
(2019) 05 GAU CK 0009
In the Gauhati High Court
Case No : Criminal Appeal No. 3 Of 2013

Amarjyoti Baruah

APPELLANT

Vs

State Cbi

RESPONDENT

Date of Decision : 04-05-2019

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 7(13)(2), 13(1)(d), 13 (1) (d) (i), 13 (1) (d) (ii), 19, 20
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 05 GAU CK 0009

Hon'ble Judges : Mir Alfaz Ali, J

Bench : Single Bench

Advocate : D K Bhattacharyya, A C Buragohain

Final Decision : Dismissed

Judgement

1. This appeal is directed against the judgment and order dated 11.12.2012 passed by the learned Special Judge, CBI, Assam, in Special Case No. 3/2010. By the said judgment, the learned Special Judge convicted the appellant (since deceased) under Section 7(13)(2) R/W Section 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced him to rigorous imprisonment for two years and to pay fine of Rs. 25,000/-, in default to undergo further imprisonment for three months.

2. The prosecution case in a nutshell may be stated thus - one Abhijit Basumatary (PW-1), a partner of the firm under the name and style, M/S B.K. Construction lodged a complaint with the Superintendent of Police, CBI/ACB, Guwahati, alleging that the appellant Dr. Amarjyoti Baruah (since deceased), who was the General Manager of Brahmaputra Board, demanded bribe of Rs. 1,00,000/- from the complainant for having awarded a contract for the construction of "RCC porcupine screen as apron of tie bund across the spill channel of Dibang (Group-2)". It was also alleged in the complaint that the appellant threatened him of not awarding any contract in future, in case, the

complainant fails to fulfill the demand.

3. The said complaint was registered as an FIR vide regular case No. 0172010A0003 dated 22.02.2010. As the allegation made in the FIR pertains to demand of illegal gratification, the Investigating Agency proposed to lay a trap to apprehend the appellant red handed and accordingly a trap team under the leadership of Sri Bipul Das, Inspector of CBI, ACB was constituted and pre-trap memo was prepared for the purpose of the trap. The complainant brought an amount of Rs. 1,00,000/- to be paid to the appellant. The above amount consisted of 100 notes of Rs. 1000 denomination, which was tainted with phenolphthalein Powder. As per the plan of the trap, the appellant Abhijit Basumatary and the trap witness Dhrubajyoti Gogoi entered into the office chamber of the appellant and after having some preliminary conversation, the complainant Abhijit Basumatary informed the appellant, that he had brought Rs. 1,00,000/- as demanded by him, to which, the appellant nodded with approval. The complainant Abhijit Basumatary placed the bundle of the tainted currency notes on the table of the appellant. The appellant asked, as to how much was there, to which, the complainant told, that there was Rs. 1,00,000/-, whereupon the appellant picked up the said tainted money and kept in his right hand side drawer of the table. Immediately, the trap witness Sri Dhrubajyoti Gogoi gave signal to other members of the trap team, who were waiting outside the chamber and they immediately barged into the chamber of the appellant and disclosing their identity challenged the appellant for demanding and accepting gratification. The tainted money was recovered from the drawer of the appellant and the same was seized. The appellant was asked to dip his right hand finger in the solution of sodium carbonate and the said solution was sent to Central Forensic Science Laboratory, Kolkata for chemical examination, which gave the positive test of phenolphthalein powder in the solution.

4. During investigation, the Investigating Officer collected the FSL report, seized various documents and on completion of investigation, obtained necessary sanction for prosecution under Section 19 of the Prevention of Corruption Act and submitted charge sheet against the appellant under Section 7/13(2) R/W 13(1) (d) of the Prevention of Corruption Act.

5. In course of trial, charges were framed against the appellant under Section 7/13(2) R/W 13(1)(d) of the Prevention of Corruption Act, to which, he pleaded not guilty. In order to establish the charges, prosecution examined 12 witnesses. On completion of the prosecution evidence, the appellant was examined under Section 313 CrPC, wherein the appellant took the plea of innocence and stated, that neither he demanded nor accepted any gratification and the tainted money was planted in his drawer. The appellant also examined himself as defence witness. On appreciation of evidence, learned Special Judge convicted the appellant under Section 7/13(2) R/W 13(1)(d) of the Prevention of Corruption Act and awarded sentence as indicated above.

6. Aggrieved by conviction and sentence, the appellant, has preferred the instant

appeal.

