

(2023) 04 OHC CK 0006
In the Orissa High Court
Case No : Criminal Appeal No. 404 Of 2011

Mahendra Maharana

APPELLANT

Vs

Republic Of India (CBI)

RESPONDENT

Date of Decision : 03-04-2023

Acts Referred:

Prevention of Corruption Act, 1988 — Section 4(1), 7, 13(1)(d), 13(1)(d)(i), 13(1)(d)(ii), 13(2), 19, 20

Citation : (2023) 04 OHC CK 0006

Hon'ble Judges : S.K. Sahoo, J

Bench : Single Bench

Advocate : Devashis Panda, Sudipto Panda, Sarthak Nayak

Final Decision : Allowed

Judgement

S.K. Sahoo, J

1. The appellant Mahendra Maharana faced trial in the Court of learned Special Judge (C.B.I.), Bhubaneswar in T.R. No.14 of 2006 for offences punishable under section 7 and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereafter '1988 Act') on the accusation that he being a public servant functioning as UDC in the Office of the Regional Labour Commissioner (Central), Sector-5, Rourkela on 22.03.2006 at Laxmi Market, Sector-4, Rourkela demanded and accepted bribe of Rs.2,000/- (rupees two thousand) from Basudev Mohanty (P.W.4) as gratification other than legal remuneration for processing the file for issuing the gratuity sanction order to the M/s. Essel Mining and Industries Limited Jilling (hereafter 'the Company').

The learned trial Court vide impugned judgment and order dated 29.06.2011 found the appellant guilty of the offences charged and sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs.1,000/- (rupees one thousand), in default, to undergo rigorous imprisonment for one month more for the offence under section 7 of the 1988 Act and to undergo rigorous

imprisonment for one year and to pay a fine of Rs.5,000/- (rupees five thousand), in default, to undergo rigorous imprisonment for three months more for the offence under section 13(2) read with section 13(1)(d) of the 1988 Act and both the sentences were directed to run concurrently.

2. The first information report (Ext.12) was lodged by P.W.4 Basudev Mohanty on 21.03.2006 at C.B.I. Rourkela branch office wherein it is stated that he was working in the Company and when he was removed from service in an illegal manner, he filed a case before the Controlling Authority -cum-Assistant Labour Commissioner (Central), Bhubaneswar and on 17.02.2006, final order was passed for payment of Rs.50,005/-(rupees fifty thousand five) in his favour within a period of one month from the date of order. P.W.4 approached the appellant, who was the UDC in the Office of the Assistant Labour Commissioner, Sector-5, Rourkela for processing the file for issuing the gratuity sanction order to the Company.

It is the further prosecution case as per the first information report that on 21.03.2006 in his office, the appellant demanded illegal gratification of Rs.2,000/- (rupees two thousand) from P.W.4 which was to be paid by 22.03.2006. Since P.W.4 was not willing to pay the bribe, he lodged the first information report wherein he mentioned that the appellant told him to pay bribe of Rs.2,000/- (rupees two thousand) on 22.03.2006 at Laxmi Market, Sector-4 near a hotel and he has to make telephonic communication with the appellant in that respect.

On the basis of such report, the Superintendent of Police, C.B.I., Bhubaneswar registered a case under section 7 of the 1988 Act against the appellant and entrusted the case to Shri D.K. Kabi (P.W.7), Inspector, C.B.I., Rourkela Unit for investigation.

P.W.7 constituted a trap team and they appeared at the C.B.I. Office, Rourkela on 22.03.2006 at about 2.30 p.m. and P.W.4 also came to the C.B.I. Office with four five hundred rupees currency notes as per the instruction given earlier by P.W.7. The numbers of the notes were noted down in a paper, which was signed by the witnesses. The notes were treated with phenolphthalein powder and P.W.6 G.V. Srinivas was asked to handle the same and his hand wash turned pink when it was taken in sodium carbonate solution and it was preserved in one bottle M.O.I and sealed. The money was kept in the left chest pocket of P.W.4 and he was instructed to hand over the money to the appellant only on demand. P.W.1 Govinda Chandra Das was asked to accompany P.W.4 and to act as over hearing witness. Other witnesses were instructed to remain in the vicinities awaiting signal from P.W.1. Pre-trap memorandum (Ext.2) was prepared and then P.W.1 and P.W.4 went in a motorcycle to Laxmi Market and other members of the team also followed them in a vehicle. The team reached at Laxmi Market, Rourkela and took position. P.W.4 rang up the appellant from a telephone booth and the appellant came to the spot. When P.W.4 came near him, the appellant demanded money. P.W.4 paid the tainted notes to the appellant who received the same in

his right hand and kept the money in his left side chest shirt pocket. At that stage, P.W.7 rushed to the spot and challenged the appellant to have taken bribe. The right hand wash of the appellant taken in sodium carbonate solution turned pink but the left hand wash did not change colour. The hand washes were preserved in separate bottles i.e. M.O.II and M.O.III and sealed. The tainted notes were recovered from the shirt pocket of the appellant and the numbers of the notes were compared with the numbers earlier noted and it tallied. The money was kept in an envelope and sealed. The shirt pocket of the appellant was washed in sodium carbonate solution and it also turned pink and the same was preserved in a bottle (M.O.V). The shirt was kept in a packet and sealed and thereafter, post-trap memorandum (Ext.3) was prepared. The appellant was arrested and spot map (Ext.15) was prepared. P.W.8 took over charge of investigation from P.W.7 on 23.04.2006 as per the orders of the Superintendent of Police, C.B.I. During course of investigation, he examined witnesses and scrutinized the documents which he had received from P.W.7. He seized certain documents. The seized exhibits were sent to C.F.S.L., Kolkata and the C.E. Report vide Ext.16 was received and on completion of investigation, charge sheet was submitted against the appellant under section 7 and section 13(2) read with section 13(1)(d) of the 1988 Act.

