

**IN THE HIGH COURT AT CALCUTTA
(CRIMINAL APPELLATE JURISDICTION)
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRA (SB) 106 of 2022

**Shib Sankar Kerr
Vs.
The Central Bureau of Investigation.**

For the appellant	:	Mr. Manjit Singh Sr. Adv, Mr. Biswajit Mal Mr. Soujanya Pattanayak
For the CBI	:	Mr. Amajit De
Heard on	:	10.04.2025
Judgement on	:	19.08.2025

Dr. Ajoy Kumar Mukherjee, J.

1. Being aggrieved by and dissatisfied with the judgment and order dated 28th June, 2022 passed by learned Special (CBI) Court Asansol, in (SPL) case no. 37 of 2011, present appeal has been preferred by the Appellant. By the impugned judgment and order, the court below convicted the appellant herein to suffer simple imprisonment for one year for commission of offence punishable under section 7 of The Prevention of Corruption Act. 1988 (hereinafter called as Act of 1988) and also directed to suffer one year simple imprisonment for commission of offence punishable under section 13(2) of the Act of 1988 and also sentenced to pay fine.

2. The background of the prosecution case is that one Tashijan Khatun, suffered a road traffic accident and became disabled. She preferred a Motor Accident claim case before the Tribunal and the Tribunal directed The New India Assurance Company to issue account payee cheque of Rs. 1,85,000/- to PW-10 mother of Tashijan Khatun. Thereafter the appellant herein who was posted as Assistant manager of said insurance company had allegedly demanded bribe from PW1, who is an Advocate of PW10, for issuance of fresh revalidated, cheque. That on 17.12.2009, PW1 met with appellant when appellant allegedly demanded Rs. 5,000/- and on 22nd December, 2009, appellant directed to make the payment of bribe money. On the basis of such complaint made by PW1, Central Bureau of Investigation (CBI) registered a case for committing offence punishable under section 7/13(2) of the Act of 1998 on 21.12.2009. Allegedly on the same day, the appellant told the *de facto* complaint over cell phone to meet him in front of "Sreeleathers" located at G.T.Road, Assansol on 22.12.2009, on which date CBI trap team caught hold of the Appellant, allegedly when he took the bribe from the *de facto* complaint. Prosecution received sanction order on 30.03.2010. Ultimately charge was framed against the appellant on 16.07.2011 under section 7/13(2) of the Act of 1988 by the court below.

3. Learned Trial Court while passed the conviction order recorded that the exhibits proved by the witnesses are sufficient to support the chain of circumstances and the recovery of G.C. notes from the possession of the accused person proves the guilt of the accused and on over all appreciation of the evidence of record, the court below held that the prosecution has

proved the guilt of the appellant beyond all reasonable doubt and as such he convicted the appellant.

4. Being aggrieved by the said judgment and order of conviction and awarding sentence, the appellant herein in his memorandum of appeal has taken grounds inter alia that the learned Trial Judge while convicting appellant has totally failed to consider the glaring discrepancies inter se the statement of the prosecution witnesses of the present case. In fact there are significant contradiction between the statements of the witnesses recorded under section 161 of the Code of Criminal Procedure, during investigation and their deposition in court. Such contradictions strikes at the very base of the prosecution case and rendering the same to be fictitious. Prosecution has failed to produce the relevant General Diary entries which strikes at the very root of the prosecution case and renders the same liable to be discarded.

5. The other ground taken by the appellant is that prosecution hopelessly failed to comply with section 19(1) (c) of the Act of 1988 and they have miserably failed to take sanction from the proper authority. Such non explanation casts a serious doubt on the prosecution case and shows that the case is planted and concocted. The court below also failed to consider that the forensic evidence adduced in connection with the present case fails to justify the conviction of the appellant under the relevant provisions of the Act of 1988. Court below did not consider that prosecution has miserably failed to establish that the currency notes produced in court and marked as material exhibits were the same currency notes which were allegedly seized

from the possession of the appellant at the alleged date and time of occurrence.

6. Another ground taken by the appellant is that in conducting the examination of the appellant under section 313 of the Cr.P.C., Court below has failed to question the appellant about all the incriminating materials which had subsequently been relied upon by the learned Judge, in coming to the conclusion of his guilt. In fact he totally failed to conduct the examination of the appellant under section 313 of the Code in accordance with the law and thereby caused prejudice to the Appellant's/defence.

