

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (SJ) No.657 of 2011

Bishnu Deo Ram, S/o late Sukhdeve Ram, R/O Ward No. 3,
Arariya, R.S.3, P.O.+ P.S. Arariya, District-Arariya, Bihar
... Appellant
Versus
The State of Jharkhand through C.B.I. ... Respondent

For the Appellant : Mr. Prashant Pallav, Advocate
For the C.B.I. : Mr. Rohit Sinha, Advocate

PRESENT

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

C.A.V. ON 24.02.2021

PRONOUNCED ON 11.05.2021

Anil Kumar Choudhary, J. Heard the parties through video conferencing.

2. This appeal has been preferred against the Judgment of Conviction and Order of Sentence dated 05.12.2011 passed by the Special Judge, C.B.I., Dhanbad in R.C. Case No.24 (A)/04 R whereby and where under the learned court below has held appellant-convict guilty of the offences punishable under Section 7 and Sections 13 (2) read with Section 13 (1) (d) of Prevention of Corruption Act, 1988 and sentenced him to undergo Simple Imprisonment for one and half years for the offence punishable under Section 13 (2) read with Section 13 (1) (d) of Prevention of Corruption Act, 1988 and further sentenced to Simple Imprisonment of one year for the offence punishable under Section 7 of Prevention of Corruption Act, 1988 and to pay a fine of Rs.1,000/- each for each of the offences i.e. in total Rs.2000/- and in default of payment of fine to undergo Simple

Imprisonment for a period of 15 days for each offences and all the sentences were directed to run concurrently.

3. The case of the prosecution in brief is that the complainant Sohan Prasad Gupta was working as an E.D.M.C., in Raj Chainpur Sub- Post Office, Palamau. The appellant-convict was working as Sub-Divisional Inspector of Post Offices, East Subdivision, Daltonganj. It is alleged that the appellant-convict used to demand illegal gratification of ₹ 2000/- for sending a favourable report to the Superintendent of the Post Offices on the application of the complainant to post the complainant in the vacant post of Postman in I.E. Sudna Branch Post Office. On 25.10.2004 when the complainant approached the appellant-convict, the appellant-convict told the complainant that the complainant has to pay ₹ 700/- as the 1st installment of the bribe amount of ₹ 2000/- and then only the appellant-convict would send the favourable report to the Superintendent of Post Offices. As the complainant did not want to give money, he lodged a complaint with the S.P., C.B.I. Ranchi. The inspector of C.B.I., Ranchi Sri S. K. Sinha verified the facts of the complaint and submitted his report confirming the demand of illegal gratification by the appellant-convict as alleged in the written complaint submitted by the complainant. On the basis of the report submitted by Sri S. K. Sinha this case has been registered. Investigation of the case was entrusted to him. A trap was successfully conducted on 29.10.2004. The appellant-convict was caught red-handed while accepting the bribe amount of Rs.700/. After completion of investigation, charge-sheet for the offences

punishable under Section 7 as well as 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 was submitted against the appellant-convict. Separate charges for the offences punishable under Section 7 and 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 were framed against the appellant-convict to which he pleaded not guilty and thus was put to trial.

4. In support of its case, the prosecution altogether examined 12 witnesses while 2 witnesses were examined on behalf of the defence.

5. Out of the witnesses examined by the prosecution, P.W.6 is the complainant himself. He has stated about the contents of his complaint submitted to the S.P., CBI. He also stated in detail about the pre-trap preparations. He further deposed that they reached the residence of the appellant-convict at 12:30 PM. It is pertinent to mention here that the PW 6 did not mention the date on which they went for the trap. The PW 6 further deposed that upon knocking of the door the appellant-convict came out and enquired as to what the matter was. The P.W.6 wished the appellant-convict and told that he has brought the money demanded by the appellant-convict and offered the appellant-convict to take the said money. The appellant was hesitant to receive the money on seeing P.W.4. The P.W.6 again told that he has brought ₹ 700/- and asked the appellant-convict to take the same and also told that he will pay the remaining amount soon. At which, the appellant convict received the money with his right hand and counted the money using both his hands. He kept the money in the left of pocket of his shirt. The PW6 gave the