3. The defence plea of the appellant is one of denial and it is pleaded that he was not dealing with the file of P.W.4 relating to gratuity matter and as such, there was no occasion for him to demand bribe from him nor he had ever demanded any bribe from P.W.4 either on 21.03.2006 or 22.03.2006. The further plea of the appellant was that one G.Y. Rao was working as Steno to Regional Labour Commissioner, Rourkela and he had close acquaintance with P.W.4 and that the appellant was working as Secretary General of Staff Association of Labour Department and that G.Y. Rao was not pulling on well with the appellant on account of his leadership and that the appellant had complained against G.Y. Rao for his transfer prior to 21.03.2006. It is further pleaded that the final order dated 17.02.2006 of the Controlling Officer -cum- Asst. Labour Commissioner vide Ext.8 passed in favour of P.W.4 was received by Narendra Maharana (D.W.1), a clerk in the office of the Regional Labour Commissioner, Rourkela on 20.03.2006 from Smt. Asima Mishra, Asst. Labour Commissioner (Central), Bhubaneswar at Camp Court, Rourkela and on 21.03.2006 D.W.1 handed over the copy of the order to P.W.4 with instruction to approach the Company authorities and also sent a copy of the order to the Company on the very same day. It is further pleaded by the appellant that P.W.4 had no occasion to approach him for processing any file in the matter and P.W.4 has foisted the false case at the instance of G.Y. Rao. It is pleaded in the accused statement that P.W.4 forcefully tried to insert tainted notes in his pocket to which he pushed back the hand of P.W.4 but another person caught hold of the right hand of the appellant and some gum like substance stuck to the hand of the appellant. It is pleaded that P.W.7 carried phenolphthalein powder with the constable and the same was used at the time of detection.

4. In order to prove its case, the prosecution examined eight witnesses.

P.W.1 Govinda Chandra Das was the Sr. TA(G) in the department of GMTD, BSNL, Rourkela and he was a member of the trap party who was present at the time of preparation of the trap. He stated about the demand and acceptance of tainted G.C. notes by the appellant from P.W.4 at Laxmi market, Sector-IV, Rourkela and keeping the same inside the left chest pocket of his shirt. He further stated about finger wash of right hand of the appellant changed its colour when it was taken in sodium carbonate solution and also taking of finger wash of left hand of the appellant taken in sodium carbonate solution in another glass tumbler which did not change any colour. He further stated about the preparation of the post-trap memorandum (Ext.3) and preparation of material objects.

P.W.2 Debarchan Pradhan was the Asst. Labour Commissioner (Central), Rourkela under whom the appellant was working as UDC. He is a witness to the documents as per seizure list Ext.4, Ext.5/1. He has also proved the file relating to the case of P.W.4 as per Ext.8 and also proved the entry in the dispatch register regarding sending of two letters addressed to P.W.4 and the Vice-president of the Company as per Ext.9.

P.W.3 Kulamani Mahakud was the Jr. Officer, Personnel, M/s. Essel Mining & Industries Limited is a witness to the seizure of certain documents from the office of D.G.M. (P &

A) as per seizure list Ext.10. He proved the order of the A.L.O. vide Ext.8/2 & the letter sent to P.W.4 for collecting dues as per Ext.11.

P.W.4 Basudev Mohanty is the informant of the case and he has stated in detail relating to demand of bribe by the appellant, lodging of the written report, preparation for the trap, demand and acceptance of bribe money by the appellant, change of colour of right hand fingers of the appellant on putting inside the solution and no change of colour on putting his left hand fingers inside the solution so also preparation of the post-trap memorandum.

P.W.5 Lallan Singh was working as the Deputy Chief Labour Commissioner (Central), Bhubaneswar who had accorded sanction for launching prosecution against the appellant as per Ext.13.

P.W.6 G.V. Srinivas was working as Lancer -cum-Gas Cutter in F.S.N.L., R.S.P. and he was a member of the trap party who was present at the time of preparation of the trap. He is a witness to the preparation of pre-trap memorandum as per Ext.2. He stated about the acceptance of tainted G.C. notes by the appellant from P.W.4 at Laxmi market, Sector-IV, Rourkela and keeping the same inside his left chest pocket of the shirt. He further stated about wash of the fingers of right hand of the appellant changing its colour when taken in solution and also putting the fingers of his left hand in another glass tumbler containing solution which did not change any colour. He further stated about the preparation of the post-trap memorandum (Ext.3) and preparation of material

objects.

P.W.7 Deepak Kumar Kabi, was the Inspector of Police, C.B.I. who laid the trap and he was the initial Investigating Officer of the case.

P.W.8 L.T. Salu who was the Inspector of C.B.I., Rourkela Unit took over charge of investigation of the case from P.W.7 as per the order of Superintendent of Police, C.B.I. and on completion of investigation, he submitted charge sheet.

The prosecution exhibited sixteen documents. Ext.1 is the paper containing number of the G.C. notes, Ext.2 is the pre-trap memorandum, Ext.3 is the post-trap memorandum, Exts. 4 & 10 are the seizure lists, Ext.5 is the personal file of the appellant, Ext.6 is the service book of the appellant, Ext.7 is the true copy of office order regarding allocation of work, Ext.8 is the file relating to the payment of gratuity amount of the informant, Ext.8/2 is the order dated 17.02.2016 passed by the Controlling Authority, Ext.9 is the two letters addressed to Basudev Mohanty and Vice-president of the Company on 21.03.2006, Ext.11 is the letter sent to the informant, Ext.12 is the F.I.R., Ext.13 is the Sanction order, Ext.14 is the formal F.I.R., Ext.15 is the spot map and Ext.16 is the C.E. report.

Six material objects were proved by the prosecution. M.O.I is the bottle containing sample hand wash of P.W.6 collected during pre-trap demonstration, M.O.II is the bottle containing right hand wash of appellant, M.O.III is the bottle containing left hand wash of the appellant, M.O.IV is the envelope containing G.C. notes, M.O.V is the bottle containing pocket wash of the appellant and M.O.VI is the shirt of the appellant.

