12 of 2015 was charged under two heads, viz., Section 7 of the said Act and Section 120B of the IPC. The court below found that the charge against the appellant was established and on such basis they were found guilty of having committed offences punishable under Sections 7 and 13(1)(d) of the said Act. The appellant in CRA 14 of 2015 was also found convicted for committing offence under Section 120B of the IPC along with the penal provisions under the Prevention of Corruption Act.

3. I have heard the learned Counsels appearing for the appellant in CRA 12 of 2015 and CRA 14 of 2015. I have also heard the learned prosecutor on behalf of the CBI.

4. Mr. Sudipto Maitra, learned Advocate for the appellant Sujit Kumar Pandey in CRA 12 of 2015 at the outset submits that the genesis of the prosecution case is shrouded with cloud. Appellant Sujit Kumar Pandey is an Inspector of Railway Protection Force (RPF). He was posted at Naihati RPF post during December, 2013. As Inspector of RPF, he conducted raid in connection with the cases of theft of railway properties. The defacto complainant along with his entire family members were engaged in dealing with unlawfully obtained the railway properties. The appellant lodged a complaint against the complainant, PW1 Md. Wakil Answari. The said case under Section 3(a) of the Railway Properties (Unlawful Possession) Act was pending in the court of the magistrate at Barrackpore. The defacto complainant was arrested by the appellant No.1. The appellant No.1 also conducted raid in the godown of the mother of the complainant. His mother was also arrested in connection with another case under Section 3(a) of the RP(UP) Act. It is further argued by Mr. Maitra that the complainant, PW1 was granted bail in connection with Criminal Complaint No.547 of 2003 on 17th November, 2003 by the learned Magistrate, Barrackpore on condition to meet the investigating officer once in every week. Therefore, the PW1 was required to report the appellant one day in a week. The evidence on record further suggests that the appellant virtually caused immense damage to the illegal business of

scrap iron materials of the complainant. Therefore, in order to take revenge the complainant lodged a complaint against the appellant on 20^{th} January, 2004 with the CBI. It is further argued by Mr. Maitra that when the relation between the defacto complainant and the appellant is such that false implication of the appellant may not be ruled out, it is the duty of the court to consider the evidence adduced on behalf of the prosecution with due care and circumspection. Mr. Maitra submits that that prosecution came up with the story against the appellant that Inspector Sujit Kr. Pandey demanded a sum of Rs.5000/- as bribe from PW1. He also insisted him to pay the said money to another appellant, named, constable Sunil Kumar Shaw and only after payment of such amount, Inspector Sujit Kumar Pandey would record his presence at RPF post as a condition for bail. It is submitted by the learned Counsel for the appellant that illegal demand of money and acceptance of the sum are the two basic ingredients of offence under Section 13(1)(d) of the said Act. In other words, demand of bribe and acceptance thereof by the accused shall be in course of the same transaction. According to Mr. Maitra mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7, since demand of illegal gratification is sine-qua-non to constitute the said offence. The above also will be conclusive insofar as the offence under Section 13(1)(d) 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. 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. Unless there is proof of demand of illegal gratification proof of acceptance will not follow. In support of his contention Mr. Maitra refers to the following decision:-

(i) **N. Sunkanna vs. State of Andhra Pradesh, (2016) 1 SCC 713.**

(ii) **Mukhtiar Singh vs. State of Punjab, (2017) 8 SCC 136.**

(iii) **C. Sukumaran vs. State of Kerala, (2015) 11 SCC 314.**

5. It is further urged by Mr. Maitra that the prosecution proposed to make out two alternative cases. First, it is the case of the prosecution that the Inspector Sujit Kumar Pandey demanded a sum of Rs.5000/- as bribe from PW1 for recording his attendance in the RPF post at Naihati as a condition for bail. Secondly, it is the case of the prosecution that appellant Sujit Kumar Pandey and appellant Sunil Kr. Shaw conspired together to receive illegal gratification from the complainant. In this regard the case of the prosecution is that accused Sujit Kumar Pandey asked PW1 to handover a sum of Rs.5000/- to constable Sunil Kumar Shaw. There is absolutely no evidence to the effect that accused Sunil Kumar Shaw had any stake over the incident. Even assuming the prosecution case to be true on its face value, it would be found that the appellant Sujit

Kumar Pandey allegedly directed PW1 to deposit a sum of Rs.5000/- with Sunil Kumar Shaw. Therefore, Sunil Kumar Shaw might be treated as bearer or carrier of some money on behalf of his superior inspector Sujit Kumar Pandey.

