IN THE HIGH COURT OFJHARKHAND AT RANCHI
Cr. Appeal (S.J.) No. 1217 of 2016

[Against the judgment of conviction and order of sentence dated 28.09.2016 passed by the learned Dist. & Addl. Sessions Judge-III-cum-Special Judge, C.B.I., Dhanbad in R.C. Case No. 01(A) of 2002-D.]

Anil Kumar Singh, Son of late Jay Mangal Mahto, Resident of Village & P.O.- Aat, P.S.- Ben, District- Nalanda, (Bihar).

……Appellant

Versus

The State of Jharkhand through C.B.I. …. Respondent

For the Appellant : Mr. A. K. Kashyap, Sr. Advocate

: Mrs. Lina Shakti, Advocate

For the State-CBI : Mr. Deepak Kumar Bharti, Advocate

PRESENT
CORAM: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA
JUDGMENT

CAV On: 20th July, 2026 **Pronounced On: 10/09/2026**

1. Heard Mr. A. K. Kashyap, learned senior counsel for the appellant as well as Mr. Deepak Kumar Bharti, learned counsel for the CBI.

2. Instant criminal appeal is preferred by the appellant for setting aside his conviction and sentence for the offence under Section7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 passed by the learned Dist. & Addl. Sessions Judge-III-cum-Special Judge, C.B.I., Dhanbad in R.C. Case No. 01(A) of 2002-D, whereby and whereunder, the appellant has been directed to undergo R.I. for 2 years alongwith the fine of Rs. 5,000/-with default stipulation for the offence under Section 7 of the P.C. Act and further sentenced to undergo R.I. for three years alongwith the fine of Rs. 10,000/- with default stipulation for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of

Corruption Act, 1988. Both the sentenced were directed to run concurrently.

Factual Matrix:-

3. Fact giving rise to this appeal is that the present appellant was Assistant Labour Commissioner (Central) office of Regional Labour Commissioner (Central), Murli Nagar, Dhanbad. It is alleged that the complainant Kara Bhuian, Drill Helper, Rajapur Colliery, BCCL, Dhanbad requested the appellant to process the gratuity amount of his father and mother namely late Tilka Bhuian and late Akli Bhuini, who were BCCL employees. It is alleged that the appellant has demanded Rs. 5,000/- as illegal gratification for processing and making payment of the gratuity amount of the deceased parents of the complainant. The complainant was not inclined to pay the bribe money, hence, lodged a complaint before the S.P., C.B.I., Dhanbad on 21.05.2002.

After receiving the complaint, on instruction, an enquiry was conducted by Mr. S. N. Khan, Inspector, SPE, C.B.I., Dhanbad. It was found that the present appellant was posted and working as Assistant Labour Commissioner in the office of Regional Labour Commissioner (Central), Murli Nagar, Dhanbad during the period of August, 2000 to May, 2002 and the collieries of Kustore Area of BCCL, Dhanbad came under the jurisdiction of present appellant Anil Kumar Singh, w.e.f. November, 2001. It was also found that the claim of gratuity of the deceased parents of the complainant Kara Bhuian was pending for processing with the appellant. The complainant, claiming himself to be son of the deceased persons, applied for release of gratuity amount in his favour. The genesis of allegation levelled in the said complaint was

verified by Sri Ram Pujan Tiwari, Inspector of Police, C.B.I., Dhanbad, who found the same to be genuine and correct during verification and submitted verification report on 22.05.2002 (Ext.-13). Thereafter, S.P., C.B.I., Dhanbad ordered for registration of F.I.R and charge of investigation was handed over to Dy. S.P., Sri B. K. Birdi. It was decided to lay a trap and to apprehend the accused red-handed while demanding and accepting illegal gratification of rupees 5,000/- from the complainant. Accordingly, a team was constituted and pre-trap formalities were made and preliminary memorandum was prepared. In the course of pre-trap formalities, complainant produced a sum of rupees 3,750/- and the number of denomination of GC notes were noted down in the preliminary memorandum. The complainant was instructed to give the tented money only on demand of money by the accused Anil Kumar Singh. Thereafter, the trap team under leadership of Sri B.K. Birdi, Dy. S.P., CBI, Dhanbad and other CBI officials along with independent witnesses, namely, Sanjeev Sudhakar and Deepak Kumar, both Postal Assistants and the complainant, laid a trap on 22.05.2002 in front of M/s. Bharat Medical, a medical shop situated at Saraidhela Main Road, Dhanbad. The appellant was caught red-handed by CBI trap team for demanding and accepting illegal gratification of rupees 3,750/- (against demand of rupees 5,000/-).

The conversation and transaction of bribe amount between the complainant Kara Bhuian and the accused Anil Kumar Singh was clearly heard and seen by shadow witnesses namely Sanjeev Sudhakar, the trap laying officers Sri B.K. Birdi, Dy. S.P, CBI, Sri Brajesh Kumar, S.I. and R.D. Mahato, Head constable. The said amount was handled by

the accused after counting the same and kept in his left upper chest pocket of his shirt and tried to flee away by his motorcycle, but he could not manage to flee away and was apprehended with illegal gratification of rupees 3,750/-. It is alleged that the accused took out GC notes from left chest pocket and threw the same on the ground on being challenged by the trap team. The accused also became nervous and his face became pale. Sri B.K. Birdi, Sri R.D. Mahato, CBI team members caught hold of both hands of the appellant. The GC notes, recovered from the accused, were tallied with GC notes mentioned in preliminary memorandum during pre-trap proceeding. Thereafter chemical test followed the right hand fingers, left hand fingers and left upper chest pocket of the shirt. These were washed separately in the solution of sodium carbonate and solution turned into pink. The liquid were separately sealed in presence of witnesses and sent to CFSL, Kolkata for chemical examination. After receiving the report from CFSL, Kolkata, wherein presence of phenolphthalein powder in the liquid was found.

4. On the basis of above, an F.I.R. being R.C. Case No. 01(A) of 2002-D was registered against the accused for the offence under Sections 7 and 13(2) r/w 13(1)(d) of the P.C. Act, 1988.

5. After completion of investigation, the charge-sheet was submitted against the present appellant for the offence under Sections 7 & 13(2) r/w 13(1)(d) of the P.C. Act. The sanction for prosecution was also granted by the Competent Authority. Accordingly, cognizance on the aforesaid offences was taken.

6. The accused appeared before the SPE-CBI, Dhanbad. Charges were read over and explained to him, to which, the appellant denied from the charges levelled against him and claimed to be tried.

7. In the course of trial, altogether 12 witnesses were examined by the prosecution.

i. PW-1: A. A. Chalai, proved sanction order (Ext.-1)

ii. PW-2: Bimal Chandra Purkait, Sr. Scientist, CFSL, Kolkata, who proved CFSL report (Ext.-2).

iii. PW-3 Deepak Kumar, independent witness

iv. PW-4 Sanjeev Sudhakar, Shadow witness

v. PW-5 Mritunjay Kumar Srivastave

vi. PW-6 Ramadhar Mahato

vii. PW-7 Bhagwat Dutta

viii. PW-8 Hare Krishna Choudhary

ix. PW-9 Lakshmi Das

x. PW-10 Prem Kumar Prasad

xi. PW-11 Bal Krishna Birdi, (1st I.O.)

xii. PW-12 Shah Navajo Khan, (2nd I.O.)