5. In order to substantiate the defence plea, the appellant examined four witnesses.

D.W.1 Narendra Moharana was working as Clerk in the office of the Regional Labour Commissioner, Rourkela. He proved Ext.8, the final order passed in Gratuity Case no.36(37) of 2005-RKL/A. He stated that the appellant was working as Secretary General of Staff Association of Labour Department. He also stated that Mr. G.Y. Rao was the steno to the Regional Labour Commissioner and he was not pulling on well with the appellant because of the leadership of the appellant and the appellant had complained against Sri Rao for his transfer prior to 21.03.2006. He further stated that Mr. Rao was instigating the informant (P.W.4) to institute a case against the appellant in the C.B.I. He further stated that there was a quarrel between the appellant and Mr. Rao always concerning the Union matters. He further stated that the appellant was having no involvement in the matter of dispatch of the order vide Ext.8/2.

D.W.2 Sarat Chandra Das who had a betel shop at Laxmi market, Rourkela stated that he heard a noise near a tree situated near China Restaurant and he saw one old man and two other persons caught hold of the appellant and the old man was inserting some currency notes into the shirt pocket of the appellant and another person had caught hold of the appellant and he saw the appellant was crying for

help. He further stated that when he enquired into the matter from the appellant, he told that Mahanty Babu was inserting some currency notes into his pocket and the C.B.I. staffs were implicating him in a false case. He further stated that when he protested, he was threatened that they were C.B.I. people and would implicate him in the case.

D.W.3 Pravakar Sahu was another shop owner having an electronic shop in Laxmi market, Sector-IV, Rourkela and he stated that on 22.03.2006 at about 3.45 p.m., he saw one person was catching hold of the hands of the appellant and other persons were dragging him. He further stated that about four numbers of 500 G.C. notes were lying on the ground and on being ascertained from the appellant, he came to learn that one middle aged person was forcibly thrusting some money into his pocket.

D.W.4 is the appellant himself. He stated that he was an active leader of All India Staff Association Central Industrial Relations Machinery. He proved the bye-law of the staff association as per Ext.F. He further stated that he had an ill-feeling with Mr. G.Y. Rao relating to his involvement in union matters and that on 10.07.2005, he lodged a complaint against Mr. Rao relating to his activity in his office as per Ext.G. He further stated that he was not dealing with gratuity cases at Rourkela office and further stated how P.W.4 calling him over phone to Laxmi Market for a cup of tea attempted to thrust currency notes to his body to which he pushed him away and another person caught hold of his right hand for which there was scuffle between them and the currency notes fell on the ground.

The defence exhibited six documents. Ext.A is the letter of the Company to Asst. Labour Commissioner (Central-I) dated 03.01.2006, Ext.B is the order of the Asst. Labour Commissioner, Ext.C is the signature of the informant on the office copy of the order (Ext.8/2), Ext.D is the office order of R.S.P. relating to allotment of shop to D.W.2 at Laxmi Market, Ext.E is the office order of R.S.P. relating to allotment of shop to D.W.3 at Laxmi Market and Ext.F is the Bye-law.

6. The learned trial Court formulated the following points for determination:-

- (i) Whether on 21.03.2006 and 22.03.2006 the accused had demanded bribe of Rs.2,000/- from the informant for processing the file for issuing the gratuity sanction order to the Company?
- (ii) Whether the accused had accepted/obtained Rs.2,000/- from the informant for processing the file for issuing the gratuity sanction order to the Company?
- (iii) Whether the accused obtained or received the bribe to show official favour to the informant and the amount was not his official remuneration?
- (iv) Whether the accused was a public servant and there was valid sanction for launching prosecution against him?

7. The learned trial Court after assessing the evidence on record has been pleased to hold that the prosecution has succeeded in establishing the fact

beyond reasonable doubt that the appellant had demanded bribe of Rs.2,000/- (rupees two thousand) from the decoy (P.W.4) for processing the gratuity file and sending the copy of the final order to the employer. It is further held that the prosecution has established beyond reasonable doubt that the appellant had voluntarily and consciously accepted illegal gratification of Rs.2,000/- (rupees two thousand) from the decoy for processing the gratuity file and sending a copy of the final order to the employer and the amount was not his legal remuneration. With regard to valid sanction for launching prosecution against the appellant, it is held that the Court is not to act as an appellate authority while considering the genuineness of a sanction order and accordingly, it was held that there was valid sanction for launching such prosecution.

8. Mr. Devashis Panda, learned counsel appearing for the appellant being ably assisted by Mr. Sudipto Panda, Advocate in his imitable style contended that there is no clinching evidence on record relating to demand of bribe money by the appellant from P.W.4 and the statements of the prosecution witnesses relating to the demand aspect are highly discrepant in nature.

Learned counsel argued that P.W.2, Asst. Labour Commissioner has testified that P.W.4 submitted application (Ext.8/1) for payment of gratuity on 05.10.2005 and Ext.8 is the file relating to his case and payment order was passed by Asst. Labour Commissioner on 09.02.2006 and the dispatch register shows that on 21.03.2006, two letters were addressed to P.W.4 & Vice President of the Company shown to be dispatched vide entry Ext.9. D.W.1 Narendra Maharana, who was working as a clerk in the office of the R.L.C., Rourkela at the time of incident was dealing with diary, dispatch & cash and he testified to have received Ext.8, the final order for payment of gratuity from the Asst. Labour Commissioner (Central), Bhubaneswar on 20.03.2006 at Camp Court, Rourkela and was instructed to hand over the copy of the order to P.W.4 if he was present and if not, to dispatch the copies to P.W.4 as well as the Vice President of the Company, accordingly, on 21.03.2006, he handed over copy of the order to P.W.4 after obtaining his signature on the office copy vide Ext.C and he instructed the appellant to approach his employer to receive gratuity and other benefits and that he also issued a copy of the order on 21.03.2006 to P.W.4's employer showing its dispatch vide Ext.C/1 in the dispatch register in which he had made entries to that effect. Mr. Panda argued that the evidence of P.W.2 coupled with the evidence of D.W.1 as well as documents vide Exts.9, 10, C and C/1 conclusively establish that the appellant was not dealing with the file of P.W.4 and the order has been communicated to the employer of P.W.4 on 21.03.2006 itself by D.W.1 before the trap. It is argued that the appellant needed to have power to exercise over the matter for which he allegedly demanded illegal gratification or bribe while in the present case, it has been established that appellant had no role to play in dealing with the file of P.W.4 relating to payment of his gratuity which D.W.1 had already forwarded to the Company as well as handed over a copy to P.W.4 and therefore, it is clear from the oral and documentary evidence on record that P.W.4's work was already over on

