

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
(Circuit Bench at Jalpaiguri)**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRA 37 of 2019

With

CRAN 1 of 2022

Suresh Dutt Sharma @ S.D. Sharma

-vs.-

The State through SP/ACB/CBI, Kolkata

For the Appellant : Mr. Tapas Kumar Ghosh,
Mr. Tanmoy Chowdhury,
Mr. Nabankur Paul.

For the CBI : Mr. Sudipto Kumar Mazumdar, Ld. D.S.G.,
Mr. Ajoy Kumar Singhania,
Mr. Abhinaba Dan.

Reserved on : 20.12.2022

Judgment on : 18.04.2023

Tirthankar Ghosh, J:-

The present appeal has been preferred against the judgment and order dated 19.11.2019 passed by the Learned Judge, Special (CBI) Court, Siliguri in Special (CBI) Court Case No. 34 of 2012 arising out of RC Case No. 05(A)/2004-Kol of CBI, Kolkata dated 04.02.2004 corresponding to FIR No. RC.CAA2004A 0005 dated 04.02.2004 under Section 7 of Prevention of Corruption Act, 1988, wherein the learned Trial Court was pleased to hold the appellant guilty for commission of offence and punished him under

Section 13(2) of the Prevention of Corruption Act, 1988 and sentenced him to suffer Simple Imprisonment of one year and to pay of fine of Rs.2,000/- i.d. to suffer simple imprisonment for three months.

The Initiation of RC.CAA2004A 0005 dated 04.02.2004 was on the basis of a complaint lodged by Barnali Banerjee (Chakraborty) (hereinafter referred to as the 'complainant'). The complainant stated that in the month of September, 2003 she was appointed as a dance teacher at Central School (Kendriya Vidyalaya), Sevoke Road, Siliguri, District- Darjeeling with a contract of Rs.200/- per day. On 29.01.2004 when she had been to school then S.D. Sharma, Principal of the said Kendriya Vidyalaya, Sevoke Road, Siliguri demanded as bribe from her a sum of Rs.1300/- per month out of her monthly salary to be paid for continuation of her contract as a dance teacher in the said school. The complainant alleges that the Principal told her that she should pay him the said amount of Rs.1300/- on 05.02.2004 afternoon in his office chamber at school. She was further threatened by the Principal that if she did not pay him the said amount of Rs.1300/- on 05.02.2004 then he would terminate her from the service as a dance teacher. Complainant alleged that she did not intend to pay the said bribe of Rs.1300/- to Sri S.D. Sharma, Principal of the school and a legal action may be taken against him. On the basis of the aforesaid complaint FIR was registered and the police authorities on conclusion of investigation submitted charge-sheet against the appellant Suresh Dutt Sharma under Section 7/13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988. It was contended in the charge-sheet that during investigation it

revealed that the complainant was appointed as dance teacher on contractual basis and accordingly she joined the said school on 15.09.2003 and her salary was fixed @ Rs.50/- per teaching period subject to maximum limit of Rs.200/- per day. On 29.01.2004 the appellant demanded bribe alleged in the written complaint. A trap was laid as per pre trap memorandum and accused was caught red handed. During post trap proceeding one Jayoti Roy intervened and alleged that the accused also took Rs.850/- from her as bribe for allowing her to continue her service in the school on contract basis and said money was recovered from the accused in presence of witnesses on same day.

On conclusion of investigation the investigating agency submitted charge-sheet under Section 7/13(1)(d)/13(2) of the Prevention of Corruption Act, 1988 against the present appellant. After supply of the documents on which the prosecution proposed to rely the learned trial Court was pleased to frame charges under Section 7/13(1)(d)/13(2) of the Prevention of Corruption Act, 1988. The contents of the charges were read over to the accused/appellant to which he pleaded not guilty and claimed to be tried.

Prosecution in order to prove its case relied upon 10 witnesses which included PW1, Sibananda Bhattacharjee, a retired Bank Manager who was a witness of the recovery of trap money and trap procedure; PW2, Smt. Arati Darnal, a Senior assistant of SBI who was a shadow witness and who stated to have witnessed demand and acceptance of bribe and seen recovery of trap money and other post trap procedure; PW3, Barnali Banerjee (Chakraborty), complainant; PW4, Jayoti Roy, teacher of same school; PW5, Bimal Chandra

Purkait, Chemical examiner who reported regarding phenolphthalein, sodium carbonate test; PW6, Sudip Roy, trap laying officer; PW7, Sanjay Kumar Aryya, Senior branch manager, UCO Bank at whose instance withdrawal slips, forwarding letter and one bank account statement were marked as exhibit; PW8, Arindam Paul, employee of Kendriya Vidhyalaya; PW9, H.M. Cairae, the then Commissioner of Kendriya Vidhyalaya Sangathan, New Delhi who granted sanction order for prosecution of the accused and PW10, Shri Rajesh Chahal, Inspector-in-charge, CBI. The prosecution also relied upon 36 documents to prove its case and five material exhibits which included the three bottles containing sodium carbonate solution, yellow envelope and 85 notes of Rs.10/- denomination.

PW1, Sibananda Bhattacharjee is a retired Bank officer who was posted as Manager, Allahabad Bank, Siliguri, Regional Office from 2004 till 31st October, 2007. The witness deposed that on 04.02.2004 he was instructed by the Regional Manager to report at the CBI Office at Siliguri on 05.02.2004. As such on the morning of 05.02.2004 he reported at CBI Office where he was introduced to Barnali Banerjee (Chakraborty) who was the complainant. The witness deposed that he was shown the complaint which the complainant informed was lodged voluntarily. Another person named Arati Darnal was also introduced to him. Barnai Banerjee told him that an amount of Rs.1300/- was demanded by the Principal as bribe to renew her in the same post as teacher for further period of time, she did not accept the proposal and lodged the complaint. The witness deposed that in his presence Barnali Banerjee gave 13 notes of Rs.100/- denomination to the

CBI Officer, which were to be used in trap. The notes were treated with phenolphthalein powder and the number of the notes were recorded in a separate sheet. A copy of the same was handed over to the witness. The CBI Officer informed him that the notes which were treated if dipped into a solution would become pink, the same was demonstrated also by dipping one of the notes in a solution which became pink. The solution which was used was kept in a bottle and was sealed and labeled, the same was identified by the witness in Court and marked as MAT Ext.I, the label which contained the signature of the witness and pasted on the bottle on identification was marked as Ext.1. Witness deposed that the notes were handed over to the complainant/Barnali and she kept it at the right side of her cardigan. She was instructed by the CBI Officer that the said notes should be handed over only when the Principal demanded it and she should enter the chamber of the Principal along with Arati Darnal. Arati Darnal was instructed to give signal as soon as the transaction was over and the witness along with CBI Officer would thereafter enter the chamber of Principal. Witness also signed the pre-trap memo which was prepared, the signature in the pre-trap memo was identified by him and marked as Ext.2 (collectively). Barnali and Arati left CBI Office in a car, the two cars separately proceeded to school with CBI Officials and the witness accompanying them. After going to the school and reaching the location of the Principal's chamber, witness found that the Barnali, Arati and CBI Officers were outside the chamber of the Principal, as a visitor was inside. When the visitor came out Barnali entered the chamber of Principal and Arati followed her. Then Arati gave signal when the CBI Officers and the

witness entered the chamber. Two CBI Officers caught hold of the two hands of the Principal and the witness found that money was lying on the table in front of the Principal, his hands were immersed in the liquid which turned pink. The liquid was thereafter placed in bottles, sealed and labeled. Witness signed on the labels. Witness identified both the bottles which were marked as MAT Ext.II and MAT Ext.III, and his signature on labels were marked as Ext.3 and Ext.4 respectively. The witness was thereafter asked to count and verify the notes with those shown at the pre-trap session, on verification witness found the notes tallying with those shown at the pre-trap session. The notes were then kept in an envelope and sealed and signature was obtained in the envelope. Witness deposed had the same been shown to him, he could have identified the same. After the said process was completed another teacher came to the Principal's chamber and informed that she was Computer Teacher working temporarily and in order to renew her service, Principal in the morning has taken Rs.850/- from her. After search the CBI Officers recovered the same from attachi of the Principal. The said notes were seized under a proper seizure list, sealed and kept in an envelope. Witness signed the same on both sides of the seizure list, identified the same in Court, which was marked as Ext.5 (collectively). Witness also identified his signature in the envelope which was marked as Ext.6. Witness identified the 85 notes of Rs.10/- denomination. The envelope was marked as MAT Ext.IV and the notes bound with cotton thread was marked as MAT Ext.IV/1. Those notes contained slip of UCO Bank, Siliguri, over which the witness signed and identified the same in Court which was marked as Ext.7. Witness also identified his signature on the

sketch map which was marked as Ext.8. A post trap memo was also prepared wherein the witness signed and identified the same in Court which was marked as Ext.9. The signature of the Principal which was signed in his presence on the seizure list was identified and marked as Ext.5/1 (collectively). Witness identified the accused in Court and submitted that his statement was earlier recorded by the Investigating Officer.

