

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

PRESENT:

**THE HON'BLE JUSTICE TIRTHANKAR GHOSH**

**C.R.A. (SB) 153 of 2022**

**With**

***CRAN 1 of 2022***

***Dr. Sanjay Kumar Arya.***

**versus**

***Central Bureau of Investigation***

For the Appellant : Mr. Milon Mukherjee, Sr. Adv.,  
Mr. Biswajit Manna,  
Mr. Samarjit Sarkar,  
Mr. Shantanu Talukdar.

For the C.B.I. : Mr. Kallol Mondal,

**Reserved On : 05.12.2024**

**Judgement On : 07.02.2025**

**Tirthankar Ghosh, J. :**

The present appeal has been preferred against the judgment and order of conviction and sentence dated 26.09.2022 passed by the learned Judge, Special (CBI) Court, Asansol, Paschim Bardhaman, in connection with Special Case No.18/2011 arising out of Case No. RC0102006A0029 dated 06.11.2013 wherein the learned Judge, Special (CBI) Court was pleased to convict the appellant under Section 7 & Section 13(2) of the Prevention of Corruption Act, 1988 and sentenced him to suffer imprisonment as follows:

*“The accused person, Sanjay Kumar Arya, is hereby sentenced to suffer rigorous imprisonment of three (3) years [Two (2) years for commission offence u/s 7 of the Prevention of Corruption Act, 1988 and one (1) year for commission of offence u/s 13(2) of the Prevention of Corruption Act, 1988 – both shall not run concurrently] and shall also pay fine of Rs.30000/- (Thirty Thousand only), in default, to suffer further rigorous imprisonment for three (3) months.”*

The genesis of the present case was on the basis of a complaint received by the Superintendent of Police, CBI, ACB Kolkata, from one Pawan Kumar, Junior Engineer-1, Diesel Loco shed, Office of Senior DME (Diesel), S.E Railway, Bokaro Steel City. It was alleged in the letter of complaint that on 09.08.2006, when Pawan Kumar (complainant) met Dr. Sanjay Kumar Arya (appellant) Divisional Medical Officer, Divisional Railway Hospital, S.E. Railway Adra, District, Purulia, West Bengal, in his office chamber at Adra Divisional Hospital for medical treatment, the said accused Dr. Sanjay Kumar Arya, demanded a sum of Rs.500/- from the complainant and agreed to accept the same from him as illegal gratification for allowing him further rest and asked him to give him the above demanded bribe money of Rs.500/- on 11.08.2006 at his residence at Adra. As the facts referred to in the letter of complaint disclosed commission of cognizable offence under Section 7 of the Prevention of Corruption Act, 1988, the case was registered against the Appellant, Divisional Medical Officer, Divisional Railway Hospital, S.E. Railway, Adra, District, Purulia, West Bengal, and endorsed to S. K. Tripathy, Inspector of Police, CBI, SPE, ACB, Kolkata for investigation.

The investigating agency on conclusion of investigation submitted charge-sheet under Section 7, 13(1)(d) & 13(2) of the P.C. Act, 1988, before the learned Special Court on or about 04.04.2007. The Learned Special Court was pleased to frame charges on 16.12.2008 under Section 7/13(1)(d)/13(2) of the P.C. Act, 1988. The contents of the charges were read over to the accused person to which he pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon 16 witnesses which included PW1, Pawan Kumar (complainant), Junior Engineer at Diesel Loco Shed, Bokaro Steel City; PW2, D.K. Srivastava P.R.O. State Bank of India, Asansol Branch; PW3, Debnath Mukherjee, Office Superintendent, ECL Headquarter; PW4, Sunil Kumar, Director, Establishment (Welfare and Discipline and Appeal); PW5, Bimal Chandra Purkait, retired Senior Scientific Officer, FSL Kolkata; PW6, Satyaranjan Naskar, Senior Section Engineer, Diesel Loco Shed, Bokaro Steel City, Bokaro; PW7, Subodh Chandra Roy, Senior Peon, Medical Department, South Eastern Railway Hospital, Adra, Purulia; PW8, Mayuk Maitra, Inspector of Police CBI, ACB, Kolkata; PW9, Dr. Amresh Ch. Bardhan, M.B.B.S. Orissa Medical Council; PW10, Susanta Bhattacharya, Inspector, CBI, Banking Securities Fraud Branch, Kolkata; PW11, Pabir Bhattacharjee, Office Superintendent, Adra, Purulia; PW12, Ashutosh Swain, Chief Medical Superintendent, East Coast Railway; PW13, Diptendu Bhattacharya, Additional S.P., CBI, Special Unit Kolkata; PW14, Partha Sarathi Upadhyay, Senior Section Officer Accounts Department of South Eastern Railway, Adra Division; PW15, Saibal Kumar Tripathy, (First

Investigation Officer), Inspector CBI, SPE, ACB, Kolkata; PW, 16 Roshan Singh (Second Investigation Officer), OC Passport Kolkata.

PW1, Pawan Kumar is the complainant who was posted as Jr. Engineer at Diesel Loco Shed, Bokaro Steel City, he deposed that he was posted since 02.03.2000 and he lodged complaint against Dr. Sanjoy Kr. Arya, D.M.O. (Ortho), Divisional Railway Hospital, Adra. He narrated that he sustained injury during working hours and was medically treated and when he approached Dr. Sanjoy Kr. Arya for issuing a certificate so that he can submit it to the office for taking rest, the accused demanded bribe of Rs.500/- and so he lodged a complaint addressing S.P./CBI/ACB/Calcutta. He handed over the complaint to Inspector, S. Bhattacharjee. He identified the complainant which was admitted in evidence. After receiving the complaint CBI Inspector S. Bhattacharjee made an endorsement on it which was also identified by him and he continued to state that the complaint was handed over to CBI Inspector at Guest house of E.C.L. at Sitalpur, Dist- Burdwan. The witness proceeded to state that when he contacted the SP, CBI over telephone from booth, he was instructed to meet the Inspector at the guest house. On receipt of the complaint the Inspector asked him to come to that guest house on the next day and to meet him at room no.7. Accordingly on the next day i.e. 11.08.2006 he met the inspector at room no. 7 where 4/6 other persons were introduced to him by Mr. Bhattacharjee. He introduced the persons as D.K. Srivastava, Relation Manger, SBI, Asansol, D. Mukherjee, Vigilance Inspector, ECL, S.K. Tripathi, CBI Inspector. Thereafter in their presence CBI Inspector Mr.