21.03.2006 and there was no occasion for the appellant to demand and receive the bribe on 21.03.2006 and 22.03.2006 respectively. He argued that the emphasis laid by the learned trial Court on processing of the file of P.W.4 for payment of gratuity is equally misconceived since the order was required to be communicated only and no processing was to be done or had been done.

Learned counsel further argued that the finding of the learned trial Court that the appellant had voluntarily and consciously accepted illegal gratification from the decoy (P.W.4) and the plea of the appellant relating to forcible thrusting of money into his pocket is an afterthought one and presumption under sections 20 and 4(1) of 1988 Act are attracted in full force is an erroneous one. It is contended that the learned trial Court has committed illegality in rejecting the defence plea. D.W.1 has testified about the strained relationship between the appellant and G.Y. Rao, the Steno to R.L.C. with whom P.W.4 had good relationship and whom he had met on 21.03.2006 where G.Y. Rao instigated P.W.4 to institute a case against the appellant with C.B.I.

Learned counsel further argued that the finding of the learned trial Court that there is no dispute with regard to correctness of the C.E. report (Ext.16) relating to the tests of hand and pocket washes of appellant is erroneous since Ext.16 does not corroborate the evidence with regard to acceptance of bribe and detection thereof as narrated by P.Ws.1, 4, 6 and 7. He further urged that these witnesses have testified that during the pre-trap preparation, the sample hand wash (M.O.I) of P.W.1 marked as 'D' by trap laying officer (P.W.7) was tested with sodium carbonate solution after he handled phenolphthalein treated tainted money which contained pink colour liquid with white sediment as noted in Ext.16, the right hand wash (M.O.II) of the appellant marked as 'R', the left hand wash (M.O.III) of the appellant marked as 'L' and the pocket wash (M.O.V) of the appellant marked as 'P' by P.W.7, all contained pink colour liquid with white sediments as noted in Ext.16 were found to be containing phenolphthalein, sodium carbonate and water on chemical analysis. According to Mr. Panda, if the version of the witnesses is believed that the bribe money was accepted by the appellant with his right hand, not counted by him by using both the hands but put straight in his left side chest pocket from where it was brought it out on being instructed by P.W.7 after the hand washes of the appellant were taken separately, the left hand wash (M.O.III) should have remained colourless and not 'faint pink' and would not have found containing phenolphthalein as stated in Ext.16.

It is argued that the learned trial Court erroneously held that there was valid sanction for launching prosecution against the appellant. Ext.13 is the sanction order signed by P.W.5 wherein a detailed description has been given, but in the cross-examination, P.W.5 has stated that the petition of the I.O. was not accompanied by documents and has further stated that the Ext.13 does not specifically reveal that he had perused the F.I.R. and that there is no specific mention on Ext.13 about the documents and statements of witnesses and that he

had not personally talked with P.W.4. It is argued that P.W.8, the I.O. has not testified to have met P.W.5 or held pre-sanction discussion with him before submission of charge sheet and has admitted to have no discussion at all with the sanctioning authority but had only submitted documents. He further submitted that the sanction order Ext.13 runs into thirteen pages containing all the details of the trap as well as pre-trap and post-trap formalities but does not indicate what documents were perused by P.W.5 before he accorded sanction. Learned counsel further argued that there is also no endorsement in the sanction order as to whether it was prepared by P.W.5 himself and then signed nor contained any endorsement of any person indicating that it had been typed out to the dictation of P.W.5.

Placing reliance in the cases of C.M. Girish Babu -Vrs.- C.B.I. reported in (2009) 43 Orissa Criminal Reports (SC) 48, Krishna Ram -Vrs.- State of Rajasthan reported in (2009) 43 Orissa Criminal Reports (SC) 92, State of Maharashtra - Vrs.- Dnyaneshwar Laxman Rao Wankhede reported in (2009) 44 Orissa Criminal Reports (SC) 425, P.Satyanarayana Murthy -Vrs.- District Inspector of Police reported in (2015) 10 Supreme Court Cases 152, it is urged that it is a fit case where benefit of doubt should be extended in favour of the appellant.

9. Mr. Sarthak Nayak, learned Special Public Prosecutor appearing for the C.B.I., on the other hand, contended that there is no infirmity or illegality in the impugned judgment of the learned trial Court and the prosecution has proved all the three aspects i.e. demand, acceptance and recovery of bribe money by way of cogent evidence and the learned trial Court has rightly held that there was valid sanction for prosecution of the appellant as P.W.5 Lallan Singh who was working as Deputy Chief Labour Commissioner (Central), Bhubaneswar was competent to remove the appellant and he has stated that he perused the documents and statements of witnesses and being satisfied accorded sanction vide Ext.13 and the defence plea has not been established even by preponderance of probability as there are material discrepancies in the evidence of defence witnesses and therefore, the appeal should be dismissed. He placed reliance in the case of D. Velayutham -Vrs.- State reported in 2015 Criminal Law Journal 3168 (S.C.).

10. In order to establish the charge under section 7 of the 1988 Act, the essential ingredients are as follows:-

- (i) that the accused at the time of the commission of the alleged offence was or expected to be a public servant;
- (ii) that he accepted or obtained or agreed to accept, or attempted to obtain from some person as gratification;
- (iii) that such gratification was not legal remuneration due to him; and
- (iv) that he accepted the gratification in question as a motive or reward for
a) doing or forbearing to do an official act; or

- b) showing or forbearing to show favour or disfavour to someone in the exercise of his official function; or
- c) for rendering or attempting to render any service.