signal, upon which the entire team of CBI reached there. The CBI officers caught hold of the hands of the appellant-convict. Upon the fingers of both hands of the appellant-convict being dipped in the white solution; the colour of the solution turned pink. Thereafter the PW5 brought out ₹ 700/- from the pocket of the appellant-convict. The numbers of the notes were tallied. The left pocket of the shirt of the appellant-convict upon being dipped in the solution the colour of the solution turned pink. PW6 identified his signatures on various documents and exhibits. In his cross-examination the PW 5 has stated that he has been working as E.D.M.C. since 28.09.1985. There is no change of place for them. He is working at Chainpur. He submitted the application to the Postal Superintendent 2-3 months before. The Postal Superintendent marked the application of the complainant to the appellant-convict. He submitted a 2nd application to the Postal Superintendent on 25.10.2004. The appellant-convict did not make any demand before 25.10.2004.

6. PW 4 Manish Kumar is an independent witness. He has deposed that on 29.10.2004 he and the PW5 had gone to the CBI office. He has stated in detail about the pre-trap preparations. They reached the house of appellant-convict at 12.15 p.m. The PW4 accompanied the PW-6 to the house of the appellant-convict and knocked his door. As the appellant-convict came out from his house, the PW 6 told the appellant-convict that he has brought ₹ 700/- as told by the appellant-convict. The appellant-convict looked at the PW 4 and told the PW 6 to keep the money as there was no requirement of the same at that time. At this, the

PW 6 told the appellant-convict that he could arrange ₹ 700/- only at that time and offered the appellant-convict to keep the said money and to do his job quickly and also promised to pay the remaining amount quickly. Upon that, the appellant-convict received the money by his right hand and counted the money using both his hands and kept the money in the left upper pocket of his shirt. The PW6 gave the predetermined signal by scratching his hair and all the members of CBI came there. 2 of them held of the wrists of the hands of the appellant-convict. The other independent witness PW5 brought out the money from the pocket of the appellant-convict. Thereafter milky white solution of sodium carbonate was prepared in a glass tumbler and upon the fingers of the appellant-convict being dipped in the said solution the colour of the solution turned pink. Upon search being made by the PW5 from the upper pocket of the appellant-convict ₹ 700/- was recovered. The PW4 and 5 tallied the said notes with the numbers of notes mentioned in the pre-trap memorandum and the recovered notes were the same notes the description of which was made in the pre-trap memorandum. The notes were seized and sealed. In the court he identified the recovered notes upon the sealed packet being opened. The pocket of the shirt of the appellant-convict was also dipped in the sodium carbonate solution and the milky white colour of the solution turned pink. The PW 4 also identified the various objects seized during the trap and the post trap formalities and also identified his signatures upon the same as well as the other documents. In his cross-examination the PW4 has stated that

both he and the PW 5 were working in CCL. The appellant-convict was telling that there was no need of the money at that time on seeing the PW4 being a stranger. The PW 6 told the appellant-convict that he has arranged ₹ 700/- only and offered the appellant-convict to keep the same. Upon the complainant insisting, in presence of PW 4 the appellant-convict received the money.

7. PW5 Prabhash Kumar Rai, is the other independent witnesses who recovered the bribe money from the pocket of the appellant-convict. He has deposed in detail about the pre-trap preparations. They reached near the house of the appellant-convict at about 12 noon. The PW 6 and PW 4 proceeded towards the house of the appellant-convict. They were followed by PW 11- a personnel of CBI. The PW 5 and others were standing on the road in front of the house of the appellant-convict. The PW 6 gave the predetermined signal. After receiving the signal everybody rushed towards the house of the appellant-convict. After entering inside PW 11 and another personnel of CBI caught hold of the wrists of the hands of the appellant-convict. Upon the fingers of both hands of the appellant-convict being dipped in the milky white sodium carbonate solution in separate glass tumblers, the colour of the solutions turned pink. On being asked the appellant-convict disclosed that the money is in his upper shirt pocket. The PW 5 brought out 7 notes of ₹ 100/- denomination each in total ₹ 700/- and the same were seized. They compared the number of the notes with the numbers mentioned in the pre-trap memorandum and found

that they are the same notes. The pocket of the shirt of the appellant-convict was also dipped in the sodium carbonate solution and the colour of the solution also turned pink. The PW5 also identified the seized articles as well as his signatures on various documents which were marked exhibits. In his cross-examination PW5 has stated that he has not heard the appellant-convict demanding the bribe nor he has seen the appellant-convict taking the bribe from the PW 6 and he is not a witness in this respect.

