
(2007) 04 JH CK 0076
In the Jharkhand High Court
Case No : Criminal Appeal No. 300 of 2001

SK. Mohammed Minhazuddin	Vs	APPELLANT
The State of Jharkhand (C.B.I.)		RESPONDENT

Date of Decision : 09-04-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Prevention of Corruption Act, 1988 — Section 11, 13(1), 13(2), 17, 19

Citation : (2007) 2 BLJR 1934 : (2007) 4 Crimes 112

Hon'ble Judges : D.K. Sinha, J

Bench : Single Bench

Advocate : B.M. Tripathi and J. Tripathi, for the Appellant; Rajesh Kumar, Deepak Kr. Bharati, Amit Kumar and M.K. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Sinha, J.—The present appeal has been directed against the judgment of conviction under Sections 7 and 13(2) of the Prevention of Corruption Act 1988 whereby the appellant Sk. Md. Minhazuddin has been sentenced to undergo rigorous imprisonment for one year and fine of Rs. 700/- with stipulation to undergo imprisonment for one month in default, further rigorous imprisonment for two years and line of Rs. 1400/- with stipulation to undergo imprisonment for the additional period of two months respectively.

2. The prosecution story lies in a narrow compass.

One Sri. S.N. Singh, retired Lieutenant Colonel (P.W.7) applied for telephone connection in his office cum residence in the month of August, 1989 and in this connection he requested his near relative i.e. the complainant, Sri. Ashok Kumar Singh (P.W.8) to follow up for connection. The complainant though contacted the officers of the Telephone department but without substantial progress. Ultimately on 14.12.1989 when the complainant (P.W.8) contacted the appellant (Telephone Inspector), he was asked to spend Rs. 1000/- for telephone connection within two days and accordingly suggested to bring the said amount by the following

day at 10.30 a.m. However, on persuasion it was alleged that the appellant agreed to accept a sum of Rs. 700/-. Since the complainant was not inclined to pay the demanded gratification, he presented a written complaint before the Superintendent of Police (CBI)/Ranchi on 14.12.1989. Upon being satisfied with the preliminary enquiry report, the S.P. CBI Ranchi ordered for registration of a regular Case against the appellant and directed Shri. B.N. Sharma, Inspector/CBI/Ranchi (P.W.9.) to constitute a trap team for nabbing the appellant red-handed. In this connection the services of the witnesses, Sri. S.K. Pandit (P.W.1) Sr. Clerk, OE Section, CCL, Darbhanga House, Ranchi and Sri. S.P. Choudhary, (P.W.3) UDC, SE Administration, CCL, Darbhanga House, Ranchi were taken who ultimately were made the members of the Trap Team. Both the witnesses assembled in the office Chamber of SP/CBI/Ranchi on 15.12.1989 where the complainant was introduced to them and the purpose of such assembly was explained to all. The complaint petition (Ext.7) of Sri. Ashok Kumar Singh (P.W.8) was read over and also individually perused by both the witnesses. The witnesses made some queries from the complainant in order to satisfy themselves as regards genuineness of the complaint. Thereafter the process of laying the trap was explained by Shri B.N. Sharma (P.W.9) to the complainant and the witnesses and also the reaction of Phenolphthalein powder with the solution of sodium carbonate was demonstrated before them whereby the solution of sodium carbonate turned pink coming in contact with Phenolphthalein powder. The pink solution was collected in a clean glass bottle which was duly sealed and signed by the complainant, the witnesses and other members of the trap party. The piece of paper used in demonstration was also kept in an envelope which was also sealed and signed by the witnesses. The complainant produced 7 G.C. notes. of 100/- each with the number of each note recorded. All the seven G.C. Note were treated with the Phenolphthalein powder. The residual phenolphthalein powder was kept in separate envelope which was also sealed and signed. Thereafter the witnesses were asked to ensure that there was nothing in their pockets except their identity cards, pens etc. All the seven notes total Rs. 700/- treated with Phenolphthalein powder were delivered to the complainant to keep with him with the caution to deliver the same only on demand by the appellant and not otherwise and the witnesses and other members of the Trap team were asked to remain vigilant. And try to listen the interaction between the complainant and the appellant and also to watch the transaction of bribe. The complainant was also asked to give a signal by raising his right hand over his head as soon as bribe money delivered by him was accepted by the appellant. The trap team was equally asked to rush up towards the spot as soon as signal was given by the complainant. A pre-trap memorandum was prepared on 15.12.1989 at 10.30 a.m. which was signed by the CBI officers of the trap team, witnesses and the complainant. All the witnesses and complainant arrived near the Telephone Exchange, Ranchi where the appellant had asked the complainant to come with bribe money. The complainant arrived in the premises of the Telephone Exchange the scheduled time on 15.12.1989 closely followed by both the witnesses and other members of the trap team. The appellant came across