7. Mr. Singh learned Counsel appearing on behalf of the appellant argued that it is sine qua non to attract the aforesaid offences under the Act of 1998, against any government official, prosecution is required to prove that:-

(a) There shall exist a demand

(b) There shall exist a valid sanction

8. On the point of sanction Mr. Singh argued that PW-2 in his cross examination stated that the CBI personal drafted the sanction order which was then examined by the legal department of the company, who asked PW2 to apply his mind. However PW-2 admitted in evidence that he was not aware of the actual claims and the awarded amount. He further admitted that the CBI instructed him to put his signature on all pages and that it was not drafted on his letter –head, neither did he compare the draft.

9. Relying upon the judgment of **Central Bureau of Investigation Vs. Ashok Kumar Aggarwal** reported in **(2014) 14 SCC 295**, Mr. Singh argued

that the order of sanction must *ex facie* disclose that the sanctioning authority had considered the evidence and other materials placed before it. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that those facts were placed before the sanctioning authority and authority had applied its mind on the same. If the sanction order on its face indicates that all relevant materials were not placed before the sanctioning authority, as happened in the present case and if it is not discernible from the recital of the sanction order, that the sanctioning authority perused all the materials, inference may be drawn that the sanction had not been granted in accordance with law. Therefore, the prosecution was duty bound to send the entire relevant record to the sanctioning authority which should contain all the materials/documents upon which the authority has to do complete and conscious scrutiny of the whole record, so produced by the prosecution. Sanctioning Authority is to apply his mind and to take all the relevant facts while giving sanction.

10. In this context he also relied upon the judgment of ***Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh*** reported in **(1979) 4 SCC 172** and ***Mansukhlal Vithaldas Chauhan Vs. State of Gujarat*** reported in **(1997) 7 SCC 622** and contended that it is well settled that sanction lifts the bar for prosecution and grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrocent act which afford protection to government servants against frivolous prosecutions. In fact sanction is a weapon to ensure discouragement of vexatious prosecution and is a safe guard for the innocent and the validity of the sanction entirely

depends upon the materials placed before the sanctioning authority and the fact that all the relevant facts/materials/evidence have been considered by the sanctioning authority and there also appears to have application of mind, which is completely absent in the present case. There is nothing to show in the present case that the sanctioning authority had considered all the materials before giving sanction to prosecute against the petitioner. Accordingly Mr. Singh argued that in the absence of application of mind on the part of the authority concerned while giving sanction, the present prosecution against the petitioner is vitiated for non-compliance of the statutory provisions.

11. As regards the other issue of demand of bribe, Mr. Singh argued that in his deposition the complainant stated that accused had asked him to produce the re-validation order of the cheque and thereafter stated that either he is to produce the order of the court about revalidation order of the cheque or to give a bribe of Rs. 5,000/- and therefore the question of demand of bribe diminishes at that juncture. Accordingly there is serious doubt whether there was any demand or not, which infact has not been proved in the instant case beyond all reasonable doubt. He further argued that it is surprising as to why PW1 was unable to provide any documents or evidence to support the fact that the bank has rejected the cheque for the purpose of it becoming stale. Even if there was a day left, then said cheque was valid and Bank cannot raise any question that the complainant will go to the Appellant for revalidation of the same and hence the question of demanding bribe loses its credibility. Further as a matter general rule, if a

person submits a cheque which is lapsed, the cheque is generally scratched by the bank authorities to make sure that it is not misused. In the instant case there has not been any such mention and there appears to be no single independent witness who is aware about any such demand.

12. Relying upon the judgement of **K. Shanthamma Vs. State of Telengana** reported in **(2022) 4 SCC 574**, learned counsel for the appellant contended that the proof of demand of illegal gratification is the gravamen of the offence under section 7 and section 13(2) (d) (i) & (ii) of the Act of 1988 and in the absence thereto the charge would fail. It is settled law that mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, does not prove demand ipso facto and the failure on the part of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the alleged amount from the wearing apparel of accused would not entail conviction of the appellant under section 7 or under section 13 of the Act of 1988.