PW2, Arati Darnal was posted as Sr. Assistant of State Bank of India, Pradhan Nagar Branch and from 1992 till May, 2004 she was posted at Zonal Office, Siliguri. She deposed that as per request of CBI at the Zonal office, Siliguri she was instructed to join CBI on 04.02.2004 and she had been to CBI Office at Hakim Para, Siliguri. On 05.02.2004 at 9.30 am she was introduced with another lady namely, Barnali Banerjee a dance teacher of Central School, Siliguri. It was informed to her that she was a temporary teacher there and has lodged a complaint against the Principal of Central School, Siliguri. She was also shown 13 notes of Rs.100/- denominations and informed that the said notes would be used for trap. The CBI Officers stated that phenolphthalein powder would be spread over the said notes and if those notes are washed by solution of sodium carbonate and water the colour of the solution would become pink. Before spreading powder over the said notes, the CBI Officers recorded the number of the 13 notes on a paper and asked another person who was also a bank officer present there to verify the same. The CBI Officers thereafter demonstrated by washing his hands in the solution which turned pink after the hands were dipped. The said solution was kept in a bottle sealed in her presence and she signed the

label pasted over it. She identified the bottle which was marked as MAT Ext.I and her signature on the label was marked as Ext.1/1. The notes were handed over to Barnali Banerjee and she was asked to keep those notes in the pocket of her cardigan. She was instructed to accompany Barnali Banerjee to the chamber of Principal, Barnali was asked to hand over the money to the Principal only when the Principal demanded the same and she was instructed to carefully hear the conversation between Barnali and the Principal and to give signal to the members of the CBI team who would wait outside the chamber of the principal. She was asked to give signal after completion of the transaction by coming out of the chamber and to rub her face with hand. S. Bhattacharjee was asked to wait outside the chamber with the CBI officers and to accompany them to the chamber after getting signal from her. After instruction the memorandum prepared at CBI Office was signed by her, the same was identified in Court and marked as Ext.2/1 collectively. She along with Barnali Banerjee thereafter left the CBI Office for school and went near the chamber of the Principal when they found another visitor was there in the chamber. They were waiting outside the chamber and the CBI Officers along with Mr. Bhattacharjee were also waiting outside the chamber. When the visitor came out she along with Barnali Banerjee entered the chamber. The Principal asked Barnali regarding her identity when she introduced her as a neighbor and also informed the Principal she was not fit at that moment to attend classes on that day so she was accompanied by her. Barnali thereafter requested to extend her term when the Principal asked whether she had brought the money. At that time Barnali informed him that she was carrying the money when the Principal

asked her to give him the money. Barnali thereafter brought out the notes from the right pocket of her cardigan and gave it to the Principal and the Principal received the same with his right hand and counted the notes with both of his hands. She came out of the chamber and gave signal by rubbing her face with her hands and immediately CBI Officers and Mr. Bhattacharjee entered the chamber of the Principal. Thereafter she also entered the chamber of the Principal again. Two CBI officers caught hold of the two hands of the Principal who was still counting the notes. As soon as his hands were caught by the officers, he threw the notes on the table. Thereafter CBI officers brought a solution in a bowl and washed left hand of the Principal in that bowl with that solution. The colour of the solution became pink and the said solution was kept in a bottle, again the said bowl was filled with solution and right hand of the Principal was washed with that solution and the solution became pink. The said pink coloured solution was kept in another bottle. Both the bottles were sealed and labels were pasted over it and she signed on those two labels. The bottles were identified and marked as MAT Ext.II and MAT Ext.III. The signature on the labels were marked as Ext. 3/1 and Ext.4/1. The CBI Officers thereafter asked Mr. S. Bhattacharjee to verify those notes with the list which was prepared at pre-trap session, he verified and found the same to be correct and tallying. The notes were kept in envelope and she was asked to sign the envelope. She stated that had the said envelope been produced she could have identified the same with her signature thereon. She added that when they were in the chamber of the Principal and the CBI Officers were doing their work at that time another lady namely, Jayoti Roy entered the chamber, she was

computer teacher of the school and she alleged before the CBI that in the morning of that day she also gave bribe of Rs.850/- to the Principal for extension of her tenure as temporary teacher. She further informed that she gave eighty five notes of Rs.10/- denomination, the CBI officers then started searching and recovered the said money from the briefcase of the Principal. CBI seized the said amount under a seizure list and she signed it. She witnessed the seizure and identified her signature in the seizure list which was marked as Ext.5/2. A copy of the said seizure list was handed over to the Principal but she was unable to identify the signature of the Principal. She identified her signature on the envelope where the 85 notes of Rs.10/- denomination were kept, the said envelope was marked as MAT Ext.IV. The signature on the envelope was marked as Ext.6/1. Her signature was also obtained on the slip attached to the notes, she identified the Rs.10/- notes bound by cotton thread as well as her signature on the slip which was marked as Ext.7/1. The signature of the witness was also present in the rough sketch map which was marked as Ext.8/1. She narrated that after completion of seizure a post-trap memorandum was prepared and her signature was obtained therein, she identified her signature which was collectively marked as Ext.9/1. Post-trap memorandum was prepared in the chamber of the Principal with the help of computer available in his chamber. She identified the Principal in Court and also identified the complaint which was shown to her and was filed by Barnali Banerjee.

PW3, Barnali Banerjee (Chakraborty), complainant, deposed that during January and February, 2004 she was a dance teacher of Kendriya

Vidyalaya, Sevoke Road, Siliguri. She was appointed on contractual basis for working on and from September, 2003 to 4th February, 2004 the then Principal of the School Mr. S. D. Sharma demanded Rs.1300/- from her for continuation of the contractual service in that school. She was unable to accept such proposal for giving him bribe and went to CBI Office at Hakimpara to lodge a complaint against Mr. S.D. Sharma and she lodged her complaint there. She identified the written complaint addressed to the S.P. CBI. She also identified her signature on the complaint and the same was marked as Ext.10. After submission of her complaint she was asked by the CBI Officer to come to their office on the next day, as such on 05.02.2004 she had been to the CBI Office at Hakimpara at about 10.00 am with a sum of Rs.1300/- as instructed by the CBI Officer. There were some CBI Officers and other persons. Those CBI Officers informed her, that a trap would be laid and they demonstrated before her as to how the trap will be laid. The notes brought by her were taken by CBI Officers, a list of the said 13 notes were prepared. The notes were also spread with phenolphthalein powder. One of the Officer demonstrated after holding the notes and washing his hands in a bowl containing some soda water that immediately the colour of the solution would turn pink. The said pink coloured water was kept in a bottle which was sealed along with others, she also signed the label pasted on it. Her signature on the label was marked as Ext.1/2. The notes were kept in an envelope, the said envelope was kept in the pocket of her cardigan by an officer and was asked not to touch it and that she should give it to the Principal only when he would demand the money. She was told that R.T. Dharnal would accompany her. She should introduce him as a

neighbor. He was instructed that when the money would be taken by the principal in his chamber he would come out by rubbing his hands on his face. Another witness Sibananda Bhattacharjee was also instructed to observe the matter. Thereafter a pre-trap memorandum was prepared and along with others she signed the said memorandum. She identified the memorandum and her signature which was marked as Ext.2/2. All of them started from CBI office in their vehicle for Central School, at a distance from the school the vehicle stopped and she along with R.T. Dharnal got down from the vehicle and proceeded towards the school, the other persons including the CBI officers also followed her from some distance. She stated that they reached the school at about 12.30 p.m. and when they reached there were two other persons in the chamber of Principal and they had to wait outside the chamber. When those two persons came out she along with R.T. Dharnal entered his chamber and as soon as they entered the chamber Principal questioned as to who was accompanying her, she introduced him as a neighbor and stated that as she was not physically fit and unable to hold her class for being sick he accompanied her. She informed the Principal that she brought the money which was demanded for service. Then he stated "*Kya lie ho*", she confirmed the same when he asked for the money and she brought out the same from her pocket and handed it over to him and when she offered the money to him at that moment R.T. Dharnal got out of the room and immediately the CBI officers entered into the chamber. The Principal who was still holding the money threw it on the table and the CBI officers caught hold of his two hands and the same was washed in a solution kept in a bowl which turned pink. The said pink colour solution

