

IN THE HIGH COURT OF ORISSA, CUTTACK

CRLA No. 327 of 2016

From the judgment and order dated 18.06.2016 passed by the Special Judge (C.B.I.), Court No.IV, Bhubaneswar in T.R. Case No. 16 of 2012.

Rajeev Ranjan

.....

Appellant

-Versus-

Republic of India

.....

Respondent

For Appellant:

- Mr. Smruti Ranjan Mohapatra
Advocate

For Respondent:

- Mr. Sarthak Nayak
Special Public Prosecutor
(C.B.I.)

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Judgment: 09.11.2022

S.K. SAHOO, J. The appellant Rajeev Ranjan faced trial in the Court of learned Special Judge (C.B.I.), Court No. IV, Bhubaneswar in T.R. Case No. 16 of 2012 for offences punishable under section 7 and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereafter "1988 Act") on the accusation that on 09.03.2012 he being a public servant functioning as Tax

Assistant, Ward No.4, Income Tax Office, Ayakar Bhawan, Rourkela demanded Rs.8,000/- (rupees eight thousand only) from the complainant Manoranjan Mishra (P.W.11) in the office of Income Tax, Udit Nagar, Rourkela for processing the refund claim of the income tax assessee Smt. Sudaramani Singh (P.W.5) for the year 2010-11 (Assessment Year 2011-12) and accepted the said amount of Rs.8,000/- on 12.03.2012 as gratification other than legal remuneration for the above purpose.

The learned trial Court vide impugned judgment and order dated 18.06.2016 found the appellant guilty of the offences charged and sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs.5,000/- (rupees five thousand), in default, to undergo rigorous imprisonment for one month for the offence under section 7 of the 1988 Act and to undergo rigorous imprisonment for one year and to pay a fine of Rs.10,000/- (rupees ten thousand), in default, to undergo rigorous imprisonment for two months for the offence under section 13(2) read with section 13(1)(d) of the 1988 Act with a direction that both the sentences shall run concurrently.

2. P.W.11 lodged the written report before the Superintendent of Police, C.B.I., Bhubaneswar through D.S.P., C.B.I., Rourkela on 10.03.2012 stating therein that he submitted the I.T. return for the year 2011-12 of P.W.5 Smt. Sundarmani Singh, who was closely known to him at Income Tax Office, Ward No.4, Rourkela and a sum of Rs.17,862/- was claimed in that return as refund claim. On 09.03.2012 at about 3.00 p.m., he met the appellant in his office in Ward No.4 and asked about the refund claim. The appellant told him that on payment of Rs.8,000/- (rupees eight thousand) to him, he would process the file and send it to the Income Tax Officer. When P.W.11 asked the appellant as to why he would give so much of money, the appellant told him that unless such amount is paid, refund would not be given. The appellant then asked P.W.11 to give Rs.8,000/- (rupees eight thousand) to him on 12.03.2012 in the morning hours. P.W.11 stated in his report to take suitable action against the appellant for making such illegal demand.

The written report was received from P.W.11 at Rourkela C.B.I. Unit Office and forwarded to the office of Superintendent of Police, C.B.I., Bhubaneswar where on 11.03.2012 Mr. M.S. Khan, Superintendent of Police in-charge, C.B.I. registered R.C. No.2(A) of 2012 treating the written report

as F.I.R. (Ext.24) for commission of offence under section 7 of 1988 Act against the appellant and entrusted the case to P.W.13 Sachidananda Ratha, Inspector of police, C.B.I., Bhubaneswar for investigation.

P.W.13 decided to lay a trap on the appellant and requested D.S.P., C.B.I., Rourkela to arrange official witnesses to act as witnesses during trap. P.W.13 instructed P.W.11 to report him at C.B.I. Office, Rourkela on 12.03.2012 at about 10 a.m. with the money which he was intending to give to the appellant. As per arrangement, the trap party members assembled at C.B.I. Unit Office, Rourkela on 12.03.2012 at 10 a.m. P.W.6 Manas Kumar Pati and P.W.10 Brundaban Pradhan, the Inspectors of Vigilance, SAIL, Rourkela Steel Plant were also reported for the purpose of witnessing the trap proceeding. P.W.11 also reported at time as per previous instruction with an amount of Rs.8,000/- (rupees eight thousand) in the form of five numbers of Rs.1,000/- Government Currency notes (for short "GC notes") and six numbers of Rs.500/- GC notes which were to be used as trap money. P.W.11 was introduced to the trap party members by P.W.13. The written report of P.W.11 which was treated as F.I.R. was shown to the witnesses P.W.6 and P.W.10 who went through the same and put some questions to P.W.11

and was satisfied regarding the genuineness of the report. Solution of sodium carbonate and water was prepared in a clean glass tumbler which was colourless. The GC notes were treated with phenolphthalein powder. P.W.10 was asked to handle the said GC notes and then dip fingers of both the hands in the prepared solution which turned pink. The hand wash of P.W.10 was preserved in a clean glass bottle (M.O.I) and properly sealed, labeled and marked as 'D' and the trap party members signed the same. The tainted GC notes of Rs.8,000/- were kept in the left hand side shirt pocket of P.W.11 and instruction was given to him to handover the money to the appellant only on his demand. A pre-trap memorandum (Ext.12) was prepared at the spot in which all the witnesses signed. It was decided that P.W.11 along with P.W.6 would proceed to the Income Tax Office in a motor cycle followed by other team members. P.W.6 was instructed to act as overhearing witness and give signal to the trap party members after acceptance of tainted money by the appellant by brushing his hairs with fingers.

It is the further prosecution case that the trap party members left the C.B.I. office at 10.50 a.m. and reached near Ayakar Bhavan, Udit Nagar, Rourkela at 11.15 a.m. and by that time, P.W.11 along with P.W.6 had already reached there.

