(2018) 04 OHC CK 0012

In the Orissa High Court

Case No : CRLA No. 278 Of 2014

SHYAM SUNDAR PRUSTY APPELLANT

Vs

REPUBLIC OF INDIA RESPONDENT

Date of Decision : 12-04-2018

Acts Referred:

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

Citation : (2018) 04 OHC CK 0012

Hon'ble Judges : S.K. SAHOO

Bench : Single Bench

Advocate : Bhimsen Sahoo, Anup Kumar Bose

Final Decision : Allowed

Judgement

S. K. SAHOO, J.

1. The appellant Shyam Sundar Prusty faced trial in the Court of learned Special Judge (C.B.I.), Court No.I, Bhubaneswar in T.R. Case No. 15 of

2011 for offences punishable under section 7 & sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (hereafter â??1988

Actâ??) on the accusation that on 30.10.2010 at L.I.C. Office, Sector-19, Rourkela, he being a public servant functioning as Asst. Branch Manager,

L.I.C. of India demanded and accepted Rs.1000/- (rupees one thousand only) from the complainant Bhubaneswar Dwibedy (P.W.8) for issuing fresh

cheques against seven numbers of stale cheques issued by the L.I.C. to the complainant towards agent commission and that by corrupt and illegal

means and by otherwise abusing his official position as such public servant, he obtained for himself pecuniary advantage of the aforesaid amount.The

learned trial Court vide impugned judgment and order dated 15.05.2014 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.10,000/- (rupees ten thousand), in default, to undergo rigorous imprisonment for

one month 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.15,000/- (rupees

fifteen thousand), in default, to undergo rigorous imprisonment for two months for the offence under sections 13(2) read with 13(1)(d) of the 1988 Act

with a direction that both the sentences shall run concurrently.

2. P.W.8 lodged the first information report before the Superintendent of Police, C.B.I., Bhubaneswar on 28.10.2010 stating therein that he was an

agent of L.I.C. of India and his agent code number was 04607/589 and during the year 200910, he was issued with seven cheques towards

commission of the L.I.C. of India. Although he collected the cheques from the L.I.C. office but he could not deposit the same in his account during

the validity period of three months as he was busy in attending to his ailing father who was admitted in ApolloHospital, Bhubaneswar and undergoing

treatment. On 20.10.2010 he submitted an application to the Branch Manager, L.I.C. of India, Sector-19, Rourkela requesting him to issue fresh

cheques in his favour in lieu of the aforesaid stale cheques. He enclosed the original cheques with his application. It is the further stated that on

28.10.2010 P.W.8 contacted the appellant who was the Asst. Branch Manager and requested him for issuing fresh cheques but the appellant told him

that the cheques are ready but those would be handed over only if he pays bribe amount of Rs.1000/-. It is mentioned in the first information report

that he did not want to pay the bribe for getting the cheques towards his commission but if the demanded amount is not paid, the appellant would not

handover the cheques and harass him.

3. On receipt of the first information report, Mr. J.N. Rana, Superintendent of Police in charge, C.B.I. registered the case and P.W.10 Sachidananda

Ratha, Inspector of police, C.B.I., Bhubaneswar was entrusted for laying the trap and to investigate the matter. P.W.10 requested D.S.P. D.K. Kabi

over telephone to arrange government officials to act as witnesses during trap and he also instructed the informant to remain present at Unit Office,

Rourkela on 30.10.2010 at 10.00 a.m. along with the bribe money of Rs.1000/-. On 30.10.2010 at 10.00 a.m., the trap team assembled at the C.B.I.