8. PW 11 Rajesh Singh Solanki is an officer of CBI and was part of the trap team. He has deposed about the Pre-trap preparations and further stated that they reached Daltonganj at 12:15 PM. At about 12:30 PM the PW 6 and PW 5 went to the door of the appellant-convict and knocked his door. After that the appellant-convict came out and the PW 6 wished him and told him that as instructed by the appellant-convict PW6 has brought ₹ 700/- and offered the appellant-convict to keep the same and also said that the rest amount will be paid by him later on. On seeing a stranger with PW 6 the appellant-convict victim became annoyed and told the PW 6 to keep the same as there is no requirement of the same at that time. The complainant again insisted, upon which the appellant-convict received ₹ 700/- by his right hand and counted the same by using both his hands and kept the same in the left upper pocket of his shirt. Thereafter the PW 6 gave the signal. The team reached there. The PW8 challenged the appellant-convict of receiving the bribe at which the appellant-convict became worried and told that he has not

demanded the bribe. The PW 11 caught hold of the left wrist while the PW 9 caught hold of the right wrist of the appellant-convict. The PW 11 further stated that upon the fingers of the hands of the appellant-convict being dipped in the sodium carbonate solution the colour of the solution turned from milky white to pink. He also stated that the PW 5 brought out ₹ 700/- from the pocket of the appellant-convict and upon being compared the numbers of the notes tallied with the numbers of the notes mentioned in the pre-trap memorandum. The pocket of the shirt of the appellant-convict upon being dipped in a separate sodium carbonate solution the colour of the solution also turned from milky white to pink. The PW 11 also identified the different objects as well as his signatures on various documents; which were marked exhibits. In his cross-examination PW 11 stated that the complaint was verified by Sri S.K. Sinha, Inspector. At the time of occurrence he was near the gate. He heard the conversation between the complainant and the appellant-convict. He stated before the investigating officer that the conversation and transaction of bribe amount was also clearly over heard and seen by PW 4, PW11 himself and Mukesh Verma. The exchange took place outside the room in the veranda just outside the door. He did not hear or see demand of bribe but the complainant stated that he has brought the money as instructed by the appellant-convict.

9. PW8 Kaushal Kishore Singh is the first Investigating Officer of the case. He was also a member of the trap team. He proved the F.I.R as well as other documents which were marked

exhibits. After registration of the FIR, the investigation of the case was entrusted to the PW8. He further stated about constitution of the trap team. He also stated about the pre-trap formalities. At about 12:30 PM PW6 and the PW4 proceeded to the house of the appellant-convict to discuss about the amount of bribe. After some time the PW6 gave the predetermined signal and the members of the trap team along with the witnesses went towards the house of the appellant-convict. After reaching there PW8 challenged the appellant-convict to admit taking bribe from the PW6. The appellant-convict became nervous and his body became yellow. The appellant-convict said that he did not demand bribe. He further stated that upon the fingers of the appellant-convict as well as the pockets of his shirt being dipped in sodium carbonate solution the colour of the solution turned pink. He also identified various objects as well as his signature on the objects and documents which were marked exhibits. He then stated that upon the numbers of the seized notes from the appellant-convict being compared with the numbers of the notes mentioned in the pre-trap memorandum the numbers tallied. He handed over the investigation of the case to the PW 9. On receiving the signal he came to know that the giving and taking of the bribe has taken place.

10. PW9 Bikas Gupta is also a member of the trap team as well as part investigating officer of the case. He has deposed about the pre-trap preparations. The PW6 and PW4 went to the house of the appellant-convict and knocked his door. Upon the appellant-convict coming out from his house the PW6 intimated