Apart from oral testimony of witnesses, following documentary evidence has been adduced by the prosecution:-

I. Exhibit-1 : Sanction order.

II. Exhibit-2: CFSL report

III. Exhibit- 3 to 3/3: Signature of PW-2 on Mat. Ext.-I to IV.

IV. Exhibit-3/4 to 3/30: Signature of PW-3

V. Exhibit-3/31: Signature on bottle (Mat. Ext.-I)

VI. Exthibit-3/32: Signature on the envelope containing tainted piece of paper.

VII. Exhibit-3/34: Signature on memorandum dated 22.05.2002.

VIII. Exhibit-3/35: Signature on envelope containing tainted money.

IX. Exhibit-3/36: Signature on bottle (Mat. Ext.-II)

X. Exhibit-3/37: Signature on bottle (Mat. Ext.-III)

XI. Exhibit-3/38: Signature on envelope of containing shirt

XII. Exhibit-3/39: Signature on memorandum

XIII. Exhibit-3/40: Signature on search list (five sheets)

XIV. Exhibit-3/41: Xerox copy of death certificate of the father of Kara Bhuian

XV. Exhibit-3/42: Xerox copy of death certificate of mother of Kara Bhuian.

XVI. Exhibit-3/43 to 3/46: Signature on seized file

XVII. Exhibit-3/47: Signature on arrest memo

XVIII. Exhibit-3/48: Signature on personal search memo

XIX. Exhibit-3/49: Signature on personal search memo

XX. Exhibit-3/50: Signature of PW-5 on seizure memo

XXI. Exhibit-3/51: Signature of Bhagwat Dutta on seizure memo dated 29.05.2002

XXII. Exhibit-3/52: Signature of PW-5 on search list dated 22.05.2002.

XXIII. Exhibit-3/53: Signature of S.K. Jha on search list dated 22.05.2002

XXIV. Exhibit-3/54: Signature of PW-6 on bottle-D

XXV. Exhibit-3/55: Signature of PW-6 on envelope of tainted piece of paper.

XXVI. Exhibit-3/56: Signature of PW-6 on pre-trap memorandum

XXVII. Exhibit-3/57: Signature of PW-6 on envelope of tainted money.

XXVIII. Exhibit-3/58: Signature of PW-6 on bottle-R

XXIX. Exhibit-3/59: Signature of PW-6 on bottle-L

XXX. Exhibit-3/60: Signature of PW-6 on bottle-P

XXXI. Exhibit- 3/61: Signature of PW-6 on envelope of shirt

XXXII. Exhibit- 3/62: Signature of PW-6 on memorandum of recovery (6 pages)

XXXIII. Exhibit-3/63: Signature of PW-7 on receiving of seizure list dated 29.05.2002

XXXIV. Exhibit-3/64 & 3/65: Signature of PW-7 on seizure memo dated 30.05.2002.

XXXV. Exhibit-3/66: Signature of I.O. on the envelope of tainted piece of paper.

XXXVI. Exhibit-3/67: Signature of I.O. on bottle-D

XXXVII. Exhibit-3/68: Signature of I.O. on bottle-L

XXXVIII. Exhibit-3/69: Signature of I.O. on bottle-R

XXXIX. Exhibit-3/70: Signature of I.O. on bottle-P

XL. Exhibit-3/71: Signature on envelope containing shirt.

XLI. Exhibit-3/72: Signature of I.O. on envelope containing G.C. notes.

XLII. Exhibit-4 to 4/15: 16 sheets within mat. Ext.-V.

XLIII. Exhibit-5 to 5/20: 21 sheets within mat. Ext-VI.

XLIV. Exhibit-6: certified copy of office order dated 31.01.2002.

XLV. Exhibit-7: the complaint

XLVI. Exhibit-7/1: endorsement on Ext.-7.

XLVII. Exhibit-8: page no. 50 of mat. Ext.-IX.

XLVIII. Exhibit-9: letter of assumption of charge from R.L.C. (Mat. Ext.-VIII).

XLIX. Exhibit-10: charge report (page no. 66 of Mat. Ext.-VIII).

L. Exhibit-11: list of family of Kara Bhuian issued from Block Office, Jharia.

LI. Exhibit-12: formal F.I.R.

LII. Exhibit-13: verification report of R.P. Tiwary.

LIII. Exhibit-14: Pre-trap memorandum

LIV. Exhibit-15: arrest memo dated 22.05.2002

LV. Exhibit-16: personal search memo.

LVI. Exhibit-17: inspection memo dated 22.05.2002

LVII. Exhibit-18: Search list

LVIII. Exhibit-19: Search list

LIX. Exhibit-20: memo of recovery-6 sheets

LX. Exhibit-21: seized memo dated 29.05.2002

LXI. Exhibit-22: confidential letter no. 4538 dated 28.05.2002 to Director, CFSL.

LXII. Exhibit-23: Seizure memo dated 29.05.2002

LXIII. Exhibit-24: seizure memo dated 30.05.2002

LXIV. Mark-X for identification: Xerox copy of death certificate of Tilak Bhuian

LXV. Mark-X/1 for identification: Xerox copy of complaint.

LXVI. Mat. Ext.-I: Bottle-D

LXVII. Mat. Ext.-II: Bottle-R

LXVIII. Mat. Ext.-III: Bottle-P

LXIX. Mat. Ext.-IV: Bottle-L

LXX. Mat. Ext.-V: File No. 36/59/2001-02

LXXI. Mat. Ext.-VI: File No. 36/60/2001-02

LXXII. Mat. Ext.-VII: One diary

LXXIII. Mat. Ext.-VIII: Personal file of Anik Kumar Singh (50 Sheets)

LXXIV. Mat. Ext.-IX: Service Book of Anil Kumar Singh

LXXV. Mat. Ext.-X: seized document.

8. On the other hand, the defence has also examined four witnesses, namely, DW-1 Ajay Kumar Samant Roy, DW-2 Narendra Kumar Singh, DW-3 Shrawan Kumar Jagnania and DW-4 Bikau, apart from following documentary evidences:-

I. Ext.-A : certified copy of note sheet from 11.06.2002 to 01.09.2002

II. Ext.-B: certified copy of judgment dated 05/08.07.2002 vide application no. 36/59/2001; E20

III. Ext.-C: certified copy note sheet from 11.06.2002 to 01.07.2002.

IV. Ext.-D: certified copy of judgment dated 05/08.07.2002 in application no. 36/60/2001-E2.

V. Ext.-E: true copy of letter dated 10.01.1987,

VI. Ext.-F: true copy of Form-F (Nomination)

9. The learned Trial Court after taking note of oral as well as documentary evidence adduced by both the respective parties, arrived at definite conclusion that prosecution has proved charges leveled against the accused through cogent and reliable evidence. There is no reason for complainant to falsely implicate the accused. It was also observed that

prosecution has proved demand, acceptance and recovery of bribe amount from possession of the accused, which find corroboration from the chemical examination report and the testimony of trap witnesses and other independent witnesses. Accordingly, the learned Trial Court held the appellant guilty for the offences under Sections 7 & 13(2) r/w 13(1)(d) of the P.C. Act and convicted and sentenced him as stated above, which has been assailed in this appeal.