6. Mr. Maitra has further pointed out that in order to prove the allegation of demand and acceptance of illegal gratification, the prosecution relied upon the evidence of PW1, PW2 and PW12. PW2 Asraf Ali is a close associate of the younger brother PW1. In cross examination of PW2 it is found that he has visiting terms in the house of PW1. It is further found from his cross examination that PW1 took him to RPF post at Naihati and met Inspector Sujit Kumar Pandey on 9th December, 2003. He also accompanied PW1 to CBI Office on 20th January, 2004 on which date, PW1 lodged complaint against the appellant.

7. PW12 Prayas Dansana is another trap witness. It transpires from his evidence that he visited Naihati Station and Naihati RPF post with Wakil Answari prior to 20th January, 2004. Thus, Mr. Maitra has raised a question as to whether PW2 and PW12 with whom PW1 had previous acquaintance, could be treated as independent trap witnesses. If the court is not in a position to treat the evidence of PW2 and PW12 as independent witnesses to the trap, the entire prosecution case on demand and acceptance of money falls flat.

8. Learned Advocate for accused Sujit Kumar Pandey next draws my attention to the charge framed under Section 120B of the IPC. The said charge reads thus:-

"that you on 20.1.2004 while functioning as inspector in Railway Protection Force and posted at Naihati to obtain gratification, other than legal remuneration and in pursuance thereof, you illegally demanded bribe money of Rs.5000/- from Md. Wakil Answari, the complainant of this case and accepted the sum through Sunil Kumar Shaw, constable in the discharge of official duty for signing the attendance of Md. Wakil Answari (i.c Complainant) in his attendance book to get marked his attendance as per the order of learned S.D.J.M, Barrackpore and you thereby committed offence punishable under Section 120B of the IPC and within the cognizance of this Court."

9. It is submitted by Mr. Maitra that the offence of criminal conspiracy consists in meeting of minds of two or more persons for agreeing to do or causing to be done an illegal act or an act by illegal means, and the performance of an act in terms thereof. If pursuant to the criminal conspiracy, the conspirators commits several offences, then all of them will be liable for the offences, even if some of them actively participated in the commission of the offence. In the instant case, the prosecution failed to produce any evidence in support of the charge of conspiracy allegedly committed by accused Sujit Kumar Pandey with constable Sunil Kumar Shaw. The evidence on record suggests that Sujit Kumar Pandey allegedly directed PW1 to pay a sum of Rs.5000/- as illegal gratification in the hand of Sunil Kumar Shaw. There is no evidence on record that Sunil Kumar Shaw took part in demanding such illegal gratification or

committing criminal conspiracy to collect the said amount of money or any portion thereof for his own use. Even if the prosecution case is believed and the evidence on record is accepted on its face value, then also accused Sunil Kumar Shaw cannot be held guilty for criminal conspiracy to commit offence punishable under Section 7 read with Section 13(1)(d) or Section 12 of the Prevention of Corruption Act. Thus, it is contended by Mr. Maitra that when two accused persons were charged with criminal conspiracy, but evidence against one of the accused did not prove the charge, charge against the other will consequently fail as the accused could not have conspired with himself.

10. Referring to a judgment of the Hon'ble Supreme Court in **N. Vijayakumar vs. State of Tamil Nadu** reported in (**2021) 3 SCC 687**, it is submitted by the learned Counsel for accused Sujit Kumar Pandey that in so far as the offence under Section 7 of the said Act is concerned, it is a settled position in law that demand of illegal gratification is sine-qua-non to constitute the said offence and merely 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. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the charge under Section 7 of the said Act. Legal position will also be conclusive in so far as the offence under Section 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. In so far 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.