P.W.11 called the appellant over mobile phone and on getting his call, the appellant told him to wait outside. By that time, rest of trap party members had taken their positions in a scattered manner in the Ayakar Bhavan premises nearer to the place where P.W.11 was standing. After few minutes, the appellant came out of the office building and came near P.W.11. P.W.11 asked the appellant about the refund claim of P.W.5 Sudaramani Singh. The appellant enquired from P.W.11 as to whether he has brought the amount as was told to him on 09.03.2012. P.W.11 replied in the affirmative and the appellant stretched his right hand towards P.W.11 and the latter took out the tainted GC notes of Rs.8,000/- (rupees eight thousand) from his left side shirt pocket and handed it over to the appellant, who accepted it by his right hand, counted the same by both hands and then kept the same in his left hand side pant pocket. The appellant told P.W.11 that he would process the matter soon and saying so, he went inside his office. P.W.11 gave pre-arranged signal to the trap team members and on getting such signal, Investigating Officer (P.W.13) rushed towards the Income Tax Office building along with the team members including P.W.11 and both the witnesses. The appellant entered the office building and went inside the office room of I.T.O., Ward No.4 and the trap team

members also went inside the said room by following him. After entering into the office room of the I.T.O., P.W.13 introduced himself as well as other members of the trap team to the appellant and asked for his identity. Then the appellant identified himself as Rajeev Ranjan, Tax Assistant, Income Tax, Ward No.4, Income Tax Office, Rourkela. When P.W.13 challenged appellant as to why he demanded and accepted the bribe from P.W.11, the appellant fumbled and told that he had not demanded the amount, but accepted the same when given by P.W.11 on his own. Being further questioned, the appellant admitted that the IT Return of Sundaramani Singh (P.W.5) was submitted by P.W.11 on 08.09.2011 and the same was pending for processing. Hand washes of both the hands of the appellant were taken in sodium carbonate solution separately which was prepared then and there and the colour of the solution changed to pink which were collected in clean glass tumblers vide M.O.II and M.O.III. On being asked, the appellant took out the tainted GC notes from his left side front pant pocket and kept the same on the table. On being instructed by P.W.13, P.W.10 compared the numbers of the GC notes with the numbers mentioned in the pre-trap memorandum and on comparison, the same tallied. Then those GC notes were kept in an envelope vide M.O.IV and

duly sealed and signed by the trap party members. The inner side of the left hand side front pant pocket of the appellant was washed in freshly prepared solution of sodium carbonate with water, upon which colour of the said solution turned to pink and the said pink colour solution was preserved separately in a clean and dry bottle vide M.O.V with proper seal and signed by the trap party members.

The appellant was arrested for demanding and accepting illegal gratification from the complainant (P.W.11) and arrest memo was prepared. Post-trap memorandum (Ext.15) was also prepared wherein P.W.13 and others put their signatures. The rough sketch map (Ext.14) of the place of occurrence was prepared and the refund claim income tax return of P.W.5 for the assessment Year 2011-12 was seized as per seizure list (Ext.16) on being produced by the appellant. The refund claim income tax return of P.W.5 was given in the zima of K.C. Barik (P.W.8), the I.T.O. as per zimanama Ext.20. Other relevant documents were seized from the Income Tax Office, Rourkela in presence of witnesses. The residential house of the appellant was searched and search list (Ext.18) was prepared. The appellant was forwarded to the Court. As per the instruction of S.P., C.B.I., Bhubaneswar, P.W.13 handed over the charge of

investigation to Sri S.B. Mishra (P.W.14) who received C.F.S.L. Report, sanction order from the Asst. Commissioner of Income Tax, seized some documents and on completion of investigation, he submitted the charge sheet against the appellant on 11.07.2012 under section 7 and section 13(2) read with section 13(1)(d) of 1988 Act.

3. The defence plea of the appellant is one of denial and in his statement recorded under section 313 of Cr.P.C., he stated that prior to the alleged occurrence, one Bibek Dasgupta (hereafter "B.D. Gupta") had taken Rs.10,000/- (rupees ten thousand) as loan from him and as the said loan amount was not repaid to him, there was misunderstanding and ill-feeling between him and B.D. Gupta. At the instance of B.D. Gupta, P.W.5, the assessee of ward No.1, resident of Chhend, filed IT return personally showing her address as Koel Nagar, C/o. B.D. Gupta. P.W.11 was a land broker and he was set up by B.D. Gupta to file a false F.I.R. against him. Further, it is pleaded that P.W.11 called him on 12.03.2012 over phone to take back a part of the loan refund amount stating that the same had been sent by B.D. Gupta and accordingly, he came out of the office and P.W.11 handover the tainted money stating that the same had been sent by B.D. Gupta towards part repayment of the loan

amount. It is further pleaded that neither the appellant had ever demanded any amount to process the file of P.W.5 nor had accepted the amount knowing it as illegal gratification and no work of the assessee (P.W.5) was pending with him at that time as he had already handed over the income tax return file of P.W.5 to the I.T.O. and that the accusation labelled against him are false and fabricated.

Prosecution witnesses:

4. In order to prove its case, the prosecution examined fourteen witnesses.

P.W.1 Amulya Kumar Patjoshi was the Branch Manager, Panposh Branch, Rourkela from May 2008 to May 2012, who stated that he had issued Form-16A (Ext.1) regarding the annual tax payable in respect of income of P.W.5 for the financial year 2010-11 on 30.04.2011 and P.W.5 was allotted agent code bearing No.0114259C and P.W.5 had total income of Rs.1,78,620.99 (rupees one lakh seventy eight thousand six hundred twenty and ninety nine paise) and total tax of Rs.17,862/- (rupees seventeen thousand eight hundred sixty two) was deducted towards income tax.

P.W.2 Madhusudan Nayak was the Office Superintendent in the Office of Joint Commissioner of Income

Tax, Rourkela from July 2006 to April 2013 and also a seizure witness. He stated that the appellant was posted as Tax Assistant in the Office of the Additional Commissioner of Income Tax, Rourkela Range, Rourkela as per the order vide Ext.6 and he was allotted the duty for Ward No.4, Rourkela vide order Ext.7 for processing the income tax returns.

P.W.3 Asutosh Pradhan was the Asst. Commissioner in the Office of Commissioner of Income Tax, Sambalpur and he was the sanctioning authority who accorded sanction for the prosecution of the appellant vide sanction order Ext.8.