13. In this context he also relied upon the judgment of **CM Girish Babu, Vs. CBI, Cochin, High Court of Kerala** reported in **(2009) 3 SCC 779** and contended that mere recovery of tainted money divorced from the circumstances under which it is paid, is not sufficient to convict the accused, when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused. In this context reliance has also been placed by Mr. Singh in the judgment of **B. Jayaraj Vs. State of Andhra Pradesh** reported in **(2014) 13 SCC 55** and further contended that demand of illegal gratification is sine

qua non to constitute the offence under section 7 which is conspicuously absent in the present case, since the demand of gratification has not been proved beyond all reasonable doubt. It cannot be said that the prosecution has proved the allegation against the accused. In this context reliance has also been placed upon the decision in **CM Sharma Vs. State of Andhra Pradesh** reported in **(2010) 15 SCC 1**.

14. Mr Singh further contended that from the prosecution case, it is clear that they have failed to support their case in so far as demand by the accused is concerned and in fact there is no direct evidence to prove that the accused had made any demand. He accordingly argued that in the absence of any proof of demand for illegal gratification, the court below ought not to have convicted the appellant herein.

15. He further argued that in the instant case none of the seizure witnesses has deposed that the wearing apparel of PW1 were tested in order to keep the prosecution case transparent that he was indeed carrying the tainted notes. PW12 had stated that stains of phenolphthalein should be present in the pocket of PW1, since she was allegedly carrying tainted notes. This non transparency raised a question whether the tainted notes were planted in the pocket of the appellant or not. He further submits that one of the trapped witness namely M.M. Banerjee could not even identify the appellant on dock, which shakes the very seizure in the instant case. He further submits that it is surprising as to why the entire seizure list was prepared in the office, when none of the person from the office was allowed to be a part of the same. Even the Divisional Manger who was the

seniormost officer of the entire office, was not called to be a witness. Most of the prosecution witnesses who were part of the trap team could not remember the exact place where the appellant was allegedly caught, taking the bribe and were unable to provide the details of the vehicle by which they arrived there and failed to provide important details like the floor in which the office of the accused was situated and all these casting the shadow of doubt. It has also not been explained by the prosecution as to why there is not a single witness from the office of the appellant who was part of the proceeding during recovery and it also remains unexplained as to why the appellant allegedly called the complainant to a public place for handing over the amount. Relying upon the judgment of ***State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede*** reported in **(2009) 15 SCC 200**, he contended that the well settled principle of law is that where it is possible to have both the views, one in favour of the prosecution and other in favour of the accused, the later should prevail.

16. Mr. Amajit De, learned counsel appearing on behalf of the CBI argued in details about the evidence adduced by all the 14 witnesses, before the court and he contended that in a case under the Act of 1988, prosecution initially needs to prove that there was demand of illegal gratification and subsequently acceptance of illegal gratification and finally recovery of the bribe amount from the possession of the appellant. In the instant case all the process was in accordance with law and successfully established and proved the guilt of the appellant.

17. He further argued that in the instant case sanction order was issued against the appellant after applying judicial mind. Moreover the aforesaid three vital parameters such as demand for bribe by abusing official position, acceptance of illegal gratification money in course of official duty and recovery of such illegal money from the possession of the appellant, i.e. the chain of circumstances successfully proves the guilt of the appellant in the instant case. Accordingly after analysing the evidence of prosecution witnesses which are corroborated with each other and does not cast any doubt, clearly points out the guilt of the appellant for the aforesaid case and for which the appellant has been rightly convicted by the learned Judge and therefore, the impugned judgment of conviction and order of sentence does not call for any interference by this Court.

Decision

18. Mr. Singh learned counsel appearing on behalf of the appellant attacked the impugned judgment inter alia on the ground that there exists no valid sanction for prosecution and secondly there does not exist a demand of bribe which is sine qua non for the instant criminal proceeding. The ground of attack as regards on the point of sanction is based on the submission that the sanctioning authority deposed as PW2, admitted in his cross examination that CBI personnel drafted the sanction order and the legal department of the insurance company asked said PW2 to apply his mind, but the cross examination of PW2 reveals that he was not aware about the actual claims and the awarded amount and he further admitted that the CBI instructed him to put signature on all pages putting his rubber

stamp and accordingly without applying his mind he had granted sanction order which is not valid in the eye of law and in the absence of a valid sanction order the entire proceeding is liable to be vitiated.