Bhattacharjee showed the complaint to him and also to others and asked him to narrate the incident. Accordingly, he narrated whole of the incident relating to the bribe demanded by the accused. Thereafter S.K. Pandya, Sub-Inspector demonstrated before him as to how soda water becomes pink in colour, if certain powder is poured. He was thereafter asked whether he brought Rs. 500/- as was instructed on the previous day. When he replied to the same and handed over five notes of Rs.100/- denomination, the numbers were noted down on a paper by S.I. Chakroborty and Mr. Mukherjee. White powder was spread on the note by S.K. Pandey and some soda water was brought in a bowl by the CBI officers. S.K. Pandey washed his hand in the said solution when the colour of the water became pink. The said pink water was kept in a bottle and the bottle was sealed and signatures were taken on the label pasted on the bottle. He identified the bottle which was sealed with signature on the label pasted on it. The sealed bottle containing pink colour solution was admitted in evidence. Mr. Pandey again spread some powder on those notes, thereafter those notes were kept on the left upper pocket of his shirt with his own hand, and he asked him not to touch those before offering the same to the accused. Thereafter, CBI inspector instructed D.K. Srivastava to accompany him as relative and to notice and hear the conversation to be held between him and Dr. Arya. It was also instructed to Srivastava that if the doctor did not allow them to enter into his chamber then he would wait out of the chamber but in such a place from where he could hear the conversation. The witness was also instructed to give signal at the moment when the transaction takes place. Mr.

Mukherjee was instructed to follow the CBI team. After the details of the demonstration and instructions were noted in a paper, the signatures were taken in the pre-trap memorandum. The pre-trap memorandum consisted of five sheets, wherein the witness identified his signatures which were admitted in evidence, specimen in seal containing signature in two pages was also produced before the Court which was identified by the witness and admitted in evidence. At about 7:15 A.M. the group started for Adra along with D.K. Srivastava in a car and other officers were in a separate vehicle. The witness and D.K. Srivastava got down near the Railway Station and thereafter proceeded to the residence at Officer's Colony of Dr. Arya on foot. The witness stated that the quarter number was DS/29A where he along with D.K. Srivastava went ahead, followed at a distance by the other members. The witness along with D.K. Srivastava entered the chamber of Dr. Arya at his residence and greeted him. Witness sat on the chair at the left side of Dr. Arya and D.K. Srivastava sat on a chair in front of Dr. Arya. Thereafter, doctor asked him for the prescription which he took out from the back pocket of his trouser and told him that still he was feeling pain and requested him to issue certificate for rest. He gave the prescription for rest till the next Wednesday. Then he requested him to prescribe for at least fortnight's rest when the doctor replied that he was not making proper requests being an engineer. He stated that if he gave 15 days rest then he would be questioned, saying this he took the prescription on the table and a paper weight was kept on it. After that he asked whether the witness brought the money when he answered in the

affirmative, he was asked to hand over the money to him, when the same was handed over to Dr. Arya who received the money with his right hand and kept the same in his upper left side pocket of the shirt. As soon as he received the money D.K. Srivastava got out of the chamber and at that moment the doctor also prescribed declaring him to be fit and to join on and from 16.08.2006. He identified the prescription and the endorsement on the back leaf of the prescription. It contained the signature of the doctor who wrote and signed in his presence. The prescription was admitted in evidence with objection. The witness proceeded to state that after Srivastava went out of the chamber doctor received the payment and within two to three minutes, CBI inspector S.K. Tripathy and 4/5 others entered the chamber, amongst them Mr. D Mukherjee was also present. When the CBI inspector S.K. Tripathy asked the witness and Sri D.K. Srivastava regarding the incident which took place, both of them narrated the incident when S.K. Tripathy asked the doctor whether he received money or not. The doctor stated 'Galti ho gia, map kar dijia'. After that as per instruction of Inspector Tripathy a bowl containing water was brought and in it washing soda and some water was added which made the solution white. After that doctor was asked to wash his right hand in that water, when the doctor inserted his right hand in the bowl the colour of the water became pink. Thereafter the said pink colour water was poured in a bottle. The bottle was sealed, labelled and pasted. The signature of the witness was obtained on the label. The bottle was marked as a material exhibit, signature of the witness was also admitted in evidence. The witness further proceeded to state that the

doctor was asked to bring out the notes kept in his left chest pocket of his shirt, the doctor brought out the notes from his pocket and handed over the same to the witness D. Mukherjee, who compared the numbers of the notes with that present in the pre-trap memo. Thereafter the notes were kept in an envelope and the said envelope was again kept inside a larger envelope which was sealed and signed by the witness. He identified his signature along with the envelope which was admitted in evidence. The other envelope which was taken out from the larger envelope contained the signature of the witness which was admitted in evidence. The seal of the said envelope was opened in Court and the five notes of Rs. 100/- denomination were produced, witness identified those five notes which tallied with the pre-trap memo, as such the same was marked as material exhibit. The witness then stated that CBI asked the doctor to bring out all the papers from his left chest pocket, when the accused brought out a small piece of paper from his pocket, which was washed in soda water kept in a bowl, the water became pink. The said pink solution was kept in a bottle sealed, labelled and signed by the witness and marked as 'D'. The said bottle was identified by the witness and admitted in evidence along with the signature. The piece of paper was then kept in sunlight and dried up, after some time, the signature of the witness was obtained on the paper. Witness identified his signature also on the envelope. The doctor was asked by the CBI officer to take off his shirt. Thereafter inside of the left chest pocket of the shirt was washed in soda water kept in a bowl, the colour became pink. The pink coloured water was kept in a bottle. A label was pasted

and signed by the witness. The bottle was marked as 'F'. The witness identified the bottle along with the signature on the label and both were admitted in evidence. The shirt was kept in a packet. The packet was sealed. The packet was marked as 'G'. The signature of the witness was obtained on the packet. Both the packet and the signature were admitted in evidence. The shirt was identified by the witness. The witness was thereafter shown the post-trap memo which was prepared after completion of all the proceedings. He identified his signature on all the pages, which was admitted in evidence. The specimen seals used for sealing the bottles were taken on two pages. He identified the signature on the said document and the same was admitted in evidence.