P.W.4 Paresh Kumar Das was working as Tax Assistant, Office of Income Tax Officer, Ward No.4, Rourkela. He stated that his duty at that time was to receive the returns filed by the assesseees and to make entries in the I.T. Return Register and the duty of the appellant was to receive the returns and process the same. He further stated that the return vide Ext.9 was received by the appellant and the entry relating to the return (Ext.9) was made in the register (Ext.10) at sl. no.2217 at page 142 on 08.09.2011 by him (P.W.4). He further stated that it takes about two to three months for processing the matter relating to return of refund and till 12.03.2012 no refund was paid in respect of income tax return vide Ext.9.

P.W.5 Smt. Sundaramani Singh was working as L.I.C. agent since October 2004 and she was also an income tax assessee. She stated that she had got no source of income except her income as L.I.C. agent and P.W.11 told her on 09.03.2012 that unless she gave Rs.8,000/- (rupees eight thousand) to the appellant, who was working as a staff in the Income Tax Office, she would not get income tax refund. She further stated that she told P.W.11 that she would not give any money and if P.W.11 wanted, he could file a complaint and thereafter she had not told him anything else to P.W.11.

P.W.6 Manas Kumar Pati was working as Inspector, Vigilance, RSP, Rourkela and he was a member of the trap party who stated about the pre-trap preparation report. He stated that he accompanied P.W.11 to the office of the appellant by motorcycle and P.W.11 contacted the appellant over phone who asked P.W.11 to wait for sometime as he was coming out of his office. He further stated that when the appellant came out of the office, P.W.11 wished him and asked him about the position/status of the matter regarding income tax refund of P.W.5 and the appellant asked P.W.11 as to whether he had brought as per the previous discussion and P.W.11 nodded his head. He further stated that the appellant showed his right hand

and P.W.11 brought out the tainted GC Notes in question from his left side shirt pocket and handed over the same to the appellant and the appellant took the GC Notes by his right hand, counted the same by both the hands and kept the same in his left side pant pocket and the appellant told P.W.11 that he would process the matter as soon as possible and went inside his office. He further stated about the hand wash of the appellant and his pant pocket wash changing its colour when taken in solution to pink so also preparation of the post-trap memorandum and seizure of one Nokia mobile telephone set with two SIM cards under seizure list Ext.13. He further stated about the seizure of the original income tax return document of P.W.5 for the assessment year 2011-12 on production by the appellant in the said office as per seizure list Ext.16.

P.W.7 Dinesh Kumar Pradhan was the Nodal Officer, Bharti Airtel Limited, Bhubaneswar, who proved the call details of the mobile No.9556756160 as per Ext.19.

P.W.8 Krushna Chandra Barik was working as Income Tax Officer, Ward No.4, Rourkela. He stated that on 12.03.2012 at the time of trap of the appellant by the C.B.I. team, he was present in the office room of the Joint Commissioner of Income Tax, Rourkela and at about 1 p.m., he was called by the C.B.I.

Officer to his office room and one document pertaining to the income tax return of P.W.5 for the assessment year 2011-12 was given in his zima by the C.B.I. Inspector as per zimanama (Ext.20). He further stated that the C.B.I. Inspector asked him the reason as to why refund was not made in favour of the concerned income tax assessee to which he replied that the appellant had not placed the said matter before him after processing and it was the duty of the appellant as Tax Assistant to process the file in connection with refund of income tax.

P.W.9 AVK Naidu was the Legal, Regulatory and Nodal Head for Idea Cellular Limited, Bhubaneswar for the State of Odisha. He stated that on the requisition of the C.B.I., Bhubaneswar, he had given the call details in respect of mobile no.9090905372 belonging to the services of Idea Cellular Limited for the date 12.03.2012 in the C.D.R. dated 03.05.2012 and the said call was made from mobile phone no.9090905372 to mobile phone no.9556756160 and the duration of the said call was for 33 seconds.

P.W.10 Brundaban Pradhan was the Vigilance Inspector, Rourkela Steel Plant, Rourkela and he was a member of the trap party who was present at the time of preparation of the trap. He stated about the acceptance of tainted GC note by

the appellant from P.W.11 in the Income Tax Office building and keeping the same in his left side pant pocket. He further stated about the hand wash of the appellant and his pant pocket wash changing its colour when taken in solution. He further stated that the appellant was arrested at about 12.30 p.m. and the original income tax return document of P.W.5 was handed over by the appellant to P.W.13 which was seized vide seizure list Ext.16. He further stated about the preparation of the post-trap memorandum (Ext.15) and seizure of one mobile under seizure list Ext.13.

P.W.11 Manoranjan Mishra is the complainant in the case and he has stated in detail relating to demand of bribe by the appellant, lodging of written report vide Ext.24 by him, preparation for the trap, demand and acceptance of bribe money by the appellant and assurance given by the appellant to do the work. He was declared hostile by the prosecution.

P.W.12 Binod Bhagaban Ramteke was the Senior Scientific Officer in C.F.S.L., New Delhi from February 2005 to October 2011 who proved the chemical examination report marked as Ext.25.

P.W.13 Sachidananda Rath was the Inspector of Police, C.B.I., Bhubaneswar who laid the trap and he is also the

Investigating Officer. He stated that as per the instruction of the Superintendent of Police, C.B.I., Bhubaneswar, he handed over the investigation of the case to Sri S.B. Mishra (P.W.14), Inspector, C.B.I., Rourkela Unit for further investigation on 14.03.2012.

P.W.14 Subhransu Bhusan Mishra was the Inspector of Police, C.B.I., Rourkela Unit who took over investigation of the case from P.W.13 as per instruction of the Superintendent of Police, C.B.I., Bhubaneswar and on completion of investigation, he submitted charge sheet against the appellant.

Documents exhibited by prosecution:

5. The prosecution exhibited twenty six documents. Ext.1 is the Form No.16-A regarding Annual Tax Payable, Ext.2 is the seizure list dated 12.03.2012, Ext.3 is the attendance register starting from 01.12.2011 to 12.03.2012, Ext.4 is the seizure list dated 18.04.2012, Ext.5 is the transfer order No.11/2008 dated 30.04.2008, Ext.6 is the office order dated 08.06.2011 of Joint Commissioner, Ext.7 is the office order, Ext.8 is the sanction order, Ext.9 is the certified copy of IT Return of P.W.5, Ext.10 is the IT Return Register for the assessment year 2011-12, Ext.11 is the authorization letter, Ext.12 is the pre-trap memorandum, Ext.13 is the search memo,

Ext.14 is the spot map, Ext.15 is the post trap memorandum (five pages), Ext.16 is the seizure list, Exts.17 and 18 are the search lists, Ext.19 is the call details of the mobile phone, Ext.20 is the zimanama, Ext.21 is the seizure list dated 12.04.2012, Ext.22 is the letter dated 16.04.2012, Ext.23 is the call details report, Ext.24 is the F.I.R., Ext.25 is the Chemical Examination Report and Ext.26 is the seizure list.