19. The sanction order which was accorded by the deputy General Manager of New India Assurance Company Ltd. is marked exhibit 16 in the present case. The concluding part of the said sanctioning order may be reproduced below for the brevity of discussion

“9.....after carefully examining the materials/records placed before me i.e.copies of complaint, FIR, pre trap Memorandum Trap Laying and Post Trap Memorandum, statements of witnesses recorded u/s 161 CrPC, copies of the relevant documents of the case put up before me related to allegations, the facts and circumstances of the case, and after proper application of mind, consider that the said Shri Shiba Sankar kerr, aged 52 Yrs, son of Late Biswananth Kerr, resident of 100, Natoon Pally, ‘Paribartan’ apartment, 3rd Floor, Burdwan, working as the then Asst. manager, The New India Assurance Co. Asansol branch, 173, G.T. Raod, Ghati Bhavan, Asansol-7 should be prosecuted in the court of Law for the said offences under Section 7& section 13(2) r/w Section 13(1) (d) of the P.C. Act, 1988.”

20. The object behind the provisions of section 19(3) of the Act of 1988 has been described by the Apex Court in the judgment of **State of Bihar and Ors. Vs. Rajmangal Ram** reported in **(2014) 11 SCC 388** and paragraph 4 reads as follows:-

4. The object behind the requirement of grant of sanction to prosecute a public servant need not detain the court save and except to reiterate that the provisions in this regard either under the Code of Criminal Procedure or the Prevention of Corruption Act, 1988 are designed as a check on frivolous, mischievous and unscrupulous attempts to prosecute an honest public servant for acts arising out of due discharge of duty and also to enable him to efficiently perform the wide range of duties cast on him by virtue of his office. The test, therefore, always is—whether the act complained of has a reasonable connection with the discharge of official duties by the government or the public servant. If such connection exists and the discharge or exercise of the governmental function is, prima facie, founded on the bona fide judgment of the public servant, the requirement of sanction will be insisted upon so as to act as a filter to keep at bay any motivated, ill-founded and frivolous prosecution against the public servant. However, realising that the dividing line between an act in the discharge of official duty and an act that is not, may, at times, get blurred thereby enabling certain unjustified claims to be raised also on behalf of the public servant so as to derive undue advantage

of the requirement of sanction, specific provisions have been incorporated in Section 19(3) of the Prevention of Corruption Act as well as in Section 465 of the Code of Criminal Procedure which, inter alia, make it clear that any error, omission or irregularity in the grant of sanction will not affect any finding, sentence or order passed by a competent court unless in the opinion of the court a failure of justice has been occasioned. This is how the balance is sought to be struck (emphasis added)

21. There is no quarrel with the proposition of law that the sanction to prosecute is an important matter and it is condition precedent to the institution of the prosecution. The authority also has discretion to refuse sanction, if they regard a prosecution as inexpedient. It has also been decided in several judgments that the grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacroscent act which afford protection to government servant against frivolous prosecution. In fact sanction is a weapon to ensure discouragement of frivolous and vexious prosecution and is a safeguard for the innocent but not a shield for the guilty (**Mohd. Iqbal Ahmed Vs, State of Andhra Pradesh, (1979) 4 SCC 172**)

22. However, the purpose for which the order of sanction is required to be passed should always be borne in mind and the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not. Undoubtedly before passing an order of sanction the entire record containing the materials collected against the accused should be placed before the sanctioning authority and in the event, it indicates non application of mind as to the materials before the said authority, before the order of sanction was passed, it cannot be said as valid sanction. In **Central**

Bureau Investigation Vs. Ashok Kumar Aggarwal reported in (2014) 14

SCC 295 the Apex Court has laid down the ratio on this issue in para 16

which are as follows:-

16.1. The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

16.2. The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

16.3. The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

16.4. The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

16.5. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

23. Coming back to the instant proceeding, it appears that the sanctioning authority has faced the dock as PW2 and in his examination in chief he stated that he perused all the relevant documents at the time of according sanction. In the cross examination he has clearly stated that the CBI personnel drafted the sanction order, then he sent it to their legal department for examining the same and the legal department though found it alright but asked him to apply his mind for according sanction. He then perused the order passed by MAC Tribunal, as well as the other papers though during evidence he could not recollect specifically what papers he had perused. However, in cross examination he has also made it clear that Mr. K.P. Das, the head of the Legal Department explained him everything

and the company advocate also assisted him. There is no denial against all these statements during cross examination and the only denial by way of suggestion was put to said PW2 is that he did not apply his mind in according sanction. I have already quoted above that while according sanction said sanctioning authority in his sanction order has mentioned that he examined copies of complaint, FIR, pre trap memorandum, trapped laying and post trap memorandum, statement of witnesses recorded under section 161 Cr.P.C., copies of the relevant documents of the case which were put up before him. He also specifically stated in the sanction order that after proper application of mind and after considering all the documents relating to allegation and also considering the facts and circumstance of the case, he accorded sanction. It further appears from said exhibit 16 i.e. the sanction order that the entire facts and circumstances of the case was placed before him in details