7. During pendency of this appeal, the appellant died. However, the brother of the appellant was granted leave to continue with the appeal.

8. Learned counsel for the appellant Mr. B. Deka and learned Standing Counsel, CBI Mr. S.C. Keyal, were heard.

9. Learned counsel Mr. Deka contended that in order to convict a person for the offence of taking illegal gratification, prosecution must prove beyond reasonable doubt that the accused demanded illegal gratification, inasmuch as, demand of illegal gratification is a sine qua non for constituting an offence of illegal gratification under the Prevention of Corruption Act. In the instant case, demand was not at all proved beyond doubt and as such, the impugned judgment of conviction and sentence deserves to be interfered with submits Mr. Deka. To buttress his submission, Mr. Deka placed reliance on the following decisions viz. P. Satyanarayan Murthy Vs. The Dist. Inspector of Police and Anr. reported in (2015)

10 SCC 152, State of Punjab Vs. Madan Mohan Lal Verma reported in (2013) 14 SCC 153 and State of Maharashtra Vs. Dnyaneshwar Laxman Rao reported in (2009) 15 SCC 200. Further contention of Mr. Deka was that the appellant neither demanded nor accepted any illegal gratification and he was made victim of a conspiracy hatched by the Chief Engineer along with the complainant and the tainted money was planted in the drawer of the appellant.

10. Supporting the impugned judgment of conviction and sentence, learned Standing Counsel, CBI, contended, that prosecution evidence were sufficient to prove the charges against the appellant and as such, no interference with the impugned judgment is called for.

11. The Apex Court in P. Satyanarayana Murthy (supra) dwelling upon the pre-requisite to constitute the offence u/s 7 and 13 (1) (d) (i) & (ii) of the P.C. Act, 1988 observed as under: "20. In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i)&(ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d)(i)&(ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification,

it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

21. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act."

12. In *State of Punjab Vs. Madan Mohan Lal Verma* (supra), the Apex Court observed that - "the law on the issue is well settled that demand of illegal gratification is *sine qua non* for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused." In *State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede* (supra) also the Apex Court observed that - "Indisputably, the demand of illegal gratification is a *sine qua non* for constituting an offence under the provision of the P.A. Act."

13. What therefore follows from the above authorities is that mere proof of acceptance and recovery of money from the accused is not sufficient to convict him for the charge of illegal gratification under the P.C. Act, 1988. Thus, in order to establish a charge of taking illegal gratification, prosecution must prove all these essential ingredients, viz., demand, acceptance and motive beyond reasonable doubt.

14. This is a trap case and the recovery of the tainted money from the drawer of the accused/appellant was not disputed. However, during examination under Section 313 CrPC as well as in his evidence as defence witness, the appellant sought to provide an explanation to show that the money was planted in his drawer. It is therefore, considered to be apt to advert to the evidence on record, in order to ascertain, whether all the essential ingredients to constitute the offence of illegal gratification i.e. demand, acceptance and motive have been proved beyond reasonable doubt.

15. PW-1, Abhijit Basumatary stated in his evidence, that he was/is a partner of the firm under the name and style, M/S B.K. Construction. According to PW-1, pursuant to an NIT floated by the Brahmaputra Board, Basistha, for the works viz., (i) construction of RCC porcupine screen at various locations. One of the works under the said NIT was for construction of RCC porcupine screen as apron of tie bund across the spill channel of Dibang. The firm of the complainant Abhijit Basumatary, namely, M/S B.K. Construction, participated in the tender process for the said work. The firm of the complainant, M/S B.K. Construction having found as lowest bidder, its tender was accepted and Letter of Intent (LOI) was issued to the complainant's firm vide No. BB/CE(I&W)/RD 8062010/5503 dated 01.02.2010 under the signature of the Chief Engineer. PW-1 has also proved the certified copy of the tender document of the M/S B.K. Construction as Ext.4, the