the complainant near the entrance of the main building of Telephone Exchange. When the complainant pretended to offer by taking out the bribe money on the subjective satisfaction of the appellant, the latter assured the complainant that his work would be done shortly and proposed to visit a hotel where he would accept money by enjoying tea together. The aforesaid conversation was heard by both the independent witnesses as well as the other members of trap team. The complainant as well as the appellant moved towards Maharaja hotel situated at the distance of about 100 yards away in the right side and occupied their seats. The witnesses followed them at some distance who also occupied their seats and took their position facing both the complainant and the appellant. The appellant made some casual conversation with the complainant and then demanded bribe amount. The complainant then took out seven G.C. notes of Rs. 100 each duly treated with Phenolphthalein Powder from his upper pocket of wearing bush-shirt and offered to which the appellant accepted the same by his right hand counted the same by using both his hands and thereafter put it in his left side pocket of full pant. The whole transaction and conversation took place within sight and hearing of the independent witnesses and the other members of the trap team. The complainant then gave the pre-fixed signal to the members of the trap team who immediately rushed and challenged the appellant of having accepted illegal gratification from the complainant, by disclosing the identity of each of them. Sri. B.N. Singh (P.W.9) asked the appellant to produce the accepted bribe money as a result of which he blushed and reluctantly took out the bribe money from his pocket and put it on the table. The witness, Sri. S.P. Choudhury (P.W.3) was asked to compare the number of the said G.C. notes presented by the appellant with the numbers mentioned in the memorandum prepared earlier, which exactly tallied. The G.C. notes recovered from the possession of the appellant were kept in an envelope. The fingers of left and right hands of the appellant were washed separately and when mixed with the solution of sodium carbonate both the samples of solution turned pink. These solutions were kept in separate glass breaker. After such incident when the crowd started coming in the hotel it was difficult for the CBI officials to prepare a detailed post trap memorandum and also to observe other formalities like sealing of the notes, taking out the wearing full pant of the appellant for washing the pockets etc. The appellant was taken into custody and brought to the CBI Office, Ranchi for completing the formalities where his wearing full pant was obtained and when it's left pocket was washed and put into the solution of sodium carbonate its colour changed into pink. The solution was preserved in a clean glass bottle, sealed and signed by all. The wearing of the full pant of the appellant was also kept separately in an envelope which was sealed and signed by all. The appellant could not give any explanation about demand and acceptance of the bribe money from the complainant, Ashok Kumar Singh. A post trap memorandum was prepared which was read over in presence of all the witnesses including the complainant, signed by all of them and a copy of the memorandum was given to the appellant who put his signature on original as acknowledgement of acceptance. List of search Memorandum of the appellant was also prepared which was signed by the witnesses and the

appellant. The case was already registered (Ext.7) before the SP/CBI/Ranchi vide R.C. 19(A)/89-Ranchi on 15.12.1989 at about 9 a.m. though the complaint was received on 14.12.1989. It was explained therein that by the time preliminary enquiry was completed, it was already late in the evening and as such on the arrival of the S.P./CBI/Ranchi in late evening of 14.12.1989 the case was registered on 15.12.1989.

3. The police after investigation submitted chargesheet against the appellant u/s 7 and 13(2) of the Prevention of Corruption Act 1988 and accordingly, cognizance of the offence was taken. The CBI prosecution in support of its case produced and examined as many as 10 witnesses viz P.W.1 S.K. Pandit, P.W.2 Jit Ram (tendered) P.W.3 Shankar Prasad Chowdhury (tendered) P.W.4 A. Chako, P.W.5 M.L. Sahani, P.W.6 Vinay Kumar Sharma, P.W.7 Lt. Col. S.N. Singh, P.W.8 Ashok Kumar Singh, P.W.9 Virendra Nath Sharma, P.W.10 Digvijay Bahadur Singh, Dy. S.P. Besides a good number of documentary evidence as well as material exhibits were proved by the prosecution. The specific defence of the appellant before the trial court was denial of the charge and that he was made the escape goat to screen the main culprit Shir M.L. Sahani JTO in the Telephone Department.

4. Mr. B.M. Tripathi, the learned Counsel appearing for the appellant submitted that the very basis of the prosecution of the appellant is unsustainable on account of the facts on record that the complainant, Ashok Kumar Singh, (P.W.8) in course of his evidence before the Special Judge, C.B.I. was unfavourable to the prosecution. He testified that the appellant had never demanded any amount from him as gratification. Even he could not identify the appellant in dock when called upon to do so and on this ground alone the conviction of the appellant is unwarranted as neither demand of gratification nor its acceptance by the appellant has been proved in the statements of any of the independent witnesses. Mr. Tripathi added that in course of preliminary enquiry no attempt was made by Sri. B.N. Singh, Inspector CBI to verify as to whether the appellant had actually demanded gratification from the complainant (P.W. 8) for the telephone connection or not.

5. Advancing his argument Mr. Tripathi submitted that no extra precaution was taken by the CBI Inspector while preparing the pre-trap memorandum by preserving and scaling the residue powder of phenolphthalein to avoid any mischief. Similarly no formality was done at the place of alleged trap since no post trap memorandum was prepared there and accordingly, no seizure of either alleged notes of Rs 700/- (seven notes of Rs. 100/- each) was prepared or the solution of sodium carbonate, which turned pink when brought in contact with the right hand of the appellant. The independent witnesses produced and examined on behalf of the CBI Prosecution including the informant P.W.8 did not identify the appellant and therefore, the prosecution failed to prove charge.