him that as instructed by the appellant-convict, the PW6 has brought ₹ 700/- . On seeing the PW4 the appellant-convict said that there is no requirement of the same and the PW 6 should keep the said money with him. At this the PW 6 told the appellant-convict that now he could arrange only ₹ 700/- and requested the appellant-convict to do his work and the remaining money will be paid by PW 6 soon. The appellant-convict received the money by his right hand and counted the money using both his hands and kept it in the upper pocket of his shirt. Inter alia the PW 9 saw and heard the entire occurrence. After the appellant-convict accepted the money, the PW 6 gave the predetermined signal. All the members of the trap team and the independent witnesses rushed there. Like other witnesses the PW 9 also stated about the appellant-convict becoming nervous upon being challenged by the PW 8 to admit taking bribe and stated that he did not demand bribe and upon the fingers and pocket of the shirt of the appellant-convict being dipped in the sodium carbonate solution, the colour of the solution turned pink. He also stated about the tainted G.C. notes of ₹ 700/-being recovered from the appellant-convict by the PW5 and on being compared with the pre-trap memorandum they were found to be the same notes. He further stated about the post trap formalities and identified his signatures which are marked exhibits. In his cross-examination the PW 9 stated that Sri S.K. Sinha did the verification and he recorded the statement of Sri S.K. Sinha after becoming the Investigating Officer of this case. The occurrence was seen by PW 11, Mukesh Verma and the PW 9. He has

himself seen and heard the occurrence about which he deposed in court. The giving and taking place at the main door of the house of the appellant-convict. He witnessed the occurrence standing outside the boundary wall.

11. PW 12 Sanjay Kumar Sinha is the verifying officer of the complaint. He had stated that upon interrogation of the PW 6 regarding the complaint submitted by him, he recommended for institution of regular case against the appellant-convict. He identified his verification report and the same was marked exhibit. In his cross-examination he had stated that he did not visit the spot for verification.

12. PW 1- M.P. Chattopadhyaya proved the sanction order for the prosecution of the appellant-convict. These sanction order was typed by the PW1 as per the dictation of the Director Postal Services.

13. PW 2 Sheo Kumar Sah proved the file regarding deployment of PW6 which was seized by the CBI. He further stated that on 25.10.2004 the application of the PW6 regarding his absorption was received. The said application was placed before the Postal Superintendent on 26.10.2004 with the endorsement that the earlier application of the PW6 was sent to the Inspector, Daltonganj for the report on 30.7.2004 and the reminder of the same was also given on 12.8.2004 for submitting his report within a week. The reminder letter was received by the appellant-convict himself. In his cross-examination the PW2 has stated that no reply of the reminder dated 12.8.2004 was received by hand delivery on 9.9.2004.

14. PW3 Raj Nath Dubey has identified the file relating to redeployment of PW6 who was E.D.M.C of Sub-Post Office, Raj Chainpur of Daltonganj. He proved the relevant documents relating to absorption of the PW6 which were marked Exhibit 3 series.

15. PW 7 Bimal Chandra Purkil was a Junior Scientific Officer of Central Forensic Science Laboratory, Kolkata. He has proved the report regarding the chemical test of the liquid with which the fingers of the hands and pocket of the appellant-convict were washed and he has further stated that phenolphthalein, sodium carbonate and water were detected in the contents of the said bottles.

16. PW 10 Kaushalendra Kumar Sinha is the Director Postal Services who accorded the sanction for prosecution of the appellant-convict.

17. After completion of the evidence of the prosecution, the statement of the appellant-convict was recorded under Section 313 Cr.P.C. In his statement recorded under Section 313 Cr.P.C., the appellant-convict denied the evidence put forth by the prosecution against him implicating him with this case. He further stated that he was not empowered to do the work for which the PW6 submitted the application and the PW6 could not have been posted in that post as it was a promotional post.

18. In his defence, the appellant-convict also examined two witnesses. D.W.1-Nageshwar Prasad has stated that the appellant-convict was present in Pathak Pagar Post Office on 27.10.2004. DW 2 Budhi Oraon had stated that on 28.10.2004

when the CBI personnel caught hold of the appellant-convict, the DW 2 was present in the residence of the appellant-convict. The DW 2 has not seen the appellant-convict demanding money from the PW6 or receiving money from him. The CBI personnel drove the DW 2 out from the said house. In his cross-examination he had stated that on 29.10.2004 he was in the head office from 10.00 AM to 4.00 PM. He does not know whether on 29.10.2004 the CBI team came or not. He got the information that the appellant-convict was arrested by CBI.

19. The learned trial court, after considering the evidence in the record, held that the evidence put forth by the prosecution is sufficient to establish the fact that the appellant-convict demanded bribe and was caught red-handed while taking the bribe and the bribe money has been recovered from him. Hence, he convicted and sentenced the appellant-convict as already indicated above.