certified copy of the agenda note and the proceeding of the tender committee being Ext. 6, showing the recommendation of the B.K. Construction as the lowest bidder, Ext.7 being the relevant office file and the Letter of Intent being Ext. 7(i). He further deposed, that after receipt the LOI (Ext.7/1), the PW-1, on behalf of the firm wrote a letter (Ext. 7/3) seeking extension of time for signing the tender agreement for the aforesaid work. PW-1 deposed, that on 03.02.2010, when he met the appellant in his office, the accused/appellant Amarjyoti Baruah (since deceased) demanded an illegal gratification of Rs.1,00,000/- from him for awarding the aforesaid work and he also threatened that if the demanded amount of Rs. 1,00,000/- is not paid, he would see, that no work in future is awarded to the firm of the PW-1. The accused/appellant also threatened, that unless the demand of Rs. 1,00,000/- is fulfilled, he would not allow the tender document to be signed or the work order to be issued. Thereafter, on 16.02.2010, when the PW-1 came to the office of the appellant for depositing the security amount and for seeking extension of time for submission of performance guarantee, he met the appellant and on that day also the appellant Amarjyoti Baruah repeated his demand for Rs. 1,00,000/-. PW-1 further stated that as he was not intending to pay the bribe, he lodged the complaint (Ext.8) on 22.02.2010 before the SP, CBI. According to PW-1, a trap team was formed by CBI officials and PW-1 produced Rs. 1,00,000/- to be paid as bribe, which consisted of 100 numbers of currency notes of Rs. 1000/- denomination. According to him, as per instruction of the trap team, he along with the shadow witness Dhrubajyoti Gogoi (PW-5) went to the office chamber of the appellant. At that time, one staff of the Barhmaputra Board was inside the office chamber of the accused/appellant. When they were in the office chamber of the appellant, D.J. Borgohain, the Chief Engineer (PW-7) entered the chamber of the appellant and after having some discussion with the appellant, PW-7 and the staff left the office chamber. Then the PW-1 and the shadow witness (PW-5) came to the front row of the chair. The accused appellant enquired about the identity of PW-5, whom PW-1 introduced to be his partner financier. Thereafter, PW-1 had some discussion regarding earlier work of construction and extension work of the tie bund of river Dibang of Bahbarighat. He further deposed, that after such discussion, the appellant asked him about his share, whereupon the PW-1 replied that he had come with the money demanded by him. The accused/appellant then asked as to how much he had brought, to which, he replied that it was 1,00,000/- and the accused/appellant nodded with approval. PW-1 then took out Rs. 1,00,000/- from his pocket and placed it on the office table of the appellant and the appellant picked up the said Rs. 1,00,000/- and kept it in his right hand side drawer of the table. After acceptance of the bribe by the appellant, the other members of the trap team, DSP, NG Khangram (PW-12), Bipul Das (PW-8) had also entered into the chamber of the appellant on the signal given by PW-5 and after disclosing their identity, they challenged the appellant for demanding and accepting the illegal gratification. When the accused/appellant failed to give any satisfactory answer, the CBI constable Suren Baruah and another caught the appellant by his wrist and the hand of the appellant was soaked in sodium

carbonate solution prepared there, which turned into pink colour. PW-1 also stated that the CBI officials took out the tainted money from the right side drawer of the accused/appellant. He also proved the pre-trap and post-trap memo being Ext. 9 and Ext. 10 respectively. PW-1 also proved a self attested copy of the agreement dated 27.10.2009. During cross examination, PW-1 stated that the amount of Rs. 1,00,000/-, which was paid to the appellant was of the firm and the same was handed over to him by one of the partners. It was also elicited in his cross examination, that the tender committee was consisted of General Manager, Chief engineer and other members and work order was issued by the Chief Engineer. He further stated that the tender committee after scrutinising the tenders of various parties, decided as to which tender was to be accepted. Once the tender committee takes a decision, the Chief Engineer issues the work order. PW-1 further stated that the General Manager is the superior and controlling officer of the Chief Engineer. He denied the suggestion that when he put the money on the table, the appellant pushed back the same.

16. PW-5, the shadow witness, who accompanied the complainant also deposed, in tune with PW-1, that he along with PW-1 entered into the office chamber of the appellant. He further stated that on entering the office chamber of the appellant, they found the appellant and one staff of the office. Both of them took their seat facing the General Manager (appellant), and after a while the Chief Engineer (PW-7) came into the office chamber of the appellant. He further stated that when the Chief Engineer entered the chamber, they took their seat in the next row, to accommodate the Chief Engineer (PW-7). After some time, when the Chief Engineer and the other staff left the chamber, they came forward to the front row of the chair. He further stated that after some initial discussion between the appellant and the PW-1, the appellant wanted to know his (PW-5) identity and the PW-1 introduced him (PW-5) to be his partner and financier. The PW-5 further stated, that after having few words with the appellant regarding some pending works at rowing division, PW-1 informed the appellant that he had come with the amount of Rs. 1,00,000/- as demanded by him and requested him to approve the pending works. When the appellant wanted to know from the PW-1 about his share, PW-1 took out the tainted notes and placed the same on the table, whereupon the appellant enquired as to how much was there. The PW-1 replied that it was Rs. 1,00,000/-. Then the appellant took the said money and kept in the right hand side drawer of his table. This witness further stated, supporting the PW-1 that immediately after acceptance of the tainted money, other trap team including the PW-8 and PW-2 entered into the office chamber and challenged the appellant for taking bribe. He also corroborated the evidence of PW-1, regarding recovery of the tainted notes from the drawer of the appellant and holding the test regarding presence of phenolphthalein in his hand by using sodium carbonate solution. PW-5 also proved the seized envelope with tainted money as material Ext.3.