P.W.2 is D.K. Srivastava, P.R.O. State Bank of India, Asansol Branch. He deposed that he was posted under probation in the State Bank of India, Asansol Branch in the year 2006 and was subsequently confirmed and permanently posted as P.R.O. SBI, Asansol Main Branch. In 2006, CBI officer wrote a letter to Branch Manager for sending some officer for being witness and there was another witness. He was unable to say in which case he was summoned as a witness as the incident occurred long ago. However, he deposed that he had been to the guest house and CBI officers were present there who told him to accompany an individual as his relative and accordingly he accompanied the person to Adra and met Sanjay Arya. The accused had some talk with some persons particularly with the complainant whom he accompanied. He could not remember the conversation which took place in

between the accused and Sanjay Arya and thereafter complainant gave some money to the accused. The witness stated that he could not remember the amount. The accused took the money and kept the said money in the pocket. The examination in chief on that date was deferred and on a subsequent date he was further examined in chief. The witness continued to state that he met the CBI officers at Sitalpur guest house and found the complainant Pawan Kumar who brought five notes of rupees hundred each. Powder was spread on it by the CBI officer. Thereafter CBI officer washed his hands and the colour changed to pink. The pink water was kept in a bottle and thereafter it was sealed and labelled. He signed on the label of the bottle. The complainant Pawan Kumar kept the said five hundred rupees in his pocket and thereafter CBI officer asked Pawan Kumar to go to the house of the accused and at that time he was asked to accompany as his relative. CBI officer also accompanied him. After reaching the house of the accused, the complainant entered along with him at the residence of the accused when the CBI officers were waiting outside the residence. He along with the complainant was sitting at the drawing room of the accused. When the accused came at the drawing room, the complainant represented that he was not fully cured and the period of leave be extended for another 15 days. When the accused told the complainant that he being an engineer, it was not possible for extension of period of leave as he prayed. But he was extending the leave for some days. Then the accused asked Pawan Kumar whether he had brought the money. When complainant Pawan Kumar gave five notes of rupees hundred denomination. The accused

took the said money and kept the same at the left chest pocket. The colour of the shirt which the accused wore at that time was green-white colour. At that time he went outside the residence and rubbed the hand on his face. When CBI officers entered into the drawing room of the accused person and asked not to move and to sit where they were sitting at that time. The CBI officers disclosed their identity. Thereafter the accused stated 'GALTI HO GAI MUJHE MAF KAR DIJIYEI'. The CBI officer prepared pre-trap Memorandum and signed the pre-trap Memorandum at every page. The witness identified his signature on the pre-trap Memorandum, which was admitted in evidence. The CBI officer spread powder on the currency notes. Thereafter, he washed his hands and the washed water changed into pink colour. The said pink water was kept in bottle and thereafter it was sealed and labelled. He identified his signature on the label which was admitted in evidence. He also identified the bottle. The specimen facsimile of the seal used in connection with the pre-trap proceedings were taken in a separate sheet of paper which was signed by the witness and identified by him in Court and as such the same was admitted in evidence. The witness proceeded to state that in the morning of 11.08.2006 he was asked to accompany the complainant Pawan Kumar to the residence of the accused at Adra. Other officers followed them and when he came to the drawing room of Dr. Arya he found the doctor sitting in the drawing room and he was reading newspaper. Then he entered at the drawing room of the doctor. Complainant Pawan Kumar requested the doctor to extend his rest period when the doctor enquired for how many days and on reply the complainant

requested for 15 days when the doctor stated that he was extending the rest period up to Wednesday. The doctor asked whether Pawan Kumar had brought the money. Pawan Kumar answered in the affirmative and handed over the sum of Rs.500/- on demand of the doctor. Pawan Kumar took money from the left chest pocket and handed over the said money to the doctor. Doctor took the money with his right hand and kept the note in his left chest pocket. Then the witness came out of the chamber of the doctor and gave signal to the CBI officers by rubbing his face. The CBI officers asked the doctor to hand over the money which he had taken. The doctor handed over the money to the CBI officers. Thereafter the CBI officers compelled the doctor concerned to wash his hands in chemical solution. The chemical solution became pink colour. Thereafter the pink colour solution was taken in an empty dry bottle. The witness identified the bottle which was sealed and labelled. He identified his signature on the seal. The bottle as well as the signature was marked in evidence. The relevant portion of the pocket of the shirt of the accused was poured into sodium carbonate solution. And the said solution became pink in colour. Thereafter the solution was taken in an empty dry bottle. The bottle including the label which was signed by the witness was identified and admitted in evidence. Certain pieces of paper were also found in the pocket of the accused. The said papers were also put into sodium carbonate solution and the solution became pink in colour. The said solution was taken in an empty dry bottle. The bottle was also sealed, labelled and signed by the witness which on being identified was admitted in evidence. The witness also identified

the papers which were kept in an envelope and signature of the witness was obtained on the envelope. The shirt of the doctor was also kept in an envelope and the witness also signed on the said envelope. The said materials on being produced before the Court was identified by the witness along with signatures and so were admitted in evidence. The witness stated that the number of the currency notes recovered from the accused matched with the numbers noted in the pre-trap memo, as such the recovered notes were kept in an envelope. And the witness signed on the envelope. He identified his signature along with the currency notes which were admitted in evidence. After completion of pre-trap proceeding, post-trap memorandum was prepared. The post-trap memorandum contained his signature at every page which was identified by him and admitted in evidence. So far as the seal, specimen facsimile of the seal used in connection with the trap proceedings was taken in a paper and was signed by the witness. The seal was identified by him and as such admitted in evidence. A search list was prepared wherein he signed and his signature was identified and as such his signature was admitted in evidence. The witness also identified the accused on dock. The witness lastly stated that the accused person and the complainant were not acquainted with him before the incident.

P.W.3, Debnath Mukherjee is the office Superintendent ECL Headquarters, E&T Department, Burdwan and was earlier posted on 11-08-2006 in the Vigilance Department of ECL. He deposed that he had been to Sitalpur Guest House at 5/5:30 a.m. as per order of the Chief Vigilance Officer. The CBI officers introduced him to PW1 and PW2 and informed him

that PW.1 lodged written complaint against the accused on the allegation of demanding bribe of Rs. 500/- for extending his medical leave. The complainant produced 5 notes of Rs. 100/- denomination to the CBI inspector. Thereafter, the numbers of notes were written in a paper and some powder was mixed on the 5 currency notes which were inserted in the pocket of the complainant. The complainant was instructed not to touch the currency notes till demand was made by the accused. The CBI inspector thereafter washed his hand in a liquid when the colour of the liquid became pink. The pink coloured solution was preserved in a bottle sealed labelled wherein he signed along with others. He identified his signature on the label of the bottle which was marked as 'A' and identified by him in court. A memorandum was prepared wherein all the team members signed which were referred to as Pre-trap Memorandum. He identified his signature which was admitted in evidence. All the team members proceeded towards Adra in the railway officer's colony where the complainant, the shadow witness PW2 was instructed to enter in the residence of the accused and he along with others were instructed to enter the premises after getting signal. The witness along with others were waiting outside the railway quarters and on receiving signal from PW2 entered the house of the accused at the place where the complainant and the accused were present. Thereafter CBI officer asked the accused as to whether he demanded and accepted money. The accused refused to reply and took out the money from his shirt pocket. Then the right hand of the accused was washed and the colour of the liquid became pink. The solution was kept in a bottle sealed and labelled which was