was kept in a bottle and label was pasted on it, she identified the signature which was marked as Ext.4/2. Another bottle containing pink colour solution was also labeled and pasted on the bottle with her signature which was marked as Ext.3/2. CBI Officers thereafter asked Sibananda Bhattacharjee to verify the number of the notes mentioned in the list, Sibananda Bhattacharjee verified the same and found the numbers tallying with the numbers in the list and the same was kept in an envelope and sealed. On the said envelope she also signed. The said envelope was marked as 'D' by the CBI Officers. She could have identified the same if the same was produced in Court. At that time another teacher namely, Jayoti Roy computer teacher entered the chamber of the Principal. She represented that the Principal took Rs.850/- from her and she gave the same in the form of 85 notes of Rs.10/- denomination accompanied by a slip of UCO Bank, those were bound by girder. On hearing the same CBI Officers searched the briefcase of the Principal and found those notes in his briefcase. The slip of UCO Bank was attached with those notes. After completion of the said seizure the same were recorded in post-trap memorandum which was signed by her along with others present there. She identified the post-trap memo and her signature over it which was collectively marked as Ext.9/2. She also identified the 85 ten rupees notes which were marked as MAT Ext.IV/1. She deposed that she applied at the Central School on the basis of an advertisement in the newspaper. She produced the said application which was submitted by her at the time of appointment, it contained her signature. The document was marked as Ext.11 and her signature on it was marked as Ext.11/1. She further narrated that interview was held in which Principal

was present and she was appointed as dance teacher. After interview she was informed about her selection over phone, she joined the school on 15th September, 2003 and her appointment was on contractual basis. As a teacher she signed the attendance register both at the time of entrance and after completion of classes and used to maintain diary as a teacher. The teacher's diary was shown to her and she stated that the diary contains endorsement from 24.02.2003 to 26.02.2004. The diary was marked as Ext.12. The 15 pages of the diary were used by her, other pages were blank. Staff attendance register for the period from December, 2002 till January, 2004 contains her signature against her name in all the working days when she was present in school in those five months. The part of the attendance register for the month of September, October, November and December were marked as Ext.12, Ext.13/1, Ext.13/2, Ext.13/3 and Ext.13/4. At the end of every month teachers had to submit summary sheet, she submitted summary sheet during her tenure at school. She identified the summary sheet for the month of September, October, November and December, 2003 and January 2004. The summary sheets of five months were collectively marked as Ext.14. After end of the month she was given consolidated amount of salary which she received by signing a bill. She also deposed that generally she used to speak with the Principal in Hindi. All the conversation relating to bribe and payment to bribe were done in Hindi. She identified the Principal in Court.

PW4, Jayoti Roy, deposed that on 11.09.2003 she was appointed as Computer teacher on contractual basis at Kendriya Vidyalaya, Sevak Road,

Siliguri. The said appointed was on a contractual basis for one year. On 05.02.2004 she was taking her computer classes in the laboratory which was situated adjacent to the Principal's room. After tiffin break a peon came to laboratory and informed her that the computer in the chamber of the Principal was not functioning and as such she was asked to go to the chamber of the Principal. When she reached there, she found that the Principal was sitting in his chair and some unknown persons were also there in the chamber. Barnali Banerjee, dance teacher and Arati Darnal another teacher of the school was also present there. She switched on the computer with password and thereafter she asked Barnali as to why so many people gathered there. At that time Barnali told her that those people were CBI Officers and the Principal was caught red handed when he was taking money from her. Being encouraged she informed the unknown persons that in the morning the Principal took a sum of Rs.850/- from her for renewal of her contractual service. She gave him 85 notes of Rs.10/- denomination each and also informed them that after taking the said money the Principal kept the same in his briefcase. One of the CBI Officer opened the briefcase and found the said bundle of notes, covered with a slip of UCO Bank, H.C. Road. The notes were kept by the CBI Officers in an envelope and the same was sealed. The officers prepared notes regarding the trap and obtained her signature on the said paper. She identified the notes by seeing the slip of the Bank. She identified the bundle of notes by seeing the slip which was attached. It contained the slip of UCO Bank. The notes were also identified by her, as her signature was present on the slip of UCO Bank. The bundle of notes were marked as MAT Ext.IV/1 and her signature was

marked as Ext.7/2. The envelope was marked as MAT Ext.IV. Signature of the witness on the envelope was marked as Ext.6/2. She also signed the post-trap memorandum and her signature was marked as Ext.9/3 collectively. She narrated that she withdrew Rs.1000/- from her savings bank account bearing no.014813 on the previous day i.e. 04.02.2004. The said amount was demanded as renewal of her contractual service. She stated that no appointment letter was given to her and her appointment was verbal. She used to sign the attendance register in all working days. She had a personal diary. She identified the attendance register of the school for the period from December, 2002 to January, 2004. The same were marked as Ext.13. She joined the school on 11.09.2003. She identified her signature in the attendance register on and from 11.09.2003. Her signatures on all working days from 11.09.2003 till 31.01.2004 were available in the attendance register which was identified and was marked as Ext.15, Ext.15/1, Ext.15/2, Ext.15/3 and Ext.15/4 collectively. She identified the diary for the period from 16.10.2003 to 26.02.2004 the same was marked as Ext.16. She narrated regarding the contents of the diary and stated that the details of her entry on 05.02.2004 is entered on page no 61. The page is marked as Ext.16/1. Signature of the Principal was identified by her which was marked as Ext.16/2. She thereafter deposed that her payment was made on monthly basis and at the end of the month she had to submit a statement in particular proforma regarding her work. The Principal forwarded the same to cash. Thereafter cashier used to make her payment as a contractual service holder. The formats which were submitted for the periods from September, 2003 to January, 2004 were marked as Ext.14

(collectively). She identified the signature of the Principal on each of the formats for the months from September, 2003 to January, 2004 which were marked as Ext.14/1 (collectively). She also identified the Principal S.D. Sharma in Court.

PW5, Bimal Chandra Purkait is retired Senior Scientific Officer of C.F.S.L. Kolkata. He deposed that in the month of April, 2004 when he was posted in the place as Junior Scientific Officer he received three sealed Lamp level bottles from the Director C.F.S.L. Kolkata for chemical examination, in connection with R.C. Case no. 5A/2004 Kolkata dated 04.02.2004. In the forwarding letter there was specimen seal, the seal of bottles and the seal of the forwarding letter was compared by him. The bottles were sent by CBI by marking 'A', 'B' and 'C' and in the C.F.S.L. the same was marked as 14/04-A, 14/04-B and 14/04-C. He conducted the chemical examination taking samples from each of the bottles. The results of the chemical examination were provided in details. The said report was prepared by office typist as per dictation and in his presence. The report bears his signature and office seals, as such the same was marked as Ext.17. He further narrated that after examination he sealed the three bottles with the help of the official seals and on the labels of the bottles he signed with official seal. He identified his signature and official seal on the labels of the bottles. The seals and the signatures are marked as Ext.18 series. Facsimile seal of the office was also present in the report, the said seal was used in the bottles at their office. The report and the three bottles were sent by Director C.F.S.L. to Superintendent of Police, CBI, Kolkata. The

forwarding letter which was signed by A. Kumar Senior Scientific Officer, C.F.S.L. on behalf of the Director was identified by him and marked as Ext.19 and he also identified the three bottles which were marked as Ext.I, II, and III.