20. At the time of hearing, it was submitted by Mr. Prashant Pallav, the learned counsel appearing for the appellant-convict that the impugned judgment of conviction and order of sentence is bad in law and fact and is against the weight of evidence in the record. It is next submitted by the learned counsel for appellant-convict that the learned trial court failed to consider the fact that there was no occasion for the appellant-convict to demand bribe from the PW6 and as the verifying officer did not go to the appellant-convict nor had any occasion to see him prior to the trap and also the fact that most of the witnesses of the

prosecution have not mentioned as to on which date the alleged trap took place whereas the DW 2 has categorically stated that the said occurrence took place on 28.10.2004; which is not the case of the prosecution, goes to show that the appellant-convict has been fabricated in this case with ulterior motive. It is next submitted by the learned counsel for the appellant-convict that the learned trial court failed to consider the fact that no question was put to the appellant-convict in his statement recorded under section 313 of the Code of Criminal Procedure that the PW6 gave the tainted currency notes of ₹ 700/- to the appellant-convict on 29.10.2004 rather in question no. 7 of the said statement it was asked from the appellant-convict that the said tainted currency notes were given to him by the PW6 on 28.10.2004 whereas charge framed against the appellant-convict goes to show that the alleged occurrence of giving the tainted currency notes by the PW6 to the appellant-convict took place on 29.10.2004 and the learned trial court ought to have held that there is major discrepancy in the evidence put forth by the prosecution vis-à-vis the charge framed against the appellant-convict hence the case of the prosecution is doubtful and thus ought to have acquitted the appellant-convict. It is then submitted that as admitted by the prosecution witnesses themselves, the appellant-convict did not at the first instance accept the money offered by the PW6 and even went on to say that there is no requirement of the said money offered to him by the PW6 at that time; as per the evidence put forth by the prosecution witnesses themselves being the PW6 and PW 4 and the appellant-convict accepted the

money only upon insistence of the PW 6 to receive the said money and as also deposed by the prosecution witnesses themselves inter alia being the PW 8, PW 9 and PW 11 that immediately after being apprehended when the appellant-convict was challenged by the CBI personnel of having received the bribe, the appellant-convict since the very inception took the stand that he never demanded the bribe makes it crystal clear that the appellant-convict did not demand any bribe on the date of the alleged occurrence and in the absence of the essential ingredient of demand of money by the appellant-convict, to constitute the offence punishable under section 7 of the Prevention of Corruption Act, 1988 or for that matter Section 13 (2) of the Prevention of Corruption Act, 1988 read with Section 13 (1) (d) (i) and (ii) of the said Act, no offence under the said penal provisions of law could be established by the prosecution hence the learned court below ought to have acquitted the appellant-convict. To buttress his submissions that in the absence of any evidence regarding demand of bribe by the accused no conviction will ensue learned counsel for the appellant-convict relied upon the judgment of Hon'ble Supreme Court of India in the case of *Satvir Singh v. State of Delhi*, (2014) 13 SCC 143 of paragraph- 34 of which reads as under:

“34. This Court, in K.S. Panduranga case⁶ has held that the demand and acceptance of the amount of illegal gratification by the accused is a condition precedent to constitute an offence, the relevant paragraph in this regard from the above said decision is extracted hereunder: (SCC pp. 740-41, para 39)

“39. Keeping in view that the demand and acceptance of the amount as illegal gratification is a condition precedent for constituting an offence under the Act, it is to be noted that there is a statutory

presumption under Section 20 of the Act which can be dislodged by the accused by bringing on record some evidence, either direct or circumstantial, that money was accepted other than for the motive or the reward as stipulated under Section 7 of the Act. When some explanation is offered, the court is obliged to consider the explanation under Section 20 of the Act and the consideration of the explanation has to be on the touchstone of preponderance of probability. It is not to be proven beyond all reasonable doubt. In the case at hand, we are disposed to think that the explanation offered by the accused does not deserve any acceptance and, accordingly, we find that the finding recorded on that score by the learned trial Judge and the stamp of approval given to the same by the High Court cannot be faulted.”(emphasis supplied)