Material Objects proved by prosecution:

6. Six material objects were proved by the prosecution. M.O.I is the solution of sodium carbonate with water bottle (Mark-D), M.O.II is the one solution of sodium carbonate with water bottle (Mark-R), M.O.III is the another solution of sodium carbonate with water bottle (Mark-L), M.O.IV is the envelope containing tainted money (sealed), M.O.V is the pant pocket wash (Mark-P) and M.O.VI is the envelope containing the pant of the appellant.

No witness was examined on behalf of the defence.

7. The learned trial Court formulated the following points for determination:-

(i) Whether on 09.03.2012 in the office room of Income Tax Office, Udit Nagar, Rourkela, the accused being a public servant functioning as Tax Assistant,

Ward No.4, Income Tax Office, Ayakar Bhavan, Rourkela, had demanded Rs.8,000/- (rupees eight thousand) from the complainant for processing the refund claim of the income tax assessee Smt. Sundaramani Singh for the financial year 2010-11 (Assessment Year 2011-12) and accepted the said amount of Rs.8,000/- on 12.03.2012 as gratification other than legal remuneration for the above purpose, as alleged?

(ii) Whether on the aforesaid date and place the accused being a public servant functioning in the above capacity, by corrupt and illegal means and/or by otherwise abusing his official position as such public servant, obtained for himself pecuniary advantage to the tune of Rs.8,000/- (rupees eight thousand) from the complainant for processing the income tax refund claim of Smt. Sundaramani Singh for the financial year 2010-11 (Assessment Year 2011-12), as alleged?

8. The learned trial Court after assessing the evidence on record has been pleased to hold that nothing substantial has been brought out during cross-examination of P.W.12 to show that the tests conducted by him, are not full proof or not reliable and his evidence corroborates the oral evidence of prosecution witnesses regarding the trap in question. It was further held that the prosecution has clearly proved that the appellant had

voluntarily and consciously accepted the tainted currency notes from the complainant. It was further held that the evidence on record not only proved the demand of bribe money but also the acceptance of bribe money. It was further held that it is legally justified to draw a presumption under section 20 of the 1988 Act. The non-examination of B.D. Gupta by the prosecution, does not in any way affect its case as he was not a material witness for the prosecution. The defence has signally failed to prove its plea in the standard of preponderance of probability regarding refund of any loan amount by B.D. Gupta to the appellant that too through the complainant on the relevant date. It was further held that the appellant had demanded and accepted bribe of Rs.8000/- (rupees eight thousand) from the complainant on 12.03.2012 for sending the application for payment of income tax refund claim amount of P.W.5. The evidence of P.Ws.6, 10, 11 and 13 has substantially remained unshaken. The documentary evidence on record, such as F.I.R., pre-trap memorandum, post-trap memorandum, seizure lists, C.E. report and hand wash and pant pocket wash of the appellant turning to pink colour lend sufficient corroboration to their version. The plea of the appellant that he received the money sent by B.D. Gupta towards refund of loan amount though the complainant is

unbelievable and not acceptable. The oral as well as documentary and circumstantial evidence clearly proved beyond reasonable doubt that the appellant demanded and accepted illegal gratification of Rs.8000/- (rupees eight thousand) from the complainant (P.W.11) for sending the application for payment of income tax refund claim amount of P.W.5 by abusing his official position as a public servant and accordingly, found the appellant guilty of the offences charged.

9. Mr. S.R. Mohapatra, learned counsel for the appellant contended that the demand of illegal gratification is sine qua non for constituting offence under the 1988 Act and in the present case, the prosecution has miserably failed to prove the demand of illegal gratification made by the appellant to the complainant (P.W.11) to process the file. The defence plea taken has rather been proved by preponderance of probability regarding acceptance of money by the appellant towards part repayment of loan amount sent by B.D. Gupta (house owner of P.W.5) through P.W.11 (complainant) and the said amount is other than as a motive or reward referred to under section 7 of the P.C. Act. The appellant need not to prove his case beyond a reasonable doubt and he could rebut it either through cross-examination of the witnesses or by adducing reliable evidence and he can succeed in

proving his case by way of preponderance of probabilities. He further contended that in a case of bribery, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the appellant particularly when the evidence of P.W.11 is not reliable and trustworthy in view of his inconsistent statements. He further contended that since there was no work of the complainant/decoy (P.W.11) pending with the appellant, the version of the complainant with regard to demand of illegal gratification is not believable. He further submitted that filing of Ext.9 personally by P.W.11 on 08.09.2011 and thereby meeting the appellant on 09.03.2012 and prior to 12.03.2012 is a doubtful feature. The sanction order vide Ext.8 is a defective one and P.W.3 had no authority to accord sanction for prosecution of the appellant. Ad finem, it is argued that it is a fit case where benefit of doubt should be extended in favour of the appellant. He placed reliance in the cases of **Suraj Mal -Vrs.- The State reported in A.I.R. 1979 S.C. 1498, Sanatan Dash -Vrs.- State of Odisha (Vig.) reported in (2021) 84 Orissa Criminal Reports 561, Man Singh -Vrs.- Delhi Administration reported in A.I.R. 1979 S.C. 1455, K. Shanthamma -Vrs.- State of Telangana reported in (2022) 86 Orissa Criminal Reports (SC) 345, C.M. Girish Babu -**

Vrs.- CBI reported in (2009) 43 Orissa Criminal Reports (SC) 48, Sidhartha Kumar Nath -Vrs.- State of Orissa (Vig.) reported in (2017) 68 Orissa Criminal Reports 510, B. Jayaraj -Vrs.- State of A.P. reported in (2014) 58 Orissa Criminal Reports (SC) 175, Punjabrao -Vrs.- State of Maharashtra reported in A.I.R. 2002 S.C. 486, Debananda Das -Vrs.- State of Orissa reported in (2011) 50 Orissa Criminal Reports 591, Niranjan Bharati -Vrs.- State of Orissa reported in (2003) 26 Orissa Criminal Reports 274, State of Maharashtra -Vrs.- Dnyaneshwar Laxman Rao Wankhede reported in (2009) 44 Orissa Criminal Reports (SC) 425, Shyam Sundar Prusty -Vrs.- State of Orissa reported in (2018) 70 Orissa Criminal Reports 733, Mohd. Iqbal Ahmed -Vrs.- State of Andhra Pradesh reported in A.I.R. 1979 S.C. 677, N. Vijay Kumar -Vrs.- State of Tamil Nadu reported in (2021) 82 Orissa Criminal Reports (SC) 67 and Khaleel Ahmed -Vrs.- State of Karnataka reported in (2015) 16 S.C.C. 350.