17. PW-2 who was also a member of the trap team deposed, that as per decision of the CBI officials, PW-5 and PW-1 initially entered the office chamber of the

appellant. He further stated that after some time, on the signal given by PW-5, and upon instruction of PW-12, they entered into the chamber. All these PW-2, PW-8 and PW-12 corroborated the PW-5 & PW-1 as regards recovery of tainted money from the drawer of the appellant, holding of chemical test by soaking the hands of the appellant in the sodium carbonate solution and positive result for phenolphthalein.

18. PW-3, one of the partners of the firm, B.K. Construction stated that he was informed by PW-1 regarding the problem and harassment faced by him in getting the work order and he requested the PW-1 to take prudent step as he was on pilgrimage at that time. During cross examination, it was elicited from this witness, that the firm maintained account book and accounts and all payments of money were entered into the said account. He also stated that no amount was sent to Guwahati from Silchar office.

19. PW-9, Assistant Director, Exclusive, CFSL, deposed that the examination of the hand wash of the appellant gave positive test for phenolphthalein.

20. The oral testimony of PW-1, that he entered into the office chamber of the appellant on 22.02.2010 accompanied with PW-5, offered the bribe money of Rs. 1,00,000/-, acceptance of the same by the appellant as well as recovery of the money from the right hand side drawer of the appellant and that the hand wash of the appellant in the mixture of sodium carbonate gave positive test for phenolphthalein were fully corroborated by the oral testimony of PW-5, the trap witness. Recovery of money from the right hand side drawer of the appellant as well as phenolphthalein test were also corroborated by PW-2, PW-8 and PW-12. During examination of the accused/ appellant under Section 313 CrPC, the appellant also did not deny the above evidence with regard to PW-1 having offered the money and keeping the same on his table, recovery of money from his right side drawer as well as positive result of phenolphthalein test etc. However, in his examination under Section 313 CrPC and also in his evidence as DW-1, the appellant sought to put forward an explanation that he refused to accept the bribe money and the same was planted in his drawer. He (appellant) stated, that on 22.02.2010, he was in his office chamber as usual and after having done some official work, told his PS, M. Sarma (PW-6) to withdraw money from the bank and for that purpose, he opened the drawer for writing a cheque. He further stated, that at that point of time, PW-1 along with an unknown person entered his chamber without permission and took seat. He further stated that the Chief Engineer (PW-7) came to his chamber with two letters and he had some discussions with PW-7. After some time when the Chief Engineer and the staff Mr. Sarma left his chamber, PW-1 and the person accompanied him came to the front row. He further stated, that all of a sudden, the PW-1 took out a bunch of notes from his inner jacket and put on the table, which he refused to accept and pushed back the same to the PW-1 by his right hand. He further stated that he rang up his PSO, but did not receive any response. Thereafter he went to the washroom, as he was suffering from cold and cough. He further stated that

having come back from the washroom, he found that the PW-1 and the unknown person were not available in the room and immediately thereafter, the said persons along with six others identified to be CBI entered into his room and seeing them he became worried and then Dibjyoti Gogoi opened the drawer and took out the tainted money therefrom. They also asked him for chemical test by dipping his hand in sodium carbonate solution, which became pink in colour.