Similarly, for establishing charges under section 13(2) read with section 13(1)(d) of the 1988 Act, the prosecution has to establish the following ingredients:-

- (i) that the accused had demanded a bribe;
- (ii) that the accused had accepted/obtained a bribe; and
- (iii) that the accused obtained/accepted the amount as illegal gratification and it was not his legal remuneration.

Law is well settled that mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. In order to constitute an offence under section 7 of 1988 Act, proof of demand is a sine qua non. (Ref:- V. Sejappa -Vrs.- The State : (2016) 64 Orissa Criminal Reports (SC) 364). The burden rests on the accused to displace the statutory presumption raised under section 20 of the 1988 Act by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in section 7 of the 1988 Act. While invoking the provisions of section 20 of the 1988 Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. For arriving at the conclusion as to whether all the ingredients of the offence i.e. demand, acceptance and recovery of illegal gratification have been satisfied or not, the Court must take into consideration the facts and circumstances brought on the record in its entirety. The standard of burden of proof on the accused vis-à-vis the standard of burden of proof on the prosecution would differ. The proof of demand of illegal gratification is the gravamen of the offence under sections 7 and 13(1)(d)(i) and (ii) of 1988 Act and in absence thereof, unmistakably the charge therefore, 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. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under sections 7 or 13 of the Act would not entail his conviction thereunder. The evidence of the informant should be corroborated in material particulars and the informant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon. (Ref:- Satyananda Pani -Vrs.- State of Orissa (Vig.) : (2017) 68 Orissa Criminal Reports 795.

In case of Krishan Chander -Vrs.- State of Delhi reported in (2016) 3 Supreme

Court Cases 108, it is held that the demand for the bribe money is sine qua non to convict the accused for the offences punishable under sections 7 and 13(1)(d) read with section 13(2) of the 1988 Act. In case of P. Satyanarayana Murthy (supra), it is held that the proof of demand 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.

In the case of C.M. Girish Babu (supra), it is held that it is well settled that the presumption to be drawn under section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption, the same would stick and then it can be held by the Court that the prosecution has proved that the accused received the amount towards gratification. In the case of Krishna Ram (supra), it is held that once it is proved that the money was recovered from the possession of the appellant, the burden of presumption as contemplated under section 20 of the 1988 Act shifts upon the appellant, which he could not rebut through cross-examination of the prosecution witnesses or by adducing reliable and convincing evidence. In the case of Dnyaneshwar Laxman Rao Wankhede (supra), it is held that for arriving at the conclusion as to whether all the ingredients of an offence, viz., demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the Court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-à-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.

Whether any work of the decoy (P.W.4) was pending with the appellant as on the date of trap:

11. Keeping in view the ratio laid down in the aforesaid decisions, let me analyse the evidence on record to find out whether any work of P.W.4 was pending with

the appellant as on the date of trap to make a demand of bribe.

According to Mr. Panda, no work of the decoy (P.W.4) was pending with the appellant as on the date of trap and hence the question of demand did not arise.

However, according to Mr. Nayak, the work of the P.W.4 that was pending with the appellant was to communicate the order of the Asst. Labour Commissioner vide Ext.8/2 to the employer of P.W.4.

P.W.2 who was the Regional Labour Commissioner at the relevant time has categorically stated in his examination-in-chief that the order of the Asst. Labour Commissioner vide Ext.8/2 was dispatched on 21.03.2006 and the entry (Ext.9) in the dispatch register shows dispatch of two letters, one addressed to P.W.4 and the other to the Vice President of the Company. He has stated in the cross-examination that all correspondence of the office were being dispatched through the dispatch section and a clerk was posted for that work and that the appellant was never been entrusted with any work of dispatch during his (P.W.2's) tenure. P.W.4 himself has stated that on 21.03.2006 he came to know about disposal of his application by the Asst. Labour Commissioner and he received the copy of the order on 21.03.2006 by putting his signature on the order sheet. D.W.1, the clerk working in the office of Regional Labour Commissioner has stated that he received the final order in the gratuity case of P.W.4 vide Ext.8 on 20.03.2006 and was instructed to issue copies to P.W.4, the informant and the Vice President of the Company and he was also instructed to hand over the copies of order by hand to P.W.4 if he was present and any representative of the Company or to dispatch the copies by registered post. D.W.1 further stated that on 21.03.2006, he handed over the copy of the order to P.W.4 and obtained his signature on the office copy vide Ext.C. and on 21.03.2006 also, he sent the copy of the order to the Company and had shown dispatch on the office copy vide Ext.C/1 and he had made entries in the register on 21.03.2006 showing dispatch of the copy to the company. He has denied the suggestion put forth by the learned Special Public Prosecutor in the cross-examination that he himself as well as the appellant was involved in the dispatch of Ext.8/2 on 21.03.2006. Though Mr. Nayak contended that D.W.1 has admitted in the cross-examination that the appellant was the dealing Asst. of T-1 section on 21.03.2006 and that he was to deal with the matter relating to pension and gratuity on 21.03.2006, but such statement would not be sufficient to discard the evidence on record that P.W.4 received the order Ext.8/2 himself on 21.03.2006 by putting his signature Ext.C on the office copy and the order was also issued to the Company on the very day which would be evident from the endorsement Ext.C/1 made on Ext.8/2.

Thus, on a conjoint reading of the evidence of P.W.2, P.W.4 and D.W.1 so also the documentary evidence Ext.9, Exts.C and C/1 made on Ext.8/2 indicate that final order in the gratuity case of P.W.4 vide Ext.8/2 was received on 20.03.2006 by D.W.1, a copy of the same was handed over to P.W.4 on 21.03.2006 by D.W.1 and another copy was issued to the Company by D.W.1 on the very day. Therefore, the submission of Mr. Panda that no work of the decoy (P.W.4) was

pending with the appellant as on the date of trap has got sufficient force. The evidence of P.W.4 that he received the copy of the order from the appellant is not believable.