11. It is further submitted by the learned Counsel for the accused that there are glaring contradictions in the deposition of key witnesses examined on behalf of the prosecution. In order substantiate his contention, he refers to the relevant portion of the evidence of PW1, PW2 and PW12. In his evidence PW1 stated that at about 6.30 pm he, Md. Asraf Ali (PW2) and (PW12) Prayas Dansana reached the office of RPF and Sunil Kumar Shaw reported their arrival to accused Sujit Kumar Pandey. So as per PW1 on 20th January, 2004, he first met accused Sunil Kumar Shaw. On the contrary during cross examination of PW2 stated that PW1, PW2 and PW12 went straight to the office chamber of Inspector Sujit Kumar Pandey and met him. Then Sujit Kumar Pandey called Sunil Kumar Shaw. PW12 gave completely different picture in respect of the chain of the circumstances. According to PW12 Prayas Dansana on 20th January, 2004 they met Sunil Kumar Shaw on the platform of Naihati Station and Sunil Kumar Shaw took them to the chamber of Sujit Kumar

Pandey. It is submitted by Mr. Maitra that in view of the contradictions in the deposition of key witnesses examined on behalf of the prosecution as well as in the absence of any evidence that inspector Sujit Kumar Pandey demanded the bribe amount and it was handed over to Sunil Kumar Shaw under the instruction of Sujit Kumar Pandey, the prosecution case is not proved beyond reasonable doubt. In support of his submission, Mr. Maitra also refers to a decision of Supreme Court in the case of **Panalal Damodar Rathi vs. State of Maharashtra** reported in **AIR 1979 SC 1191** to buttress his argument on the point of the requirement of proving demand and acceptance of illegal gratification by producing cogent and reliable evidence.

12. The facts of Mukhtiar Singh (supra) is almost similar to the facts of the case in hand. In the said report, the complainant was a constable of traffic police. A case under Section 498A IPC was registered against him. The Investigating Officer demanded a sum of Rs.3000/- where after negotiation it was scaled down to Rs.2000/- so as to favour the complainant in the case. He lodged a complaint against the said sub-inspector with Deputy Superintendent of Police. A trap was laid. The complainant went to the police station and met the sub-Inspector and Inspector of Police. On being asked as to whether the money had been brought or not, the complainant answered in the affirmative and he handed over Rs.2000/- to the sub-inspector who received the same and after counting the money kept in a cardboard box. The Hon'ble Supreme Court on overall appreciation of evidence on record in the context of

elucidation of law pertaining to proof of ingredients of Section 7 and 13 of the said Act, was pleased to record that the prosecution failed to prove the charge leveled against the accused beyond all reasonable doubt because the prosecution failed to prove that the accused demanded money from the complainant. Mr. Maitra also relies on a decision of the Hon'ble Supreme Court in **Dashrath Singh Chauhan vs. Central Bureau of Investigation** reported in **(2019) 17 SCC 509**. It is held by the Hon'ble Supreme Court in this report that it is necessary for the prosecution to prove the twin requirement of demand and the acceptance of the bribe amount by the appellant. It is clear from the evidence on record that accused Sujit Kumar Pandey did not receive or accept the bribe money. It was allegedly received by Sunil Kumar Shaw. In the absence of any evidence to prove that appellant Sujit Kumar Pandey directly accepted the money from the complainant, charge under Section 7 and Section 13(1)(d)(i)(ii) cannot be said to have been proved against the accused. Thus, it is submitted by the learned Counsel for accused Sujit Kumar Pandey that the conclusion of the court below leading to the conviction of the accused persons on both the counts are contrary to law and the reasons stated by the court below to hand down such order of conviction is unsustainable.

13. Mr. Sudhanshu S. Pandey, learned Advocate for accused Sunil Kumar Shaw in his argument reemphasizes the fact of the case. He further submits that in order to bring home a charge under Section 7 and Section 13(1)(d)(i)(ii) the prosecution is under obligation to prove the

demand and acceptance of illegal gratification or bribe against the accused. The first stage is demand of bribe money anterior to the trap and secondly laying of trap and recovery of bribe money from the possession of the accused. Acceptance of some amount of money from the complainant allegedly paid as bribe is completely irrelevant. It is submitted by Mr. Pandey that the trial court's judgment is passed entirely on acceptance of money. The prosecution has hopelessly failed to prove demand of illegal gratification by accused Sunil Kumar Shaw. Therefore, the impugned judgment and order of conviction and sentence cannot be sustained.