6. Mr. Tripathi further added that, the independent witness P.W.1 Sri. S.K. Pandit testified that the CBI people though had seized the bribe money from the

possession of the appellant but the numbers of the G.C. notes were not recorded in the pre-trap memorandum. Similarly, no specific mark was given on the alleged notes which casts doubt that the alleged recovery of the notes from the possession of the appellant were not such which were given by the complainant. Mr. Tripathi pointed out that telephone connection was already installed in the office cum residence of Lt. Colonel. Sri. S.N. Singh (P.W.7) at 10.30 a.m. it self on 15.12.198, whereas the alleged trap of the appellant was made on the same day about 10.45 a.m. and therefore, it cannot be inferred that money delivered to the appellant was paid by way of award/ reward. Since the complainant (P.W.8) was declared hostile so demand of gratification from him and its acceptance by the appellant could not be proved and for that the appellant had to face ordeal of trial for long 12 years for no fault of his and therefore, the judgment of conviction and order of sentence passed against the appellant under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 is liable to be set aside.

7. For better appreciation it is imperative to critically examine the evidence of the statements of the prosecution witnesses. P.W.1 Sri. S.K. Pandit, a Sr. Clerk, in the CCL, Ranchi, was requisitioned by the SP/CBI/Ranchi to witness the event of trap. He admitted having being the witness of the pre trap demonstration and further admitted having signed over the sealed paper attached with the bottle, containing the solution of sodium carbonate which turned pink coming in contact with the powder. He also admitted that the complainant, Ashok Kumar Singh presented 7 notes of Rs. 100/- each to the CBI Officer which were treated with Phenolphthalein powder. It was cautioned that the said notes were to be given as bribe only when demanded by the appellant. He put his signature on the pre-trap memorandum. He testified having visited the outskirts of the office of the appellant with S.P. Chowdhury (P.W. 3), complainant and other members of the trap team. The witness testified in his evidence as to how the appellant responded on the arrival of the complainant. He testified that the appellant and the other members of the trap team took their respective position. The witness further added that the complainant met the appellant and the latter enquired as to whether he had brought the money or not? When the complainant (P.W.8) answered in the affirmative the appellant asked him to accompany to a hotel. Accordingly, the appellant and the complainant went to a nearby hotel for taking tea where the members of the trap team followed. They occupied their different seats and enjoyed tea. The witness further admitted having heard the conversation between the appellant and complainant. The appellant demanded the bribe amount and in response, the complainant (P.W.8) A.K. Singh delivered the seven G.C notes, earlier treated with Phenolphthalein powder. The appellant received the said notes from his right hand and kept the same in the pocket of his full pant. On the signal there being given by the complainant, the CBI people trapped the appellant and recovered the money from his possession. The number of each G.C. note was compared with its numbers mentioned in the pre-trap memorandum and it were tallied. The appellant was taken to the CBI office and when his hands were washed with the solution of sodium carbonate its, colour

turned pink. The solution was preserved in two different bottles and sealed. He also put his signature on it (Ext. 1/D). The G.C. notes recovered from the possession of the appellant were sealed under cover and he put his signature there on (Ext.1/E). Similarly the witness proved the seizure list (Ext.F.) of the full pant of the appellant and testified his signature (Ext.1/F) on the seizure list of the solution of sodium carbonate which turned pink coming in contact with the pocket of the said full pant of the appellant.

8. P.W.2 Jitan Ram and P.W.3 Shankar Prasad Chowdhury were unfavourable to the prosecution hence were declared hostile and nothing material could be elicited by the defence in their cross examination.

9. P.W.4. Mrs. S. Chako a formal witness was the steno of the Vigilance Officer of Telecommunication Division Patna Circle during 1988-90 who proved the sanctioned order which was typed by her on the dictation of Mr. S.P. Srivastava Vigilance Officer and it was signed by Rustam Ali, C.G.M. Telecommunication which was marked Ext.2.

10. P.W.5 M.L. Sahani was the Junior Telecommunication Officer at the relevant time of the occurrence. He admitted that the appellant was posted under him as Telephone Inspector. He admitted that Lt. Colonel Sri. S.N. Singh had filed an application on 21.8.1989 for telephone connection and his application was put under waiting list. The application was marked Ext. "X" for identification. Similarly the demand note of Rs. 1200/- issued on 7.12.1989 was marked Ext. X/1. Apprising the procedure of granting telephone connection the witness narrated that the applicant was required to deposit the amount on issuance of demand note and on the receipt of cash payment against the demand note the telephone advice note used to be issued. He proved the telephone advice note Ext.3. He further proved Jamper slip in the pen and signature of the appellant, (Ext.4), which was used to be issued only in the case of installation of a new telephone connection. He further proved the memo in respect of the telephone connection (Ext.5/1). The witness deposed that prior to installation of telephone connection, one Sri. A.K. Singh representative of the applicant Sri. S.N. Singh had contacted him to whom he had assured that on receipt of the advice note from the office of SDO Phones, he would get his work done. The new connection of telephone was installed by Ram Jitan Prasad in the house of the applicant, Sri. S.N. Singh. The witness affirmed that he was apprised by the SDO phones on 15.12.1989 at about 10.30 a.m. that his subordinate, Minhazuddin (appellant) was trapped by the CBI while accepting bribe. In cross examination he could not specify as to whether the telephone connection was installed in the house of the Lt. Colonel Sri. S.N. Singh prior to the trap of the appellant or thereafter after his trap. In the cross-examination the witness admitted that on 11.12.1989 he had received advice note for the telephone connection in the house of Sri. S.N. Singh to which he had entrusted the work for telephone connection to the appellant. The witness further admitted that the appellant had issued Jamper slip for the new connection on 13.12.1989 and further issued requisition slip for the delivery