21. Thus, as regards recovery of the tainted bribe money, which was offered to the appellant by PW-1 from the drawer of the appellant was not in dispute, inasmuch as, the appellant has admitted the recovery of the tainted money from his drawer, during examination u/s 313 CrPC as well as in his deposition as DW-1. However, in order to neutralize such incriminating circumstances, the appellant sought to put forward an explanation that when he went to the bathroom, the money was planted in his drawer pursuant to a conspiracy hatched against him by the PW-7 and the PW-1. Therefore, the point to be seen is whether the appellant has been able to establish such explanation, that the money was planted as a consequence of any conspiracy. The appellant deposed as DW-1, that PW-1 and PW-5 entered into his office chamber without his permission. The appellant further stated in his examination under Section 313 CrPC, that except the official staff, other cannot enter into his chamber without permission. Admittedly, when the PW-1 and PW-5 entered into the chamber of the appellant, one of the staff of the appellant was present there and PW-1 & PW-5 took their seat in front of the appellant. Admittedly, during the stay of the PW-1 & PW-5, the PW-7 (Chief Engineer) came into his chamber and have some discussions with him on official matter. When the Chief Engineer(PW-7) and the staff M. Sarma (PW-6) left the room, PW-1 & PW-5 came to the front row and according to the appellant suddenly PW-1 put the money on his table.

22. Although, the appellant stated that except the office staffs, others could not enter into his chamber without permission and the PW-1 & PW-5 entered into his office chamber without permission, there is no evidence on record to show that the appellant asked them to leave the room or questioned them for entering into the chamber without his permission, rather, the evidence shows that he allowed the PW-1 & PW-5 to remain seated in his chamber, even when he was discussing with a senior officer like Chief Engineer (PW-7) and after the Chief Engineer and the staff left the room, PW-1 & PW-5 came to the front row. The conduct of the appellant in allowing the PW-1 & PW-5 to enter into his room and remain seated even during his discussion with the senior officer clearly suggests, that the PW-1 & PW-5 were not unwelcome guest or unwanted person for the appellant. That apart, there is evidence of PW-6 M. Sarma, staff of the appellant, who was present in his chamber, that before the PW-1 entered into the chamber, a slip was sent through the peon, where the name of the PW-1 was written, which clearly indicated that before entering into the chamber of the appellant, the PW-1 sought permission of the appellant. But there is no evidence to show that permission was refused by the appellant. Therefore, the explanation of the appellant that PW-1 & PW-5 unauthorisedly entered into his chamber is hardly

convincing. PW-1 clearly stated that on 22.02.2010 also the appellant asked him, as to how much he brought, to which PW-1 stated that he has brought Rs. 1,00,000/- and such evidence of PW-1 also corroborated by PW-5. It is also in the evidence of PW-1, PW- 2, PW-5, PW-8 & PW-12 that immediately after acceptance of the money, PW-2, PW-8 & PW-12 entered the chamber of the appellant upon signal given by PW-5.

23. According to the appellant, when the PW-1 & PW-5 entered into his office chamber and put a bundle of money on his table, he rang up his PSO, but he did not get response. The appellant being the General manager was the chief executive and head of the concerned organization i.e. Brahmaputra Board. Admittedly, he had personal security officer (PSO), who was supposed to be in his close proximity. The appellant being the top most officer and head of the Brahmaputra Board and entry to his chamber without permission being prohibited for the stranger, obviously there was some attendant in front of his chamber. Therefore, when an untoward incident had happened in the chamber, usually immediate reaction of the appellant would have been to call his attendant on duty by using calling bell or otherwise, inasmuch as, evidently, there was an attendant (peon), who brought the slip sent by the PW-1, seeking permission to visit the appellant. But there is no evidence to show, that the appellant tried to call the attending staff, rather rang up his PSO, who was purportedly non-responsive. Not only that, he also stated to have gone to the washroom leaving the PW-1 & PW-5 in his chamber. In such a situation, no prudent man can be expected to leave the chamber keeping the unwanted persons in the chamber, who, according to him, entered into the chamber without permission and indulged in illegal act of which he smelt conspiracy hatched against him. Thus, in view of the evidence of PW-1, PW-2, PW-5, PW-6, PW-8 & PW-12, the explanation of the appellant that he entered into the bathroom to clean his nose and face and at that point of time, the money was put in his drawer is also hardly worthy of inspiring confidence. Therefore, having regard to the conduct of the appellant in not raising any objection when the PW-1 & PW-5 entered into his chamber and allowing them to remain seated in his chamber till completion of his discussion with senior officer, leaves no room of doubt, that PW-1 & PW-5 were not the unwelcome or unwanted person for the appellant. Neither the appellant could adduce any evidence to establish the theory of conspiracy nor such conspiracy was discernible from the evidence and materials brought on record by the prosecution. It is no doubt true, that the standard of proof on the part of the accused to prove the defence and that of the prosecution is different. When prosecution is required to prove its case by proof beyond reasonable doubt, the standard of proof, so as to prove the defence, on the part of the accused is preponderance of probability. In my considered view, having regard to the evidence and materials as discussed hereinbefore, the appellant has failed to establish his defence, that the tainted money was planted in his drawer as part of conspiracy, even in the touchstone of probability. Therefore, the clinching evidence adduced by prosecution witnesses, coupled with recovery of the money

from the drawer of the appellant clearly established that the appellant accepted the money given by PW-1.