signed by him. He identified his signature on the label which was admitted in evidence. The money which was recovered from the pocket of the accused was tallied with respect to its number mentioned in the Pre-trap Memorandum and it was inserted in an envelope which was signed by him along with others. He identified his signature on the envelope. The envelope and the signature were admitted in evidence. Thereafter a piece of paper was recovered from the shirt pocket of the accused which was dipped into the liquid solution, when the colour of the liquid became pink, the said solution was kept in a bottle, sealed, labelled and signed by him, he identified his signature which was admitted in evidence. The piece of paper was kept in an envelope after being dried up and he signed on the said envelope which was identified by him in court and admitted in evidence. He also put his initial on the said piece of paper and identified the initials which were also admitted in evidence. The pocket of the wearing shirt of the accused was washed. After the same was handed over by the accused, the colour of the liquid became pink. The said solution was kept in a bottle sealed and labelled on which he along with others signed. He identified his signature on the seal and label which was admitted in evidence. He also identified the shirt which was signed by him. The signature was also marked in evidence. A post-trap memorandum was prepared by the CBI officer on which he along with others signed. He identified his signature on all the pages of the post-trap memorandum which was admitted in evidence. The specimen and facsimile of the seal used during post-trap memorandum was prepared on which he signed. He identified his signature on the specimen and

facsimile which was admitted in evidence. A search list was prepared in which he took out certain seized materials. He identified his signature on the specimen facsimile which was admitted in evidence. A search list was prepared in which he took out certain seized materials. He identified his signature on the search list which was admitted in evidence. He identified the accused in Court.

PW4 is Sunil Kumar, who was posted on 27.02.2007 as Deputy Secretary (Discipline and Appeal), Railway Board, Ministry of Railways, New Delhi. On the said date he signed the sanction order which was accorded by the Minister of Railways on behalf of the President of India. He deposed that the request for grant of sanction was sent by CBI which was sent to the Vigilance Directorate of Ministry of Railways which was examined and sent to the Hon'ble Minister of Railways and after carefully considering the record sent by CBI, it was considered a fit case for granting sanction. After granting sanction the file was sent to the witness for authentication and returning the same to CBI. He identified the sanction order which was admitted in evidence. In cross-examination, he replied that without perusing the file, it was not possible for him to say the date and from photocopy of the order passed by the Hon'ble Minister, it would reflect the documents which were considered for granting sanction for prosecution. He further replied in cross-examination that after completion of investigation, CBI approached the competent authority which included FIR, statement of witnesses, pre-trap and post-trap memorandum but the said document was not accompanied with charge sheet.

The sanction order was typed in a plain computer paper and not in the letterhead of any office. It was dictated by him and typed by his typist. The sanction order according to him do not contain the forensic expert report. He also produced the Government Order which authorized him to sign the sanction order. He denied in cross-examination that there was no application of mind while granting sanction for prosecution.

PW5, Bimal Chandra Purkait was the Senior Scientific Officer of CFSL Kolkata. On 29.08.2006 their office received four sealed glass bottles with a forwarding letter from SP/CBI/ACB/Kolkata for chemical examination and he was assigned the job. The witness deposed that he tallied the seals, then marked the laboratory number in the four sealed bottles. After opening the seal of the glass bottles, the liquid contents were measured separately. A small quantity of sample from all the four bottles separately were taken and examined by chemical and instrumental method. On examination, he found the contents of the four bottles contained phenolphthalein, sodium carbonate and water. He identified the chemical examination report which was prepared by him as well as the signature and seal of the Director, CFSL which was admitted in evidence. The forwarding letter through which the forensic examination report was sent was also identified by him and the same as such was admitted in evidence. The remnants of the four glass bottles were re-sealed and deposited in the office of the Director, CFSL which were subsequently sent to CBI. In cross-examination he replied, a little quantity of the contents of each of the four bottles were taken and after examination the

sample of the contents were destroyed but the fact of destruction was not mentioned in the report. He denied the fact that the chlorine content in water destroys the colour of phenolphthalein and sodium carbonate.

PW6, Satyaranjan Naskar is Senior Section Engineer at Diesel Loco Shed, Bokaro Steel City, Bokaro. In the year 2006 the informant Pawan Kumar used to work under him as JE-1 and on or about 18<sup>th</sup> July, 2006 while stepping down stairs in the office yard he got his foot injured. He was taken for treatment to nearby doctor who issued Memo No. BN-100 for his treatment and so he was taken to Bokaro Railway Hospital, Bokaro. CBI interrogated the witness at Kolkata and also seized medical memos as well as the fit and unfit certificates of Pawan Kumar. A seizure list was prepared and he signed the same. He identified the documents as also his signatures which were admitted in evidence. In cross-examination the witness replied that memo no. BN-100 was issued by him on 19.07.2006 as in the night of 18.07.2006 the informant was injured and he joined his duty on 18.08.2006. He further replied in cross-examination that Dr. Sanjay Kumar Arya issued two prescriptions dated 26.07.2006 and 11.08.2006 wherein it was mentioned as 'fit for duty from 05.08.2006' and 'fit for duty from 16.08.2006' respectively. However, he denied of any personal knowledge relating to the case.

PW7, Subodh Chandra Roy was employed as senior peon in the medical department of South Eastern Railway Hospital, Adra, Purulia between 13.02.2000 to 11.11.2015. He was assigned the job of recording the names of

patients in the General Register and IOD (injured on duty) register in respect of patients who met Dr. Sanjay Kumar Arya. He identified the IOD register including the entry number, serial number, column number as well as page number, as such the same was admitted in evidence. He identified the signature of the accused in the IOD register which was also admitted in evidence. He identified the accused in Court and deposed that he knew the accused as he worked with him for six years and also claimed that the informant visited the clinic on 09.08.2006. In cross-examination when the witness was confronted with the entries he denied regarding the name of the patient which was written by him in black ball pen and the advice declaring the patient Pawan Kumar 'fit for duty' was written by the accused. However, in cross-examination he accepted that he was present in Court during the deposition of PW6 but later on he volunteered that he could not understand.