of telephone set and much prior to that advice note was issued in accordance with the process by the appellant before 13.12.1989. There remained the work of line man to connect the telephone set with the telephone line. He further admitted that the telephone with its connection was installed before the appellant was trapped taking gratification. However, the witness testified that the telephone line was connected on 15.12.1989 itself but he could not say the exact time of such connection.

11. P.W.6 Vinay Kumar Sharma was the owner of the Maharaj Hotel. He simply deposed that the CBI had trapped a person who was an employee of Telephone Department. To more specific he deposed in the cross examination that when the appellant came out from his hotel to wash his hands he was trapped by the CBI who took him away in his vehicle and that no formality was done in his presence.

12. P.W.7, Lt. Col. Sri. S.N. Singh was an important witness being the applicant for the telephone connection. He testified that he was running Bihar Security and Intelligence Agency in the House No. 9. Dippti Para, Ranchi in December, 1989. He was in need of a telephone connection and for that he had applied in the Month of August 1989 to the SDO Telephones North, Ranchi. As he had to pursue his application for the telephone connection he asked his brother-in-law. Sri. A.K. Singh to get his work done but after some time Sri. A.K. Singh apprised that though all the paper formalities had been completed but the Telephone Inspector, Minhazuddin (appellant) was demanding Rs. 700/- as bribe and that the appellant was not inclined to do his work without bribe. He narrated that he refused and he along with A.K. Singh went to the office of CBI, Ranchi on 14.12.1989. As the SP/CBI was not available he met, Sri. R.K. Singh presuming him to be S.P. Incharge, CBI, who entrusted Sri. B.N. Sharma (P.W.9) to verify the veracity of the application. He along with Ashok Singh met Sri. B.N. Sharma and upon satisfaction of Shri Sharma a written complaint was presented which was scribed by him and A.K. Singh (P.W.8) put his signature as complaint (Ext.6). After preliminary enquiry Sri. A.K. Singh was advised to come on the following day i.e. 15.12.1989 at about 10 a.m. with 700/- rupees. Accordingly, he delivered Rs. 700/- to A.K. Singh (P.W.8) and asked him to visit CBI office. In the cross examination the witness deposed that pursuant to the demand note received by him he had deposited the amount but he could not remember the exact date of such deposit. In the cross examination he further admitted that though he found the telephone set and other connecting materials in his house when he returned back from the CBI Office on 14.12.1989 but the telephone line was not connected till 15.12.1989.

13. The statement of P.W.8 Sri. A.K. Singh is important since he was the complainant of the present case. He deposed that his brother-in-law Lt. Colonel No. 9 situated at Dippti Para and for that he had applied in the telephone department in the Month of August, 1989. When he suffered delay in such telephone connection he was asked by Sri. S.N. Singh (P.W.7) to pursue the matter. Pursuant to that he visited telephone office where he came across Mr.

M.L. Sahani. J.T.O (P.W5) and the appellant Miahazuddin. He was apprised by Mr. M.L. Sahani that since there was no cable in Diptti para and therefore, delay may be caused and for that Mr. Sahani demanded Rs. 1000/-. In core question the witness replied that money was not demanded by the appellant rather he was sitting there when Mr. Sahani demanded. This witness was declared hostile by the prosecution CBI since he was not supporting his earlier version. He proved his complaint petition bearing his signature which was scribed by Sri. S.N. Singh. He clarified that he put signature on the complaint petition presuming that the same was drawn as per his statement by Shri S.N. Singh (P.W.7). The conduct and demeanour during his cross-examination on behalf of the prosecution has been recorded by the trial court. This witness tried to mislead the court by his deposition partly in favour of the prosecution and partly in favour of the appellant. This apart disowning his statement before the CBI, but admitted having delivered Rs. 700/- i.e. seven notes of Rs. 100/- each to the CBI people which were treated with Phenolphthalein powder and returned to him. On the point of identification, he expressed his inability to identify the appellant on account of passage of time though at the relevant time the appellant was present in the dock. Ultimately, he admitted his earlier statement before the CBI that when he proceeded towards the telephone exchange compound he was followed by the independent witnesses viz. Sri. S.K. Pandit (P.W.1) and Sri. S.P. Chowdhury (P.W.3). He admitted having stated that he was proposed by the appellant to come to a hotel to have a tea where he would accept the bribe money and that he assured that his work would be done sooner. He further admitted having stated that on such proposal of the appellant he went to a hotel with the appellant which was situated at the distance of about 100 yards from the telephone exchange followed by the members of the trap team of CBI and two independent witnesses. In para-42 the witness fairly accepted having stated in his earlier statement that he took out seven notes of Rs. 100/- each duly treated with Phenolphthalein powder and delivered to the appellant and it was accepted by the appellant by his right hand who counted the notes with both of his hands and kept it in the pocket of his full pant. In the meantime, CBI Inspector Sri. B.N. Sharma and the other members of the trap team appeared at the scene. He admitted that the appellant was trapped by them and further added that when the bribe money was recovered from the possession of the appellant the number of the notes were compared by Sri. S.K. Pandit (P.W.1) and Sri. S.P. Chowdhury (P.W.3) (both independent witnesses) with the (Pre trap) memorandum. He admitted that number of notes were mentioned earlier in the memo in the office of the CBI and he admitted his signature on material Exts I to VII which were the seven notes of Rs. 100/- each recovered from the possession of the appellant. On compare the numbers of the notes it were found same which were earlier recorded. He admitted that both the hands of the appellant were washed separately in the solution of sodium carbonate which turned pink. He further admitted that post trap recovery memo was prepared in the CBI Office after the occurrence which was read over and after finding it correct it was signed by all the witnesses including him and the same was proved. The witness