Submission on behalf of appellant:-

10. Assailing the impugned judgment, learned senior counsel for the appellant has strenuously argued that the learned Trial Court has miserably failed to consider that the complainant appeared after 13 years of death of his purported parents, without furnishing any documentary evidence showing that he is the son or otherwise legal heir of the deceased employees of BCCL, namely, late Tilak Bhuian and late Akli Bhuini. In the service report of the deceased employees also there was no nominee and the name of the complainant was not mentioned as their son. Therefore, due to non-appearance of any claimant, the matter was closed. Suddenly, the complainant incarnated as son of the deceased employees and overall matter was communicated to him, but he failed to produce any document to the satisfaction of the appellant showing any genuine claim raised by the complainant. Therefore, in order to put pressure, absolutely false case was lodged by the complainant, who after institution of the complaint case absconded. There is nothing on record that any summons was issued against the complainant during trial of the case and any service report was obtained. His death certificate has also not been brought on record, but other

witnesses have given a bald statement that complainant has died. Accordingly, no steps were taken by the concerned Trial Court for appearance of the concerned complainant. Therefore, question is still open as to whether the complainant is alive or dead. The very strange cause has been propounded during pre-trap formalities. If there was demand of rupees 5,000/- for processing the gratuity amount, then why only 3,750/- rupees were get deposited as bribe to be given to the appellant. It is quite obvious from the prosecution evidence itself that the tainted money was never demanded and accepted by the appellant, rather it was found scattered on the earth. The shadow witnesses have also failed to prove the conversation between the complainant and the appellant regarding any demand of bribe or illegal gratification and its acceptance and recovery is also manipulated by the witnesses. It is further argued that the learned Trial Court has also failed to consider the documentary evidence (Ext.- B & C) adduced by the defence, which clearly shows that the complainant was not the son or the legal heir of the deceased persons and offered no explanation as to why he raised claim after 13 years of death of deceased persons, when it was already closed and complainant was not nominee or mentioned as son in the service record of the deceased persons namely, late Tilka Bhuian and late Akli Bhuini. The learned Trial Court has further failed to examine the officer, who conducted preliminary inquiry. Therefore, why and on what basis, he has submitted verification report, could not be cross examined causing serious prejudice in defence of the appellant. The shadow witnesses P.W.-3 and P.W.-4 have also clearly stated that the amount was scattered and lying on earth and they have not heard any

conversation between the complainant and the accused about demand of bribe and its acceptance. It is further submitted that the investigating officer of this case has played a pivotal role, who without examining the pendency of any claim in respect of complainant in the official record simply conducted upon table work of inquiry by recording statement of witnesses and taking the CFSL report as conclusive evidence submitted charge sheet against the appellant. It is further submitted that even if the trap procedures conducted by officials by itself is not conclusive proof about guilt of the accused rather the entire facts and circumstances of the case must be looked into. The motive behind the prosecution and the intention of the complainant has also to be looked into. The non-examination of complainant in this case and no corroboration from shadow witnesses regarding demand of bribe its acceptance and recovery and factum of no genuine claim of the complainant, the prosecution case absolutely falls on ground. In absence of proof of foundational facts, no presumption under section 20 of the P.C. Act can be raised against the accused. It is further argued that the sanction order has been signed by the sanctioning authority without producing the materials for forming his subjective satisfaction towards the prima facie case meet out against the accused, which is also admitted fact. It is further submitted that the Trial Court has simply narrated the evidence of witnesses and exhausted the list of documentary evidence and material exhibits in all together 21 pages, thereafter, extracted the ingredients of offence under Section 7 of the P.C. Act and without recording any sound reasons and scrutinizing the evidence of witnesses concluded about the guilt of the appellant in a single paragraph 29.

Apparently, the impugned judgment is devoid of reasons and based on non-application of judicial mind towards oral and documentary evidence adduced by the parties. The defence evidence was absolutely discarded without recording any findings. Therefore, the impugned judgment is absolutely illegal and based upon non consideration of evidence in proper perspective, which is liable to be set aside. The appellant deserves acquittal from the charges extending the benefit of reasonable doubt. Accordingly, this appeal may be allowed.

Submission on behalf of State-CBI:-

11. On the other hand, learned counsel for the state-CBI has opposed the aforesaid contentions raised by learned counsel for the appellant and defending the impugned judgment has submitted that the prosecution has been able to prove all the ingredients of offences under Sections 7 & 13(2) read with 13(1)(d) of the P.C. Act. In Section 20 of the P.C. Act, there is presumption against the accused if the foundational facts are proved. The appellant has miserably failed to explain or offer any valid and cogent reason for false implication either in his statement under Section 313 of the Cr.P.C. or adduced by defence evidence. The appellant has been caught red handed while asking and accepting bribe of Rs. 3,750/- from the complainant in order to process application for gratuity amount applied by him. The chemical examination report conducted by C.F.S.L., Kolkata also corroborates prosecution case. Therefore, the learned Trial Court has very wisely and aptly scrutinized the evidence adduced by the prosecution and committed no error of law while convicting and sentencing the appellant for the aforesaid offence

calling for any interference in this case. This appeal is devoid of merits and fit to be dismissed.

Analysis, Reasons and Decision:-

12. I have gone through the records of the case alongwith the impugned judgment and order in the light of the contentions raised on behalf of both side.

13. The only point for consideration in this appeal is, as to whether the impugned judgment of conviction and sentence suffers from any serious error or law calling for any interference or not?

14. Before adjudicating the above point, it is pertinent to apprise with the testimony of the witnesses examined during trial.

15. It appears that altogether 12 witnesses have been examined by the prosecution.

PW-1 A.A. Chalai is a formal witness and proved sanction order for prosecution (Ext-1).

In his cross examination, this witness has admitted that he received draft sanction from CBI. He has also not filed any permission obtained from C.B.C., New Delhi for recording sanction.

PW-2 BImal Chandra Purkait, Senior scientist, CFSL, Kolkata has proved CFSL report (Ext.-2).