PW6, Sudip Roy was posted as Inspector of Police in CBI, ACB, Kolkata, on 04.02.2004 he was entrusted with the Case being R.C.5/2004 of ACB, Kolkata under Section 7 of the P.C. Act, 1988 which was registered on the basis of a written complaint by one Barnali Banerjee (Chakraborty), a contractual teacher of Kendriya Vidyalaya, Sevoke Road, Siliguri. The allegation was that Sri S.D. Sharma the then Principal of Kendriya Vidyalaya, Siliguri demanded bribe of Rs.1300/- from the complainant for renewing her contract as dance teacher. The FIR was registered on 04.02.2004 on the basis of the said complaint and it was signed by Sri Dipak Kumar the then S.P. of CBI, A.C.B. Kolkata. He identified the signature of the S.P. which was marked as Ext.20. He identified the Formal FIR which was typed in five pages along with the original signature of the S.P. Sri Dipak Kumar which was marked as Ext.21. He deposed that he played the role of trap laying officer. As per direction of the SP a trap laying team was constituted which included him as trap laying officer along with Inspector Rajesh Chahal, Inspector Bhowmick and SI LK Mishra and other constable staff for assistance. The said trap laying team assembled in CBI Office at Siliguri on 05.02.2004 at about 10.00 am where the complainant Barnali Banerjee and two other witnesses namely, Smt. Arati Darnal, Clerk-cum-cashier, SBI, Siliguri and Shibananda Bhattacharjee, Manager,

Allahabad Bank, Siliguri were present. The purpose of such assembly was explained to all the persons who were present and were introduced with each other. The witnesses were informed regarding the pre-trap formalities as per the letter of complaint so that the accused S.D. Sharma, Principal, Kendriya Vidyalaya, Siliguri could be caught red handed. The complaint submitted by PW3 was read over to the independent witnesses who thereafter clarified the genuinity of the complaint by questioning PW3 who admitted the same and also identified her hand writing and signature on the complaint. The witness as trap laying officer explained to the members present at the spot that he was laying a trap on the said accused S.D. Sharma, a demonstration of phenolphthalein powder was shown to the independent witnesses and other members present, by L.K. Mishra, Sub-Inspector. The witnesses were instructed that if the phenolphthalein powder is touched and then dipped in the colourless solution of sodium carbonate then the solution turns pink, and L.K. Mishra, Sub-Inspector took a pinch of phenolphthalein powder in his hand and then dipped his finger on colourless solution of sodium carbonate prepared on the spot in clean bowl, on doing so the colourless solution turned pink in colour. The said solution was transferred in a clean bottle, duly seized and marked as 'A', after sealing, the same was labeled and signed by all the persons present including the witnesses. He identified the bottle containing solution which was marked as MAT Ext.I. The signature of the witness on the label was identified by him and the same was marked as Ext.1/3. He stated that PW3 Barnali Banerjee (Chakraborty), the complainant produced 13 notes each denomination of Rs.100/-, the same was treated with phenolphthalein

powder by Shri LK Mishra, Sub-inspector of Police and on the advice of Shri LK Mishra PW3 kept the notes in the pocket of the cardigan and there were no other notes in the said pocket. Witness instructed the complainant to hand over the said tainted money to S.D. Sharma only on demand and otherwise she should not. Arati Darnal the other witness was made as the shadow witness and was instructed to accompany the complainant in office chamber of the Principal, S.D. Sharma and would be watching the transaction and clearly hear the conversation between the accused and the complainant and thereafter give a pre-fixed signal by rubbing her face with both the hands after the transaction was over by coming out of the chamber. The remaining portion of the phenolphthalein powder was kept at the CBI Office and SI LK Mishra was instructed not to assist the trap team for further proceedings. Thereafter all the trap members washed their hands with soap and water and the pre-trap proceedings that took place was noted down by typing the same in the CBI Office at Siliguri in which the thirteen notes of Rs.100/- denomination was mentioned and noted down prior to tainting them with phenolphthalein powder. Thereafter the pre-trap memorandum was read over to all the members of trap team including the independent witness, who then signed the same on the spot and thereafter the CBI team including the complainant and the independent witnesses left for Kendriya Vidyalaya, Siliguri at 12.00 p.m. The pre-trap memorandum so prepared was handed over to Shibnanda Bhattacharjee (PW1), independent witness for reference in the post-trap proceedings. The facsimile seal was also taken in the pre-trap memorandum. He identified the facsimile seal in page no.5 of the pre-trap memorandum which was prepared under his

instruction and typed by Arup Bhowmick in the CBI Office at Siliguri. He identified his signature in each of the pages of the pre-trap memorandum and marked as Ext.22. After completion of pre-trap proceedings the CBI Team including two independent witnesses and the complainant without SI LK Mishra left for Central School, Sevoke Road, Siliguri in government vehicle. At around 12.30 pm they reached and the complainant along with shadow witness went to the chamber of S.D. Sharma, Principal, Central School followed by Shibnanda Bhattacharjee and other trap members. After reaching the chamber of the Principal the complainant and the shadow witness had to wait in front of the door as one visitor was inside the chamber of the Principal. After five minutes the said visitor came out of the chamber and the complainant PW3 along with shadow witness PW2 entered the chamber of Principal. The shadow witness came out from the chamber and gave a pre fixed signal by rubbing her face with both of her hands. This witness and other CBI officers including the independent witnesses rushed inside the chamber of the Principal and saw that the Principal was holding 13 G.C. notes of Rs.100/- each in his left hand. He (witness) rushed inside and caught hold one of his hand and Arup Bhowmick caught hold of the other hand and challenged the Principal for demanding and accepting Rs.1300/- from the complainant. On this the Principal got perplexed and threw the said tainted money in his office table. The witness thereafter asked Arati Darnal, PW2, the shadow witness, who narrated the sequence of events/offence that took place inside the chamber in her presence. She narrated the incident from entering the office chamber. It was stated that the complainant wished the principal and requested him to extend her

tenure as dance teacher on contract. On this Principal asked in Hindi "*Keya paisa layee ho*", on this the complainant answered in the affirmative and the accused demanded as "*Lao*". Then the complainant handed over the said tainted thirteen G.C. notes of Rs.100/- to the accused/Principal and came out of the chamber to give a pre fixed signal. Then the witness asked the independent witness Shibananda Bhattacharjee to take charge of the tainted money of Rs.1300/- lying on the office table of the Principal, he took the same along with the pre-trap memorandum by checking the numbers of the currency notes already mentioned in the pre-trap memorandum and found the same to be correct. The clean water of sodium carbonate was poured in a tumbler and the accused was asked to dip his left hand fingers inside the same. On doing so the said solution turned into pink, the solution was transferred in a clean glass bottle and covered, sealed and labeled and marked as 'B'. Similarly the right hand was washed in clean solution of sodium carbonate which also turned pink and the same was labeled and marked as 'C'. The bottles were identified which was marked as MAT Ext.II and Mat Ext.III. The signature on the label on the said two bottles which was signed by the witness and identified by him were marked as Ext.3/3 and Ext.4/3. Thereafter the trap money was packed and labeled and duly signed by all the members and marked as 'D'. When the trap proceeding was going on one Jayoti Roy, a computer teacher who worked on a contractual basis entered the chamber of the Principal where the post-trap proceedings was carried on and she reported that in the morning of the said date i.e. 05.02.2004 she on demand of the Principal gave him Rs.850/- as illegal gratification for renewing her contract as computer teacher. She also stated

that the said Rs.850/- were in the denomination of Rs.10/- in a bundle of UCO Bank, Hill Cart Road, Siliguri. Thereafter search under Section 165 of the Code of Criminal Procedure was conducted in the briefcase of the Principal and in presence of the independent witnesses and from the same the said Rs.850/- denomination of Rs.10/- in the bundle of UCO Bank, H.C. Road, Siliguri was recovered. The same was identified by Jayoti Roy who signed on the label of UCO Bank, which was marked and signed by all the members present there. The marked was made as 'A', witness also identified the bundle mark as 'E' which contained his signature. He also identified the bundle of notes bearing the signature of Jayoti Roy the same was marked as Ext.4/2. The Principal was thereafter arrested on the spot and personal search was also conducted in presence of the independent witnesses and the personal belonging so recovered as per the arrest and seizure memo was handed over to the Hindi Teacher of the school under receipt. He identified the search list prepared by Arup Bhowmick under his instruction. He identified his signature which was marked as Ext.23. A sketch map of the office chamber of the Principal was prepared under his instruction. He identified his signature therein which was marked as Ext.8/2. The post trap memorandum which consists seven pages was marked as Ext.24. Witness also stated that he seized some documents from Kendriya Vidyalaya, Sevoke Road, Siliguri by a seizure list prepared by Arup Bhowmick under his instruction which bears his signature and on identification of the witness, the seizure list was marked as Ext.25. As he was trap laying officer he could not investigate the case and as such he informed the matter to the S.P. who entrusted Mr. Rajesh Chahal to investigate the case.

PW7, Sanjay Kumar Arya was posted at UCO Bank, Siliguri Branch as one of the Managers. On or about 25.02.2004 the forwarding letter was made from his office under his hand writing which bears his signature with office seal of the bank. On the basis of the forwarding letter he signed one withdrawal slip and a bank account statement to the CBI, Siliguri Officer. Witness stated that he is unable to recollect the name of the account holder, however he identified the withdrawal slip and the bank account statement sent by him on the basis of the forwarding letter. He identified his signature and office seal on the bank account statement. The forwarding letter, bank account statement and the withdrawal slip were marked as Ext.26 collectively (on objection). Note slip was fixed by the UCO Bank, Hill Cart Road Branch, Siliguri which was identified by him and marked as Ext.7/3 (with objection).