Mr. Sarthak Nayak, learned Special Public Prosecutor, C.B.I. on the other hand supported the impugned judgment and contended that even though the decoy has been declared hostile by the prosecution for not supporting its case fully, but the

evidence of other witnesses particularly the circumstances established by the prosecution are sufficient to hold the appellant guilty of the offences charged. According to Mr. Nayak, in the case in hand, the appellant has not disputed the acceptance and recovery of money in question and when the defence plea regarding acceptance of part repayment of the loan dues sent by B.D. Gupta through the decoy (P.W.11) on the date of trap is not acceptable, it otherwise proves the acceptance of bribe money on demand made by the appellant for processing the refund claim in I.T. return of P.W.5. He placed reliance in the cases of **Malti Sahu -Vrs.- Rahul reported in 2022 SCC OnLine SC 821, State of U.P. -Vrs.- Ramesh Prasad Mishra reported in A.I.R. 1996 S.C. 2766, Koli Lakhmanbhai Chanabhai -Vrs.- State of Gujarat reported in A.I.R. 2000 S.C. 210, Rohtash Kumar -Vrs.- State of Haryana reported in (2013) 14 S.C.C. 434 and Himanshu -Vrs.- State of NCT of Delhi reported in (2011) 1 Crimes 157 (SC).**

Gravamen of offence under sections 7 and 13(1)(d)(i) & (ii) of 1988 Act:

10. Law is well settled that mere receipt of money by the accused is not sufficient to fasten his guilt, in the absence of any evidence with regard to demand and acceptance of the same as

illegal gratification. In order to constitute an offence under section 7 of 1988 Act, proof of demand is a sine qua non. (**Ref: V. Sejappa -Vrs.- The State reported in (2016) 64 Orissa Criminal Reports (SC) 364, B. Jayaraj (supra), K. Shanthamma (supra), Sidhartha Kumar Nath (supra), N. Vijay Kumar (supra)**). The burden rests on the accused to displace the statutory presumption raised under section 20 of the 1988 Act by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in section 7 of the 1988 Act. While invoking the provision of section 20 of the 1988 Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. For arriving at the conclusion as to whether all the ingredients of the offence i.e. demand, acceptance and recovery of illegal gratification have been satisfied or not, the Court must take into consideration the facts and circumstances brought on the record in its entirety. The standard of burden of proof on the accused vis-à-vis the standard of burden of proof on the prosecution would differ. The proof of demand of illegal gratification is the gravamen of the

offence under sections 7 and 13(1)(d)(i) and (ii) of 1988 Act and in absence thereof, unmistakably the charge therefore, 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 of accused of the offence under sections 7 or 13 of the Act would not entail his conviction thereunder. The evidence of the complainant should be corroborated in material particulars and the complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon. (Ref: **Satyananda Pani -Vrs.- State of Orissa (Vig.)** reported in (2017) 68 Orissa Criminal Reports 795, **Debananda Das** (supra), **Punjabrao** (supra), **Shyam Sundar Prusty** (supra), **N.Vijay Kumar** (supra), **Dnyaneshwar Laxman Rao Wankhede** (supra)).

In case of **Krishan Chander -Vrs.- State of Delhi** reported in (2016) 3 Supreme Court Cases 108, it is held 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 1988 Act. In case of **P. Satyanarayana Murthy -Vrs.- District Inspector of Police reported in (2015) 10 Supreme Court Cases 152**, it is held that the proof of demand has been held to be an indispensable essentiality and of permeating mandate for offences 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 section 13(1)(d)(i) & (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 emphasized, 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 1988 Act would also not arise. In the case of **C.M. Girish Babu** (supra), it is held that it is well settled that the presumption to be drawn under section 20 of 1988 Act is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption, the same would

stick and then it can be held by the Court that the prosecution has proved that the accused received the amount towards gratification. 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 1988 Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt. In the case of **Khaleel Ahmed** (supra), it is held that the presumption raised under section 20 for the offence under section 7 is concerned, it is the settled law that the presumption raised under section 20 is a rebuttable presumption, and that the burden placed on the accused for rebutting the presumption is one of preponderance of probabilities.

11. Adverting to the contentions raised by the learned counsel for the respective parties, since the appellant has not disputed the 'acceptance' and 'recovery' of the money in question, let me now carefully examine the evidence on record relating to the 'demand' aspect.

Demand prior to the date of trap:

11-A. P.W.11, the decoy and the complainant of the case when was asked by the learned Public Prosecutor about the

appellant, has specifically stated that he did not know the accused who was present in the dock.

In the chief examination, P.W.11 has stated that he submitted the income tax return file vide Ext.9 of P.W.5 on 08.09.2011 to one Rajeev Ranjan at Income Tax Office, Ward No.IV at Rourkela. He further stated that on 09.03.2012 when he visited the said office and approached Rajeev Ranjan regarding progress made for refund of income tax in favour of P.W.5, the latter told him that the said work would be done after payment of Rs.8,000/- (rupees eight thousand) within three days. He further stated that as he was not willing to pay the amount to Rajeev Ranjan, on 10.03.2012 he met D.S.P., C.B.I. Sri Kabi and told him about the matter and Sri Kabi asked him to give a written report and accordingly, he submitted the F.I.R. (Ext.24). He further stated about the preparation for the trap on 12.03.2012 at C.B.I. Office, Rourkela and after the same was over, he along with the vigilance staff proceeded to the Income Tax Office and he contacted Rajeev Ranjan over telephone, who came out of the office building and asked him whether he had brought the money to which he answered in the affirmative. He further stated that he handed over the tainted GC notes of Rs.8,000/- to Rajeev Ranjan who told him that the work would

be done. Rajeev Ranjan counted the GC notes in question, went inside his office and then he gave pre-arranged signal to the rest members of the CBI team, who came and caught hold of Rajeev Ranjan.