Unit Office at Rourkela and in pursuance of requisition of D.S.P., C.B.I., Rourkela unit, independent witnesses namely Ashok Kumar Roy (P.W.3)

and Kishore Kumar Pradhan (P.W.7) also reported for the purpose of witnessing the trap proceeding. The informant (P.W.8) reported at C.B.I. Unit

Office, Rourkela at 10.00 a.m. on 30.10.2010 along with the amount of Rs.1000/-. He was introduced to the witnesses and the witnesses were shown

a copy of the written complaint of P.W.8. The informant produced Rs.1000/- and the number of the G.C. note was noted down and solution of sodium

carbonate and water was prepared in a clean glass tumbler by constable Jitray Singh which was colourless. Sri Singh treated the G.C. note with

phenolphthalein powder and the witness Ashok Kumar Ray (P.W.3) was asked to handle the G.C. note by his hands and after he handled, he was

asked to dip his fingers of both the hands in the solution after which the colour of the solution turned pink. The hand wash of P.W.3 was preserved in

a clean glass bottle which was properly sealed, labeled and marked as â??Dâ??. The tainted G.C. notes of Rs.1000/- was kept by constable Jitray

Singh in the right side pant pocket of P.W.8 who was specifically instructed to handover the note to the appellant only on his demand. All the team

members including both the independent witnesses and P.W.8 washed their hands with soap and water and it was ensured that none of the trap team

members kept any money with them.

It was decided that P.W.7 Kishore Kumar Pradhan would accompany P.W.8 to the L.I.C. office in the motor cycle of P.W.8 and rest of the team

members including P.W.3 would follow them in a vehicle. A pre-trap memorandum (Ext.17) was prepared in the C.B.I. Unit Office, Rourkela which

was read over to the witnesses after which they put their signatures on it. P.W.8 was instructed to pass prearrange signal by rubbing his hairs with

both the hands after transaction was over and other trap team members were instructed to take their position. P.W.7 was instructed to remain with

P.W.8 and to see transaction of bribe money as well as overhear the conversation between P.W.8 and the appellant. After completion of the pre-trap

proceeding, P.W.7 and P.W.8 proceeded to L.I.C. Office, Sector 19, Rourkela and the rest of the team followed them in a vehicle. The team parked

their vehicle at a safe distance and P.W.8 parked his motor cycle inside the L.I.C. Office compound and went to the first floor of the L.I.C. Office building followed by P.W.7. The appellant was found sitting in the office and P.W.7 remained outside mixed with the other people. The other team

members also followed them keeping a safe distance and took their position in the first floor of the L.I.C. building from where the sitting position of the

appellant was clearly visible. It is the further prosecution case that after entering into the building, P.W.8 greeted the appellant and requested him for

issuing the cheques. The appellant asked P.W.8 whether he had brought Rs.1000/- as demanded. When P.W.8 answered in the affirmative, the

appellant stretched his right hand towards P.W.8 and P.W.8 brought the tainted G.C. notes of Rs.1000/-from his pant pocket and handed over the

same to the appellant who accepted the amount in his right hand and kept the same in his left hand side shirt pocket. After receiving the tainted

money, the appellant took out a bunch of vouchers from his drawer and asked P.W.8 to sign the vouchers and accordingly, P.W.8 signed the vouchers

and thereafter, the appellant handed over a bunch of cheques to him. P.W.8 took the cheques from the appellant. At that point of time, P.W.7 was

witnessing the transaction. Other team members including P.W.3 also saw the transaction and they rushed into the cubical of the appellant. P.W.10

introduced himself to the appellant so also the other trap party members. When the appellant was challenged to have demanded and received the bribe

money of Rs.1000/- from P.W.8, he became nervous, fumbled and kept quite.

Two of the trap party members caught hold of both the hands of the appellant. Sodium carbonate solution with water was prepared in a clean glass

tumbler and the appellant was asked to dip his right hand fingers in the sodium carbonate solution which turned pink in colour. The solution was kept in

a clean glass bottle and sealed and signed by the trap party members. Another solution of sodium carbonate with water was prepared in another clean

glass tumbler and the appellant was asked to dip his left hand in the said solution which did not change its colour. The chemical solution was kept in

clean bottle sealed. The appellant was asked to produce the G.C. note which he had accepted from P.W.8 as bribe money. The appellant took out the