PW8 Mayuk Maitra, was Inspector of Police, C.B.I., A.C.B. Kolkata and a member of the Trap Team. He deposed that on 10.08.2006 as per order of the Superintendent of Police, C.B.I., A.C.B. Kolkata, he along with other officials, reported to the investigating officer of the case for assisting him in working out certain secret operations to be conducted on 11.08.2006, for the said purpose, they reached E.C.L. Seetalpur Guest House at night on 10.08.2006. On 11.08.2006, in the morning, he along with other officers assembled at room number 7 of the guest house and one Pawan Kumar was introduced to them as the complainant and two other persons, Debnath Mukherjee Mukherjee and D.K. Srivastava were also introduced as witnesses. The complaint was read

over and explained to all the persons present there, from where he understood that the allegation was against Dr. S. K. Arya, the then D.M.O. (Ortho) who demanded bribe of Rs. 500/- from the complainant to allow him further medical rest and directed the complainant to pay such bribe amount at his residence at Adra in Purulia. The complainant was directed to produce the bribe amount, which was in the form of five G.C. notes, of Rs. 100/- denomination each. The serial numbers of the notes were written down on a paper and then an officer of A.C.B. Kolkata gave a demonstration regarding the purpose and significance of the use of phenolphthalein powder, on a material object and its chemical reaction with sodium carbonate and water. The five G.C. notes were treated with phenolphthalein powder and then the officer washed both his hands in a freshly prepared solution of sodium carbonate and water, which turned pink in colour, which was stored in a bottle duly corked and sealed and marked as 'A'. The witness identified the bottle in Court, marked as Mat. Ext. I. The signature of the witness on the bottle at two places was also identified by him and admitted in evidence. The currency notes were again treated with phenolphthalein powder and kept at the left chest pocket of the shirt of the complainant of the case. The independent witness, namely D. K. Srivastava, was asked to accompany the complainant at the spot with a view to see the transaction and overhear the conversation between the complainant and the accused. The witness was asked to give a signal by rubbing his face with both of his hands once the transaction was over and it was also directed that the other Trap team members would be present close to the place of

transaction. The specimen facsimile of the brass seal used during pre-trap proceedings was also taken and the same was identified and admitted in evidence. The said pre-trap memorandum was prepared, read over and signed by all the persons who were present there. A copy of the same was handed over to Debnath Mukherjee, the second witness, for future reference at the spot. The officer who prepared the pre-trap memorandum was asked to stay at the Guest House and the remaining team members left for the spot at around 7 a.m. from the guest house. The witness identified the pre-trap memorandum which was also admitted in evidence. The whole team reached the Railway Officer's Colony Adra, Purulia at around 9 a.m. and started walking towards the residence of the accused Dr. Arya. Thereafter, the complainant Pawan Kumar and the shadow witness D. K. Sivastava entered inside the residence of the accused. The rest of the Team members remained on the lawn just outside the said residence. After about 10 minutes, D. K. Srivastava gave prefix signal to the members who were waiting outside and on receiving such signal by rubbing his hands on the face, all the team members rushed into the house and on entering the said house, the accused was found sitting on a wooden cot while the complainant was sitting in front of him on a plastic chair. The investigating officer disclosed his identity to all the pre-trap members and offered a search of all team members present there, which the accused declined. Then the investigating officer challenged the accused for demanding and accepting bribe of Rs. 500/- from the complainant in respect of the allegations mentioned in the complaint and F.I.R.. Witness stated that the accused admitted his guilt

and pleaded mercy when the accused was asked not to touch anything till further instructed. The shadow witness was requested to narrate whole of the incident, which included the conversation and the subsequent transaction, including acceptance of the bribe. The shadow witness confirmed regarding the accused having accepted the tainted G.C. notes of value Rs. 500/- with his right hand. The shadow witness also confirmed that the said amount after being received from the complainant was kept by the accused inside the left chest pocket of his wearing shirt. The complainant was also directed to narrate the incident when the version of the complainant and that of the shadow witness was found to be corroborated. The only addition which was made by the complainant was that when D.K. Srivastava shadow witness went out to give pre-fixed signals, the accused had extended the medical leave upto 16.08.2006. The right hand wash of the accused was taken in a specially prepared milky white solution of sodium carbonate and water, which turned pink. The pink colour solution was preserved in a bottle duly corked, sealed, labelled, signed by witnesses and marked as 'B' for identification. Witness identified the bottle which was admitted in evidence. The signatures of the witnesses were also identified at two places of the bottle which was also admitted in evidence. The tainted currency notes were recovered from the left chest pocket of the accused which was handed over by the complainant. The accused took out the same notes from his pocket and handed over to Sri Debnath Mukherjee/independent witness. The serial numbers of the currency notes were tallied with the help of a copy of the pre-trap memo. The recovered

notes were kept inside an envelope which were labelled, sealed, signed and marked as 'C' for the purpose of identification. The envelope on being produced in court was identified by the witness and admitted in evidence. The signature of the witness thereon was identified by him and was also admitted in evidence. The notes were thereafter taken out from the envelope which was inside another envelope. The signature of the witness on the said envelope was also identified and admitted in evidence. The serial notes were tallied with the numbers written on the pre-trap memo and were kept back in the said envelope. Thereafter, a piece of paper was also recovered from the left chest pocket of the accused and washed, which was also taken in another specially prepared solution of sodium carbonate and water, which turned pink. The pink coloured solution was preserved in a bottle, duly corked, and labelled, sealed and marked as 'D' for the purpose of identification. The same bottle on being produced was identified along with the signatures and as such was admitted in evidence. The sheet of paper which was kept inside the envelope was also produced before the court and the said envelope along with the signature were identified and admitted in evidence. The shirt of the accused where the tainted notes were recovered was washed similarly in a sodium carbonate solution and the said solution turned pink which was preserved in a bottle, signed, sealed and marked as 'F' for identification. The same was produced before the court along with the signature of the witnesses which on being identified was admitted in evidence. A separate search-cum-seizure list was prepared in respect of the currency notes recovered from the person and possession of the

accused which was signed by all the persons present there. The seizure also included the shirt of the accused and the left chest pocket of the shirt was also signed. The seizure list as well as the material object was produced before the court identified and as such was admitted in evidence. The accused was thereafter arrested by observing all legal formalities and the post-trap proceedings were recorded in the form of trap laying and post-trap memorandum which was read over and signed by all the persons present there. The witness prepared rough sketch map of the spot which was signed by all the persons present there. He identified the same which was admitted in evidence. He also identified the post-trap memorandum which was admitted in evidence. A specimen facsimile of the seal used in connection with the post-trap proceedings was shown to the witness who identified it and the same was admitted in evidence. The witness lastly stated that the post-trap proceedings concluded on 11.08.2006 at around 4 p.m.