in para-57 has stated, an English translation version is being quoted:

It was not a fact that the accused/appellant Minhazuddin, who is present in the court, had demanded Rs. 700/- from him for installation of telephone line.

But at the same time in para-58 the witness deposed: (English translation version)

It is true that he had delivered Rs. 700/- to the appellant as bribe and that the said amount was recovered from the possession of the appellant.

In cross examination on behalf of the appellant the witness testified that he had delivered the money to the appellant for its transfer to Sahanijee (P.W5) who was an officer in the office of the appellant and that it was Sahanijee and not the appellant Minhazuddin who had demanded bribe from him and that he was asked by Sahaniji to deliver the bribe amount to the appellant.

14. P.W.9 Birendra Nath Sharma, the Inspector CBI (Ante corruption Bureau) had made preliminary enquiry on the instruction of the SP/CBI/Ranchi. On receipt of the complaint from the complainant. Ashok Kr. Singh (P.W.8) and upon being satisfied on the approval of the SP/CBI/Ranchi RC Case No. 19(A)/1989 was instituted on 15.12.1989. He testified before the trial court that on his dictation the pre-trap memorandum was prepared and typed which was signed by him as well as other live members of the trap team including Sri. S.K. Pandit (P.W.1), Sri. S.P. Chowdhury (P.W.3), the complainant Ashok Kr. Singh (P.W.8) besides the CBI Officials. He proved pre trap memorandum, marked as Ext.8. He added that the contents of the pre-trap memorandum were read over and explained to the witnesses and upon being satisfied the witnesses including P.W.8 put their respective signatures. After preparation of the memorandum, a trap was laid and all the minute details of the process of the trap were explained and read over to the witnesses. The other officers of the trap team were Sri. Digvijay Bahadur Singh, Inspect, CBI (P.W.10), Sri. S.K. Sharma and the witness himself. After trap was successfully laid and the appellant was apprehended with the bribe money, he testified that post trap memorandum was prepared (Ext.9) duly signed by all the witnesses and a copy of which was given to the appellant after obtaining his acknowledgement by putting his signature and date (Ext.9/1). He further testified that the complainant was advised, after he filed the complaint, to come with the money demanded by the appellant on 15.12.1989 at 9.45 a.m. and pursuant to that the complainant arrived in time with 700/-Rupees, Seven notes of the denomination of Rs. 100/- each which were presented by the complainant, Ashok Kumar Singh (P.W.8), were treated with phenolphthalein powder with its demonstration as to how the colour of the solution of sodium carbonate turned pink, was made. The witness narrated in details of the sequence of Trap as to how the appellant was caught red handed after he accepted the G.C. notes delivered by the complainant as bribe. The witness testified the minute details of the entire episode of demand and acceptance of bribe consistently with other witnesses P.W.1 Sri. S.K. Pandit, Digvijay Bahadur

Singh (P.W.10) Investigating Officer and the complainant P.W.8. during his cross examination. He testified that it was not a fact that the appellant did not demand illegal gratification from the complainant. He proved search memorandum in respect of the personal search of the appellant (Ext.10), a copy of which was given to the appellant with his acknowledgement. The witness narrated that it was the premises of telephone exchange where the complainant met the appellant and that at Maharaj hotel from where bribe amount was recovered from the possession of the appellant. The hotel was open for the public and many customers were there. Admittedly, none of the customers was made witnesses to the recovery of bribe money. The recovered notes were made to the custody of P.W.3, S.P. Chowdhury who delivered the same at the CBI Office which were kept in sealed cover with the signatures of the members of the trap team including of the complainant obtained thereon. When the attention of the witness was attracted, he clearly testified by denying that the illegal gratification was demanded from the complainant by Sri. Sahani JTO rather it was a fact that the complainant delivered the money to the appellant.