24. It is needless to say that for the sanction to be valid, it must be shown that the sanction was given in respect of the facts constituting the offence charged. A bare perusal of the details of sanction order, it leaves no manner of doubt that the entire fact constituting the offence charged has been considered in the sanction order. A sanction to prosecute a particular person for an offence implies first a full knowledge of the facts upon which it is sought to prosecute him and secondly a deliberate decision of the sanctioning authority that he may be prosecuted. It reflects from the sanctioning order as well as the evidence adduced by the PW2 that there is nothing to say that sanctioning order was not a deliberate decision of the

sanctioning authority that the Appellant may be prosecuted. At the cost of repetition it can be said that the intention of the Legislature in providing for a sanction is merely to afford a reasonable protection to the public servants in the discharge of their official functions but it is never the object of the section that a public servant who is guilty of the particular offence should escape the consequences of his criminal act by raising any technical plea of invalidity of the sanction. In fact the law presumes and the court must also presume, until the contrary is established that sanctioning authority has acted fairly and objectively and has accorded sanction when he got himself satisfied that the charges against the public servant requires to be inquired into by a court. Undoubtedly the sanctioning authority is expected to act consistent with public interest and the interest of law which demands that while a public servant be not subjected to harassment, at the same time genuine charges and allegations should be allowed to be examined by the court.

25. Though Mr. Singh argued strenuously that the facts and circumstances of the case discloses that the said PW2/sanctioning authority was not aware of the actual claims and the awarded amount and he put signature on the sanction order as per instruction of CBI but the averments made in the sanction order and as quoted above, does not justify the contention of learned Counsel for the appellant. Moreover the law does not lay down what the minimum facts that should be brought to the notice of the sanctioning authority and what are the documents that he needs to peruse before according sanction. The satisfaction of the sanctioning

authority is entirely subjective and he is the judge of the materials to come to a conclusion on the basis of the materials placed before him. In fact there appears to be no hard and fast rule as to what facts are necessary to be brought to the notice of the sanctioning authority. In the instant case the sanctioning authority has stated in his order as well as in his deposition that he had gone through all the relevant papers and thereafter accorded sanction and such deposition has not been controverted or shaken during cross-examination.

26. Section 19 does not speak that the sanctioning authority in order to grant sanction must peruse the investigation papers but he can proceed on any material which according to him is sufficient or trustworthy. He is also not concerned to find out the truth or otherwise of the facts disclosed to him. All that is necessary for him is to apply his mind to the facts as disclosed to him as the grant of sanction is not a judicial act but it is purely an executive act.

27. In the instant case beside putting a suggestion to the said PW2 that he has not applied his mind, there is nothing to show that he has not perused the necessary materials or has not come to his independent decision. It is to be kept in mind that what needs to be placed before the sanctioning authority is necessary materials and not the necessary evidence, because he is not supposed to carry out a preliminary investigation before according sanction.

28. Looking at the sanction order it clearly reflect that the facts constituting the offence have been properly written there and the

sanctioning authority was fully appraised of the facts and circumstances constituting the offence and furthermore the evidence led by PW-2 that on perusal of relevant documents, he accorded sanction is not under challenge in evidence and the authority has chosen to grant the sanction on perusal of materials, by itself is sufficient to hold that the sanction was given with an adequate application of mind. No material is placed on record to doubt that the sanction order was passed without application of mind. It is true that the CBI has sent draft sanction and the sanctioning authority might have adopted it but it cannot be that said this alone is sufficient to show that the sanctioning authority has not gone through the relevant papers in the matter, when in his evidence also PW-2 has clearly stated that he has gone through the entire record relating to the accused and then only he accorded sanction. There is also nothing indicating that he has not done so because the sanction order contains the fact of the case and the ground for the satisfaction and therefore I find no reasons whatsoever to interfere with the judgment impugned with the finding that the sanction order is a valid one. Furthermore Apex Court in ***Vinod Kumar Garg Vs. State (Government of National Capital Territory of Delhi)*** reported in **(2020) 2 SCC 88** held that a mere error, omission or irregularity in sanction is not considered to be fatal unless it is resulted in a failure of justice or has been occasioned thereby. Section 19(1) of the Act is a matter of procedure and does not go to the root of the jurisdiction.