PW8, Anirban Pal, is Lower Division Clerk at Kendriya Vidyalaya, BSF, Baikunthapur. He deposed that he knew Mrs. Barnali Banerjee and Smt. Jayoti Roy who were contractual teachers working at Kendriya Vidyalaya, Sevoke Road, Siliguri in the year 2002-2003. He also knew the accused/Principal of Kendriya Vidyalaya who used to work there and identified him in dock. He also knew HL Yadav who was the PGT Hindi Teacher of Kendriya Vidyalaya in the same school and was officiating Principal at Kendriya Vidyalaya. He deposed that a notification was published in the newspaper for which candidates applied for contractual teachers and submitted their applications. After verification of their bio data and testimonials an interview was held which was conducted by a board

constituted by the Vidyalaya Management Committee. The Principal is also a member of the said Board. Performance in the said interview were evaluated and thereafter selected on the basis of the merit list. The office copy of the order of notification which was sent to the Editor of "Uttar Banga Sambad" was kept in the office records of the school. He identified the signature of HL Yadav the then officiating Principal along with his official seal. The signature was marked as Ext.27 (on objection). The witness was shown the minutes of the meeting which was held after the interview was conducted and the signature on the minutes of the meeting by all the members of the Vidyalaya Management, witness stated that the accused SD Sharma also signed the said minutes. The consolidated form of the marks obtained by the candidates in the said interview which reflects the panel for the post of contractual teachers, were shown and the witness identified the signatures of the members of the interview board. Witness also identified the official seal and signature of the accused SD Sharma the then Principal, as such minutes of the meeting along with result analysis of contractual basis appointment 2003-2004 was marked as Ext.28 collectively (on objection). The official letter which was sent from Kendriya Vidyalaya Sanghatan Headquarter, New Delhi and was attested by Assistant Commissioner, Kendriya Vidyalaya Sanghatan, Regional Office, Kolkata relating to the rules for engaging contractual teachers were produced and identified by the witness, the official letter was marked as Ext.29. The certified copy of the attendance register for the period from September, 2003 to January, 2004 which was certified by HL Yadav officiating Principal was produced in Court and identified by the witness and marked as Ext.30 (on objection). Another

certified copy of the staff attendance register of regular teachers of the school which was certified by officiating Principal Mr. HL Yadav was produced in Court and was marked as Ext.31 (with objection). The joining letter of Jayoti Roy one of the contractual teacher was produced in Court, witness stated that he was acquainted with her signature as he worked with her and also acquainted with green ink of the said joining letter along with signature of the then Principal SD Sharma which was produced in Court and the same was marked as Ext.32. The certified copy of the acquaintance roll was also identified by the witness and the same was marked as Ext.33 (on objection). The forwarding letter addressed to the Inspector, CBI, ACB, Siliguri Unit with the signature of the officiating Principal written by the witness was produced and marked as Ext.34 (on objection). The bio-data form of Smt. Jayoti Roy along with testimonials was marked as Ext.35 (on objection). The witness stated that the term of the contractual teachers so appointed in the year 2003 were for a period of one year, however, they were retained till the month of February as examination takes place in the month of March during which no teaching classes are held.

PW9, H.M. Cairac was posted as Commissioner, Kendriya Vidyalaya Sangathan on 28.04.2004. He granted the sanction order for prosecution of the accused SD Sharma. He identified the sanction order which was typed in his office and deposed that he granted sanction order long ago and cannot recollect who dictated the same. The witness stated that in all probability he had dictated the same. He stated that the said sanction order was issued 12 years earlier and he applied his mind before issuing the

same. Referring to the contents of the sanction order the witness deposed that in the said sanction order it was mentioned that after careful examination of relevant materials placed before him like copy of FIR, copies of statements of witnesses, copies of documents relied upon and other relevant materials collected during investigation he issued/granted the sanction order. However, the witness stated that he cannot remember what exactly he did as it was done long time ago. Witness identified his signature and seal and the sanction order was marked as Ext.36.

PW10 Rajesh Chahal deposed that on 07.02.2004 he was posted as Inspector-in-charge, CBI, Siliguri Unit and was posted there from the month of June, 2003 till December, 2005. On 04.02.2004 he was in his office at Siliguri and a lady namely, Barnali Banerjee came to him for lodging a written complaint. Said complaint was addressed to S.P. CBI, ACB, Kolkata. He identified the complaint and his endorsement on the said complaint was marked as Ext.10/1. He discussed with the Superintendent of Police, CBI over phone and received information from the Superintendent of Police that a criminal case was registered on the complaint lodged by Barnali Banerjee (PW3) against SD Sharma the then Principal of Kendriya Vidyalaya, Sevoke Road, Siliguri. On that day he arranged two independent witnesses namely, Arati Darnal, an employee of SBI and S. Bhattacharjee, an employee of the Allahabad Bank for laying trap. He also instructed the complainant to come on the following day with Rs.1300/- i.e. on 05.02.2004 at about 10.00 am. He along with Sudip Roy, Inspector of CBI, Arup Bhowmick, another Inspector of CBI, LK Mishra, Sub-inspector, CBI and the aforesaid two

witnesses along with the complainant assembled at his office at Siliguri. All the persons were introduced to each other and Inspector Sudip Roy explained all the persons present there the purpose of the said assembly. The contents of the complaint were read over and explained to all the persons, thereafter PW3 handed over Rs.1300/- to Sudip Roy, Inspector for using the same as trap money. Said money was Indian Currency of Rs.100/- denomination each. SI LK Mishra treated the said money with phenolphthalein powder and prepared the solution of water and sodium carbonate. The said solution was colourless and thereafter he dipped his finger of right hand into the solution which turned the colour of the solution as pink. The currency notes of Rs.1300/- were again treated with phenolphthalein powder and the said money was inserted in the right side cardigan pocket of the complainant as per her consent. No other articles were there inside the said pocket. Inspector Sudip Roy instructed the de facto complainant not to touch the said currency unless the money is demanded by the accused from her. Hand wash of SI LK Mishra was kept in a bottle which was corked, sealed and the persons present there signed on the label pasted on it. Mrs. Arati Darnal was instructed to act as a shadow witness and to see the transaction of the money along with over hearing the conversation which was made between PW3 and the accused Principal. The other witness S. Bhattacharjee was asked to accompany the said members of the team. A pre-trap memo of the proceedings were prepared wherein he signed and the same was marked as Ext.2/3 collectively. He identified the bottle where the hand wash was kept by SI LK Mishra. His signature on the label was identified and marked as Ext.1/4. Witness deposed that after

completion of the pre-trap proceeding all the members left the office for Kendriya Vidyalaya and reached there at 12.30 pm along with Sudip Roy the trap laying officer and according to his instruction the complainant and the shadow witness went in front of the office of the Principal rest of the members took their position in the school. After about five minutes the complainant and shadow witness entered in the said office chamber and after some time the shadow witness Arati Darnal came out of the said office chamber and gave a pre-arranged signal by rubbing her face with both hands. Thereafter the trap laying officer along with all the members of the team entered into the office at the time the accused/principal was holding the said money amounting to Rs.1300/- in his left hand. Inspector Sudip Roy challenged the accused for demanding and accepting the gratification of Rs.1300/- from PW3 for continuation of her service as a dance teacher, when accused threw all the notes on the table. At that time Sudip Roy caught right wrist of the accused and Inspector Arup Bhowmick caught left wrist of the accused. Thereafter trap laying officer asked the shadow witness for narrating the entire incident. Mrs. Darnal explained the matter, narrating that the accused demanded bribe from Barnali Banerjee (PW3) when she took out the sum of Rs.1300/- from her cardigan pocket and extended money towards him, it was accepted by the accused with his right hand. The accused counted the same with both the hands and kept the money in his left hand. The complainant, PW3 also stated the same facts. The fingers of the left hand of the accused was washed with the solution of sodium carbonate which was kept in a bottle corked, sealed and the label was signed by the witnesses. He identified the signature on the label which

was marked as Ext.3/4. The same repetition was done with the right hand of the accused and the solution was kept in the bottle being labeled and signed by the witness. The signature on the label was identified by him which was marked as Ext.4/4. As per instruction of the trap laying officer, Sudip Roy recovered number of notes which were kept on the table, the denomination and number of the notes tallied with the list of the notes written earlier. The said currency notes were kept in an envelope and the envelope sealed and signed. At that point of time another contractual teacher namely, Jayoti Roy came there and informed them that she also gave Rs.850/- to the accused in the morning for continuation of her services as contractual teacher. As such search was conducted and Rs.850/- was recovered from the briefcase of the accused, the said money was in denomination of Rs.10/- each. Jayoti Roy identified the said money wherein slip of UCO Bank was attached. The said money was kept in an envelope, seized by the trap laying officer. The witness was shown the envelope and he identified his signature which was marked as Ext.6/3. Witness stated that Jayoti Roy narrated that she had withdrawn the said money from the UCO Bank where she maintained her accounts. A rough sketch map was prepared, post trap memorandum were also prepared and the witness signed the same. He identified his signature on the post-trap memorandum which was marked as Ext.9/4. Trap laying officer arrested the accused. On 07.02.2004 according to the order of SP, CBI the charge of investigation was handed over to him. He examined all the members of the trap team including the private witnesses and Mrs. Jayoti Roy, recorded their statements, some other witnesses of Kendriya Vidyalaya were also

examined, documents were collected from Kendriya Vidyalaya and UCO bank, Sevoke Road, Siliguri. The Superintendent of Police forwarded the sealed bottles to the C.F.S.L. for chemical analysis and report. On completion of investigation all relevant materials were sent to the sanctioning authority for sanction to prosecute the accused. After obtaining the sanction order from the competent authority, charge-sheet was filed against the accused. The witness stated before the submission of charge-sheet he also received the report from C.F.S.L. Kolkata.