24. Leaned counsel for the appellant Mr. B. Deka strenuously argued that there was no demand or the prosecution has not been able to establish the illegal demand made by the appellant beyond reasonable doubt. The contention of Mr. Deka was that though the money given to the appellant was stated to be of the firm or it was paid on behalf of the firm, M/S Construction, the prosecution could not establish, that the said money was given to the PW-1 by any other partner of the firm or the same was given from the fund of the firm, namely, M/S B.K. Construction. It was also contended by the learned counsel, that the prosecution also failed to establish, that the PW-1 was partner of the firm as the alleged partnership deed (Ext.14) proved in the case cannot be construed as a partnership deed. Further contention of Mr. Deka was that the so-called partnership deed (Ext.14) was executed on 27.10.2009 i.e. after the NIT dated 15.10.2009 was published on 19th and 20th October, 2009. Evidently, M/S B.K. Construction submitted its tender for the work on 12.11.2009, meaning thereby, the partnership deed was executed before the submission of the tender. There is no legal requirement, that in order to participate in the tender process by any partnership firm, it has to be constituted before publication of the NIT. When there was clear evidence that the money was paid by PW-1 and accepted by the appellant, the question, where from the money came became irrelevant and redundant. The factum of PW-1 being partner of the firm, M/S B.K. Construction was never in dispute. Even the accused/appellant in his examination under Section 313 CrPC categorically admitted in his answer to the question No. 1, that PW-1 was the partner of M/S B.K. Construction. Ext.4, the certified copy of the tender document of M/S B.K. Construction, the letter written by PW-1 being Ext. 7/3 as well as Ext. 14 demonstrates that PW-1 was the partner of M/S B.K. Construction. When M/S B.K. Construction evidently participated in the tender process and upon acceptance its bid, the LOI was issued and admittedly, PW-1 was the partner of the firm M/S B.K. Construction, who evidently gave the money and the appellant accepted the same, even if there was any technical defect in the partnership deed (Ext.14), such defect was of no consequence so far the offence of taking illegal gratification is concerned.

25. PW-3, one of the partner of M/S B.K. Construction also deposed in his evidence, that PW-1 was a partner of the firm. PW-1 clearly stated in his evidence that after issuance of the Letter of Intent (LOI) dated 01.02.2010, on 03.02.2010 when he met the appellant in his office, the appellant demanded illegal gratification of Rs. 1,00,000/- from him for awarding the aforesaid work mentioned in the LOI. Thereafter on 16.02.2010, when PW-1 came to the office of the appellant for depositing the security money and for seeking extension of time for submission of performance guarantee, the appellant reiterated his demand for Rs. 1,00,000/-. That the PW-1 visited the chamber of the appellant on 16.02.2010 has also been admitted by the appellant during his examination under Section 313 CrPC as well as in his evidence on oath as DW-1, inasmuch

as, the DW-1 stated that on 16.02.2010 again he (PW-1) came to his office chamber to discuss about a revised work. Therefore, the evidence of PW-1 that he visited the office chamber of the appellant on 16.02.2010 was reinforced by the own admission of the accused/appellant himself.