G.C. note of Rs.1000/- from his left hand side shirt pocket and handed over the same to P.W.10. The number of the G.C. note was compared with

the number which was earlier noted in the pre-trap memorandum and it got tallied. The G.C. note of Rs.1000/- was kept in an envelope and it was duly sealed and signed by all. The appellant was asked to take off his shirt and the left side shirt pocket of the appellant was washed in a freshly

prepared solution of sodium carbonate with water where after the colour also changed to pink. The solution was preserved in another glass bottle and

sealed. The appellant was arrested for demanding and accepting illegal gratification from the complainant and arrest memo was prepared. Post-trap

memorandum (Ext.19) was also prepared wherein P.W.10 and others put their signatures. Copy of the post-trap memorandum was handed over to

the appellant who also signed the same. P.W.10 put the specimen seal impression in a white sheet of paper and the trap party members and he

himself signed on it. P.W.10 seized seven numbers of payment vouchers regarding the handing over the cheque to P.W.8 and seizure list Ext.20 was

prepared. A copy of the seizure list was given to the Branch Manager. P.W.10 prepared the sketch map and other documents were seized by him on

production by the Branch Manager under seizure list Ext.22. On the very same day the team members conducted house search of the appellant but no

incriminating material was found. The seized exhibits were sent to Director, C.F.S.L. for chemical examination and opinion. P.W.10 handed over the

charge of investigation to D.S.P. D.K. Kabi who also seized some documents, prepared seizure lists and after completion of investigation, he

submitted the charge sheet against the appellant after obtaining sanction order.

4. The defence plea of the appellant is one of denial and it is his case that P.W.8 had taken a loan of Rs.1000/- (rupees one thousand only) from him

and despite repeated demand, P.W.8 was not repaying such amount and he was not coming to the L.I.C. Office for receiving the cheques and that

the amount in question which was received by the appellant from P.W.8 on the date of trap and recovered from his possession was not the bribe

amount but the loan amount which he had given to P.W.8.

5. In order to prove its case, the prosecution examined ten witnesses. P.W.1 Sesadeb Barik was the Administrative Officer, Accounts Department,

L.I.C., Rourkela Branch, Sector-19 and he has proved the payment vouchers for the fresh cheques and the stale cheques. He stated that Accounts

Department issued fresh cheques as per the request of Sales Department and he was one of the signatories in the issue of fresh cheques and the

other signatory being Michel Dang (D.W.1). He has proved cheque movement register (Ext.9) of Accounts Department. He has stated that on

28.10.2010 seven fresh cheques were prepared by the Accounts Department and were sent to Sales Department along with other cheques which

were received by Mr. S.K. Mishra (P.W.2), Asst. in Sales Deptt. on that day.

P.W.2 Susanta Kumar Mishra was the Asst. in Sales Department, L.I.C. of India, Rourkela Branch and he has stated about the procedure for re-

validation of stale cheques. He further stated about the application submitted by P.W.8 for re-validation of stale cheques along with the stale cheques

for issuance of fresh cheques. He further stated that the stale cheques were received by the appellant and those were marked to him for preparation

of the cheque cancellation vouchers and accordingly he prepared the same. He proved the stale cheque register (Ext.13). He further stated about the

preparation of fresh cheques in the Accounts Department under the signatures of P.W.1 and D.W.1. He further stated to have received the fresh

cheques in the Sales Department as per cheque control register (Ext.9) and gave his endorsement in the register in token of receipt of the same. He

further stated to have kept the fresh cheques and vouchers in the file of Sales Department. He was declared hostile by the prosecution and cross-

examined.

P.W.3 Ashok Kumar Roy was the Senior T.O.A. (G) in the Office of CMTD, 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 acceptance of tainted G.C. note by the appellant from P.W.8 in the L.I.C. Office

and keeping the same in his left side shirt pocket. He further stated about the hand wash of the appellant and his shirt pocket wash changing its colour

when taken in solution. He further stated about the preparation of the post-trap memorandum (Ext.19) and seizure of some vouchers under seizure list

Ext.20.

P.W.4 Bibhudha Prasad Nayak was the Higher Grade Assistant (Sales), L.I.C., Rouekela Branch who stated about the submission of application by

P.W.8 for revalidation of cheques which was received on 21.10.2010 and also preparation of fresh cheques against the stale cheques. He proved the

copies of fresh cheques. He also proved the stale cheques and also the cheque control register (Ext.9).