PW9, Dr. Amresh Ch. Bardhan was posted in the year 2006 as Senior Divisional Medical Officer, Bokaro Steel City, Railway Health Unit (Polyclinic), South Eastern Railway, Bokaro. He deposed that he was responsible for the Polyclinic and was entrusted to the patients who sustained injuries during the course of official duties. He stated that in course of severe/serious injuries patients were referred to senior specialist at Divisional Hospital at Adra, Purulia. On 07.09.2006 he was handed over certain documents of the informant Pawan Kumar to CBI which was seized. He identified his signature in the seizure memo which was admitted in evidence. The witness identified

the Central OPD register of South Eastern Railway, the patient's passbook for the relevant period along with bunch of medical prescriptions some of which were marked in evidence. On perusal of the register, witness stated that Pawan Kumar was injured on 18.07.2006 and was admitted to OPD and approached the witness on 21.07.2006 for treatment. He identified his signature in the medical slips which were admitted in evidence. He was referred on 21.07.2006 to Sr. D.M.O. (Ortho), Adra and he visited the doctor on 26.07.2006 and was advised 'fit for duty' on 05.08.2006. The informant visited the witness on 27.07.2006, 28.07.2006 and 31.07.2006. On 04.08.2006 he informed that he was still in pain and was not in a position to join office on 05.08.2006. The patient was referred to meet the doctor at Adra. The informant/patient was issued fitness certificate on 17.08.2006 for joining on 18.08.2006. He identified the fitness certificate and also the passes which were admitted in evidence. In cross-examination he replied that the patient was first treated by Dr. Malto who was his colleague and as the patient was suffering from knee injury, X-ray examination was advised. However, in his prescription he wrote no bone injury and the same is after seeing the X-ray report. The witness stated that he was not aware regarding any complaint lodged by the accused, however, after returning on 09.08.2006 the informant did not lodge any complaint with him.

PW 10 Susanta Bhattacharya, was an Inspector of C.B.I., Banking Securities Fraud Branch, Kolkata. He was earlier posted at A.C.B. C.B.I., Kolkata. The witness stated that on 10.08.2006, he along with others were

camping for investigation in connection with another case and on that day at about 5 p.m., a person named Pawan Kumar approached him and told him that he had a conversation with the S.P., C.B.I., Kolkata, Sri D. K. Thakur who had informed to contact him. He handed over the complaint against Dr. Sanjay Kumar Arya, DMO (Ortho), Divisional Railway Hospital, Adra District Purulia. The complaint was handwritten in English and was addressed to the SP CBI ACB Kolkata dated 10-08-2006, which stated that the accused demanded a bribe of Rs. 500/- from the complainant for allowing him as 'sick' and granting rest to him for some time. The complainant then called the SP, CBI, ACB and on receiving the said complaint, SP told him to fax the said complaint. The complainant then faxed the said complaint to the SP, CBI, ACB Kolkata at around 6 p.m. from ECL HQ, Sanctoria Area. The said complaint was admitted in evidence along with the signature of the witness. The witness thereafter stated that at around 7 p.m. S.K. Tripathi, the then Inspector CBI, ACB Kolkata, called him and asked him to inform the complainant to report at the guest house of ECL till further instruction. Accordingly, he conveyed the said message to the complainant and he waited as per the instruction. S.K. Tripathi reached the guest house along with CBI officers at night around 11-11.30 p.m. The said complaint was seized from him by seizure Memo dated 11.08.2006. One I.O.D., register was also seized from the office chamber of the accused on 11.08.2006 vide seizure Memo dated 11.08.2006. The search list bears his signatures. He identified the search list and his signature thereon as also on the I.O.D. register, which was admitted in evidence. The seizure of the

complaint also had the signature of the witness, which on being identified was admitted in evidence.

PW11, Prabir Bhattacharjee was an Office Superintendent at the office of Chief Medical Officer, Adra, Purulia in the year 2006. He witnessed the search at the office chamber and official residence of accused on 11.08.2006. He identified his signature in the seizure list which was admitted in evidence. His cross-examination was declined on behalf of the accused.

PW12, Dr. Ashutosh Swain deposed that in the year 2006 he was posted as Senior Divisional Railway Medical Officer, Adra and in the month of July-August, 2006 the accused was posted at the Office of Medical Superintendent, South Eastern Railways, Adra, Purulia. His cross-examination was declined on behalf of the accused.

P.W.13 Diptendu Bhattacharya, was at the relevant time posted as Inspector CBI, ACB Kolkata and on 10.08.2006 as per direction of the Superintendent of Police CBI, ACB, Kolkata, he along with other officers went to Asansol in the late night for assisting Inspector S.K. Tripathi in connection with the case. On 11.08.2006 at around 5.40 a.m. all the officers assembled including Debnath Mukherjee, D.K. Srivastava, the complainant, in connection with the case at room no. 7 of the guest house, the proceedings relating to pre-trap were explained to all the persons who were present. This part of the evidence is similar to what has been deposed by P.W.8. The witness also deposed similarly in respect of the manner in which they had been to place of

occurrence and entered the house of Dr. Arya after the prefixed signal was received from D.K. Srivastava the shadow witness. The witness also narrated the incident in the same manner as P.W.8 in respect of the presence of the accused who sat on a wooden cot and the complainant who was sitting on a plastic chair, the Trap laying Officer and the other members offering for their personal search to the accused, the challenge made to the accused in respect of the money which he accepted, the accused admitting his guilt and apologizing and thereafter the manner in which the seizures were affected. Witness added that the accused enquired from the complainant regarding his health when the complainant answered that he had pain and as such it was not possible for him to join duty, when the accused represented that he cannot grant any extension when the complainant requested for 15 days more for rest. The accused agreed to grant him rest till Wednesday then he asked whether he had brought the money, when the complainant took out the currency notes which was accepted by the accused. Such fact was corroborated both by the complainant and the shadow witness except the added part wherein the accused extended his rest period till 16.08.2006 which was discussed when the shadow witness went outside to give pre-fixed signal. The witness also similarly narrated as P.W.8 regarding the shirt of the accused which when dipped in sodium carbonate solution turned pink, he identified the envelope, the glass bottle which was admitted in evidence. The shirt was also washed similarly in the sodium carbonate solution and was preserved in glass bottle signed by the witness and the same being identified by him was admitted in evidence. He

identified the signature of the witnesses on the arrest memo, post-trap memo and the paper containing facsimile of brass-seal which was admitted in evidence. Three search lists which were prepared, the site-map prepared by M. Maitra which was signed by him was also identified by him in court and admitted in evidence. The witness also identified the accused in court.

PW14, Partha Sarathi Upadhyay was working as Senior Section Officer in the accounts department of South Eastern Railways, Adra Division in the year 2006. His office was responsible for maintaining the establishment of Gazetted officers. The witness deposed that in September, 2006 he handed over the personal file of the accused, Dr. Sanjay Kr. Arya which contains the joining report, leave particulars, annual increment etc. The witness identified the personal file of the accused which was admitted in evidence, however, the accused declined to cross-examine the witness.