PW-3 Deepak Kumar is an independent witness arranged by CBI to observe the trap formalities. On 22.05.2002, he was instructed to report at CBI office at 9:00 a.m. According to his evidence, the complainant Karra Bhuian went inside the office of the accused at the time of trap and Sanjeev Sudhakar (PW-4) was standing in the corridor in front of window. A pre-trap formality was taken and memorandum

was prepared. He has also stated that out of demand of illegal gratification of rupees 5,000/-, the complainant could arranged only 3,750/- rupees out of which, 34 notes were of Rs. 100 denomination and 7 notes were of Rs. 50 denomination. The numbers of currency notes were noted in a paper and after smearing with the chemical, sealed in the envelope with instruction to complainant to give to the accused on his demand of bribe only. At the time of trapping, the accused was standing in the corridor and witness Sanjeev Sudhakar along with complainant Karra Bhuian went towards the office. Karra Bhuian entered into the office and Sanjeev Sudhakar was standing near the window. Karra Bhuian requested for payment of gratuity of his parents of which the accused demanded rupees 5,000/- but Karra Bhuian replied the arrangement of only Rs. 3750/-, on which the accused asked him go near the Pipal tree outside the office. The accused Anil Kumar Singh reached near the Pipal tree by his motorcycle and after taking Karra Bhuian went towards Saraidhela. Dy. S.P., B.K. Birdi and Sanjeev Sudhakar also followed him by scooter and this witness also followed them. It is further stated that the accused Anil Kumar Singh stopped his motorcycle near Bharat Medical Hall and Karra Bhuian gave him rupees 3,750/- which was received by the accused, kept in his left pocket. In the meantime, raiding team surrounded the accused, then he threw the money on earth, but Dy. S.P. caught hold of hand of the accused and Sanjeev Sudhakar was instructed to pick up the notes. Thereafter, hands of accused Anil Kumar Singh was washed separately and white solution turned into pink and the memorandum of said solution, after keeping in separate bottles and sealing the same, was prepared. He has also signed

over the memorandum. Thereafter, the accused was brought to CBI office. This witness has further deposed that again at about 3:15 hours, members of raiding team went to the office of accused and searched and seized two files, one copy of death certificate and another diary from the chamber of the accused Anil Kumar Singh and seizure list was prepared, which also bears his signature.

In his cross examination, this witness admits that he has also given evidence in the CBI cases on previous occasion as a shadow witness. He has also admitted that as per instruction given to this witness at pre-trap stage, only complainant along with Sudhakar have to go in the office of the accused and this witness have to remain present nearby and have to go after receiving the signal of transaction. He also admits that he was standing outside the office. Therefore, what conversation took place between the complainant and the accused in the office room at the time of trap, he could not hear. He also admits that no transaction of bribe money took place in the office. He further admits that Bharat Medical Hall is situated at the distance of one and half kilometer from the office. The accused and the complainant was sitting on the motorcycle of the accused and what talk took place between them, he does not know. He also admits that when he reached at Bharat Medical Hall, the place of occurrence, he saw tented money was lying on earth. Therefore, he could not say whether the accused demanded any money as illegal gratification from the complainant or any money was received by the accused.

PW- 4 Sanjeev Sudhakar is a postal assistant at G.P.O., Ranchi. He was posted at Dhanbad at the relevant time of occurrence and he was

a shadow witness of this case. According to his evidence, on instruction of senior officer, he was instructed to report at CBI office on 22.05.2002 and report there at about 9:00 a.m. He was introduced with other witnesses and the complainant Karra Bhuian. He was also instructed with the complainant and about the incident and he was told that the accused Assistant Labor Commissioner has asked bribe of rupees 5,000/- for processing the gratuity of his deceased father and mother but he could manage only 3,750/- rupees. Thereafter, trap procedure was demonstrated and memorandum was prepared. The complainant produced 3,750/- rupees out of which 34 currency notes were of Rs. 100 denomination and 7 notes were of Rs. 50 denomination. The notes were smeared with phenolphthalein powder and after noting down the number of notes put in the envelope and gave to the complainant to give to accused when he demands bribe otherwise the money has to be returned. This witness was instructed to see the transaction in between the complainant and the accused. According to this witness, at the time of trap, the complainant went inside the office of the accused, the office of the accused is situated at ground floor and a window is also near the office room. This witness was standing near a window and other witnesses were also scattered nearby. Karra Bhuian alone went inside the office room of the accused and talked with him, thereafter came out from the office and stated that he was instructed by the accused to stay near the Pipal tree outside the office. After some time, accused Anil Kumar Singh came on his motorcycle and stopped there and taking complainant got him boarded on motorcycle and went towards Saraidhela and this witness alongwith other also followed them and

reached near Bharat Medical Hall, Saraidhela. The accused Anil Kumar Singh was purchasing some medicine, the complainant was standing near his medical. This witness and other witnesses were also watching from some distance. He has further stated that after purchasing the medicine Anil Kumar Singh returned to his motorcycle and got boarded on his motorcycle. Then complainant Karra Bhuian attempted to put money in his pocket but the same was pushed away by the accused and money scattered on the earth. Then this witness and others reached at the place and this witness picked up tainted currency notes lying on the earth and tallied the same with the numbers noted down at the pre-trap procedure, which was found to be correct. Then both hands of the accused was caught and he was brought near the Bharat Medical Hall. The tainted money was kept in an envelope and sealed, which bears his signature. He has also proved that both hands of Anil Kumar Singh was washed with liquid of sodium carbonate and the liquid turned into pink. The said liquid was also sealed in a separate bottle. The pocket of shirt of the accused was also washed in the liquid of sodium carbonate, which also turned into pink and shirt was also seized and sealed and the liquid was kept in a separate bottle and sealed in presence of witnesses. Thereafter, accused was brought to CBI office and rest of the proceedings took place in the CBI office. Again this witness along with other went to the office of the accused and some files and registers were seized. He has further proved other legal formalities taken in his presence.

At this juncture, this witness was declared hostile by the prosecution and permitted to be cross-examined by the prosecution.

PW-5 Mritunjay Kumar Srivastava was posted as Upper Division Clerk in the office of Regional Labour Commissioner (Central), Dhanbad. According to his evidence, in the month of February, 2002, Sri. A. K. Singh, Assistant Labour Commissioner was looking after gratuity cases, industrial disputes and other matters. He has further stated that this seizure list was dated 29-05-2002 by which the personal file and service book of Anil Kumar Singh were given by Sri Bagwat Dutta, U.D.C. to CBI officers in his presence and he has proved his signature and signature of Bhagwat Dutta on the letter, marked as Ext- 3/50 and 3/51 respectively and the personal file (containing 50 pages) and service book (containing 57 pages) of Anil Kumar Singh have been marked as Mat Ext-VIII and Mat. Ext.- IX. He has further stated that this is the search list dated 22-05-2002 by which the search of the chamber of A.K. Singh was made and during that course two files relates to gratuity was seized, besides this, the xerox copy of death certificate of Tilka Bhuian and a document relates to family details of Akli Bhuini, an Executive Diary, in which Industrial dispute and gratuity cases were written, were also recovered. He has also proved his signature and the signature of Sri S.K. Jha on the search list, marked as Ext- 3/52 and 3/53 respectively. He has further stated that this Mat. Ext.- V and VI are related to gratuity application filed by Kara Bhuian for gratuity of Tilka Bhuian and Akli Bhuini and the Mat. Ext. V was initiated by Bangali Choudhary on 16-08-2001. He has stated that this is the note sheet (3 sheets) along with Form- N on which the then Regional Labour Commissioner, A.N. Mehra put his signature and 15 other papers, which have been marked as Ext.- 4 to 4/15. He has

also proved 21 pages on Mat. Ext. VI in which note sheet (two pages) are there, marked as Ext.- 5 to 5/20. He has also proved the office order dated 31-01-2002, marked as Ext.-6. He has further proved the office order dated 1/2-11-2001 related to change the Area of ALC. Sri A.K. Srivastava and Anil Kumar Singh, marked as Ext. 6/1.