P.W.5 Binay Sah was the Zonal Manger, L.I.C. of India who had accorded sanction for launching prosecution against the appellant as per sanction

order Ext.21. P.W.6 Subodh Acharya was the Branch Manager, L.I.C., Rourkela Branch who stated that the appellant was the Asst. Branch

Manager, Sales from 23.04.2008 till 2011. He further stated about the submission of application by P.W.8 as the L.I.C. agent addressed to the Branch

Manager for revalidation of cheques along with the stale cheques which were received by the appellant and the work was assigned to P.W.2. He

further stated that vouchers were prepared by P.W.2 and those were sent with the stale cheques to the Accounts Department for preparation of the

fresh cheques and after preparation of the fresh cheques, those were sent to the Sales Department on 28.10.2010.

P.W.7 Kishor Kumar Pradhan was the Social Security Asst. in E.P.F.O. and he was a member of the trap party who stated about the pre-trap

preparation and he acted as overhearing witness in the transaction and stated about the demand and acceptance of Rs.1000/- (rupees one thousand)

by the appellant from P.W.8, right hand wash and the inner portion of the shirt pocket of the appellant changing colour when taken in chemical solution

to pink so also preparation of the post-trap memorandum.

P.W.8 Bhubaneswar Dwibedy is the informant in the case and he has stated in detail relating to demand of bribe by the appellant, lodging of the

report, preparation for the trap, demand and acceptance of bribe money by the appellant, change of colour of right hand wash and shirt pocket of the

appellant so also preparation of the post-trap memorandum.

P.W.9 Baijayanta Mukhapadhya was the Asst. Director, Explosives, C.F.S.L., Kolkata who proved the chemical analysis report which was marked

as Ext.26. P.W.10 Sachidananda Rath was the Inspector of Police, C.B.I. who laid the trap and he is also the Investigating Officer. The prosecution

exhibited twenty nine documents. Ext.1 is the voucher movement register, Exts.2, 3, 4, 5, 6, 7 and 8 are the payment vouchers, Ext.9 is the cheque

movement register, Ext.10 is the application for revalidation of cheque, Ext.11 is the inward receipt register, Ext.12 to Ext.12/6 are the duplicate

vouchers, Ext.13 is the stale cheque register, Ext.14 to Ext.14/6 are the xerox copies of cheques, Exts.15, 20, 22 and 25 are the seizure lists, Ext.16 is

the list of stale cheques (7 sheets), Ext.17 is the pre-trap memorandum, Ext.18 is the sketch map, Ext.19 is the post-trap memorandum, Ext.21 is the sanction order, Ext.23 is the charge report, Ext.24 is the complaint petition, Ext.26 is the C.F.S.L. report, Ext.27 is the F.I.R., Ext.28 is the arrest

memo and Ext.29 is the search list. Six material objects were proved by the prosecution. M.O.I is the demonstration sample bottle, M.Os.II & III are

the bottles containing right and left hand wash of the appellant, M.O.IV is the envelope containing tainted money, M.O.V is the sample bottle

containing shirt pocket wash of appellant and M.O.VI is the packet containing shirt of the appellant.

6. In order to substantiate the defence plea, the appellant examined two witnesses. D.W.1 Michel Dang was the Higher Grade Asst., L.I.C. of India,

Rourkela Branch in the Accounts Department who stated about the procedure relating to receipt of the stale cheques by the Sales Department and

also preparation of the fresh cheques. He further stated that P.W.2 was custodian of the cheque control register and further stated that Asst. Branch

Manager never uses such register. D.W.2 Satyanaryan Mishra was the Development Officer in L.I.C. of India, Rourkela Branch and he stated about

the termination of agency of P.W.8. He further stated about P.W.8 taking loan of Rs.1000/-(rupees one thousand) from the appellant before the

detection of the case. The defence exhibited two documents. Ext.A is the office order relating to promotion and transfer of Branch Manager and

Ext.B is the document of L.I.C. in respect of P.W.8 and his wife showing their dates of appointment and dates of exit.

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

(i) Whether the accused Shyam Sundar Prusty, Asst. Branch Manager, L.I.C. of India, Rourkela Branch, Sector-9, Rourkela being public servant

functioning in the above capacity accepted Rs.1,000/- from the complainant as gratification other than legal remuneration for re-validation of the stale

cheques on 31.10.2010.