Mr. Nayak, learned Special Public Prosecutor contended that the dispatch of the order vide Ext.8 might not be within the knowledge of P.W.4 and he must be under impression that only on fulfillment of demand of bribe of Rs.2,000/- raised by the appellant, the copy of the order would be sent to his employer. If that be so, then the prosecution was required to adduce specific evidence in that respect that in spite of dispatch of the order (Ext.8/2) to the employer on 21.03.2006, the same was not within the knowledge of P.W.4. The evidence of P.W.4 is completely silent in that respect. Therefore, there was no occasion of the appellant to demand bribe from P.W.4 as on the date of trap i.e. on 22.03.2006, as by 21.03.2006, as per the instruction given by Asst. Labour Commissioner, not only the copy of the gratuity order was handed over to P.W.4 but the same was also dispatched to the employer of P.W.4 by D.W.1. Had the appellant fixed the date of receipt of bribe to 22.03.2006 and he was in charge of dispatch of the order to the employer of P.W.4, he would have certainly seen that the order was not dispatched on 21.03.2006 and at least he would have waited till 22.03.2006 for dispatching the same only on getting the bribe money. The issuance of order to the Company on 21.03.2006 speaks for itself that there was no expectation of the appellant from P.W.4 and no condition like payment of bribe money was fixed for dispatching the order.

I am of the humble view that the learned trial Court has not considered the evidence of P.W.2, P.W.4 and D.W.1 so also Ext.9, the entry in the dispatch register and Exts.C and C/1 appearing on Ext.8/2 in its proper perspective which proves that the gratuity order passed in favour of P.W.4 by the Asst. Labour Commissioner vide Ext.8/2 was dispatched to the employer of P.W.4 on 21.03.2006 after handing over a copy to P.W.4 and therefore, no work of the decoy (P.W.4) was pending with the appellant as on the date of trap.

Demand of bribe by the appellant on 21.03.2006:

12. With regard to the point no.(i) as formulated by the learned trial Court regarding demand of bribe of Rs.2,000/-(rupees two thousand) by the appellant on 21.03.2006 and 22.03.2006 from P.W.4 for processing the file for issuing the gratuity sanction order to the Company, P.W.4 has stated that on 21.03.2006, the appellant gave him a copy of the order when he met him and asked him to give Rs.2,000/- for the purpose of sending the copy of the order to the employer and that the appellant demanded a sum of Rs.2,000/- as bribe. The demand is stated to be made in the office of Regional Labour Commissioner Central, Sector-5, Rourkela and it is only P.W.4 who has stated about the same. P.W.4 admits that there is no mention on the document that he received the copy of the order in presence of the appellant. He further stated that only one old man was present in the office on the day of receipt of the copy. He further admits that he had not lodged any written report regarding illegal demand of bribe from him

to any of the Senior Officers of the office. He further stated that he knew the then Regional Labour Commissioner, but he had not given any written complaint to RLC. In absence of any corroboration to the evidence of P.W.4 that on 21.03.2006, the appellant demanded a sum of Rs.2,000/- as bribe and in view of his conduct in not complaining before any seniors of the appellant or to RLC and particularly when no work of P.W.4 was pending with the appellant as discussed in the previous paragraph, the prosecution evidence relating to demand on 21.03.2006 is a doubtful feature.

Demand of bribe by the appellant on 22.03.2006 at Laxmi Market:

13. The next demand stated to have been made by the appellant to P.W.4 was on 22.03.2006 at Laxmi Market, Sector-4, Rourkela in the afternoon. The relevant witnesses on this aspect are P.W.1, P.W.4, P.W.6 and P.W.7.

P.W.1 has stated that on the telephonic call of P.W.4, the appellant came to Laxmi Market on a motor cycle and asked P.W.4 whether he had brought the money asked for and when P.W.4 said 'yes', then the appellant asked for the same by stretching his right hand. P.W.4 handed over the tainted notes to the appellant and the appellant accepted the same in his right hand and kept the tainted notes inside the left chest pocket of his shirt. P.W.1 has further stated that the C.B.I. team had taken powder for test to the place of detection, which makes the conduct of P.W.7 suspicious. There was no justification to take phenolphthalein powder to the spot.

P.W.4 has stated that after he reached Laxmi Market, he called the appellant from a telephone booth and told him (appellant) that he should come as he (P.W.4) had brought the cash with him. P.W.4 further stated that after the appellant arrived, he (appellant) asked him whether he (P.W.4) had brought money to which he (P.W.4) answered in the affirmative and then the appellant asked for the same and he (P.W.4) brought out the tainted notes from his pocket and handed it over to the appellant which he (appellant) accepted and kept it inside the right side chest pocket of the shirt. P.W.4 stated in the cross-examination that there was only one pocket in the banian of the appellant. The shirt of the appellant which was marked as M.O.VI was called for during argument from the trial Court and the sealed cover was opened and it was found that M.O.VI was having only one left side chest pocket. Therefore, the evidence of P.W.4 that the appellant kept the tainted notes inside the right side chest pocket of his shirt cannot be accepted. There are discrepancies in the evidence of P.W.1 and P.W.4 as to in which side of the chest pocket of the shirt, the appellant kept the tainted money after receiving the same from P.W.4. P.W.4 has stated that he called the appellant from the telephone booth and told him that he (appellant) should come as he (P.W.4) had brought the cash with him. If P.W.4 had already communicated to the appellant that he had brought the cash and receiving such communication, the appellant came to the spot just to receive the cash, what was the occasion for the appellant to make a query to P.W.4 again as to whether he (P.W.4) had brought the money? The evidence on record that the

appellant asked P.W.4 whether he (P.W.4) had brought money would rather suggest that P.W.4 had not told the appellant from the telephone booth that he (P.W.4) had brought the cash with him for making payment to the appellant. In other words, if P.W.4 had already communicated to the appellant that he (P.W.4) had brought the cash with him and called the appellant to the spot, then the query and demand made by the appellant at Laxmi Market is not acceptable. P.W.4 has also stated like P.W.1 that the C.B.I. authority had kept the unused powder in their custody.