14. It is further submitted by Mr. Pandey that the complainant (PW1) had strong motive to implicate the accused persons in a false case. It is not in dispute that the complainant is an accused in a case under Section 3(a) of the RP (UP) Act. The mother and brother of the complainant were also made accused in other cases under Section 3(a), RP (UP) Act. Accused Sujit Kumar Pandey was the Investigating Officer and he lodged complaint against the complainant. The complainant was in custody for few days and thereafter he was released on bail. Therefore, the official act of accused Sujit Kumar Pandey in implicating the complainant for unlawful possession of railway properties ought to have been taken to be considered while appreciating the evidence and interestedness of the witnesses. The complainant visited RPF post at Naihati for six or seven times before lodging the complaint. The independent trap witnesses, viz., PW2 is closely associated with the younger brother of the complainant and the complainant himself and PW12 Prayas Dansana visited the

complainant's house and Naihati Station prior to trap. Therefore, the evidence of the trap witnesses cannot be taken into consideration. Mr. Pandey draws my attention to Clause 17.34 and 17.35 of the Central Bureau of Investigation (Crime) Manual, 2005. The said provisions are reproduced below:-

> **17.34** Whenever the CBI/SPE desires to lay a trap in the office for any public servant, who is suspected to be about to accept a bribe, the Special Police Establishment will give prior information to the Head of the Department/Office concerned. If the circumstances of the same cannot be permit this being done, the Special Police Establishment will furnish details of the case to the Head of the Department/Office immediately after the trap.
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> **17.35** In trap cases, it is necessary that some responsible and impartial person or persons should have witnessed the transaction and/or overhear the conversation of the suspect public servant. All public servants particularly Gazetted Officers, should assist and witness a trap whenever they are approached by the Special Police Establishment. The Head of Department/Office will, when requested by CBI/SPE, detail a suitable person/persons to be present at the scene of the trap. Refusal to assist or witness a trap on the part of a public servant will be regarded as a breach of duty and disciplinary action may be taken against him.

15. On the point of prosecution's obligation to prove both demand and acceptance of bribe money by the accused, the learned Advocate for

accused Sunil Kumar Shaw refers to the following decision of the Hon'ble Supreme Court:

a) **Suraj Mal vs. State (Delhi Administration), (1979) 4 SCC 725**

b) **N. Vijayakumar vs. State of Tamil Nadu, 2021 SCC Online SC 53**

c) **B. Jayaraj vs. State of Andhra Pradesh, (2014) 13 SCC 55**

d) **Prabhat Kumar Gupta vs. State of Jharkhand & Anr, (2014) 14 SCC 516**

e) **State of Punjab vs. Madan Mohan Lal Verma, (2013) 14 SCC 153.**

16. Ms. Chandreyi Alam, learned Counsel for the respondent, CBI on the other hand, submits that the learned Advocates for the appellant tried to cast a cloud on the genesis of the prosecution case. It is not disputed, rather admitted that complainant was an accused of a criminal case for committing an offence punishable under Section 3(a) of RP (UP) Act. He was granted bail by the learned Magistrate on condition to meet the Investigating Officer once in a week. The accused complied with the said order but subsequently the Investigating Officer demanded bribe of Rs.5000/- from him. A question was raised by the learned Counsel for the appellant that when a criminal case is pending against the defacto complainant and he was directed to meet the Investigating Officer as a condition of bail why he did not inform the matter to the learned

Magistrate when the Investigating Officer refused to record his attendance unless he would be paid a sum of Rs.5000/- as bribe. According to the learned Counsel for the CBI two courses were open to the complainant. He could have informed the matter to the learned Magistrate or he could lodge a complaint against the Officer who demanded bribe from him. The complaint opted for the second course of action. The complaint with the CBI should not be looked into with suspicion due to criminal antecedent of the complainant.