Before analyzing the evidence of the prosecution and the submissions advanced by the respective parties it would be apposite to refer to the deposition of the accused who examined himself as a defence witness. He stated that he had been at the Kendriya Vidyalaya, Sevoke Road, Siliguri from 21st July, 2003 as a Principal. According to him in the local station it is the Chairman of Vidyalaya Management Committee who has the authority to appoint part time contractual teacher and the Principal has no authority to renew any contract of contractual part time teacher and on 29th January, 2004 he was present in the said school and on that date Assistant Commissioner of Kendriya Vidyalaya Sangsthan, Regional Office, Kolkata and four principals of other kendriya Vidyalaya came for panel inspection of Kendriya Vidyalaya, Sevok Road. He also produced the original "Educational Code for the Kendriya Vidyalaya" which was marked as MAT Ext.'A' for defence (with objection from the prosecution).

Mr. Tapas Kumar Ghosh, learned Advocate appearing for the appellant Suresh Dutt Sharma submitted that the genesis of the matter

related to the written complaint dated 04.02.2004 submitted by Smt. Barnali Banerjee (Chatterjee) (who has been cited as prosecution witness no.3) to the Superintendent of Police ACB, Kolkata through Inspector, CBI, ACB, Siliguri alleging that in the month of September, 2003 she was appointed as dance teacher on contract basis with payment of Rs.200/- per day, in the Central School (Kendriya Vidyalaya) Sevoke Road, Siliguri, District Darjeeling). On 29.01.2004 the appellant/accused demanded bribe for a sum of Rs.1300/- per month out of the monthly salary of the complainant for continuation of her contract as a dance teacher in the said school and in case the complainant did not pay the said amount to the appellant/accused he would terminate her services. The complainant as such requested for taking legal action against the appellant/accused. The said complaint was forwarded to SP, CBI, ACB, Kolkata on 04.02.2004 for necessary action by Shri Rajesh Chahal, Inspector, CBI, ACB, Siliguri Unit (PW10). On the basis of the aforesaid complaint the FIR being RC No. CAA 2004A0005 was registered under Section 7 of the Prevention of Corruption Act, 1988 against the appellant. Learned Advocate submitted that on 05.02.2004 at about 10.00 hrs pre-trap legal formalities were conducted by the CBI team at the CBI Office and to that effect a pre-trap memorandum was prepared. On 05.02.2004 the appellant was caught red handed accepting the bribe of Rs.1300/- from PW3, a contractual dance teacher, Kendriya Vidyalaya, Sevoke Road, Siliguri for continuation of her contract as dance teacher by a team of CBI Officials at Siliguri and it was also alleged that while the post-trap proceedings concluded one Jayoti Roy who was a contractual computer teacher at Kendriya Vidyalaya, Sevoke Road, Siliguri

came inside the Office chamber of the appellant/accused and narrated that she also gave Rs.850/- as illegal gratification for her continuance of service in the school on contractual basis. She stated that she handed over Rs.850/- in the morning at around 10.45 am to the appellant/accused on demand and the said amount was paid by way of 85 number of G.C. notes of Rs.10/- denomination each, containing a note slip of UCO Bank, H.C. Road, Siliguri, the same was recovered from the briefcase of the appellant/accused. The amount was identified by Smt. Jayoti Roy. A post-trap memorandum was prepared by the CBI team in respect of the incident which happened at the chamber of the Principal. On or about 28.05.2004 charge-sheet was submitted under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act against the accused before the learned trial Court. The learned Advocate submitted that none of the ingredients of Section 7 of the Prevention of Corruption Act could be proved by the prosecution and they failed to prove the case that the accused accepted such gratification as a motive or reward for doing any official work. It was pointed out that according to Rule 9(2) of the Kendriya Vidyalaya Sangathan (Appointment, Promotion, Seniority, Etc.) Rules, 1971, the same person is not permitted to be engaged for consecutive years. Learned Advocate emphasized that the Principal of Kendriya Vidyalaya was not entitled to renew the contract of any contractual teacher for two academic sessions consecutively in the same school and as such the accused/appellant at the relevant point of time had no power or authority to act as alleged by the complainant. By referring to the evidence of PW10 it was pointed out that the investigating officer of the case in fact was a

member of the trap laying party and assumed the role of an investigating officer which speaks of mala fides which also vitiated the trial subsequently conducted. According to the learned Advocate a member of the raiding party is precluded from carrying out investigation in view of the settled principle that he becomes an interested party regarding the consequences and outcome of the case and as such works motivatedly in course of the investigation. The evidences reflect that the amount of Rs.1300/- which was handed over to the appellant and he accepted it in his official capacity. The narration of facts of PW3 differs before the Court, as in the complaint it was referred that on 29th January, 2004 demand was made, while in Court PW3 during her deposition stated that such a demand was made on 04.02.2004. Learned Advocate also drew the attention of the Court to the factual inconsistencies in respect of the manner of deposition of eye-witness who claimed to have witnessed the incident. To that extent learned Advocate drew the attention to the evidence of PW6 and PW10 regarding the incident of the CBI Officers holding the hands of the principal and the money lying on the table in front of the Principal. Learned Advocate submitted that the sum of Rs.1300/- or the envelope in which the said amount was kept and signed by the witness were never produced by the CBI before the Court and as such a new story of Smt. Jayoti Roy, PW4 another contractual computer teacher was introduced in the case. Learned Advocate relied upon the judgment of ***State of Kerala & Anr. -Vs. - C.P. Rao*** reported (2011) 6 SCC 450 and pointed out that accepting illegal gratification as motive or reward for doing or forbearing to do an official act, in absence of motive cannot be basis of conviction.

Reliance was also placed on ***Maddu Lakshmana Rao -Vs. - State of Andhra Pradesh*** reported in ***2000 SCC OnLine AP 292*** for emphasizing that the investigating officer being a member of the raiding party affects the credibility of the prosecution case and in the reported case on this issue at the inception case was quashed. Reference was also made in respect of the judgment of the Hon'ble Supreme Court in ***Bhagwan Singh -Vs. - The State of Rajasthan*** reported in ***(1976) 1 SCC 15*** wherein the Hon'ble Supreme Court deprecated the practice of the informant who lodged the FIR to investigate and thereafter submit charge-sheet. Amongst other issues the said issue was considered and the Hon'ble Supreme Court was of the opinion that the prosecution case is not free from reasonable doubt and as such the order of conviction and sentence was set aside.

On the other hand Mr. Sudipto Kumar Mazumdar, Ld. D.S.G. appearing for the CBI narrated the facts of the case and supported the judgment and order of conviction and sentence passed by the learned Special court. Learned Advocate submitted that the defence case emphasizes on the issues relating to the trap money not being produced before the Court; the computer in the office of the Principal was out of operation and as such it was impossible to prepare the post-trap memorandum as narrated by the witness; PW3 was suspended from school by the appellant for dereliction of duty; Jayoti Roy gave bribe for which she should have been held to be an accused and the case should have been registered against her, however she was neither made an accused nor her presence in the appellant's office at the relevant time is believable or acceptable; the

demand made on 29.01.2004 is absolutely impossible in view of the fact that inspection was being carried out on the said date. Learned Advocate submitted that the oral evidence of the witnesses are corroborative in nature, particularly with regard to the pre-trap and post-trap procedure and demeanor of the appellant when he was apprehended by the CBI Officials. Learned Advocate drew the attention of the Court to the relevant part of the evidence of PW1 and PW2 who are independent witnesses. So far as the issue relating to non-production of trap-money, learned Advocate for the CBI argues that mere recovery of tainted/trap money under no circumstances leads to conviction, what is required to be proved is the factum of demand or acceptance. In this case according to CBI, demand has been proved and there was no explanation from the side of the accused/appellant as to how the money was lying in his hand, table and briefcase. Learned Advocate relies upon ***Neeraj Dutta –Vs. – State (Govt. of NCT, Delhi)*** reported in **2022 SCC OnLine 1724** and draws the attention to the following paragraphs:

“76.In the absence of evidence of the complainant (direct/primary, oral/documentary evidence) it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Act based on other evidence adduced by the prosecution.