PW 15 is Saibal Kumar Tripathi, who was posted as Inspector CBI Kolkata on 10.08.2006 and he received FIR vide case number RC 29A/2006 which was registered on the basis of written complaint by one Pawan Kumar Junior Engineer-I, Bokaro Steel City, SE Railway wherein it was alleged that Sanjay Kumar Arya, DMO, Orthopedics demanded bribe from the de-facto complaint for an amount of Rs. 500/- to extend his further medical rest. It was also alleged in the complaint that Sanjay Kumar Arya directed him to hand over the bribe money at his residence that is Railway Officers Colony, Quarter No. DS 29A at Adra under SE Railway. The complaint was forwarded by fax to the office of the SP, CBI, ACB, Kolkata and was enclosed with the FIR. On

receipt of the complaint he verified the integrity of Sanjay Kumar Arya discreetly and it was found to be bad, thereafter it was decided to lay a trap on 11-08-2006. As such a trap team was prepared by the SP, CBI, and he was appointed as the Trap Laying Officer and the case was also entrusted to him for investigation by the Superintendent of Police. The written complaint was forwarded to SP, CBI, by fax through Susanta Bhattacharyya, Inspector CBI who was camping at ECL, Sitalpur Guest House. He informed to direct the de-facto complainant to be present at the guest house and wait till his arrival. The witness deposed in the meantime that he sent requisition to SBI, Vigilance Department and ECL to provide shelter to witness and vehicles. On arrival at the ECL, Sitalpur Guest House on 10.08.2006, the officer present introduced the de-facto complaint to him and showed him the formal FIR and supplied a copy of the FIR with acknowledgement of receipt with the copy of formal FIR and also obtained the receipt signature of the de-facto complaint on the formal FIR. The formal FIR contained signatures of D.K. Thakur, the then SP, CBI, de-facto complainant and also a fax copy of complaint tagged with the same. He identified the document which was admitted in evidence. The witness thereafter instructed the de-facto complainant to attend ECL, Sitalpur Guest House at Room No. 7 at 5.00 hours sharp on 11-08-2006 and on that day early in the morning seized the original written complaint of the de-facto complaint from SI, Susanta Bhattacharyya by making a seizure list. He identified the seizure list which was admitted in evidence. At 5 a.m. on 11-08-2006 he recorded the statement of the de-facto complainant as also that of the

independent witnesses who reached the Guest House and were introduced to the members of the Team who would be proceeding for carrying out the information furnished. The witness thereafter narrated whole of the incident in the same manner as P.W. 8 and P.W. 13. Additionally, he stated that as the principal investigating officer of the trap proceedings, he wrote down the entire description of the proceedings in the post-trap memorandum which was prepared between 9.00 hours to 16.00 hours of 11.08.2006. He also prepared the facsimile of seal in separate paper and both documents were signed by him. He identified the post-trap memorandum which was admitted in evidence and thereafter he arrested the accused and produced him before the court on 12-08-2006. He identified all the seizure lists and the material exhibits which were already admitted in evidence and on 17.08.2006 he entrusted the remaining investigation of the case to Sri Roshan Singh as per order of SP, CBI. He identified the accused Sanjay Kumar Arya in court.

PW16, Roshan Singh was an Inspector, CBI/ACB, Kolkata in the year 2006 and as such he was entrusted with the investigation of RC Case No. 29 of 2006. He deposed that in course of investigation he recorded the statements of witnesses, seized relevant documents, transmitted seized articles to CFSL for forensic examination and after obtaining CFSL report as also the sanction for prosecution he submitted charge-sheet. The witness identified the accused in Court. He identified the seizure list which was prepared in course of investigation and as such the same was admitted in evidence. In cross-examination he replied that there was no preliminary inquiry, he did not

examine any independent witnesses except the pre-trap and post-trap witnesses.

Mr. Mukherjee, learned senior advocate appearing on behalf of the appellant, narrated the facts of the case in his own manner and pointed out certain salient features of the factual aspects which, according to him, requires consideration of the Court and was not taken into account by the learned trial Court while passing the judgment and order of conviction and sentence against the appellant. Learned senior advocate submitted that the appellant was facing charges under Sections 7/13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, and the prosecution in order to prove its case relied upon 16 witnesses. According to him, apart from the prosecution failing to prove the pre-trap and post-trap events, it would be relevant to take into account the evidence of PW4, Sunil Kumar, the Sanctioning Authority, who was the then Deputy Secretary (Discipline and Appeal), Railway Board, Ministry of Railways, New Delhi.

The appellant drew the attention of the Court to the relevant part of the evidence, wherein the witness deposed that “the request for a grant of sanction for prosecution was made by CBI/ACB/Kolkata, which was sent to the Vigilance Directorate of the Ministry of Railways, Government of India and New Delhi, when it was examined and submitted to the then Honourable Minister of Railways, so after carefully considering the record sent by the CBI, considered the case as fit for according sanction against the accused persons. After

granting sanction, the file was referred to me by the Honourable Minister of Railways for authentication and congregation of the same to the CBI/Kolkata.” By drawing attention of the Court to the deposition of PW4, it was emphasized on behalf of the appellant that subjective satisfaction of the witness or for that matter, the sanctioning authority who accorded sanction was not available as according to the witness, sanction was accorded by the Minister and PW4 only signed the same. Thus, independent application of mind of the witness as a sanctioning authority was absent.

Learned Advocate also drew the attention of the Court to the evidence of PW5, Bimal Chandra Purkait, who is a Senior Scientific Officer of CFSL, Kolkata and emphasized that from his evidence, it would be transparent that the currency notes were not sent for chemical examination or for opinion of any scientific expert, although it has been claimed by the prosecution that the same were smeared with phenolphthalein powder. The only materials which were sent were four sealed bottles with liquid to the CFSL for examination. Factually, it was stated that although extension in respect of medical leave was claimed to be for 15 days, but the accused did not extend such leave for 15 days and only extended the same till 15.08.2006 with remarks as fit for duty on 16.08.2006. The same may be because of the reasons that earlier PW9 has extended the period. Learned senior counsel argued that it is very illogical that when no benefit was extended, why should the complainant pay the appellant. Learned senior counsel apart from factual aspects mainly stressed on the question of sanction and in order to fortify his arguments relied upon the

following judgments, Mohd. Iqbal Ahmed -Vs. - State of Andhra Pradesh, (1979) 4 SCC 172; Mansukhlal Vithaldas Chauhan -Vs. - State of Gujarat, (1997) 7 SCC 622; State of Tamil Nadu -Vs. - M.M. Rajendran, (1998) 9 SCC 268 and State of Karnataka -Vs. - Ameerjan, (2007) 11 SCC 273.

According to the Learned Senior Advocate appearing for the appellant the whole prosecution which has been carried out by the CBI was without any valid sanction. Further prosecution having failed to lay down the factual foundation of the case and the same being ignored by the learned trial Court while arriving at its conclusion, interference by this Court is warranted and the judgment and order of conviction and sentence so passed by the trial Court/Special Court is liable to be set aside.