(ii) Whether the accused being public servant functioning as Asst. Branch Manager, L.I.C. of India, Rourkela Branch by corrupt and illegal means

abusing his official position as such public servant obtained for him pecuniary advantage to the tune of Rs.1,000/- from the complainant for re-

validation of the cheques on 30.10.2010. The learned trial Court after assessing the evidence on record has been pleased to hold that the evidence of

P.W.8 appears to be clear, consistent, convincing, credible and above reproach and he has successfully stood the test of crossexamination and his

evidence suffers from no inherent infirmity and improbability and therefore, there is no cogent reason or ground to doubt the veracity of the

complainant. It was further held P.W.7 and P.W.8 have convincingly proved that the appellant had received illegal gratification of Rs.1,000/- and

issued fresh cheques after taking signatures of the complainant on the vouchers. The learned trial Court while discarding the defence plea has held

that the evidence of the prosecution witnesses with regard to demand and acceptance of bribe is free of blemish and above reproach. It was further

held that the scientific test has clearly established the fact that the appellant after handling the currency note had kept the same in his left side shirt

pocket and that the prosecution has clearly established that the appellant had voluntarily and consciously accepted the tainted currency note from the

complainant. It was further held that the argument of the defence that there was no work of the complainant with the appellant is not only factually

misconceived but also legally untenable. It was further held that preponderance of oral as well as documentary evidence of the prosecution coupled

with the circumstances leading trap and recovery of tainted government currency note points to the inescapable conclusion that the appellant had

demanded and accepted the illegal gratification or bribe money from the complainant.

8. Mr. Bhimsen Sahoo, learned counsel appearing for the appellant while not disputing the acceptance of Rs.1,000/- by the appellant from P.W.8 and

its recovery from the appellant, contended that there is no clinching evidence relating to demand of bribe money by the appellant and the statements of

the witnesses relating to the demand aspect are discrepant in nature. It is further contended that the learned trial Court has committed illegality in

rejecting the defence plea. He placed reliance in the case of V. Sejappa -Vrs.- The State reported in (2016) 64 Orissa Criminal Reports (SC) 364,

Satyananda Pani -Vrs.- State of Orissa (Vig.) reported in (2017) 68 Orissa Criminal Reports 795 and contended that benefit of doubt should be

extended in favour of the appellant. Mr. Anup Kumar Bose, learned Asst. Solicitor General appearing for the Republic of India 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 and the defence plea that the amount which was received by the appellant on the date of trap

and recovered from his possession was the loan amount earlier taken by P.W.8 from the appellant is not acceptable and such plea has been rightly

turned down by the learned trial Court. He further contended that the defence plea has not been established even by preponderance of probability and

therefore, the appeal should be dismissed.

9. 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 reported in (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-Ã -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 complainant should be corroborated in material particulars and the complainant 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 â?"Vrs.- State of

Orissa (Vig.) reported in (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 -Vrs.- District Inspector of Police reported in (2015) 10

Supreme Court Cases 152, 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.

10. The demand aspect of the bribe money has been deposed to by P.W.8 who has stated that on 28.10.2010 when he met the appellant who was the

Assistant Branch Manager and requested him to issue fresh cheques, he demanded Rs.1,000/- and told that unless the amount was paid, fresh

cheques cannot be issued. Thus the reason for demand of bribe by the appellant was meant for issuance of fresh heques to P.W.8. Let me now

examine the evidence on record to see as to how far the demand aspect on 28.10.2010 is acceptable. The only witness who has stated about that

aspect is P.W.8.

It has come in evidence of the prosecution witnesses like P.W.2 and P.W.6 that on 20.10.2010 P.W.8 filed an application for revalidation of cheques

and with such application (Ext.10), he had also submitted the stale cheques (Exts.2/1 to 7/1). P.W.6 has stated that the appellant had received the

application and stale cheques. P.W.2 has also stated that the cheques were handed over by P.W.8 to the appellant who received the same after

putting his endorsement (Ext.11/2) in the inward receipt register (Ext.11). P.W.2 further stated that those stale cheques were marked to him for

preparation of vouchers by the appellant and the endorsement of the appellant in that respect has been marked as Ext.10/1. P.W.2 further stated that

he prepared the cheque cancellation vouchers. P.W.6 has also stated that P.W.2 was assigned the work of preparation of vouchers by the appellant

and P.W.2 prepared the vouchers along with duplicates and he proved the original vouchers i.e. Exts.2 to 8 and the duplicate vouchers i.e. Exts.12 to