The evidence of P.W.6 that in the Laxmi Market, the appellant asked P.W.4 about the money and the evidence of P.W.7 that the appellant demanded money from P.W.4 is also very difficult to be accepted as per the same reason assigned in the previous sub-paragraph inasmuch as according to P.W.4, he had already told the appellant from the telephone booth that he had brought money with him for making payment. Therefore, the demand of bribe by the appellant on 22.03.2006 at Laxmi Market is also a doubtful feature.

Finding of C.E. Report (Ext.16) regarding left hand wash of the appellant:

14. The evidence of all the relevant witnesses indicate that the appellant used his right hand in accepting the tainted money from P.W.4 and no one has stated that the appellant counted the money by using his left hand before putting it in his shirt pocket. If that be so, then how the left hand wash of the appellant when taken in sodium carbonate solution which was collected in a glass bottle (M.O.III) and sealed and labeled as 'L' was found on chemical examination to have contained faint white colour liquid with white sediments. The evidence of P.W.1 is that the C.B.I. team had taken powder for test to the place of detection. P.W.4 has also stated that the C.B.I. authority had kept the unused powder in their custody. Such oral evidence coupled with the chemical examination report (Ext.16) finding that in the left hand wash of the appellant, faint white colour liquid with white sediments was found makes the prosecution case suspicious.

Discrepancies in evidence regarding recovery of tainted money from shirt pocket of appellant:

15. P.W.4 has stated that the appellant himself brought out the money from his pocket and put it on a piece of paper and then the hand wash of the appellant was taken in the prepared solution. In my humble view, the hand wash of the appellant should have been taken first before asking him to bring out the tainted money from his pocket, otherwise it would be natural that his hand wash would change colour after he handled it. On this particular point, there are discrepancies in the statements of witnesses. P.W.1 has stated that P.W.7 brought out the tainted notes from the pocket of the appellant. P.W.6 has stated that the appellant brought out the money and gave the same to P.W.7. The evidence of P.W.7 is completely silent as to who brought out the tainted notes from the pocket of the appellant and he has simply stated that the money was recovered from the shirt pocket of the appellant.

In the case of D. Velayutham (supra), it is held that Courts are not to be swayed by the semantics of describing the trap witnesses as antecedently "interested" or "partisan" in their testimonies. Rather, their testimonies can only be so stigmatised, and suffer the evidentiary consequence of necessary corroboration, on a casuistic basis, that is to say, whether corroboration is necessary or not will be within the discretion of the Court, depending upon the facts and circumstances of each case.

Thus, even though the evidence of the trap witnesses will not be rejected only on the ground that they are interested witnesses but it appears that there is no corroboration in the statements of these witnesses on the recovery of tainted money rather each of them give a different version which weakens the prosecution case.

Other suspicious features of prosecution case:

16. P.W.7 D.K. Kabi, the Inspector, C.B.I., Rourkela branch has deposed that on 21.03.2006, F.I.R. (Ext.12) was lodged by P.W.4 which was sent to Bhubaneswar for registration of the case. He has further stated that S.P., C.B.I. is alone competent to register the case and there is no endorsement on the body of the F.I.R. or any letter of Rourkela C.B.I. Unit Office showing dispatch of F.I.R. to S.P., C.B.I., Bhubaneswar. The formal F.I.R. (Ext.14) contains signature of S.P., C.B.I., Bhubaneswar marked as Ext.14/1. On perusal of Ext.14, it appears to have been received at C.B.I. P.S., Bhubaneswar on 22.03.2006 and accordingly, SDE No.140 dated 22.03.2006 was made at 13:00 hrs and S.P., C.B.I., Bhubaneswar after registration of the case entrusted P.W.7 for investigation. If after registration of F.I.R. at 1.00 p.m. on 22.03.2006, P.W.7 was asked to investigate, then how within such a short span of time, the decoy and other official witnesses assembled at C.B.I. Office, Rourkela for preparation of trap. P.W.7 states that he requisitioned the service of G.C. Das (P.W.1) and G.V. Srinivasan (P.W.6) and in the cross-examination, he has stated that requisition was made telephonically without any written letter and he admits that there is no endorsement anywhere that requisition was made telephonically to the official witnesses. P.W.7 states that he had no prior acquaintance with P.W.1 and P.W.6. It is not understood as to why and how those two official witnesses immediately responded to P.W.7 and leaving all their work, assembled at C.B.I. Office. P.W.1 has stated that his higher authority ordered to report before C.B.I. Office, however he has stated that he could not produce any written order to show that he was so directed. P.W.6 has also stated that he had not filed any document showing that he was directed to report before C.B.I. Inspector. Pre-trap memorandum (Ext.2) dated 22.03.2006 is a three pages computer typed document which indicates that pre-trap memorandum exercise commenced at 14.30 hours and closed at 15.30 hours which means after registration of the F.I.R. at 1.00 p.m. on 22.03.2006 at Bhubaneswar, everything was done in a hurried manner at Rourkela but to that effect no document is forthcoming.

P.W.4 has not stated in his evidence that the appellant told him on 21.03.2006 to

give Rs.2,000/- on 22.03.2006 and that too at Laxmi Market though in the F.I.R., he has mentioned in that respect. P.W.4 stated in his chief examination that post-trap memorandum vide Ext.3 was prepared at the spot, however in the cross-examination, he has stated that he had not signed in any paper at Laxmi Bazar, but he signed in the C.B.I. office and further stated that he could not say the contents of the papers and number of papers in which he had signed in C.B.I. Office. Therefore, it is doubtful whether the post-trap memorandum (Ext.3) dated 22.03.2006 which is a four pages computer typed document and shows that post-trap memorandum commenced at 16.15 hours and completed at about 17.15 hours, was prepared at Laxmi Market itself or at C.B.I. Office, Rourkela.