26. Further contention of the learned counsel Mr. Deka was that the prosecution evidence, as to for which work the amount was demanded was self contradictory and therefore, the evidence of PW-1 could be believed, that the accused demanded the money for the work, i.e. construction of RCC porcupine screen as apron of tie bund across the spill channel of Dibang, for which the tender of M/S B.K. Construction was accepted. PW-1 categorically stated, that after issuance of the LOI, when he visited the appellant in his office chamber, the appellant demanded Rs. 1,00,000/- and also threatened him, that in future no work would be awarded and he would not allow the work order to be issued, unless the demand was fulfilled. It was also in the evidence of the PW-5 that on 22.02.2010 also the appellant enquired about the money and asked the PW-1 about the quantum of money he brought. PW-5, the trap witness was a bank official. Defence could not impeach the credibility of the PW-5. In anti corruption law the testimony of the trap witness is not considered to be interested witness, unless his credibility is impeached like any other witnesses. The Apex Court in *D. Velayutham Vs. State* reported in AIR 2015 (SC) 2506 observed that the anti corruption laws do not presuppose a trap witness to be an interested witness with ulterior motive to ensure punishment of the accused. The burden is on the defence to rattle the credibility and trustworthiness of the trap witness testimony, thereby bring him under the doubtful glare of the court as an interested witness. In the present case, the defence even did not make any effort to create any dent in the oral testimony or credibility of the PW-5. Therefore, the oral evidence of the PW-5 as regards the appellant having made quarry regarding the amount of money brought by the PW-1 on 22-02-2010 also reinforced the evidence of PW-1 as regard demand made by the appellant.

27. Referring to the evidence of PW-1 in examination-in-chief, where he stated that after entering into the chamber of the appellant he had discussion regarding an earlier work and extension and strengthening of tie bund on river Dibang at Bahbarighat and the allegation in the FIR that the demand was made in respect of the work, for which LOI dated 01.02.2010 was issued, Mr. Deka contended, that the PW-1 made different version at different stages as to the work for which demand was made and as such the demand cannot be said to have been proved beyond doubt. Evidently, when the PW-1 met the appellant on 16.02.2010, seeking extension of time to submit performance guarantee, the appellant inquired about his share in course of discussion about another previous work. Such discussion regarding some previous work does not make any difference, in the facts and circumstance of the case, inasmuch as, the amount was demanded for showing undue favour and as such, there could not be any doubt about the demand, which was further supported by the evidence of PW-5, when the money was paid. Evidently, the appellant was General Manager and the head

of the office of Brahmaputra Board and M/S B.K. Construction, of which the PW-1 was a partner, was awarded with a contract and the demand was made when the work order was yet to be issued. The categorical evidence of PW-1 was that the appellant threatened not to award any work in future and also that he would not allow the work order to be issued clearly demonstrated that demand was in respect of awarding contract.

28. From the above evidence, although, it appears that there was some discussion about other works, it cannot be said that the demand was not for giving any illegal or undue benefit. It was also submitted by the learned counsel Mr. Deka, that the tender of M/S B.K. Construction was selected by the Tender Committee, which consisted of General Manager, Chief Engineer and others and after the tender was selected, the formal work order was issued by the Chief Engineer. Therefore, when the tender was already selected by the committee, there was no reason for PW-1 to bribe the appellant as the appellant individually could not do anything, since the role of the appellant in the tender process was already over after recommendation of the tender of the PW-1 and the work order was to be issued only by the Chief Engineer. Therefore, there was no reason for the PW-1 to apprehend, that non-payment of bribe would deprive him of the contract as observed by the learned trial court. Evidently, the General Manager was the head of the office and the Chief Engineer was his subordinate and the firm of the PW-1 was doing contract with the department of Brahmaputra Board. Therefore, the threatening given by the appellant, that in case, PW-1 fails to pay the money demanded, he would not be awarded contract in future and also the work order would not allow to be issued, was sufficient to create pressure on the PW-1 to pay the bribe. Therefore, the argument advanced by the learned defence counsel, that the appellant did not have any role in awarding the contract to the PW-1 after issuance of LOI or the PW-1 did not have any reasons to pay bribe to the appellant, is not acceptable in the facts and circumstances of the case.

29. The admitted position that PW-1 was partner of the firm M/S B.K. Construction in favour of which the contract was awarded and the clinching evidence adduced by the prosecution as discussed hereinbefore, and the falsity of the explanation put forward by the appellant clearly established the demand and acceptance of money by the appellant. Such demand and acceptance of money in the facts and circumstances of the case, coupled with the presumption under Section 20 of the Prevention of Corruption Act made the motive of the appellant also clear, that the money was demanded for giving illegal and undue benefit and as such, all the three essential ingredients i.e. demand, acceptance and motive were found to be clearly established by the prosecution beyond all reasonable doubt. Therefore, this court do not find any reason to interfere with the impugned judgment and order of the learned Special Judge, recording conviction and imposing sentences on the appellant under Section 7(13)(2) R/W Section 13(1)(d) of the Prevention of Corruption Act, 1988. Accordingly, the appeal is found to be devoid of merit and stands dismissed.

30. Send down the LCR.