12/6. P.W.2 has further stated that entries were made in the stale cheque register relating to receipt of cheques and preparation of vouchers and

entries were also made in the voucher movement register. P.W.6 has stated that the vouchers with stale cheques were sent to Accounts Department

for preparation of fresh cheques which found mentioned in the voucher movement register Ext.1. It is not disputed that the fresh cheques were

prepared in the Accounts Department. P.W.1 has stated that Accounts Department prepared the fresh cheques as per the request of the Sales

Department vide nos.354105, 354107, 354108, 354109, 354110, 354111 and 354112. P.W.1 was one of the signatories to the fresh cheques and the

other signatory is D.W.1. P.W.1 has further stated that after preparation of the seven fresh cheques prepared by the Accounts Department, those

were sent to the Sales Department and P.W.2 had received those cheques on that day. P.W.2 has also stated that he had received the fresh cheques

in the Sales Department where he was working and in token of receipt of the fresh cheques, his endorsement is Ext.9/2 in the cheque movement

register (Ext.9). P.W.2 has further stated that he had kept those vouchers and cheques in the file of Sales Department. P.W.6 has also stated that the

fresh cheques were sent to Sales Department on 28.10.2010 and cheques were available in Sales Department till 30.10.2010. P.W.6 has further

stated that P.W.8 has never made any complain before him about the revalidation of cheques.

Therefore, the statements of the aforesaid witnesses and documentary evidence indicate that P.W.8 filed an application for revalidation of stale

cheques along with stale cheques on 20.10.2010 in the L.I.C. office which were received by the appellant and those cheques were marked by the appellant to P.W.2 for preparation of cheque cancellation vouchers and accordingly P.W.2 prepared the vouchers and then those stale cheques were

sent to Accounts Department for preparation of fresh cheques and then seven numbers of fresh cheques were prepared on 28.10.2010 in the

Accounts Department and those were sent to Sales Department on the very day and P.W.2 received the fresh cheques and made endorsement

relating to receipt of the cheques in the cheque control register (Ext.9) and thereafter he kept the vouchers and cheques in the file of Sales

Department. P.W.8 has stated that Susanta Kumar Mishra (P.W.2) was disbursing the cheques without commission after signing of the cheque issue

register. P.W.6 has stated that the Higher Grade Assistant was there to deliver the cheques to concerned Agent or Development Officer. According

to P.W.2, Smt. Arati Patnaik was the Higher Grade Assistant at the relevant time and she had checked the cheque cancellation vouchers and put her

endorsement on it. D.W.1, the Higher Grade Assistant who was the signatory to the issuance of fresh cheques in question has stated that an account

holder or agent receives the cheques from the Sales Department by entering the same in the cheque control register and that P.W.2 was the custodian

of that register and that nobody can receive cheques without entry in the cheque control register.

He has further stated that Assistant Branch Manger (appellant) never used the cheque control register. If P.W.2 was the custodian of the fresh

cheques and the cheque control register and he also kept the vouchers and he was the person who was disbursing the cheques after taking signatures

of the person concerned in the cheque issue register as stated by P.W.8, the demand of bribe stated to have been made by the appellant to P.W.8 on

28.10.2010 appears to be a doubtful feature. P.W.8 was working as L.I.C. agent since 2007 and therefore, he was supposed to know as to who was

the officer entrusted to issue the cheques after taking signatures in the cheque issue register. Therefore, the purpose for which the appellant stated to

have made the demand from P.W.8 is not acceptable particularly when it was P.W.2 who was entrusted with disbursement of cheques. P.W.2 has

stated that Ext.16 reveals that some cheques had been revalidated after those became stale for two to three times. P.W.4 has stated that some

cheques were presented for revalidation after it had become stale twice and the informant was irregular in presenting the cheques.