29. Mr. Singh also attacked the judgment on the ground that demand of dowry is the vital piece of evidence but in the instant case the complainant

has only stated about said demand and in his deposition he stated that the appellant had asked him to 'produce the re validation order of the cheque' and in reply appellant stated that either the complainant is to produce the order of the court or to give a bribe of Rs. 5,000/- and therefore, the question of demand diminishes at this juncture. He accordingly argued that the entire point as to whether there is any demand or not has not been proved beyond an iota of doubt specially when *de facto* complainant failed to provide any document in support of allegation that the bank has rejected the cheque for the purpose of it becoming stale, because even if there was a day left then the said cheque was valid and there cannot rise any question that the complainant will go to the accused for revalidation of the same. Hence the question of demand loses its credibility.

30. It is well settled that to establish the offence under section 7 and under section 13(2) (d) of the Act of 1988 the prosecution has to establish the existence of demand as well as acceptance by the public servant as held in ***B. JayaRaj Vs. State of Andhra Pradesh*** reported in **(2014) 13 SCC 55** which held as follows:-

7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma v. State of A.P. [(2010) 15 SCC 1 : (2013) 2 SCC (Cri) 89] and C.M. Girish Babu v. CBI [(2009) 3 SCC 779]

31. It appears from the trial court judgment that he has scanned the evidence and it reflects that appellant herein was a public servant and posted as Assistant Manager of New India Assurance Company Ltd. at

Asansol Division during the relevant period of time. PW1,PW9 and PW11 have adduced evidence to prove that the appellant was the concerning person who had dealt with the matter relating to issuance of re validating cheque for which the alleged demand, acceptance and recovery was made. PW 10 stated that the accused demanded bribe money of Rs. 5,000/- from her advocate for extending the validity of the said issued cheque and she told her advocate/complainant that she would not be able to pay the said amount. The complainant Ataur Rahaman adduced evidence as PW1 who stated that he met the appellant several times for revalidating the aforesaid cheque and lastly on 17.12.2009, he met the appellant and took out his application, who asked him to produce fresh court order for revalidation of the cheque. Thereafter appellant took him out of the office and asked him to give a fresh court order or to give Rs. 5,000/- as bribe, then he took time over the matter and returned home. Thereafter, he made contact with Appellant over phone on several occasion but Appellant did not shift from his decision and thereby the complainant tried to establish the initial demand which was allegedly made by the appellant from the complainant on 17th December, 2009. The said complainant has also stated in evidence that as per the direction of accused on 22.12.2009 he reached at the spot along with the CBI team members when the accused demanded the money. The complainant took out the money from his left side chest pocket and handed over the same to the accused. He also stated that after taking the money the accused counted it with both hand and thereafter he kept the said money in

the coat and when the money was accepted, the CBI team rushed there for further proceeding.

32. PW3 and PW4 both are the independent witnesses and PW-7,13 and 14 also corroborated the version of the complainant that the complainant handed over tainted money to the appellant who started counting the money by both the hands and thereafter the appellant kept the money in his pocket. They have also corroborated that the money was recovered from the pocket of the wearing coat of the appellant and the paper pasted with the pockets bears the signatures of the witnesses from which the bribe amount was took out by the Appellant and washed solution was taken. PW1, PW3, PW4, PW7, PW13 and PW14 proved the pre trapped proceeding which took place at the guest house in the presence of all members of the team on 22.12.2009 and during that proceeding the complainant was asked to produce the bribe money of Rs. 5,000/- which was demanded by accused. A demonstration was shown about the reaction of phenolphthalein, sodium carbonate and water. The tainted bribe money with phenolphthalein powder was kept in the pocket of complainant and was directed not to touch that money unless demanded by the Appellant. The pre trapped demonstration was shown by Biswanath Chakraborty who was left behind along with the remaining phenolphthaliein powder as well as the bottle marked by letter A at the guest house and proved by PW4, PW7, PW12, PW13 and PW14.