15. P.W.10. Digvijay Bahadur Singh Inspector of CBI was the Investigating Officer of the case. While supporting the statement of other material witnesses such as P.W.1. S.K. Pandit, P.W.9, B.N. Sharma and partly of the complainant P.W.8. A.K. Singh right from the presentation of complaint by the complainant, laying a trap team for nabbing the culprits with the demonstration of the reaction of Phenolphthalein powder with the solution of sodium carbonate until the demand of bribe money from the complainant and acceptance by the appellant. To be more specific the witness testified that on demand by the appellant from the complainant at Maharaja Hotel, he took out Rs. 700/- which was treated by Phenolphthalein powder, from the left side pocket of his bush shirt and delivered it to the appellant by his right hand which was accepted by the appellant by his right hand. The notes were counted by the appellant by both his hands and upon being satisfied he kept the amount in the left pocket of his full pant. On the Signal there being given by the complainant by raising his right hand. P.W.9, Sri. B.N. Sharma immediately rushed there and challenged the appellant by raising the right hand of the appellant and disclosing their identities as the CBI Officials. On demand the appellant took out the money which he had received from the complainant and put up on the table. The notes were sealed in the office of the CBI. He proved the material Exts. He further testified that in course of investigation the sample of sodium carbonate solution preserved by washing the hands of the appellant were sent to the Central Forensic Science Laboratory, Calcutta for chemical test and also obtained sanction for initiating prosecution against the appellant u/s 19 of the Prevention of Corruption Act 1988. He identified the appellant in the Dock. He further admitted that he was an eye witness of the occurrence as well as the Investigating Officer of the case. He had taken the charge of investigation on 18.12.1989. The witness clearly affirmed the compliance of the provision of Section 17 of the Act that though he was inspector of the CBI/Ranchi but on the instruction of the then SP/CBI Ranchi he took up

the investigation of the case. After investigation he submitted chargesheet u/s 7 and 13(1)(d) of the Prevention of Corruption Act, 1988 against the appellant.

16. The statements of the appellant recorded u/s 313 of the Cr.P.C. speaks that all the incriminating materials collected and recorded during his trial were pointed out before him but his defence was of evasive denial of the incriminating materials of accepting bribe. On the other hand he explained that a man came to him and put the money on his table asking him to deliver the same to one Sahani Saheb and when he refused to accept the money from such person the CBI People came and forcibly put the same in his hand and asked him to count and thereafter he was arrested. He admitted that his hands were washed in the CBI office. Bare perusal of the statements of the appellant indicate that he was very conscious and instead of giving relevant answer put to him in his statement recorded u/s 313 Cr.P.C. to the questions by the trial court he made evasive denial in his -exculpatory statements.

17. Mr. B.M. Tripathi, the learned Counsel, emphasized that the appellant was consistent in the trial court the Rs. 700/- was put on his table to deliver it to Mr. M.L. Sahani JTO and that he was not at all beneficiary of the alleged amount. The appellant was further consistent in his statements recorded u/s 313 Cr.P.C. that he had neither demanded bribe nor accepted the same which was placed before him on the table and he was asked by the CBI officials forcibly to count the same as a result of which his fingers stuck with the dust of Phenolphthalein powder and when his hands were washed and mixed with solution of sodium carbonate reaction appeared with the change in its colour. Mr. Tripathi added that the prosecution failed to prove the demand of bribe from the complainant and its acceptance by the appellant. Mr. Tripathi further submitted that similar situation fell for consideration before the Apex Court reported in T. Subramanian Vs. State of Tamil Nadu, and the Court in T. Subramanian v. The State of Tamil Nadu observed:

Mere receipt of Rs. 200/- by the appellant from P.W.1 on 10.7.1987(admitted by the appellant) will not be sufficient to fasten guilt u/s 5(1)(a) or Section 5(1)(d) of the Act, in the absence of any evidence of demand and acceptance of the amount as illegal gratification. If the amount had been paid as lease rent arrears due to the temple or even if it was not so paid, but the accused was made to believe that the payment was towards lease rent due to the temple, he cannot be said to have committed any offence. If the reason for receiving the amount is explained and the explanation is probable and reasonable, then the appellant had to be acquitted.

18. Mr. Tripathi placed his reliance upon the decision of this Court reported in 2004 (1) ECC 161 (Jhr). This court in Brij Bhushan Prasad v. State of Bihar observed:

So far as the decision relied by the CBI in the case of Madhukar Bhaskarrao Joshi Vs. State of Maharashtra, is concerned, it has been held by the Supreme Court

that once prosecution has established that gratification in any form cash or kind had been paid or accepted by a public servant the Court is under a legal compulsion to presume that the said gratification was paid or accepted as a motive or reward to do any official act.

But in the present case the prosecution has not been able to establish the facts that money which was accepted by the appellant was a bribe money or it was gratification, therefore, the decision in the case of Madhukar Bhaskarrao Joshi Vs. State of Maharashtra, does not apply in this case. Similarly the decision in the case of State of A.P. v. Kemmaraju Gopala Kroshna Murthy, reported in 2000 (9) SCC 752 which is also in the same line is not applicable in the facts and circumstances of the case.