P.W.11 was declared hostile by the prosecution under section 154 of the Evidence Act and with the permission of the Court, leading questions were put to him by the learned Public Prosecutor in which he not only denied to have been examined by the I.O., but also denied to have stated regarding giving any statement made in connection with pre-trap demonstration and that the tainted money of Rs.8,000/- was recovered in his presence from the possession of the appellant and that the hand wash of the appellant taken with sodium carbonate solution changed its colour to pink. He denied the suggestion given by the Public Prosecutor that he had been gained over by the appellant and purposefully failed to identify the appellant in the dock. The learned Public Prosecutor did not try to put any specific question to P.W.11 as to whether the person who demanded the alleged bribe to him and whose name he told to be Rajeev Ranjan was the same person present in the dock or somebody else. Thus, there is no substantive evidence that prior

to the date of trap, it is the appellant who had demanded Rs.8,000/- from P.W.11.

In the cross-examination by the defence, P.W.11 has stated that neither he has submitted his own income tax return ever nor of any person and he had no knowledge or idea about submission of income tax return. He further stated that he did not know about the income tax return of P.W.5 and the financial year and assessment year in respect of which the income tax return of P.W.5 was required to be submitted and he did not know about the gross income or net income of P.W.5 of any particular year or specifically for the assessment year 2011-12. He further stated that he could not say the amount of income tax paid by P.W.5 for the assessment year 2011-12 and the amount of money to which P.W.5 was entitled towards income tax refund. He further stated that he could not read English language.

P.W.5 has stated in her chief examination that she had given the authorisation letter (Ext.11) in favour of P.W.11 authorising him to file her income tax return. She not only proved her signature but also signature of P.W.11 on Ext.11. However, in the cross-examination, she stated that she did not have much acquaintance with P.W.11 and that she had given the

income tax return vide Ext.9 to B.D. Gupta for filing who was looking after the same and she had also given Ext.11 to B.D. Gupta and that she did not know as to who prepared Ext.11. Therefore, the evidence of P.W.5 that she had issued the authorisation letter (Ext.11) in favour of P.W.11 is not consistent. Even P.W.11 has also stated that B.D. Gupta typed Ext.11 by taking the help of somebody near the Court premises at Udit Nagar of Rourkela and he had not submitted Ext.11 at Income Tax Office and B.D. Gupta took Ext.11 from him after obtaining his signature. Though P.W.14, the I.O. has stated that he had received the authorisation letter Ext.11 from P.W.11, but evidence of P.W.11 is completely silent about it. Such a vital document was produced only at the time of submission of charge sheet on 11.07.2012. The defence has suggested to P.W.14 that as Ext.11 was not in existence prior to 11.07.2012, it was not sent earlier.

Though P.W.5 stated that P.W.11 told her that unless she gave Rs.8,000/- to the appellant, she would not get income tax refund, but it has been proved through the I.O. (P.W.14) that in her statement under section 161 Cr.P.C. recorded on 04.04.2012, P.W.5 had not stated that the P.W.11 had disclosed before her that the appellant had demanded bribe of Rs.8,000/-

on 09.03.2012 and that unless the said payment was given to the appellant, she would not get the income tax refund.

In view of the materials on record and particularly the evidence given by P.W.11 in the cross-examination, his evidence in the chief examination that he had submitted income tax return file of P.W.5 to one Rajeev Ranjan is very difficult to be accepted. Ext.9 nowhere discloses that it was submitted by P.W.11 and even P.W.4, the Tax Assistant attached to the Office of I.T.O., Ward no.4, Rourkela who was senior to the appellant has stated that the return vide Ext.9 was personally filed by P.W.5 in which she had furnished her address as C/o.- B.D. Gupta. Thus, the evidence of P.W.11 regarding approaching Rajeev Ranjan for refund of income tax of P.W.5, which led the latter to make a demand of Rs.8,000/- (rupees eight thousand) is very difficult to be accepted.

Law is well settled that the evidence of a hostile witness can also be acted upon to the extent to which it supports the prosecution version and the evidence of such witness cannot be treated as washed off the record. It remains admissible in the trial and there is no legal bar to base an order of conviction upon his testimony if corroborated by other reliable evidence. It is for the Judge of the fact to consider in each case whether as a result

of the cross-examination made by the Prosecutor with the leave of the Court after the witness was declared hostile and also in view of contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the said witness, accept in the light of other evidence on record, that part of his testimony which he found to be of creditworthy and act upon it. The portion of the evidence which is consistent with the case of the prosecution or defence, and are admissible in law can be used either by the prosecution or by the defence. (Ref: **Kili Lakhmanbhai Chanabhai –Vrs.- State of Gujarat (supra), T. Shankar Prasad –Vrs.- State of Andhra Pradesh : (2004) 3 Supreme Court Cases 753**). In the case of **Malti Sahu** (supra), it is held that as per the settled position of law, even the evidence of a hostile witness can be considered to the extent, it supports the case of the prosecution. In the case of **Ramesh Prasad Mishra** (supra), it is held that it is equally settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the

prosecution or defence may be accepted. In the case of **Rohtash Kumar** (supra), it is held that it is a settled legal proposition that evidence of a prosecution witness cannot be rejected in toto, merely because the prosecution chose to treat him as hostile and cross examined him. The evidence of such witnesses cannot be treated as effaced, or washed off the record altogether. The same can be accepted to the extent that their version is found to be dependable, upon a careful scrutiny thereof. In the case of **Himanshu** (supra), it is held that the evidence of a hostile witness remains the admissible evidence and it is open to the Court to rely upon the dependable part of that evidence which is found to be acceptable and duly corroborated by some other reliable evidence available on record.