In his cross examination he has proved certified copy of note sheet from 11-06-02 to 01-07-02 and certified copy of Judgment dated 05/08-07-02, which have been marked as Ext.- A and B respectively. He has also proved certified copy of note sheet from 16.06.2002 to 17-06-02 & 01-07-02 and certified copy of Judgment dated 05/08-07-02 in application No. 36/60/2001-E 2, marked as C and D respectively.

In his re-examination by the prosecution, he has stated that Ext. A and C have not been written in his presence and he did not see the original file. He has further stated that he cannot say as who had certified the Ext.- C and D. As such, it is crystal clear that the accused A.K. Singh was dealing with the payment of gratuity of claim cases.

PW-6 Ramadhar Mahto has stated that in May, 2005, he was working as Head Constable in CBI, Dhanbad. He has further stated that on 21-05-2002 at about 10 hrs. Kara Bhuian came to CBI Office, Dhanbad and met with Amit Garg, Superintendent of Police, CBI, Dhanbad. He has also stated that Superintendent of Police, CBI called him in his chamber and asked to write an application as stated by the complainant Kara Bhuian. Then, he wrote the application as stated by the complainant on 21-05-2002 and read over the same to him and after that he put his thumb impression in his presence. He has proved the photo copy of the application, marked "X/1" for identification. He has

further stated that Kara Bhuian had complained that Anil Kumar Singh, Assistant Labour Commissioner had demanded a sum of Rs. 5,000/- as bribe for payment of gratuity amount of his parents. He has also stated that he was called on 22-05-2002 at 9 A.M. in CBI Office, Dhanbad, where Sri B.K. Birdi, Dy. S.P., Sri R.P. Tiwary, S.I., Sri B.K. Mukherjee, S.I., Sri Sanjeev Sudhakar, Pradeep Kumar both are employees of Postal Department, complainant Kara Bhuian were present and the complaint of Kara Bhuian was read over to all of them and asked to Sanjeev Sudhakar to touch his right hand fingers on a piece of paper in which phenolphthalein powder was applied. He has further stated that he (Sanjeev Sudhakar) touched the paper, thereafter, his fingers were washed with sodium carbonate water solution, which turned into pink and said solution was kept in a bottle and sealed, on which the signature of complainant was obtained and he (this witness) also put his signature on it and his signature has been marked as Ext.- 3/54. He has further stated that the tainted piece of paper was also kept in an envelope and sealed on which all the members put their signature and his signature has been marked as Ext.- 3/55. He has also proved the complaint of Kara Bhuian, marked as Ext.-7. He has further proved the endorsement on complaint (Ext.- 7), marked as Ext.- 7/1. He has further stated that during the trap proceeding a sum of Rs. 3,750/- was demanded from the complainant as Rs. 5,000/- was demanded by the accused but the complainant arranged only Rs. 3,750/- and the phenolphthalein powder was applied on the notes and Kara Bhuian was asked to give the same only on demand. He has also stated that said notes were given to Kara Bhuian and a pre-trap memorandum of whole

process was prepared on which the signatures of all members and L.T.I. of Kara Bhuian were obtained. He has proved his signature, marked as Ext.- 3/56. He has further stated about trap proceeding, recovery of notes from the possession of the accused in detail and he has further stated that said notes were kept in an envelope and sealed on which signatures of all members and L.T.I. of the complainant were obtained and he has proved his signature, marked as Ext.- 3/57. He has further stated that fingers of the hands of accused were washed with sodium carbonate solution separately, which turned into pink and said solution were kept in two separate bottles, marked "R" and "L" and signatures of all members were obtained and the signatures of this witness on "R" bottle and "L" bottle have been marked as Ext.- 3/58 and 3/59 (illegible). He has also stated that pocket of the shirt of accused was also washed with sodium carbonate solution, which turned into pink and said solution was kept in a bottle and sealed, marked "P" and his signature on bottle mark "P", marked as Ext.- 3/60. He has further stated that the shirt of accused was also kept in an envelope and sealed on which his signature was obtained, marked as Ext. 3/61. He has also stated that a recovery memorandum (six pages) of whole proceeding was prepared and his signatures were obtained in all pages, marked as Ext.- 3/62. He has further stated that the accused was arrested and personal search was also made and his office and residence were also searched and arrest memo was also prepared.

In his cross examination, he has stated that pre-trap memo was prepared in CBI Office and post-trap, recovery memo was prepared in

front of Medical Shop. Nothing has been elicited in the cross-examination of this witness so as to discredit his testimony.

PW- 7 Bhagwat Dutta has stated that from the year 2000 to 2002, he was working in Administration Section-I, Labour Department as U.D.C. He has proved his signature on seizure memo dated 29-05-02 through which service book and personal file were seized, which has earlier been marked as Ext.- 3/51. He has further stated that he had received the copy of said seizure memo and sent to R.L.C. on which he put his signature and his signature has been marked as Ext.- 3/63. He has also proved the Service Book and Personal File of A.K. Singh, which have earlier been marked as Mat. Ext VIII and IX. He has also proved the page No. 50 of file of Anil Kumar Singh on which there is signature of A.K. Singh, marked as Ext.- 8. He has further proved the letter for assumption of charge dated 11-08-2000, on which the then R.L.C. Sri A.N. Mehrotra and he (PW-7) put their initials, which has been marked as Ext.- 9. He has also proved the charge report dated 07-08-2000 (Page No. 66 of Personal file of Anil Kumar Singh), marked as Ext.- 10. He has proved his signature on seizure memo dated 30-05-02, marked as Ext.- 3/64 and 3/65. He has further proved two office orders which have earlier been marked as Ext.- 6 and 6/1, which were attested by Sri S.K. Jata, Assistant Labour Commissioner (HQ).

In his cross-examination, he has explained the procedure for payment of gratuity.

PW- 8 Hare Krishna Choudhary has stated that in the year 2002 he was posted at Rajapur O.C.P. Kustore Area as Dy. Personal and at that time Kara Bhuian was working as General Mazdoor and the parents

of Kara Bhuian were also working in Kustore Area. He has further stated that this is family details of late Akli Bhuini and late Tilak Bhuian issued by B.D.O., Jharia. He has also stated that the deceased have not submitted Nomination Form- F regarding their legal heirs in the office due to which the cheque for the amount of gratuity of the deceased was deposited in the office of Assistant Labour Commissioner, Dhanbad. He has further stated that he had seen the family details in the office and on the basis of said family details, Kara Bhuian was heirs of Akli Bhuini and Tilka Bhuian and nobody had claimed the gratuity prior to Kara Bhuian.