Mr. Pallav next relied upon the judgment of Hon’ble Supreme Court of India in the case of **P. Satyanarayan Murthy Vs. District Inspector** reported in (2015) 10 SCC 152 wherein in paragraph - 23, the Hon’ble Supreme Court has held that the proof of demand of illegal gratification is the gravamen of the offence punishable under Section 7 and 13 (1) (d) and (ii) of Prevention of Corruption Act, 1988 and in absence thereof, the charge thereof would fail. Paragraphs 24 to 27 of **P. Satyanarayan Murthy Vs. District Inspector (supra)** reads as under:

24. The sheet anchor of the case of the prosecution is the evidence, in the facts and circumstances of the case, of PW 1 S. Udaya Bhaskar. The substance of his testimony, as has been alluded to hereinabove, would disclose qua the aspect of demand, that when the complainant did hand over to the appellant the renewal application, the latter enquired from the complainant as to whether he had brought the amount which he directed him to bring on the previous day, whereupon the complainant took out Rs 500 from the pocket of his shirt and handed over the same to the appellant. Though, a very spirited endeavour has been made by the learned counsel for the State to co-relate this statement of PW 1 S. Udaya Bhaskar to the attendant facts and circumstances including the recovery of this amount from the possession of the appellant by the trap team, identification of the currency notes used in the trap operation and also the chemical reaction of the sodium carbonate solution qua the appellant, we are left unpersuaded to return a finding that the prosecution in the instant case has been able to prove the factum of demand beyond reasonable doubt. Even if the evidence of PW 1 S. Udaya Bhaskar is accepted on the face value, it falls short of the quality and decisiveness of the proof

of demand of illegal gratification as enjoined by law to hold that the offence under Section 7 or Sections 13(1)(d)(i) and (ii) of the Act has been proved. True it is, that on the demise of the complainant, primary evidence, if any, of the demand is not forthcoming. According to the prosecution, the demand had in fact been made on 3-10-1996 by the appellant to the complainant and on his complaint, the trap was laid on the next date i.e. 4-10-1996. However, the testimony of PW 1 S. Udaya Bhaskar does not reproduce the demand allegedly made by the appellant to the complainant which can be construed to be one as contemplated in law to enter a finding that the offence under Section 7 or Sections 13(1)(d)(i) and (ii) of the Act against the appellant has been proved beyond reasonable doubt.

25. In our estimate, to hold on the basis of the evidence on record that the culpability of the appellant under Sections 7 and 13(1)(d)(i) and (ii) has been proved, would be an inferential deduction which is impermissible in law. Noticeably, the High Court had acquitted the appellant of the charge under Section 7 of the Act and the State had accepted the verdict and has not preferred any appeal against the same. The analysis undertaken as hereinabove qua Sections 7 and 13(1)(d)(i) and (ii) of the Act, thus, had been to underscore the indispensability of the proof of demand of illegal gratification.

26. In reiteration of the golden principle which runs through the web of administration of justice in criminal cases, this Court in Sujit Biswas v. State of Assam had held that suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of "may be" true but has to upgrade it in the domain of "must be" true in order to steer clear of any possible surmise or conjecture. It was held, that the court must ensure that miscarriage of justice is avoided and if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused.

27. The materials on record when judged on the touchstone of the legal principles adumbrated hereinabove, leave no manner of doubt that the prosecution, in the instant case, has failed to prove unequivocally, the demand of illegal gratification and, thus, we are constrained to hold that it would be wholly unsafe to sustain the conviction of the appellant under Sections 13(1)(d)(i) and (ii) read with Section 13(2) of the Act as well. In the result, the appeal succeeds. The impugned judgment and order of the High Court is hereby set aside. The appellant is on bail. His bail bond stands discharged. Original record be sent back immediately. (Emphasis supplied)

Mr. Pallav in this respect next relied upon the judgment of Hon'ble Supreme Court of India in the case of *Mukhtiar Singh v. State of Punjab*, (2017) 8 SCC 136, paragraphs 13 and 14 of which reads as under:

13. The indispensability of the proof of demand and illegal gratification in establishing a charge under Sections 7 and 13 of the Act, has by now engaged the attention of this Court on umpteen occasions. In A. Subair v. State of Kerala, this Court propounded that the prosecution in order to

prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and till that is accomplished, the accused should be considered to be innocent. Carrying this enunciation further, it was exposted in State of Kerala v. C.P. Rao that mere recovery by itself of the amount said to have been paid by way of illegal gratification would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