In view of the prevaricating and inconsistent statement given by P.W.11 at different stages, it is very difficult to accept him as a truthful and reliable witness and his evidence becomes unworthy of credence. In the case of **Suraj Mal** (supra), it is held that where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances, no conviction can be based on the evidence of

such witnesses. Since the prosecution relies only upon the version of P.W.11 regarding the demand aspect of Rs.8,000/- (rupees eight thousand) prior to the date of trap, it cannot be said that the same has been proved beyond all reasonable doubt.

Demand on the date of trap:

11-B. Coming to the demand stated to have been made by the appellant on the date of trap, the evidence of two witnesses i.e. the decoy (P.W.11) and the overhearing witness (P.W.6) are very relevant for the purpose.

P.W.11 has stated that when Rajeev Ranjan came out of the office building on receipt of his phone call and asked him if he had brought the money, he answered in the affirmative and handed over the tainted GC notes of Rs.8,000/- (rupees eight thousand) to him and Rajeev Ranjan told him that his work would be done and he should leave that place. However, in the cross-examination, he stated that as per instruction of B.D. Gupta, he called Rajeev Ranjan over telephone and handed over the money. He specifically stated that he had no discussion with anybody thereafter and came back from that place.

P.W.6 stated that when the appellant came out of the office, P.W.11 asked him about the status of income tax refund

matter of P.W.5 and then the appellant asked P.W.11 whether he had brought as per the previous discussion made on 9th. Then the appellant received the money and told P.W.11 that he would process the matter as soon as possible.

Thus, there is difference in evidence as to what was the exact conversation between P.W.11 and the appellant outside the office. When as per the evidence of the T.L.O. (P.W.13), it was decided at the pre-trap proceeding that after reaching the Income Tax Office, P.W.11 would proceed to the office of the appellant inside the office and P.W.6 would follow him closely, it is not known why P.W.11 called the appellant outside over phone and handed over the tainted money to him outside and who had given instruction to him to do that and when, after they left C.B.I. Office, Rourkela. It is very difficult to accept that P.W.11 on his own deviated from the planning, changed the place and the manner in which he had to hand over the tainted money to the appellant. P.W.13, the T.L.O. has stated that there was no specific instruction given by him to P.W.11 to contact the appellant over telephone and to ask him to come out of his office. P.W.10 who was also a member of trap party has stated that P.W.11 was not asked to contact the appellant by any particular mobile telephone number and the

telephone number of the appellant was not supplied to them. There is nothing on record that the mobile phone number of the appellant was available with P.W.11.

P.W.11 has not stated that it was P.W.6 who accompanied him to the office of the appellant in a motor cycle and overheard the conversation between himself and the appellant and saw the transaction.

In view of the available materials on records, it is very difficult to hold that the prosecution has successfully established that on the date of trap also, there was demand made by the appellant to P.W.11.

Whether any work was left with the appellant to make demand :

12. P.W.4 Paresh Das was also a Tax Assistant who was working with the appellant in the Office of I.T.O., Ward No.4, Rourkela. He has stated that after receiving the I.T. returns on any particular day, the concerned Tax Assistant makes a bundle of the same and hands over the same to the I.T.O. on the same day. He further stated that the I.T. return in question vide Ext.9 was also handed over to the I.T.O. Sri K.C. Barik (P.W.8) on the same day. He further stated that the I.T.O. decides regarding

refund and the amount of the same to be refunded to the concerned assessee.

In the case of **Sanatan Dash** (supra), it is held that section 138 of the Indian Evidence Act, 1872 clearly states that the re-examination shall be directed to the explanation of the matters referred to in the cross-examination. Therefore, if any ambiguity is cropped up during cross-examination of a witness or a witness stated completely contrary to what he has deposed in the chief-examination, it is nonetheless the duty of the prosecution to make a prayer before the learned trial Court for re-examination of such witness and to explain the matters. The object is to give an opportunity to reconcile the discrepancies, if any, between the statement made in the examination-in-chief and cross-examination or to explain any statement inadvertently made in cross-examination or to remove any ambiguity in the deposition or suspicion cast on the evidence by cross-examination. When P.W.4 stated in the cross-examination that Ext.9 was handed over to P.W.8 on the same day, the learned Public Prosecutor should have prayed for re-examination of P.W.8 in view of the provision under section 138 of the Evidence Act, which has not been done.

P.W.8 has stated that there was no fixed time for processing the matter relating to income tax return in the year 2012 and that P.W.5 had not complained before him regarding any delay in refund of the income tax to her. Though P.W.8 has stated that it was the duty of the appellant as Tax Assistant to process the file in connection with refund of income tax and when the C.B.I. officer asked him the reason as to why refund had not been made in favour of P.W.5, he told that the appellant had not placed the said matter before him after processing, but such statement of P.W.8 is contrary to the evidence of P.W.4 who has stated that Ext.9 was handed over to the P.W.8 on the same day after its receipt. The seal of office of I.T.O., Ward - 4, Rourkela - 12, Ayakar Bhawan, Rourkela dated 08.09.2011 is very prominent on Ext.9 which was its receipt date. P.W.4 has stated that Ext.9/1 is the endorsement and signature of P.W.8 whose signature and handwriting appeared in all the eleven pages of the said return. As Ext.9 was seized under seizure list Ext.16 on the date of trap (12.03.2012) itself and if it had not been placed before P.W.8 after processing by the appellant as stated by him, then how his signature appeared on Ext.9. Merely because Ext.16 indicates that it was produced by the appellant, it cannot be said that it was in his possession. P.W.8 was not in his

office when the seizure was effected at 12.50 p.m. and he was present in the office room of the Joint Commissioner of Income Tax, Rourkela and was called by C.B.I. Officer at 1 p.m. as stated by P.W.8 himself. Therefore, mere production of Ext.9 by the appellant for seizure in the absence of P.W.8 cannot be a ground to hold that the appellant had deliberately not processed Ext.9 and kept it with him to get the bribe amount from P.W.11.

In the case of **Niranjan Bharati** (supra), it is held that there is no evidence as to on which date the demand was raised by the appellant for payment of bribe and by the time trap was laid, there was any work pending with the appellant and therefore, there could not have been any occasion for the appellant to demand as alleged.