77. We direct that individual cases may be considered before the appropriate Bench after seeking orders of Hon'ble the Chief Justice of India.

78. Before we conclude, we hope and trust that the complainants as well as the prosecution make sincere efforts to ensure that the

corrupt public servants are brought to book and convicted so that the administration and governance becomes unpolluted and free from corruption.

79. *In this regard, we would like to reiterate what has been stated by this Court in Swatantar Singh v. State of Haryana, (1997) 4 SCC 14:*

“6.Corruption is corroding, like cancerous lymph nodes, the vital veins of the body politic, social fabric of efficiency in the public service and demoralising the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of corruption would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke”.”

Learned Advocate also submitted that the contention regarding Section 114 of the Evidence Act being attracted as submitted by the appellant/accused is not acceptable, as the nature of the evidence was not only restricted to oral or ocular evidence but was based upon documentary evidence particularly with regard to the witnesses in respect of whom such a contention has been advanced. It has been reiterated by the CBI that under no circumstances Sub-Inspector L.K. Mishra was such a witness that non-examination of such witness would lead to acquittal in the present case. Learned Advocate stated that charge was framed under Section 7 of the Prevention of Corruption Act yet the appellant was convicted under Section 13(1)(d) of the Prevention of Corruption Act. To that effect reliance was placed upon ***Dalbir Singh –Vs. – State of UP*** reported in **(2004) 5 SCC 334**

by referring to Section 464 and Section 222 of the Code of Criminal Procedure. Reference was made to the relevant provisions of the Code of Criminal Procedure for pointing out that any error, omission or ignoring any misjoinder of charges shall not result in invalidating the conviction or order of a competent Court unless the same has occasioned in failure of justice. It was pointed out that as the appellant failed to show any miscarriage of justice, it would not be fit and proper in the circumstances to hold that in the circumstances of the case no offence under Section 13(1)(d) of the Prevention of Corruption Act has been committed by the appellant/accused.

Before proceeding further with the merits of the appeal and the submissions advanced on behalf of the learned Advocates appearing for the parties the relevant part of the post-trap Memorandum is required to be set out for the purposes of the present case:

“After completing Pre-trap formalities at CBI office,

The complainant along with the witness Smt. Arati Darnal

On reaching Central School (Kendriya Vidyalaya), the complainant and the witness Smt Arati Darnal went in front of the door of the Office chamber of Shri S.D. Sharma, Principal, but waited outside the room as one visitor was inside the chamber. Whereas the CBI team and the other witness, took position in a scattered manner, around the office chamber of Shri S.D. Sharma, Principal, Central School (Kendriya Vidyalaya), Sevoke Road Siliguri, from where the complainant and the witness Smt. Darnal could be seen. After Five minutes, the visitor came out from the office chamber of the Principal and then the complainant and the witness Smt. Arati Darnal entered inside the office chamber of

Shri S.D. Sharma, the Principal, Central School (Kendriya Vidyalaya), Sevoke Road, Siliguri. After two minutes or so, the witness Smt. Arati Darnal came out from the office chamber of Shri S.D. Sharma, the Principal, Central School (Kendriya Vidyalaya), Sevoke Road, Siliguri, and gave the previously fixed up signal by rubbing her face with both her hands. Immediately the CBI team namely Shri Sudip Roy, Shri Arup Bhowmick, Shri Rajesh Chahal and the other witness Shri Sibananda Bhattacharjee rushed inside the office chamber of Shri S.D. Sharma, the Principal, Central School (Kendriya Vidyalaya), Sevoke Road, Siliguri, and found the accused Shri S.D. Sharma holding the money in his left hand. On seeing the same Shri Sudip Roy caught hold the right wrist, while Shri Arup Bhowmick caught hold the left wrist of the accused Shri S.D. Sharma, by disclosing their identity as CBI Officer and challenged Shri S.D. Sharma for demanding and accepting Rs.1300/- from the complainant Shri S.D. Sharma got perplexed and threw the money on the table, which he was holding in his left hand and started pleading his innocence.

Thereafter Shri Sudip Roy asked the witness Smt. Arati Darnal to narrate the sequence of events, which took place inside the office chamber of the accused and also to narrate the conversation which took place and heard by her.

On this, Smt Arati Darnal narrated the whole sequence of events in the presence of the CBI team members and the other independent witness as under "After entering the chamber of Shri Sharma, the complainant wished Good Morning to the Principal. On seeing me Shri Sharma asked the complainant as to who I am. On this the complainant introduced me as her neighbour and also told that she will not be able to attend school today as she is unwell and as such has come with me. Then she requested Shri Sharma to renew her contract. On this, Shri Sharma asked the

complainant in Hindi - - KYA PAISE LAIE HO - -. On this, the complainant answered in affirmative and Shri Sharma, said – LAO. The complainant took out the money from the right pocket of her cardigan with her right hand and handed it over to Shri S.D. Sharma, which he took in his right hand and started counting it with both the hand and thereafter kept the same in his left hand. After seeing the transaction, I walked out the room and gave the prefixed signal.”

Then a solution of Sodium Carbonate and water was prepared in a clean bowl and after procuring water from attached bath-room of the chamber of the accused, after washing the bowl with soap and water. The said solution was colour less. Thereafter Shri S.D. Sharma was asked to wash his Left hand by dipping his fingers and palm in the said colourless solution. On doing so, the colour of the said solution turned into pinkish in colour. Then the said pink coloured solution was poured in a clean bottle, which was then duly corked, sealed and Marked as ‘B’ for identification and got signed by the all concerned.

Thereafter, the said bowl was again washed with soap and water and again a solution of Sodium Carbonate and water was prepared in the bowl. The said solution was colour less. Thereafter Shri S.D. Sharma was asked to wash his Right Hand by dipping his fingers and palm in the said colourless solution. On doing so, the colour of the said solution turned into pinkish in colour. Then the said pink coloured solution was again poured in a clean bottle, which was then duly corked, sealed and Marked as ‘C’ for identification and got signed by the all concerned.

In the mean time Shri Sibananda Bhattacharjee, independent witness was asked to take over charge of the tainted money which was lying on the office table of Shri S.D. Sharma, accused. Shri Sibananda Bhattacharjee was also asked to take out the

copy of the Pre-Trap Memorandum kept with him and tally the G.C. notes Nos recovered from Sri. S.D. Sharma accused, with those mentioned in Pre-Trap Memorandum. Smt. Arati Darnal and Sri. Sibananda Bhattacharjee tallied the 13 nos. G.C notes of Rs.100/- denominations, which Sri, S.D. Sharma was found to be holding in his left hand and which he threw on his office table, with those mentioned in the Pre Trap Memorandum. On doing so the said G.C notes numbers tallied with the numbers of the G.C. Notes mentioned in the Pre Trap Memorandum. The said recovered 13 G.C. notes of Rs.100/- denomination each was kept in an envelope which was duly packed and sealed and marked "D" for identification. The said envelope was got signed by all concerned.

While the trap proceeding was going on Smt. Joyati Roy wife of Mr. Sushil Das, who is a computer teacher of Kendriya Vidyalaya, Sevoke Road, Siliguri came inside the office chamber of the Sri. S.D. Sharma, Principal and offered herself to participate in the investigation of the Trap case. She told that Sri. S.D. Sharma Principal has also taken Rs.850/- from her as illegal gratification for allowing her to continue be in service in the school on contract basis. She further informed that she has handed over the said amount of Rs.850/- in this morning at around 10:45 A.M. to Sri. S.D. Sharma on his demand, in his office chamber. Accordingly she was asked to remain present in this spot and witness the further Trap proceedings.

Thereafter, the personal search of Shri S.D. Sharma Principal, was taken in presence of independent witnesses after observing all legal formalities. The articles found in possession of Sri. S.D. Sharma accused, during personal search were mentioned in Personal-search-cum-inspection-cum-arrest memo prepared separately on the spot. The articles mentioned in the Personal search-cum-inspection-cum-arrest memo were returned to Sri.

H.L. Yadav PGT Hindi, Kendriya Vidyalaya, Sevoke Road Siliguri, under acknowledgement. Thereafter Shri S.D. Sharma, was arrested after observing all legal formalities.