17. It is further submitted by Ms. Alam that the Investigating Officer demanded bribe from the complainant for recording his attendance at RPF post on 6th January, 2004. On that date he did not pay the said amount and his attendance was not recorded. Inspector S.K. Pandey then asked him to report on 20th January, 2004 and pay a sum of Rs.5000/- to Sunil Kumar Shaw. The incident that happened before 20th January, 2004 when the complainant lodged complaint with the CBI should be looked into and if the evidence on record is assessed properly, the chain of circumstances in respect of the charge under Section 120B of the IPC would be found to be established. On 6th January, 2004 Inspector S.K. Pandey directed the complainant to pay Rs.5000/- to Sunil Kumar Shaw. On 20th January, 2004 in the evening Sunil Kumar Shaw accepted the envelop containing money in presence of S.K Pandey. He counted the currency notes and on being satisfied that a sum of Rs.5000/- was paid, he had kept it inside the pocket. According to the learned Counsel for the CBI the entire chain of circumstances from 6th January, 2004 to 20th

January, 2004 proves meeting of minds of Inspector S.K. Pandey and constable Sunil Kumar Shaw and the learned trial court rightly held that the accused persons are guilty for committing offence punishable under Section 120B of the Indian Penal Code. In support of her contention learned Counsel for the CBI has placed reliance on the decision of the Hon'ble Supreme Court in the case of **Rajiv Kumar vs. State of Uttar Pradesh & Anr**. reported in **(2017) 8 SCC 791**. The ingredients of criminal conspiracy are summarized in the aforesaid decision in the following words:-

i) An agreement between two or more persons;

ii) The agreement must relate to doing or causing to be done either

(a) An illegal act; or (b) an act which is not illegal in itself but is done by illegal means. It is, therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine qua non of criminal conspiracy. It is extremely difficult to adduce direct evidence to prove conspiracy. Existence of conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. In some cases indulgence in the illegal act or legal act by illegal means may be inferred from the knowledge itself.

18. It is submitted by Ms. Alam that accused Sunil Kumar Shaw had the knowledge that Inspector S.K. Pandey demanded bribe of Rs.5000/- from the complainant and he would have to collect the said money on behalf of accused S.K. Pandey.

19. It is further submitted by Ms. Alam that accused S.K Pandey had the duty to record attendance of the complainant in RPF post. It was a part of his public duty. He denied to perform such public duty unless bribe be paid to him. He also induced accused Sunil Kumar Shaw to accept the bribe. Thus, both the accused persons were rightly held guilty for committing offence under Section 120B read with Section 7(a) and (c) of the said Act. Ms. Alam next submits that the learned Advocates on behalf of the appellant have not raised any question in respect of the evidence adduced by the witnesses on behalf of the prosecution regarding pre-trap arrangement. The appellants have also not questioned on the legality of the sanction for prosecution obtained by the CBI. So far as the apprehension of the accused persons red handed at the spot, is not denied by the appellant. In view of such evidence on record, the order of conviction passed by the learned court below cannot be set aside. In support of his contention learned Counsel for the CBI refers to a decisions of this Court in the case of the **Central Bureau of Investigation vs. Joydeb Ghatak & Anr**. reported in **(2018) 1 C Cr LR (Cal) 156.**

20. During trial 13 witnesses were examined on behalf of the prosecution. One Ashim Das, Inspector of RPF at Naihati RPF post was examined as DW1. It is already recorded that amongst the witnesses, PW1 is the complainant, PW2 Asraf Ali and PW12 Prayas Dansana are the trap witnesses. PW3 Prosun Ghosh, PW9 T. Bardhan, Inspector of CBI and PW10 Mayukh Maitra, Inspector of police CBI (Special Unit), Kolkata are the post trap witnesses. PW4 is a retired Chief Security Commissioner of Eastern Railway. He issued sanction for prosecution against the accused persons. PW6 Sanjay Kumar Dwivedi and PW7 Sandeep Kumar Ravivanshi are the witnesses of seizure of certain documents from the RPF post Naihati by the Investigating Officer of CBI in connection with this case. PW8 Bimal Chandra Purkait is the Senior Scientific Officer of CFSL. PW11 Ms. Rubi Chaudhuri is the Inspector of Police of CBI who mixed phenolphthalein powder in the currency notes which was alleged paid to Sunil Kumar Shaw as per the demand of Inspector S.K Pandey by the complainant. PW13 is the Investigating Officer of the case.