19. Finally Mr. Tripathi submitted that acceptance of the bribe money on the alleged demand from the complainant is not sufficient to prove the charges under Sections 7 and 13(2)(d) of the Prevention of Corruption Act. What the prosecution is required to do is to prove that the practice adopted by the appellant was corrupt and he had misused his post and position for the purpose of providing telephone connection to Lt. Col. Sri. S.N. Singh. Mr. Tripathy submitted that the Bombay High Court in Dhirajlal Chatrabhuj Ratnagrahi Vs. The State of Maharashtra, observed:

...it would be insufficient for the prosecution to merely establish that a certain consideration was asked for and that it was received by him. The gravamen of the charge essentially requires that the means adopted are corrupt or illegal or that he has misused his position for purpose of securing the consideration in question. If the prosecution merely establishes the receipt as has happened in the present case, it would be wholly insufficient because there are many possible reasons why the accused could have received the money or articles. It is only when there is a nexus with corruption, illegality or misuse of position which is a matter of fact and which must be conclusively established in addition to the receipt that an offence can be said to have been made out.

20. Concluding his arguments Mr. Tripathi, submitted that by the time the alleged money was recovered the telephone connection was already installed in the office-cum-residence of. Lt. Col. S.N. Singh (P.W.7) which can be evident from the statements of P.W.5, M.L. Sahani, JTO, P.W. 7, Lt. Col. Sri. S.N. Singh and P.W.8 Ashok Kr. Singh (Complainant). No verification was made in this regard by the Investigating Officer in course of investigation to ascertain this fact and under the circumstances the question of demand of bribe money or its acceptance by the appellant did not arise at all, therefore, the order of conviction and sentence recorded against the appellant for the alleged charge u/s 7 and 13(2)(d) of the P.C. Act by the Special Judge, Ranchi is unsustainable and hence it be set aside by allowing this appeal.

21. Mr. Deepak Kr. Bharati, the learned J.C. to S.C. (CBI) submitted that the trap was laid by the CBI only after receipt of the complainant from the complainant,

Ashok Kr. Singh (P.W.8) alleging that the appellant was demanding Rs. 700/- for immediate connection of the telephone on the application of Lt. Col. S.N. Singh (P.W.7). After preliminary enquiry by P.W. 9, B.N. Sharma the then inspector, CBI a trap was successfully laid and the appellant was apprehended red handed accepting the Phenolphthalein powder treated 7 notes of one hundred each being the bribe money. The sodium carbonate solution test by asking the appellant to deep his fingers was made only with a view to ascertain as to whether the appellant had accepted the treated notes and when the said notes recovered were compared in the presence of independent witnesses its numbers tallied with that of earlier noted by the trap team. The competent authority i.e. CGM, Telephone, Bihar Circle, Patna accorded sanction u/s 19(1)(c) of the Prevention of Corruption Act 1988 for the prosecution of the appellant. SK Mohammed Minhazuddin only upon being satisfied that the appellant by adopting illegal means and also by abusing the official position as a public servant demanded and accepted Rs. 700/- as a bribe from Sri. A.K. Singh (complainant). The sanction order (Ext.2) was accorded only after subjective satisfaction of an authority competent to take disciplinary action against the appellant including his removal from service. Admittedly, appellant was phone inspector at the relevant time. Mr. Deepak Kr. Bharati submitted that in *B. Nona v. State of Kerala* and *Anr.* reported in 2007(1) JLJR 116 (S.C) the Supreme Court observed:

The evidence shows that when P.W.1 told the accused that he had brought the money as directed by the accused, the accused asked PW-1 to take out and give the same to him. When it is proved that there was voluntary and conscious acceptance of the money, there is no further burden cast on the prosecution to prove by direct evidence, the demand or motive. It has only to be deduced from the facts and circumstances obtained in the particular case. It was held by this Court in *Madhukar Bhaskarrao Joshi Vs. State of Maharashtra*, as follows:

The premises to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premises is established the inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act. So the word "gratification" need not be stretched to mean reward because reward is the out come of the presumption which the court has to draw on the factual premises that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like "gratification or any valuable thing" if acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word "gratification" must be treated in the context to mean any payment for giving satisfaction to the public servant who received it.

This decision was followed by this Court in *M. Narsinga Rao Vs. State of Andhra Pradesh*, . There is no case of the accused that the said amount was received by him as the amount which he was legally entitled to receive or collect from P.W1. It was held in the decision in *State of A.P. v. Kommaraju Gopala Krishna Murthy*

2000 (9) SCC 752, that when amount is found to have been passed to the public servant the burden is on public servant to establish that was not by way of illegal gratification. That burden was not discharged by the accused.