Search of the office chamber of the accused Shri S.D. Sharma Principal, Kendriya Vidyalaya, Sevoke Road, Siliguri, was also conducted as per the provision of Section 165 Cr.P.C. in the presence of independent witnesses and all concerned. During search the cash amounting to Rs.850/- in a bundle of 85 nos of G.C. notes of denominations of Rs.10/-, containing the note slip of UCO BANK, H.C. Road, Siliguri 0210 was found. The said slip note also had the initial of the clerk of the said bank for having recounted the same. Smt. Joyati Roy identified the said bundle of Rs.850/- so recovered vide a separate search list, prepared on the spot. The said 85 numbers of G.C. notes of Rs.10/- denomination were also sealed in an envelope and got signed from all concerned. Before sealing, the note slip attached with the said bundle of currency note was also got signed from both independent witnesses and Mrs. Jayoti Roy & then tied with a string and sealed. The said bundle was then kept in an envelope and duly sealed and labeled and marked as "E". Fascimile of the seal used has been obtained in this memo, as well as in a separate sheet of paper, which has been duly got signed by all concerned.

All the articles marked as "B", "C" and "D", the description of which is under, have been seized vide this memorandum:

- 1) Left hand wash of Sri. S.D. Sharma accused marked as "B" in a half glass bottle, duly sealed.*
- 2) Right hand wash of Sri. S.D. Sharma accused marked as "C" in a quart glass bottle., duly sealed.*

3) 13 numbers of tainted currency notes of denomination of Rs.100/- each, recovered from Sri. S.D. Sharma accused, marked as "D" in an yellow coloured sealed envelope.

The contents of the memorandum were read over to witness....."

On an analysis of the post-trap memorandum and the pre-trap memorandum it is seen that in the pre-trap memorandum the numbers of each of the notes were recorded while in the post-trap memorandum it has been only recorded that 13 nos. G.C notes of Rs.100/- denominations have been seized. No specifications regarding the notes which have been seized are there in the post-trap memorandum, neither any other seizure list has been prepared in respect of the seized 13 G.C. Notes of Rs.100/- denominations which were allegedly seized from the chamber of accused/Principal of the School. The same assumes importance in this case as in the post-trap memorandum it was stated that in an envelope marked as "D" the said 13 G.C. notes were kept and sealed. The said envelope was not produced in Court neither the 13 G.C. notes of Rs.100/- denominations which were seized were produced before the Court. No documents were also produced before the Court to show that the said 13 G.C. Notes or the envelope "D" was kept in a manner in the office Malkhana of the CBI where materials exhibits are usually retained/stored or kept for production at the time of trial. Any register was also not produced to show before the Court as to how the envelope or the 13 G.C. Notes were kept after seizure was effected. So neither the primary evidence nor the secondary evidence is available before the Court of law with regard to the subject matter of

recovery. Thus except oral evidence nothing is available regarding the factum of acceptance of such Rs.1300/- by way of 13 G.C. notes of Rs.100/- denomination as alleged in the prosecution case.

The aforesaid issue raises a suspicion in view of the allegations made in the complaint and the deposition in Court, while in the complaint it was alleged that such a demand by the Principal was made on 29th January, 2004 but in the deposition before the Court it was submitted by PW3, Barnali Banerjee (Chakraborty) that the demand was made on 4th February, 2004. The evidence of the complainant is also very hazy as PW2 was a lady named Mrs. Arati Darnal, but in the evidence it has been recorded as Mr. R.T. Dharnal. It could have been possible for this Court to presume that the same was an inadvertent typographical error had it been a single sentence where this was spotted, but a substantial part of the evidence relating to PW2 in the deposition of PW3 has been referred to as if PW2 was a male person and not a female. This raises apprehension particularly with regard to the factum of the case as the prosecution evidence as set out in evidence is to the effect that PW3 accompanied by PW2 entered in the chamber of the Principal when the issue relating to offence of demand and acceptance of illegal gratification took place for commission of the offence. Although this fact could have been ignored but having regard to the non-production of the seized money or any documents supporting seizure of the alleged Rs.1300/-, a suspicion is bound to be created in the mind of the Court regarding the factum of acceptance of illegal gratification which is an integral part of

commission of offence in a case under Section 7 read with Section 13 of Prevention of Corruption Act.

In this case prosecution emphasized on the factum of seizure of sum of Rs.850/- from the briefcase of the Principal to substantiate the complaint of PW3 but the said sum of Rs.850/- was a chance seizure on the allegations of PW4 in which case no demand could be witnessed by any of the cited prosecution witnesses. The charges in this case were framed by the learned Trial Court under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act which read as follows:

“First. – That you, being a public servant employed as a Principal, Central School (Kendriya Vidyalaya) under Govt. of India, Sevoke Road, Siliguri on 5.2.2004 around 10.45 A.M. and 12.30 hrs. accepted an amount of Rs.850/- and Rs.1300/- from Smt. Jayati Roy, a Computer teacher in that school and Barnali Banerjee (Chakraborty) another teacher for yourself a gratification (other than legal remuneration) as reward for them allowing them to continue be in service in the said school on contract basis and thereby committed an offence punishable under Section 7 of Prevention of Corruption Act, 1988.

Secondly. – That you being a public servant employed as a Principal, Central School (Kendriya Vidyalaya) under Govt. of India, Sevoke Road, Siliguri, habitually accepted gratification (other than legal remuneration) from your teachers and on 5.2.2004 around 10.45 A.M. and 12.30 hrs. you accepted an amount of Rs.850/- and Rs.1300/- from two teachers viz. Smt. Jayati Roy and Barnali Banerjee (Chakraborty) as reward for them for allowing them to continue in service in the said school on contract basis in exercise of your official function as Principal and the said gratification was accepted by you for your pecuniary

advantage and thereby committed an offence punishable under Section 13..... Prevention of Corruption Act, 1988.”

The deposition of PW4 Jayoti Roy also raises suspicion as she deposed before the Court that when she entered the chamber of the Principal, the Principal was seating in his chair and some unknown persons were there in that chamber, Barnali Banerjee, dance teacher and another teacher of the school namely, Arati Darnal were also present there. Having taken into account the description or introduction of PW2, Arati Darnal made by both PW3 (complainant) and PW4 (the computer teacher), her presence at the place of seizure raises serious concern, thereby diluting the chain of events.

In **V. Sejappa –Vs. – State** reported in **(2016) 12 SCC 150** by relying on an earlier proposition of Hon’ble Supreme Court, it has been observed in paragraph 21 as follows:

“21. While dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it illegal gratification and that the prosecution has a further duty to prove that what was paid was an illegal gratification, reference can be made to the following observation in Mukut Bihari v. State of Rajasthan [Mukut Bihari v. State of Rajasthan, (2012) 11 SCC 642 : (2013) 1 SCC (Cri) 1089 : (2013) 1 SCC (L&S) 136] , wherein it was held as under: (SCC pp. 645-46, para 11)

“11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of amount by the accused is not sufficient

to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but 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 provisions of Section 20 of the 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. However, before the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused person.”

In this case the deficiencies which have surfaced, particularly with no explanation being offered by the prosecution regarding the whereabouts of the seized sum of Rs.1300/-, complainant PW3 wrongly describing PW2 who accompanied her as a male person and PW4 also wrongly describing PW2 as a teacher of the School, while PW2 in her evidence introduces herself to be Senior Assistant of State Bank of India and as per request of CBI at the Zonal Office, she was instructed to join CBI do raise a serious doubt regarding the factual foundation of the case. In **B. Jayaraj –Vs. – State of**

Andhra Pradesh reported in **(2014) 13 SCC 55** it has been held in paragraph 9 as follows:

“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.”

Considering the nature of discrepancies appearing in the evidence of the present case, I am of the view that it would not be fit and proper to arrive at a finding of guilt in the background of the factual foundation laid down by the prosecution/CBI for the purpose of convicting the appellant herein.

Consequently, the judgment and order dated 19.11.2019 passed by the Learned Judge, Special (CBI) Court, Siliguri in Special (CBI) Court Case No. 34 of 2012 arising out of RC Case No. 05(A)/2004-Kol of CBI, Kolkata dated 04.02.2004 calls for interference and the same on the aforesaid reasons are hereby set aside. The appellant is acquitted of all the charges leveled against him.

Thus CRA 37 of 2019 is allowed.

Pending applications, if any, are consequently disposed of.

Appellant be discharged from the bail bonds.

Department is directed to send back the Lower Court Records to the Trial Court and communicate this judgment, so that effective steps are taken by the learned trial Court.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)