Whether the prosecution has proved that the sanction order (Ext.13) was valid?:

17. Mr. Panda, learned counsel for the appellant contended that there is no valid sanction for launching prosecution against the appellant. Ext.13 is the sanction order signed by P.W.5 who has stated that the petition of the I.O. was not accompanied by documents and has further stated that the Ext.13 did not specifically reveal that he had perused the F.I.R. and that there is no specific mention in Ext.13 about the documents and statements of witnesses. It is argued that P.W.8, the I.O. has admitted to have no discussion at all with the sanctioning authority but had only submitted documents. The sanction order Ext.13 runs into thirteen pages containing all the details of the trap as well as pre-trap and post-trap formalities but does not indicate what documents were perused by P.W.5 before he accorded sanction. It is argued that the sanctioning authority without application of mind has accorded sanction vide Ext.13.

Mr. Nayak, learned Special Public Prosecutor on the other hand argued that there was valid sanction for prosecution of the appellant as P.W.5 Lallan Singh who was working as Deputy Chief Labour Commissioner (Central), Bhubaneswar was competent to remove the appellant and he has stated that he perused the documents and statements of witnesses and being satisfied accorded sanction vide Ext.13.

In the case of Vijay Rajmohan -Vrs.- C.B.I. reported in (2023) 1 Supreme Court Cases 329, it is held that section 19 of the P.C. Act provides for a requirement of sanction before prosecution. The requirement of law for having relevant material placed before the sanctioning authority, as well as the independent application of mind by the said authority, applies with equal vigour to sanction under the P.C. Act.

In the case of C.B.I. -Vrs.- Ashok Kumar Aggarwal reported in (2014) 14 Supreme Court Cases 295, while discussing section 19 of the 1988 Act, it is held as follows:-

"13. The prosecution has to satisfy the court that at the time of sending the matter for grant of sanction by the competent authority, adequate material for such grant was made available to the said authority. This may also be evident from the sanction order, in case it is extremely comprehensive, as all the facts

and circumstances of the case may be spelt out in the sanction order. However, in every individual case, the court has to find out whether there has been an application of mind on the part of the sanctioning authority concerned on the material placed before it. It is so necessary for the reason that there is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

14. It is to be kept in mind that sanction lifts the bar for prosecution. Therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. Further, it is a weapon to discourage vexatious prosecution and is a safeguard for the innocent, though not a shield for the guilty.

15. Consideration of the material implies application of mind. Therefore, the order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that those facts were placed before the sanctioning authority and the authority had applied its mind on the same. If the sanction order on its face indicates that all relevant material i.e. F.I.R., disclosure statements, recovery memos, draft charge sheet and other materials on record were placed before the sanctioning authority and if it is further discernible from the recital of the sanction order that the sanctioning authority perused all the material, an inference may be drawn that the sanction had been granted in accordance with law. This becomes necessary in case the court is to examine the validity of the order of sanction inter-alia on the ground that the order suffers from the vice of total non-application of mind. (Vide: Gokulchand Dwarkadas Morarka v. King : A.I.R. 1949 P.C. 82; Jaswant Singh v. State of Punjab : A.I.R. 1958 S.C. 124; Mohd. Iqbal Ahmed v. State of A.P. : A.I.R. 1979 S.C. 677; State through Anti-Corruption Bureau, Govt of Maharashtra v. Krishanchand Khushalchand Jagtiani : A.I.R. 1996 S.C. 1910; State of Punjab v. Mohd. Iqbal Bhatti : (2009) 17 S.C.C. 92; Satyavir Singh Rathi, ACP v. State : A.I.R. 2011 S.C. 1748 and State of Maharashtra v. Mahesh G. Jain : (2013) 8 S.C.C. 119).

16. In view of the above, the legal propositions can be summarised as under:

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

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

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

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

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

P.W.5, the sanctioning authority though stated in the chief examination that he perused the documents and statements of the witnesses and being satisfied, accorded sanction and he also proved the sanction order (Ext.13), but in the cross-examination, he has stated that the petition of the I.O. for a prayer to accord sanction was not accompanied by documents. He admits that Ext.13 specifically did not reveal that he perused the F.I.R. and there is no specific mention in Ext.13 about the documents and statements of witnesses which he had perused. P.W.8, the I.O. has stated that he had no discussion with the sanctioning authority. Though P.W.8 has stated that he had presented material documents, but in view the evidence of P.W.5 that the petition of the I.O. was not accompanied by documents, it is very difficult to accept the evidence of the I.O. in that respect. In view of the evidence of P.W.5 and P.W.8, it cannot be said that the entire relevant facts were placed before the sanctioning authority (P.W.5) and that he had applied his mind on the same and that the sanction had been granted in accordance with law.

Conclusion:

18. Though several other points including the materials on record to substantiate the defence plea were urged by the learned counsel for the appellant, but in my humble view, it is not necessary to discuss all those points in a threadbare manner which would unnecessarily make the judgment lengthy. In view of the foregoing discussions, when no work of the decoy (P.W.4) was pending with the appellant as on the date of trap and the demand of bribe by the appellant on 21.03.2006 so also on 22.03.2006 is a doubtful feature, the finding of C.E. Report (Ext.16) regarding left hand wash of the appellant makes the prosecution case suspicious, there are discrepancies and suspicious features in the case and the application of mind by the sanctioning authority (P.W.5) to all the relevant facts before according sanction is also a doubtful feature in the case, it cannot be said that the prosecution has succeeded in establishing the charges against the

appellant beyond all reasonable doubt.

In the result, the criminal appeal is allowed. The impugned judgment and order of conviction of the appellant under section 7 and section 13(2) read with section 13(1)(d) of the 1988 Act and the sentence passed thereunder is hereby set aside and the appellant is acquitted of all the charges. The appellant is on bail by virtue of the order of this Court. He is discharged from liability of his bail bond. The personal bond and the surety bond stand cancelled.

Trial Court records with a copy of this judgment be sent down to the learned trial Court forthwith for information.

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