14. *In P. Satyanarayana Murthy, this Court took note of its verdict in B. Jayaraj v. State of A.P. underlining that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It was recounted as well that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. Not only the proof of demand thus was held to be an indispensable essentiality and an inflexible statutory mandate for an offence under Sections 7 and 13 of the Act, it was held as well qua Section 20 of the Act, that any presumption thereunder would arise only on such proof of demand. This Court thus in P. Satyanarayana Murthy on a survey of its earlier decisions on the pre-requisites of Sections 7 and 13 and the proof thereof summed up its conclusions as hereunder: (SCC p. 159, para 23)*

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

Mr. Pallav then submitted that in this case there is absolutely no evidence regarding the demand of illegal gratification. Therefore it is submitted that no offence punishable under Section 7 of the Prevention of Corruption Act, 1988 or for that matter Section 13 (2) of the Prevention of Corruption Act, 1988 read with Section 13 (1) (d) (i) and (ii) of the said Act is made out. It is then submitted that evidence of mere recovery of tainted money with the post trap formalities is by itself not sufficient to constitute the offence punishable under Section 7

of the Prevention of Corruption Act, 1988 or for that matter Section 13 (2) of the Prevention of Corruption Act, 1988 read with Section 13 (1) (d) (i) and (ii) of the said Act, so the appellant-convict be acquitted of the charges by at least giving him the benefit of doubt. It is lastly submitted that the impugned judgment of conviction and order of sentence be set aside and the appellant-convict be acquitted of the charges at least by giving him the benefit of doubt.

21. Mr. Rohit Sinha, the learned counsel for the Central Bureau of Investigation on the other hand defended the impugned judgment of conviction and order of sentence and submitted that as the P.W.4, PW6 and PW11 have categorically deposed about the ingredients of the offences for which the appellant-convict has been convicted and their testimonies have been corroborated by the testimonies of the other witnesses of the prosecution, thus the evidence in the record are sufficient enough to establish the charges for the offences punishable under Section 7 and Sections 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988. It is lastly submitted by Mr. Sinha that as the learned trial court, taking into consideration the evidence in the record having rightly convicted and sentenced the appellant-convict, hence there being no merit in this appeal, the same be dismissed.

22. Having heard the submissions made at the Bar and after going through the evidence in the record, it is crystal clear that there is absolutely no evidence in the record regarding the demand of money by the appellant-convict. The PW 4, PW 6 and PW 11 have categorically stated that initially the appellant-convict refused to

receive the money offered by the PW 6 and only upon insistence of the PW 6 he received the money. Further, as already indicated above the prosecution witnesses themselves have stated that when the appellant-convict were challenged by the personnel of CBI regarding accepting of the bribe from the PW6, the appellant-convict since the beginning pleaded that he did not demand the bribe. The verification officer being the PW 12 never went to the appellant-convict during the verification of the complaint submitted by the PW6 hence he had no occasion either to hear from the appellant-convict as to whether he ever demanded any bribe from the PW6. There is absolutely no substantive evidence in the record regarding the demand of bribe by the appellant-convict. Under such circumstances keeping in view the principle of law settled in the case of **P. Satyanarayan Murthy Vs. District Inspector (supra)**, this court has no hesitation in holding that the evidence in the record is insufficient to establish the essential ingredient of demand of illegal gratification by the appellant-convict, for constituting the offences punishable under section 7 or for that matter section 13 (2) read with section 13 (1) (d) of the Prevention of Corruption Act, 1988. So in the absence of essential ingredient of demand of bribe, the presumption in this case under Section 20 of Prevention of Corruption Act, 1988, in the considered opinion of this Court cannot be drawn. Thus this is a fit case where the appellant-convict be acquitted of the charges framed against him in this case by giving him the benefit of doubt.

23. Accordingly, the impugned Judgment of Conviction and Order of Sentence dated 05.12.2011 passed by the Special Judge, C.B.I.,

Dhanbad in R.C. Case No.24 (A)/04 R is set aside and appellant-convict namely Bishnu Deo Ram is acquitted by giving him the benefit of doubt.

24. Perusal of the record reveals that the appellant-convict - Bishnu Deo Ram is on bail. In view of his acquittal, the appellant-convict is discharged of the liability of his bail bond.

25. In the result, this appeal is allowed. Let a copy of this judgment along with the lower court records be sent to the learned court below forthwith.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 11th day of May, 2021
AFR/ Animesh/-