Therefore, presentation of stale cheques for revalidation in the L.I.C. office was not an unusual phenomenon. If it was regularly done then why

somebody would demand bribe for it and why somebody would agree to pay the same particularly when he was accustomed with the procedure of

receipt of fresh cheques in lieu of stale cheques. P.W.8 admits that he has not made any complain before the Branch Manager about the demand of

bribe money by the appellant. P.W.2 has not supported the prosecution case that on the date of trap, the appellant asked him to hand over the cheques

and vouchers and accordingly, he handed over the cheques and vouchers to him. If the fresh cheques, cheque issue register and the vouchers were

with P.W.2 and P.W.8 was supposed to receive the cheques either from P.W.2 or from the Higher Grade Assistant Smt. Arati Patnaik and he has

received the fresh cheques and signed the vouchers, the demand stated to have been made by the appellant for the said purpose on the date of trap is

difficult to be accepted.Though P.W.8 has stated that on the date of trap, when he requested the appellant to give fresh cheques, the appellant asked

him whether he had brought the demanded amount, P.W.7 has stated that he had not heard the appellant demanding illegal gratification from P.W.8.

11. Coming to the defence plea, in the accused statement, in answer to question no.11 relating to acceptance of the demanded amount from P.W.8,

the appellant has answered that P.W.8 had taken a hand loan of Rs.1000/- from him on 20.10.2010. D.W.2 has stated that P.W.8 had taken a loan of

Rs.1000/- from the appellant before the detection of the case and the appellant told him about the loan amount which had been taken by P.W.8 from

him and that the appellant had disclosed the same to Branch Manager Subodh Acharya (P.W.6). P.W.6, the Branch Manager has stated that the

appellant had told him that P.W.8 was not repaying the loan amount of Rs.1000/-. D.W.2 has further stated that he had heard the appellant was

speaking out loudly that the amount of Rs.1000/- was loan amount and not bribe amount. Specific suggestion has been given to P.W.8 that he had

taken a loan of Rs.1000/- from the appellant and despite repeated demand, he did not pay any amount and was avoiding and P.W.8 has denied such

suggestion.

The learned trial Court while considering the defence plea in paragraph 13 of the judgment has held that the most damaging admission in the evidence of D.W.2 was that he had no knowledge about the date and day when the appellant had given the loan of Rs.1000/- to P.W.8. On a plain reading of the evidence of D.W.2, it appears that he has not made any such admission. Therefore, the observation of the learned trial Court on that score is an error of record. The question might arise, if the appellant had extended his helping hands by giving loan of Rs.1000/- to P.W.8 at the time of his need then why P.W.8 would falsely implicate the appellant in a trap case. D.W.2, the Development Officer has stated that the wife of P.W.8 was also an agent and she had taken illegal agency which was brought to the notice of the appellant and agency of P.W.8 was terminated. Therefore, there was no dearth of motive with P.W.8 to falsely implicate the appellant.

When the defence plea is required to be proved by preponderance of probabilities and defence witnesses are entitled to equal treatment with those of the prosecution and Court ought to overcome its traditional and instinctive disbelief in defence witnesses and is required to consider the explanation offered by the accused only on the touchstone of preponderance of probabilities, I find that not only the appellant has taken a specific plea but witness like D.W.2 has stated about the loan transaction and witness like P.W.6 has stated about the disclosure made by the appellant relating to non-repayment of loan amount of Rs.1000/- by P.W.8 to him and the conduct of the appellant in speaking out loudly after the trap that the amount of Rs.1000/- was the loan amount and not the bribe amount and when the purpose for which demand is stated to have been made by the appellant to P.W.8 appears to be a doubtful feature as already discussed, I am of the humble view that the appellant has successfully discharged his burden by displacing the statutory presumption raised under section 20 of the 1988 Act. Even though acceptance of Rs.1000/- from P.W.8 by the appellant is not disputed so also the recovery of that amount from the appellant, which has been deposed to by a number of prosecution witnesses but since the demand of bribe aspect is shrouded in mystery which is the gravamen of the offences charged and the defence plea is acceptable and the reasonings assigned by the learned trial Court is faulty, in my considered opinion, guilt of the appellant has not been established beyond all reasonable doubt and therefore, I am constrained to give benefit of doubt to the appellant.

12. 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 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.