21. If the evidence of PW1 and PW10 Moyukh Maitra under whose leadership the trap was laid and the accused persons/appellants were arrested is compared side by side, one can find that PW10 who is a responsible officer of the CBI tried to make out a new case in order to substantiate the reason of lodging complaint with CBI by the complainant. While the complainant stated in his complaint as well as in evidence that Inspector S.K Pandey demanded illegal gratification of Rs.5000/- from him for recording his attendance in RPF post, PW10

stated that the appellant No.1 demanded bribe of Rs.5000/- from the complainant for acknowledging the attendance of the complainant and also for not falsely implicating any of his family members in a case under the RP(UP) Act. Exoneration of family members of the complainant from case/cases under RP(UP) Act was not a reason for demand of bribe allegedly made by the appellant No.1.

22. It is rightly pointed out by the learned Advocates for the appellants that the CBI could not offer any reason as to why the entire case record of the case under Section 3(a) of the RP(UP) Act against the complainant was seized by CBI during investigation. As a result of seizure of entire case diary, the criminal case against the complainant could not be proceeded with. The said case record was not exhibited during trial. Therefore, the said case diary was not required by the CBI. Does it mean that CBI wants to see that trial of the case filed against the complainant might not be proceeded with? The answer is unknown.

23. On careful perusal of the evidence of PW2 and PW12 I am in agreement with the learned Counsels for the appellant that they are not the independent witnesses to the trap as depicted by the CBI. The PW2 is a close associate with younger brother of the complainant. He accompanied with PW1 to the RPF post even prior to 20th January, 2004.

24. PW 12 Prayas Dansana visited the house of the complainant prior to 20th January, 2004. He also visited Naihati Railway Station with the complainant prior to the date of arrest of the appellants. In almost all decisions the Hon'ble Supreme Court consistently laid down the settled

proposition of law that mere possession and recovery of currency notes from the accused without proof of demand will not bring him the evidence under Section 7, since the demand of illegal gratification is sine-qua-non to constitute the offence. The position of law also will be conclusive in so far as offence under Section 13(1)(d) is concerned. As in the absence of proof of demand of 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. It is only on proof of acceptance of illegal gratification, presumption can be drawn under Section 20 of PC Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification, proof of acceptance will not follow.

25. In the instant appeal except the complainant, PW1 there is no corroborative evidence to prove that the appellant no.1 demanded bribe from the complainant. Such corroborative evidence is absolutely necessary under the facts and circumstances of the case, especially when the relation between the complainant and the appellant no.1 was inimical. The complainant had obvious grudge against appellant no.1 because he not only implicated the complainant in a case under the RP(UP)Act, he conducted raid in the godown of his mother and brother and initiated separate cases of theft of railway properties against them. Under such circumstances it was absolutely necessary to produce corroborative evidence to proof demand of bribe by the appellant.

26. There is absolutely no evidence against appellant no.2 in respect of the charge under Section 120B IPC. The appellant no.2 never demanded for any illegal gratification from PW1. Even if the case of CBI is accepted, he received the money under the instruction of his superior officer there is absolutely no evidence to prove criminal motive or mens rea of appellant Sunil Kumar Shaw.

27. Last but not least, it is necessary to record that the decision of a Coordinate Bench of this Court in the case of Joydeb Ghatak & Anr. (Supra) has been set aside by the Hon'ble Supreme Court in Criminal Appeal no.1645 of 2021(Suman Chandra vs. Central Bureau of Investigation) on 16th December 2021. Therefore, the aforesaid judgment cannot be held to be precedent while deciding the appeals in hand.

28. For the reasons stated above, this Court is of the view that the judgment and order of conviction and sentence passed by the learned Special Judge, CBI Court, Alipore, South 24 Parganas in special Case No.2 of 2004 is liable to be set aside.

29. Accordingly both the appeals are allowed on contest.

30. The judgment and order of conviction and sentence are set aside.

31. The appellant be acquitted from the charge and discharged from their respective bail-bonds.

(Bibek Chaudhuri, J.)