In his cross examination, he has stated that he has no knowledge about the dispute regarding the gratuity claim by Kara Bhuian.

PW- 9 Lakshmi Das has stated that she was working as Typist-cum-Assistant in Jharia Block from 1997-2002. She has proved the family list issued vide Memo No. 1230 dated 10-11-97, marked as Ext.-11. She has further stated that this family list of Kara Bhuian shows that his parents and one brother Tulsi Bhutan had already died.

In her cross examination, she has stated that the family list has been prepared on the basis of inquiry report.

PW-10 Prem Kumar Prasad has stated that he was posted in Personal Section at ROCP/SJ, BCCL from 1990 to 2005. He has further stated that this is the photo copy of death certificate of Tilka Bhuian, who was posted as Wagon Loader at Rajapur ROCP, Jharia and died on 20-04-1988, which is in the writing and signature of Dr. S. Chaterjee marked as "X" for identification. He has also stated that the name of wife of Tilak Bhuian was Akli Bhuini, who was also working in ROCP

and Akli died in the year 1993. He has further stated that according to service record, Tulsi Bhuian was the son of Tilak and Akli and according to service record, he came to know that Tulsi has died. He has further stated that according to service record, Kara Bhuian is also son of Tilak and Akli and Kara Bhuian has claimed for gratuity amount of his parents.

PW-11 Bal Krishna Birdi, is the trap laying officer as well as the 1st Investigating Officer of the case and according to him, in the year 2002, he was posted as Inspector and he joined as Dy. S.P. in CBI, Dhanbad. He has further stated that on 22-05-2002, he registered this case vide R.C. Case No. 01(A)/2002-D against Anil Kumar Singh, Assistant Labour Commissioner (Central), Dhanbad on the basis of written complaint of Kara Bhuian, the complainant and verification report of Ram Pujan Tiwari, CBI Inspector. He has proved the FIR, marked as Ext.- 12 and also proved verification report, marked as Ext.- 13. He has further stated that as per order of the then S.P., he was appointed as Investigating Officer of this case and after taking charge for investigation, he made arrangement for the attendance of two witnesses, who are Sanjeev Sudhakar (PW-4) and Deepak Kumar (PW-3) of postal department. He has also stated that team members i.e. he, R.P. Tiwari, Inspector, D.K. Mukherjee, Inspector, S.1. Brajesh Kumar, Hawaldar R.D. Mahto, Constable Vijay Singh, complainant Kara Bhuian, independent witnesses were assembled in his office for observing the pre-trap formalities and all of them were introduced with each other and also disclosed about the purpose of their assemblage. He has further stated that a practical demonstration was made and

phenolphthalein powder was applied on a piece of paper and Sajeev Sudhakar (PW-4) was asked to touch, who touched with his right hand fingers on piece of paper, thereafter, his fingers were washed with sodium carbonate solution, which turned into pink and the paper was kept in an envelope and sealed on which the signatures of all members were obtained and he also put his signature. He has further stated that said pink solution was also kept in a bottle and sealed. He has proved his signature on the envelope of tainted piece of paper, marked as Ext.-3/66 and he has also proved his signature on bottle, marked as Ext.-3/67. He has further stated that the number of notes of Rs. 3,750/- brought by the complainant were noted and phenolphthalein powder was applied upon the notes. The said notes were returned to the complainant and he was instructed to give the notes only on demand by the accused. After that, he kept the notes in his left pocket of the shirt. He has further stated that the complainant was also instructed to talk with loud voice for hearing the conversation by the witnesses and also instructed to give signal when the transaction will be completed. He has also stated that witness Sanjeev Sudhakar (PW-4) was made shadow witness to accompany with the complainant and was directed to hear the conversation. He has further stated that the witness had also been instructed to give signal and other witness of the team and independent witness Deepak Kumar (PW-3) were also directed to try to see and hear the conversation. He has also stated that the hands of all witnesses were washed by soap and water and remaining phenolphthalein powder was kept in the Store (Malkhana) of CBI and a pre-trap memorandum was prepared, on which the independent witnesses and he put their

signatures. He has proved the pre-trap memorandum, which is typed by Ashok Sahu on his dictation, which is in five pages, marked as Ext. 14. He has further stated that he alongwith team members, independent witnesses and complainant proceeded towards Regional Labour Office Centre situated at Murli Nagar, Dhanbad by personal scooter, rickshaw etc. He has also stated that the complainant and shadow witness Sanjeev Sudhakar (PW-4) and R.D. Mahato (PW-6) went to the office and they took their position there. He has further stated that Kara Bhuian entered into the office and Sanjeev Sudhakar (PW-4) and R.D. Mahato were standing near the window of corridor. He has also stated that the accused asked the complainant that **क्या आप पांच हजार लाये हो** ? then the complainant told that **सर पांच हजार नहीं** 3750/- **रुपये लायें हैं, बहुत मुश्किल से लाया हूँ**, during that course, he again stated that **मेरे माँ बाप का** gratuity claim **को पास करके पेमेंट करा दीजिये ।** He has further stated that the accused told the complainant to go outside, then Kara Bhuian came outside from the office and other shadow witnesses and Habaldar also came outside. He has also stated that the team members had gone to near Peepal tree one by one and Anil Singh came near the tree and asked the complainant to take sit on motor cycle, which was seen by them. He has further stated that A.K. Singh stopped his motor cycle near Bharat Medical, Saraidhela and went to medical shop and after taking some medicines came near the motor cycle. He has also stated that accused Anil Kumar Singh demanded money from the complainant and the complainant gave him money in the right hand of accused Anil Kumar Singh. Anil Kumar Singh saw the money and kept it in upper

pocket of his shirt. He has further stated that they stopped the motor cycle of the accused and challenged him for taking illegal gratification after introducing their identity, then the accused threw the money but he caught hold his hands and Sanjeev Sudhakar (PW-4) lifted the notes and compared the same, which was tallied in toto. He has also stated that they have done post-trap formality in the counter of Bharat Medical and the hands of A.K. Singh were washed one by one in solution of sodium carbonate, which turned into pink and the said solution were kept in bottle and sealed. He has proved his signatures on bottles, marked as Ext.- 3/68 & 3/69. He has also stated that pocket of the shirt of accused was washed with milky white solution, which turned into pink, which was also kept in a bottle and sealed the same and he put his signature, which has been marked as Ext.-3/70. He has further stated that the shirt of the accused was also sealed upon, which all members had put their signatures and he also put his signature, marked as Ext.-3/71. He has also stated that the recovered tainted money was also sealed in an envelope, on which he put his signature, marked as Ext.- 3/72. The accused Anil Kumar Singh was arrested and arrest memo was prepared on 22-05-02 in his writing and signature on which there are signatures of independent witnesses and signatures of accused, marked as Ext.- 15. He has further stated that after arrest, personal search memo was prepared on which there are signature of Brajesh Kumar and his signature, marked as Ext.- 16. He has also stated that inspection memo of body of the accused was prepared, which is in his writing and signature on which the witnesses also put their signatures, which is in two pages, marked as Ext.- 17. He has also proved search list related to