33. Complainant and PW3 and PW4 who are independent witnesses along with PW7, PW13 and PW14 further proved that the right hand wash of the appellant was taken in a fresh solution of sodium carbonate and water

which turned into pink. The said pink coloured solution was preserved in a bottle and it was corked levelled and sealed and marked as exhibit "B". All the members put their respective signature on the seal and level of the bottle. The said bottle bears the signature of the witnesses. Similarly, the left hand wash of the accused was taken in a fresh solution of sodium carbonate which also turned into pink and the said pink coloured solution was preserved in a bottle and levelled and marked as "C" and all the members put their signature. Thereafter the pocket of the wearing apparel of the Appellant was washed in a fresh solution of sodium carbonate when the solution became pink and it was preserved in a bottle and was corked and levelled and marked as exhibit "E" and all members put their signature on the seal and level. Statement of PW5 and report marked exhibit 17 also corroborates the evidence who said that he examined the contents of the glass bottles separately and he found sodium carbonate phenolphthalein and water present in each of the glass bottles and thereafter he prepared the report.

34. Furthermore it is the case of the prosecution that the complainant met with the accused on 17.12.2009 when the initial demand was raised by the accused from the complainant and at that time the fresh cheque dated 09.12.2009 was kept with the Appellant but to fulfil his illegal demand the cheque was kept with him till the recovery on the date of trapping. The letter marked exhibit 18, call details record (CDR) along with the certificate under section 65(B) marked as exhibit 19 collectively and exhibit 27 which is the customer application form related to the PW1, proved the SIM no. of the

complainant and accused and these documents corroborates the version of the complainant and other witnesses regarding the conversations that took place on 22.12.2009 between complainant and accused over telephone.

35. Learned Trial court while decided the said issue came to a finding:-

“Thus we have a very strong prosecution case showing that there had been previous telephonic conversations in presence of the witnesses between the defacto complainant and the accused persons about their meeting at a lace of choice of the accused person, that the accused person had been to that place after telephonic conversation with the accused person, that both of them walked together a little distance which did not take them away of sight to the other witnesses present scattered around the place since they also changed position with the two. The conduct of the accused person of his appearing at the spot, consentingly receiving the phenolphthalein tainted GC notes from the defacto complainant within sight of the defacto complainant and the eye witnesses are in themselves sufficient proof for me of the fact that there was demand of the money from him and he appeared there for nothing else but to obtain that bribe. The exhibits proved by the witnesses are also sufficient to support this chain of circumstances. The recovery of those GC notes from the possession of the accused person completes the proof of acceptance both by documents and the proven circumstances. I feel that the prosecution evidence as a whole overall appreciation of the evidence on record clearly proves the guilt of the accused person in consonance with the charge framed beyond all reasonable doubt and thus this court is constrained to hold him guilty of the charge and punish him accordingly.

36. From the aforesaid fact and circumstance of the case, it is evident that the allegation that appellant took the money is corroborated by the evidence of several witnesses apart from the evidence of complainant who handed over the cash to him. This appears to be sufficient to raise presumption that the amount taken by the appellant was by way of illegal gratification for doing an official act. In order to satisfy as to whether a case of demand and acceptance of illegal gratification which is sine quo non for sustaining conviction of the accused under section 7 read with section 13 has been made out or not, I am satisfied with the evidence that the twine requirement of demand and acceptance of bribe has been correctly assessed by the court

below and there appears to be no evidence on the part of the defence to discard the evidence of the prosecution on material issue.

37. Now so far as the presumption raised under section 20 of the Act for the offence under section 7 is concerned it is no doubt true that the presumption raised under section 20 of the Act of 1988 is rebuttable presumption but the burden is upon the appellant for rebutting the presumption on the parameter of preponderance of probabilities.

38. It is settled law that the burden of proof placed upon the accused against whom the presumption is made under section 20 of the Act of 1988 is not akin to that of burden placed on the prosecution to prove the case beyond reasonable doubt but since it is established from the fact and circumstances of the case that the appellant was found to have possessing the bribe money, it was for him to explain as to how the bribe money has been received by him and in the present case the appellant has miserably failed to offer any explanation. Even the stand taken by the Appellant while examined under section 313 Cr.P.C, that on 22.12.2009 between 11.30 AM and 12 noon when he was entering his office, the witness caught him on the road and after making little conversation, CBI people from all corners surrounded him and they gave him a coat to wear and without looking what is there inside the coat, he put on the coat, remains unsubstantiated.