22. Having regard to the facts and circumstances of the case, arguments advanced on behalf of the parties, the specific defence of the appellant as it appears in his statement recorded u/s 313 of the Cr.P.C. was that a person came to him and delivered the money by putting it on the table and asked him to give it to P.W5 M.L. Sahani. When called upon to answer the incriminating materials appealed on the record that he had demanded Rs. 700/- from the complainant A.K. Singh for quick installation of telephone connection in the office-cum-residence of S.N. Singh and pursuant to that he received the demanded amount to the tune of Rs. 700/- at the suggested date and time, the reply of the appellant was evasive yet no relevant question was put on behalf of the appellant to Mr. Sahani JTO in the witness box. The reply of the appellant was that he refused to accept the bribe money from that person and he was trapped by the CBI people. Similarly in other questions put to him in the same sequence recorded u/s 313 Cr.P.C. the appellant answered that CBI People forced him to count such notes put on the table and took him away with them and finally he answered that he was implicated only with view to screen M.L. Sahani JTO.

23. Admittedly the appellant was phone inspector at the relevant time of trip and the documentary evidence produced on behalf of the prosecution clearly indicates that P.W.7 Lt. Col. S.N. Singh had applied for telephone connection on 21.8.1989 and was allotted waiting list. On 7.12.1989 after lapse of about 3-1/2 months a demand note of Rs. 1200/- was issued against which cash was deposited by the applicant and thereafter SDO telephone issued advice note (Ext.3) and subsequently jumper slip (ext.4). Mr. Sahani P.W.5 has clearly testified that he was in-charge Junior Engineer of North East Area, Ranchi for telephone connection and in such capacity on receipt of the advice note dated 11.12.1989 he entrusted the work of telephone connection to the appellant (Phone Inspector) in the office-cum-residence of the Lt. Col. S.N. Singh (P.W.7). Therefore, it can well be inferred that the appellant was entrusted by authority superior to him to install the telephone connection in the office-cum-residence of the house of P.W.7 S.N. Singh after completion of all documentary formalities including the payment against the advice note. The P.W.7 Mr. Sahani specifically narrated that after entrustment of the work the appellant sent the jumper slip on 13.12.1989 to the Assistant Engineer for supply of telephone set and the proposed telephone number and on the same day the requisition was counter signed by Mr. Sahani. This witness admitted that all the formalities were completed.

24. The complainant (P.W.8) Ashok Kumar Singh was declared hostile who retracted from his earlier statement made in the written complaint duly signed by him but at the same time he proved his signature on the written complaint (Ext.6) which was drawn by P.W.7, Sri. S.N. Singh. In paragraph 42 under the

cross examination of his deposition the complainant (P.W.8) clearly admitted his earlier statement before the Investigating Officer having stated that he took out seven G.C. notes each of one hundred rupees treated with Phenolphthalein powder and made it over to the appellant who accepted the same by his right hand counted the notes and placed the notes in his pocket.

25. The other witnesses such as P.W.1. S.K. Pandit, an independent eye witness as well as the member of trap team, P.W.9 B.N. Sharma, the then Inspector, CBI/Ranchi and P.W.10 Digvijay Bahadur Singh, Investigating Officer have consistently narrated the entire sequence of the trap which was laid by them and the appellant was caught red handed while accepting to the tune of Rs. 700/- given by the complainant (P.W.8). These witnesses had cautioned the complainant that the bribe money was to be given only on demand by the appellant. The witnesses referred to here in above are consistent that the interaction between the complainant and the appellant were audible to them who followed them up to Maharaja hotel and after the trap in the manner indicated above, when the fingers of the appellant were dipped in the solution of sodium carbonate, the solution turned pink. They are consistent that the appellant demanded the bribe and accepted it from complainant. The complainant has testified the demand of bribe and its acceptance by the appellant in the later part of his evidence. No convincing ground has been shown by the appellant of his innocence or any kind of bias against him by the C.B.I.

26. Section 20 of the Prevention of Corruption Act, 1988 deals with presumption where Public servant accepts gratification other than legal remuneration and to quote:

20(1) where, in any trial of an offence punishable u/s 7 or Section 11 or Clause (a) or Clause (b) of Sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be without consideration or for a consideration which he knows to be inadequate.

27. From the facts as well as materials appearing on the record I have no hesitation to observe that the prosecution CBI proved that the appellant was Inspector phone i.e. a public servant at the material time of his trap on 15.12.1989 who accepted/obtained a sum of Rs. 700/- as gratification from the complainant (P.W.8) other than his legal remuneration and the same was accepted for ensuring quick telephone connection in the house of P.W.7, Lt. Col. S.N. Singh who was brother-in-law of the Complainant P.W.8, Ashok Kumar Singh.

28. It was observed by the Apex Court reported in (2000) 9 S.C.C. 752 that when the amount is found to have been passed to the public servant the burden

is on the public servant to establish that it is not by way of illegal gratification.

29. From the above discussions I find that the CBI prosecution has established the charges beyond all reasonable doubts against the appellant under Sections 7 and 13(2) of the Prevention of Corruption Act 1988 in R.C. Case No. 19(A)/89 and that the appellant failed to show grounds for interference in the judgment of his conviction u/s 7 and 13(2) of the P.C. Act and order of sentence passed by the court of Special Judge, CBI, Ranchi therein. There being no merit, this appeal is dismissed affirming the above judgment and order against the appellant.