Therefore, when the appellant as Tax Assistant had no role in the refund of income tax to the assessee except processing the same to the I.T.O. Sri K.C. Barik (P.W.8), which he had already done as per the evidence of P.W.4, I am of the humble view that there is substantial force in the contention of the learned counsel for the appellant that no work was pending with the appellant for which there was no occasion on his part to raise any demand of bribe.

Defence plea:

13. At this stage, the defence plea is required to be considered carefully. P.W.5 has stated that she was staying in the house of B.D. Gupta, who had taken a loan of Rs.10,000/- (rupees ten thousand) from Rajeev Ranjan and there was misunderstanding between them as the loan amount was not repaid by B.D. Gupta. P.W.11 has stated that he called Rajeev Ranjan over telephone as per instruction of B.D. Gupta and the latter told him to give money to the person who would come in response to the telephone call and accordingly, he gave money to the said person. P.W.11 specifically stated that B.D. Gupta accompanied him to C.B.I. Office, Rourkela when he had gone there to lodge the F.I.R. and he and B.D. Gupta discussed the matter and as per the instruction of B.D. Gupta, he lodged the F.I.R. Therefore, in view of the previous dispute between the appellant and B.D. Gupta, there was every probability that the allegation of demand as made in Ext.24 was not the version of the complainant (P.W.11) but it was lodged as per the instruction of B.D. Gupta.

It is not in dispute that an accused is not supposed to establish his defence plea by proving it beyond reasonable doubt like the prosecution but by preponderance of probability.

Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstance upon which the accused relies. The burden can be discharged by an accused adducing cogent and reliable evidence which must appear to be believable or by bringing out answers from the prosecution witnesses or showing circumstances which might lead the Court to draw a different inference. The prosecution cannot derive any advantage from the falsity or other infirmities of the defence version, so long as it does not discharge its initial burden of proving its case beyond all reasonable doubt. If the defence version is incorrect, it does not mean that the prosecution version is necessarily correct. The prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. A false plea set up by the defence can at best be considered as an additional circumstance against the accused provided that the other evidence on record unfailingly point towards his guilt. In the case of **Man Singh** (supra), while dealing with a case of illegal gratification under section 5(1)(d) and 5(2) of the Prevention of Corruption Act, 1947, Hon'ble Supreme Court held that the accused is not required to prove his defence by strict standard of proof of reasonable doubt but it is sufficient if he

offers an explanation or defence which is probable and once this is done, presumption under section 4 of the Prevention of Corruption Act, 1947 stands rebutted.

The learned trial Court seems to have not considered the defence plea of the appellant on the touchstone of preponderance of probability and held that the defence failed to prove regarding refund of loan amount by B.D. Gupta to the appellant through P.W.11 on the relevant date. However, in view of the specific defence plea taken by the appellant and the supporting evidence adduced by P.W.5 and P.W.11, it cannot be said that such plea has not been proved by preponderance of probability or it is an out and out false plea set up by the defence. In my humble view, the appellant has discharged the burden of proof placed on him based on preponderance of probability and in that view of the matter, the presumption raised under section 20 of 1988 Act has been successfully rebutted.

Whether P.W.3 is the competent authority to accord sanction for prosecution of appellant and Ext.8 is a valid one:

14. The Office Superintendent in the office of the Joint Commissioner of Income Tax, Rourkela was examined as P.W.2

and he has categorically stated in his cross-examination that the Commissioner of Income Tax, Odisha, Bhubaneswar is the appointing and removal authority of Tax Assistant. P.W.3 was the Assistant Commissioner of Income Tax, Sambalpur who has accorded sanction for prosecution vide Ext.8 and he has stated in his cross-examination that he had not filed any document to show that he was the removal authority of the appellant. P.W.8 has stated that the Chief Commissioner is the appointing and removal authority for the Tax Assistant.

In the case of **Mohd. Iqbal Ahmed** (supra), it is held that it is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (i) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (ii) by adducing evidence aliunde to show that the facts placed before the Sanctioning Authority and the satisfaction arrived at by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void ab initio. In the first place, there is no question of the presumption being

available to the Sanctioning Authority under section 4 of the Prevention of Corruption Act, 1947 because at that stage the occasion for drawing a presumption never arises since there is no case in the Court. Secondly, the presumption does not arise automatically but only on proof of certain circumstances, that is to say, where it is proved by evidence in the Court that the money said to have been paid to the accused was actually recovered from his possession. It is only then that the Court may presume the amount received would be deemed to be an illegal gratification.

P.W.3, the Assistant Commissioner of Income Tax has stated in his cross-examination that the sanction order Ext.8 does not disclose the mode of receiving documents by him. Ext.8 is also silent regarding the names of the witnesses whose statements were perused by him. The pre-rap memorandum, post-trap memorandum and seizure list have not been mentioned in Ext.8. In cross-examination, he further stated that Ext.8 is silent regarding any such inquiry by him and it also did not mention that he was satisfied that there was a prima facie case made out against the appellant under sections 7 and 13(1)(d) of the P.C. Act. There was a draft sanction order and

accordingly, he passed the sanction order and the draft prepared by him has not been submitted in this case.

In view of the such evidence, there is force in the submission of the learned counsel for the appellant that P.W.3 is not the competent authority to accord sanction for launching prosecution against the appellant, which is very much essential under section 19 of the P.C. Act and that the sanction order (Ext.8) is a defective one which was mechanically prepared without any application of mind.

Conclusion:

15. In view of the foregoing discussion, when the prosecution has not successfully established the demand aspect of bribe by the appellant beyond all reasonable doubt, the defence plea put forth by the appellant has been established by preponderance of probability and there is defect in the sanction order (Ext.8), it would not be legally justified to hold the appellant guilty of the offences charged.

Accordingly, the criminal appeal succeeds and is allowed. The impugned judgment and order of conviction of the appellant under section 7 and section 13(2) read with section 13(1)(d) of the 1988 Act and the sentence passed thereunder is hereby set aside and the appellant is acquitted of all the charges.

The appellant is on bail by virtue of the order of this Court. He is discharged from liability of his bail bond. The personal bond and the surety bond stand cancelled.

Trial Court records with a copy of this judgment be sent down to the concerned Court forthwith for information.

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S.K. Sahoo, J.

Orissa High Court, Cuttack
The 9th November 2022/PKSahoo/Pravakar/RKMishra