39. Whether there is any scope to take a lenient view involving corruption allegation against public servant, the Supreme Court came down heavily on a petitioner who sought for such prayer in ***State of M.P. Vs. Sambhu***

Dayal Nagar, (2006) 8 SCC 693 and held in paragraph 31, 32 and 33 as follows:

“31. In view of the evidence and documents on record, it is difficult to uphold the impugned judgment and consequently, the impugned judgment of the High Court is set aside and the judgment of the Special Judge is restored.”

“32 It is difficult to accept the prayer of the respondent that a lenient view be taken in this case. The corruption by public servants has become a gigantic problem. It has spread everywhere. No facet of public activity has been left unaffected by the stink of corruption. It has deep and pervasive impact on the functioning of the entire country. Large-scale corruption retards the nation-building activities and everyone has to suffer on that count. As has been aptly observed in Swatanter Singh v. State of Haryana [(1997) 4 SCC 14 : 1997 SCC (L&S) 909] corruption is corroding, like cancerous lymph nodes, the vital veins of the body politics, 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 corrupt would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke.”

“33. This Court in Hazari Lal v. State (Delhi Admn.) [(1980) 2 SCC 390 : 1980 SCC (Cri) 458] observed that where the recovery of money coupled with other circumstances lead to the conclusion that the respondent received gratification from some person, the court would certainly draw a presumption under Section 4(1) of the Prevention of Corruption Act. In the instant case, the recovery of 35 notes of the denomination of 100 is fully proved by Badan Singh, PW 1 and two other independent witnesses Aditya Chobey, PW 6 and Surender Rai Sharma, PW 11.”

40. In such view of the matter and after considering the evidence adduced on behalf of prosecution, I am of the view that the evidence of PW 1 on this issue is entirely trustworthy as to the issue of demand and even there appears to be no need to seek any corroboration. The submission of Mr. Singh that when the cheque has not been lapsed what could be the reason for the complainant to seek for revalidation of the cheque does not have any substance in view of the fact that the revalidated cheque was kept with him till the recovery on the date of trap. The argument that when the entire seizure was prepared in the office of the appellant, why not a single witness from the office of the appellant was made part of the proceeding, during recovery and/or if the appellant had any requirement of the said amount, he

could have easily taken it in his office or in his home and there was no requirement for appellant to call the complainant to a public place for handing over the amount, such contention also does not have any leg to stand in view of the CDR collected during investigation and it is the choice of the appellant and it can be the choice of the complainant and as such the question as to where he was trapped and who had witnessed the entire proceeding is not at all important for adjudication and what is important is whether the demand, acceptance and recovery have been duly proved during trial or not. On that score and in the fact and circumstance of the case and the evidence adduced by the witnesses, I am of the view that the judgment impugned does not call for interference.

41. Mr. Singh though argued that the PW-3 Mani Mukul Banerjee who was one of the trap witness was unable to identify the appellant on dock which vitiates seizure in the instant case but in my opinion when money recovered from appellant was currency note that were treated and noted in pre-trap proceeding, it is immaterial whether said PW 3 could identify him on the dock when the other witnesses corroborated the evidence of complainant and when no reasonable explanation rebutting presumption under section 20 had been given by the appellant and specially when trial took place after a considerable period of time after the trap proceeding.

42. In *Vinod Kumar Garg Vs. State (Government of National Capital Territory of Delhi)* reported in **(2020) 2 SCC 88** Supreme Court reminded that minor contradictions on some details are bound to occur and are natural when the evidence are taken at a time gap of few years and the

witnesses are not required to recollect and narrate the entire version with photographic memory notwithstanding the hiatus and passage of time as such minor discrepancies as pointed out by learned counsel for the Appellant do not in any way negate or contradict the main and core evidence of demand of bribe, reason why the bribe was demanded and the actual taking of bribe that was paid which are the ingredient of the offences alleged. Appellant also has not made out any specific case as to which incriminating circumstance was not explained to him, while he was examined under section 313 Cr.P.C. or how it caused prejudice to the Appellant. Mere omission of a particular question to the Appellant cannot vitiate the trial, unless it is shown that it caused prejudice to Appellant in any way.

43. In view of aforesaid discussion **CRA SB 106 of 2022** stands dismissed. The appellant is directed to surrender before the court below to serve out the sentence within a period of thirty days from the date of delivery of judgement, in default the Trial court would be at liberty to take any steps including issuance of warrant of arrest to secure the attendance of appellant before the court below in order to serve out the sentence.

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

(DR. AJOY KUMAR MUKHERJEE, J.)