On the other hand Mr. Mondal, learned advocate appearing for the CBI stressed upon the issue that the accused in the instant case was caught red handed with the sum of Rs.500/- which was taken by him and was found to be in his possession which would be transparent at a glance from the pre-trap memorandum and the post-trap memorandum. The currency notes which were part of the pre-trap memorandum, the serial numbers of which were recorded, smeared with phenolphthalein powder was found from the left chest shirt pocket of the accused and so far as the phenolphthalein test is concerned, after the seizure, the same responded positive as the sodium carbonate solution turned pink. It was never the duty of the appellant who was a doctor to issue any certificate or prescription after receiving any

consideration as he was only discharging his duties as a public servant, being a Divisional Medical Officer attached with the concerned railways.

Learned Advocate resisted on the issue relating to sanction as canvassed by the learned advocate for the appellant by referring to Ext. No. 25, according to him, the sanction order was granted in accordance with law by following the rules and the reasoning assigned there is in consonance with the settled propositions of law, including the Government of India Authentication (Orders and other) Instruments Rules, 2002, as notified under Article 77 of the Constitution of India. So far as the factual aspect of the case is concerned, learned counsel for the CBI emphasized on the evidence of PW2 and PW3, who were independent witnesses according to him and particularly PW2, who had been a witness to the events for demand and acceptance of the bribe, and who on cross-examination remained unshaken which establishes the prosecution case beyond any reasonable doubt. Accordingly, learned counsel on behalf of the CBI submitted that the judgment and order of conviction and sentence so passed by the learned Special Court/Trial Court do not call for any interference by this Court and the appeal should be dismissed.

I have considered the submissions advanced by the learned advocate appearing on behalf of the appellant as well as that of the Central Bureau of Investigation. So far as the factual matrix of the case is concerned both the parties have deliberated on the factual foundations, while the appellant has tried to substantiate that the prosecution has miserably failed to prove the

issues relating to demand and acceptance of the illegal gratification, on the other hand the learned counsel appearing for the CBI has emphasized that the prosecution has been successful in proving its case beyond all reasonable doubt, as such there is no scope for interference.

However, on a scanning of the evidence of the case, I find that from the evidence of P.W.4 there has been non-application of mind as in his examination-in-chief he has categorically deposed “on that date I signed on the sanction order, against the accused, which was accorded by the Minister of Railways, Government of India on behalf of the President of India”. The witness has also deposed that “After granting sanction, the file was referred to me by the Honourable Minister of Railways for authentication and congregation of the same to the CBI/Kolkata”.

Thus, P.W.4 Sunil Kumar has acted only as Post Office and according to him if any application of mind was done the same was by the Minister of Railways, Government of India and he only signed and authenticated the sanction order. Considering the manner in which P.W.4 has dealt with the sanction order it appears that there has been an infraction in respect of the purposes for which Section 19 of the Prevention of Corruption Act, 1988 was incorporated, the principle set out in *Mansukhlal Vithaldas Chauhan* (supra) by the Hon’ble Supreme Court aptly applies to the present case. Reference to paragraphs 19 and 38 of the cited judgment is relevant which reads as follows:

**“19.** Since the validity of “sanction” depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority “not to sanction” was taken away and it was compelled to act mechanically to sanction the prosecution.

**38.** From the notings of the Secretariat file, contained in Exhibit 70, as also the conflicting statements made by the Secretary and the Under-Secretary, it is not possible to hold as to who actually granted the sanction. The Gujarat High Court has held that the sanction was granted by the Deputy Secretary, Shri Lade (PW 8), ignoring the fact that the file was also placed before the Secretary and he had also put his signature thereon. The file had, admittedly, been sent to the Office of the Chief Minister from where it was received back on 30-1-1985 and as such it is not understandable as to how sanction could be granted on 23-1-1985. This confusion also appears to be the result of the order passed by the High Court that the sanction must be granted within one month. The Secretary being the Head of the Department stated on oath that he had granted the sanction,

*particularly as the mandamus was directed to him and he had to comply with that direction. The Deputy Secretary, who actually issued the order of sanction, had signed it and, therefore, he owned the sanction and stated that he had sanctioned the prosecution. Both tried to exhibit that they had faithfully obeyed the mandamus issued by the High Court and attempted to save their skin, destroying, in the process, the legality and validity of the sanction which constituted the basis of the appellant's prosecution with the consequence that whole proceedings stood void ab initio.”*

A vital factual aspect has also touched the conscience of this Court. This relates to the evidence of P.W.2, that is, D.K. Srivastava. The said witness was first called on dock on 29.03.2011 when at the time of deposition he narrated sketchy set of facts with respect to the series of incident with which he was associated as a prosecution witness, starting from attending the Guest House in the morning to the accused being handed over with the money. On 29.03.2011 the prosecution prayed for time for deferring the examination-in-chief of the said witness and the said witness was subsequently tendered on 25.11.2011 when the witness came up with exact facts and figures in relation to the same incidents which he earlier deposed on 29.03.2011. This in fact raised a serious doubt in the mind of this Court regarding the veracity of the witness, as the procedure adopted by the prosecution gives an impression relating to subsequent tutoring of the witness after his first day's deposition. PW2 is a vital witness as he was a shadow witness described by the prosecution and had first-hand knowledge relating to the events or incident

which took place within the room of Dr. Sanjay Kumar Arya. It was he who heard the conversation and the comparison of his deposition on the first date i.e. 29.03.2011 and on the second date i.e. 25.11.2011 would reflect that there has been a vast improvement in the version of the deposition of the witness in respect of similar set of facts. The credibility of the deposition of this witness in Court raises serious doubt which touches the factual foundation of the case as the reliability of the deposition of this witness before the Trial Court is very hard to believe.

So far as the rest of the witnesses are concerned except the complainant, they have narrated regarding the attending circumstances.

In light of the aforesaid considerations both relating to factual aspect as well as sanction it would be inappropriate for this Court to arrive at a finding of affirming the judgment and order of conviction and sentence passed by the Learned Trial Court.

Accordingly, the judgment and order of conviction and sentence dated 26.09.2022 passed by the learned Judge, Special (CBI) Court, Asansol, Paschim Bardhaman, in connection with Special Case No.18/2011 corresponding to Case No. RC0102006A0029 is set aside.

Thus, CRA (SB) 153 of 2022 is allowed.

Pending connected application, if any, is consequently disposed of.

The appellant is acquitted from all the charges.

The appellant is on bail as such he is discharged from the bail bonds.

Department is directed to send back the Trial Court Records immediately. A copy of the judgment be forwarded to the learned Trial Court immediately for compliance regarding the directions given above.

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

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

**(Tirthankar Ghosh, J.)**