document 5 in numbers, of the office of the accused, marked as Ext. 18. He has further proved another search list of government residence of the accused, marked as Ext. 19. He has also proved the memorandum, which is in six pages on which he put his signature, marked as Ext.- 20. He has also proved the original seizure memo dated 29-05-2002, which was received from Kara Bhuian, which is in his writing and signature, marked as Ext.- 21. He has further proved the seized documents seized through Ext. 21, marked as Material Ext.- X. He has proved forwarding letter written to Director, CFSL, Kolkata for chemical examination on which there is signature of Sri Amit Garg, S.P. CBI, marked as Ext.- 22. He has proved the seize memo dated 30-05-2002, marked as Ext.- 24. He has further stated that during the investigation, he recorded the statements of the complainant Kara Bhuian and Ram Pujan Tiwari, who had supported the case of the prosecution and Sanjeev Sudhakarn (PW-4) had stated about the demand and acceptance that on being asked by him and Shri Dipak Kumar, the complainant told that though the accused Anil Kumar Singh had demanded rupees five thousand from him as bribe but he could arrange Rs. 3,750/- by taking loan from his relatives and friends (with objection). He has further stated that Sanjeev Sudhakar (PW-4) had also stated that on demand, the complainant had given the notes to the accused, which was accepted by the accused by his right hand and he used his both hands to keep the same in the left upper pocket of his half sleeve shirt. He had also stated that on seeing the people, the accused threw the notes from the pocket. He has further stated that during investigation, he recorded the statements of the witnesses and handed over the charge of further investigation to S.N.

Khan (PW-12), the then Inspector, CBI, as he was promoted and transferred to Delhi.

The witness has been subjected to lengthy cross-examination but nothing remarkable has been elicited so as to disbelieve his testimony.

PW- 12 Shah Navaj Khan, has stated that in the year 2002, he was working as Inspector, CBI, ACB, Dhanbad. He has further stated that Sri B.K. Birdi, Dy. S.P originally investigated R.C. Case No. 1(A)/2002-D and he was made Investigating Officer on 26-06-2002. He has also stated that he obtained sanction order and received the CFSL report and on the basis of previous investigation, he has submitted charge-sheet on 11-02-2003 u/s 7 and 13(2) r/w 13(1)(d) of P.C. Act.

This witness has also been subjected to cross-examination in length but the defence could not gather any detrimental thing against the prosecution case.

16. On the other hand, the defence has also examined as many as four witnesses with intent to prove the innocence of the accused and his false implication.

DW-1 Ajay Kumar Samant Roy has stated that he brought two files i.e. File No. 36/59/2001 E-2 and 36/60/2001 E-2 and both files contain the final findings of the Controlling Authority under payment. He has further stated that in both cases, the applicant is the same person, i.e., Kara Bhuian and both the applications filed by Kara Bhuian had been dismissed by order dated 05-07-2002 due to non-appearance of the applicant. He has also stated that in both the cases, the original employee Tilak Bhuian died in the year 1988 and his wife Akli Bhuini, who was also an employee of BCCL died in December, 1993 and the

claimant Kara Bhuian filed the claims in the year 2001. He has also stated that one application was filed after 13 years and other was filed under a gap of 7½ years. He has further stated that both the applications should have been filed within a period of one year from the date of death of the employee and as per record the claimant Kara Bhuian did not file any condonation application. He has further stated that the claimant was also not a nominee in both cases and in respect of Akli Bhuini, her husband Tilak Bhuian was the nominee, who predeceased Akli Bhuini in the year 1988. He has further stated that as per records available in the file, one Tulsi Bhuian was the son of Akli Bhuini and no where it has been mentioned in the record that Sri Kara Bhuian is the son of Akli Bhuini and Tilak Bhuian. He has also stated that there is the provision of Appeal under the payment of Gratuity Act: If any party is aggrieved by the order of the Controlling Authority, he/she can file a memo of Appeal within 60 days from the date of the receipt of the Order. He has further stated that in both cases, the claimant Kara Bhuian has not filed any Appeal before the Appellate Authority. He has also stated that he has brought the file of both cases (Ext.- B & D), which are certified copies.

In his cross examination, he has stated that the original cases were filed before Assistant Labour Commissioner-IV but they were transferred to the Court of Assist. Labour Commissioner-II, A.K. Singh and the files were with A.K. Singh till 22 May, 2002 and after the occurrence of trap, both the files had been disposed of. He has further stated that he has not verified the family details in his personal capacity.

DW- 2 Narendra Kumar Singh has stated that in the year 2001-02, he was posted as Clerk in the office of Regional Labour Commissioner (Central), Dhanbad and he was working under Sri P.K. Lucos, Assistant Labour Commissioner Central-cum-Controlling Authority under P.G. Act, 1972. He has further stated that he was dealing two files of Kara Bhuian i.e. 36/59/2001 E-2 and 36/60/2001 E-2, which were dismissed by the findings dated 05-07-2002.

DW- 3 Shrawan Kumar Jagnania has stated that in the year 2001, he was Project Officer at Rajapur and Kara Bhuian had filed a claims before A.L.C. for gratuity of his parents vide case No. 36/59/2001 E-2 and 36/60/2001 E-2 and he (this witness) has filed reply on behalf of Management. He has further stated that this is letter No. BCC/KA/FS/ROCP/SJ/01/1373 dated. 11/13-12-2001, through which R.C. Jha, Panel Advocate of BCCL was authorized, which had earlier been marked as Ext. 5/13. He has also stated that this is letter No. BCC/ KA/F/ ROCP/SJ/ 01/ 1371 dated 11/13-12-2001, through which he had filed objection, which had earlier been marked as Ext.- 3/15. He has further stated that the main cause of his objection was that there was delay in filing the cases. He has also stated that all the employees have given Gratuity Nomination and the name of Kara Bhuian was not there.

In his cross examination, he has stated that the payment of gratuity was made under the provision of Gratuity Act and Assistant Labour Commissioner is the competent authority to make payment as per the Act.

DW- 4 Bikau was posted as P.O. Clerk in Rajapur Open Cast Project, BCCL from to March, 2003. He has proved the certified copy of letter

dated 10-01-1987, marked as Ext.- E. He has also proved certified copy of Form-F, marked as Ext.- F.

In his cross examination, he has stated that this service book was not certified by Project Officer and he does not know as to who prepared the certified copies.

17. It is also pertinent to apprise with Sections 7, 13(1) r/w 13(2)(d) and 20 of the P.C. Act for better appreciation of the case.

Section-7: Public servant taking gratification other than legal remuneration in respect of an official act.

Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Explanations.-

(a) "Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) "Gratification." The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) "Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) "A motive or reward for doing." A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section

Section-13 Criminal misconduct by a public servant

(1) A public servant is said to commit the offence of criminal misconduct,-

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public

servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.-For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

Section-19 Previous sanction necessary for prosecution

(1) No court shall take cognizance of an offence punishable under section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the code of Criminal Procedure, 1973,-

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the

authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.-For the purposes of this section,-

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

Section-20 Presumption where public servant accepts gratification other than legal remuneration

(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be Inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or, as

the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-section (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.

18. In the case of **"Neeraj Dutta vs. State (NCT of Delhi)"** reported in **(2022) Supreme SC 1248** or **(2023) 4 SCC 731**, wherein, ***the moot question arose for answering the reference that in absence of complainant letting in direct evidence of demand owing to unavailability of complainant or owing to his death or other reason, whether demand for illegal gratification could be established by other evidence?***

The constitution Bench of the Hon'ble Apex Court, after taking into consideration the conflict judgment passed by the Hon'ble Apex Court has led relevant provision of law has summarized the principle as under:-

> "88.1. (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the PC Act.
>
> 88.2. (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.
>
> 88.3. (c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

88.4. (d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an **offer to pay by the bribe-giver** without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a **case of acceptance** as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, **if the public servant makes a demand and the bribe-giver accepts the demand** and tenders the demanded gratification which in turn is received by the public servant, **it is a case of obtainment**. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Sections 13(1)(d)(i) and (ii), respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Sections 13(1)(d)(i) and (ii) of the Act.

88.5. (e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in

the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

88.6. (f) In the event the complainant turns "hostile", or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

88.7. (g) Insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d)(i) and (ii) of the Act.

88.8. (h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature.

In view of the aforesaid discussion and conclusion, we find that there is no conflict in the three-judge bench decision of this Court in B. Jayraj and P. Satyanarayan Murthy with the three-judge bench in M. Narsingha Rao with regard to the nature and quality of prove necessary to sustain a conviction for the offence under Section 7 or 13(1)(d)(i)(ii) of the act, when the directed evidence of the complainant or "primary evidence" of the complainant is unavailable owing to his

> death or any other reason. The position of law when a complainant or prosecution witness turns "Hostile" is also discussed and the observation made above would accordingly apply in the light of Section 154 of the Evidence Act."

19. I have given anxious consideration to the overall aspects of the case and the material evidence available on record.

20. In the instant case, there is no doubt that the appellant was a public servant and working as Assistant Labour Commissioner at the relevant time of occurrence. Tilak Bhuian died on 20.04.1988 and for some time, the appellant has handled the proceedings for payment of gratuity amount of late father of the complainant. The record of the proceeding (Ext.-4) was initiated in the year 2001. As per official record, one Tilak Bhuian and his wife Akli Bhuiani were working as wagon loader at Rajapur Colliery and Akli Bhuini retired after completion of service. Tilak Bhuian in his service record has disclosed the nominee to his wife Akli Bhuini only and his wife Akli Bhuini, in the nominee claim has mentioned only one son namely Tulsi Bhuian, who has also admittedly died. It is also apparent that Tilak Bhuian died on 20.04.1988 and Akli Bhuiani died in the year 1994. The application dated 30.07.2001 for release of gratuity amount was filed by the complainant in the year 2001, which was objected by the concerned department on the ground of successive highly time bar and the applicant was also directed to file documents showing any prove of being son/legal heir of the aforesaid deceased employees. Sufficient opportunity was provided to the applicant but he did not appear to contest the proceeding and also failed to adduce any satisfactory evidence showing relationship with the deceased persons as their son. It further show that the applicant was

absent on several dates, i.e. on 07.03.2002, 26.03.2002, 18.04.2002, 16.05.2002 and the proceeding was adjourned for 11.06.2002. In the meantime, complaint was lodged before the C.B.I.

21. It further appears that Ext. B-D relied upon by the defence, the claim of the applicant/complainant was dismissed by the controlling authority under payment of Gratuity Act by the successor of the present appellant vide order dated 05.07.2002. The very basis for claiming the gratuity amount by the claimant appears to be or was groundless.

22. In the background of aforesaid factual aspect, the complainant did not appear to be examined in this case. The shadow witnesses have also not been able to prove the exact conversation about demand of bribe by the appellant and its recovery from his conscious possession or conscious acceptance of bribe money. Moreover, as per the complainant, there was demand of Rs. 5,000/- by the appellant but at the time of pre-trap proceeding, the complainant deposited only Rs. 3,750/-. There is no evidence that the appellant agreed to accept the lesser amount than demanded. There is also no doubt that in absence of complainant, letting his evidence before the learned Trial Court, the case has to be decided on its own merits and mere non-examination of complainant does not give any premium to the accused.

23. The entire evidence has to be considered and evaluated in proper perspective. Here, in this case, only pre-trap memorandum and pre-trap proceeding has been proved by the prosecution but the foundational facts, which are essential to establish the guilt of the appellant regarding demand of bribe, its acceptance and recovery from conscious possession of the appellant, has not been proved. The learned Trial Court has

simply reiterated the evidence of witnesses without evaluating their evidentiary value and surprisingly recorded no findings in connection with documentary evidence adduced by the defence, which clearly uproots the very genesis of prosecution case. The record clearly shows that the complainant did not appear before the appellant on several dates and did not comply with the direction issued to him for filing documents showing himself to be son of the deceased employees and his entitlement for grant of gratuity amount claim. The record also shows that the purported father of the complainant namely Tilak Bhuian died in the year 1988 and his wife died in the year 1993 without claiming any gratuity amount lying due in respect of their service. The purported mother Akli Bhuiani in her service report has also disclosed name of only one son namely Tulsi Bhuian, who has also died prior to the application lodged by the complainant for release of the gratuity amount. Therefore, the very genesis of the case appears to be malicious. The materials brought on record by the prosecution does not establish the very foundational facts of demand of any bribe by the appellant, which is sine quo non for establishing the guilt of the appellant for the charges levelled against him.

24. In my considered view, the learned Trial Court has miserably failed to properly appreciate the evidence available on record in the factual background of the case and without recording any reason for arriving at the conclusion of the guilt of the appellant, has simply held the appellant guilty for the charges levelled against him.

25. Therefore, impugned judgment and order of conviction and sentence of the appellant is apparently illegal, devoid of reasons and based on non-consideration of material evidence available on record.

26. Accordingly, impugned judgment of conviction and order of sentence of the appellant passed by the learned Trial Court is hereby set aside.

27. This appeal is **allowed**.

28. Pending I.A.(s), if any, stands disposed of.

29. The appellant is on bail. He is discharged from the liability of bail bond and sureties are also discharged.

30. Let a copy of this judgment alongwith the trial Court records be sent back immediately to the concerned Trial Court for information and needful.

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand at Ranchi
Dated: 10/09/2026
Rahul- ***A.F.R.***
Uploaded On: 11/09/2026