

Patna High Court

Bhagwan Mahto vs The State Of Bihar Through Central ... on 11 December, 2018

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.611 of 2013

Arising Out of PS. Case No.-23 Year-2006 Thana- C.B.I CASE District- Patna

Bhagwan Mahto Son of Late Ram Jatan Mehto Resident of Village Dhampur P.O. Amnor, P.S. Marhaura, District Chhapra Saran ... ... Appellant Versus The State of Bihar through Central Bureau of Investigation . . . . . Respondent / s  
===== Appearance :

For the Appellant/s : Mr. Rajendra Kumar Jain, Advocate. For the Respondent/s : Mr. Bipin Kumar Sinha, SC/CBI. =====  
**CORAM:** HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL C.A.V. JUDGMENT Date : 11-12-2018 Heard learned counsel for the appellant and learned Standing Counsel for the CBI on this criminal appeal.

2. This criminal appeal has been preferred against the Judgment and Order of conviction and sentence dated 07.08.2013 passed by Special Judge, CBI Court-II, Patna in Special Case No. 13 of 2006, R.C. Case No. 23A/2006 arising out of Patna CBI/ACB/Patna 2006 RC PAT 2006A 0023 whereby learned trial court convicted the appellant Bhagwan Mahto for the offence punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act and sentenced him to undergo R.I. for one year and also slapped him with the fine of Rs.1000/- and in default of payment of fine to further undergo S.I. for one month under Section 7 of the Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 Prevention of Corruption Act and further sentenced him to undergo R.I. for two years and also slapped him with fine of Rs. 10,000/- and in default of payment of fine to further undergo S.I. for two months under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. Both the sentences were directed to run concurrently.

3. Factual matrix of the case is that Patna CBI/ACB/Patna 2006 RC PAT 2006A 0023 was instituted under Section 7 of the Prevention of Corruption Act against the accused Shri Bhagwan Hawildar and D.S. Singh, I.O., D.R.I. on the basis of the written report dated 09.10.2006 filed by one Jagdevan Prasad, Son of Shri Nandlal Rai with the case in succinct that D.S. Singh, Officer of D.R.I., Patna had apprehended the brother of the informant and seized his Truck bearing Registration No. BR-1G-4689 in connection with the Case No. 26 of 2006. When he reached out the aforesaid D.S. Singh for help and to get his brother released, he extended threatening of his implication as well asking him that he has to meet expenses in case of soliciting any help and get the amount fixed meeting with Hawaldar Bhagwan Mahto. On his insisting to disclose the aforesaid amount, he made him to escape and warned him not to approach him direct. Then he reached out Hawaldar Shri Bhagwan who demanded Rs. 35000/- as a bribe Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 in lieu of his work. On making request by him citing his financial crisis, he agreed to pay him Rs.5000/- at present and rest amount in 2-3 installments uttering that he had confabulated with the I.O. D.S. Singh and on getting the entire amount he will submit the final form in Special Case No. 26 of 2006 and get both his brother and his vehicle released. As he does not want to accord

graft, he has filed this complaint petition to take action against them.

4. On receiving the aforesaid complaint petition, the matter was got verified regarding the veracity of the allegation made in the said petition by the constable Onkar Nath Singh and after verification and finding the allegation true, F.I.R. was instituted against the aforesaid accused persons. Thereafter a raiding party was constituted and after carrying out the demonstration formality and pre-trap proceeding, trap was laid and the accused Bhagwan Mahto was apprehended demanding and accepting the bribe of Rs. 5000/- from the complainant and the aforesaid graft amount was recovered from his possession.

5. The aforesaid case was investigated by the I.O. and on conclusion of the investigation, I.O. submitted chargesheet in the case against the accused Bhagwan Mahto under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act.

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6. On receiving the chargesheet and case diary and perusing the same, the learned Lower Court took cognizance of the offence.

7. Charge against the accused Bhagwan Mahto was framed under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act. Charge was read over and explained to him by the Court to which he pleaded not guilty and claimed to be tried.

8. To substantiate its case, in ocular evidence, the prosecution has examined altogether ten prosecution witnesses namely, Jai Prakash Mishra as PW-1, Lalit Prasad as PW-2, Constable CBI/ACB/Patna Onkar Nath Singh as PW-3, Ram Awadh Singh Yadav as PW-4, Salman Imtiaz Hussaini as PW-5, Informant Jagdevan Prasad as PW-6, Shashi Mohan as PW-7, Inspector CBI Lalit Kaushik as PW-8, Vimal Chandra Purkait, Retired Senior Scientific Officer, CFSL, Kolkata as PW-9 and Anil Kumar Jha Dy. SP CBI B.S. & F.C. Kolkata as PW-10. Prosecution has also filed and proved some documents by way of documentary evidence in the case.

9. Statement of the accused was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence. The accused neither adduced any ocular nor documentary in buttress of his Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 case.

10. After hearing the parties and perusing the record, the learned lower court passed the aforesaid Judgment and Order of conviction and sentence as detailed in the earlier paragraph.

11. Being aggrieved and dissatisfied with the aforesaid Judgment and Order of conviction and sentence, convict Bhagwan Mahto has preferred this Criminal Appeal.

12. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charge levelled against the appellant beyond all reasonable doubts or not.

13. It is submitted by learned counsel for the appellant that no verification regarding veracity of the allegation made in the complaint petition has been made by the CBI after receiving complaint petition as in the F.I.R., neither name of the verifier nor the date and time of verification has been mentioned and in verification report date and time of verification has also not been mentioned. It is further submitted that D.S. Singh and Bhagwan Mahto both were made accused in the F.I.R., but no verification has been made against D.S. Singh by the verifier and without making verification against the said D.S. Singh, F.I.R. has been lodged also against him which creates serious Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 doubt about the aforesaid verification. It is further submitted that the verifier was mere a constable of the CBI and was not competent to carry out the verification as per Section 17 of the Prevention of Corruption Act. It is further submitted that the occurrence is of day time and it took place near the betel shop and as per the witnesses' account, several persons were passing through the place of occurrence at the time of occurrence, but neither any passerby nor the owner of the betel shop has been examined by the prosecution rather two witnesses i.e. PW-4 and PW-7 who happen to be own man of the CBI and personnel of the CAPART and have visited CBI office time and again in connection with official work and deposed in favour of CBI in the cases earlier have been made witness in the case by summoning them from their place of posting at Delhi preceding to the occurrence. It is further submitted that as per the account of complainant, it is D.S. Singh who had demanded money and not the appellant, but he has not been sent up for trial by the CBI and no explanation has been given for the same. It is further submitted that the appellant had no motive to demand the graft money because it was D.S. Singh who had apprehended the brother of the complainant namely Chhote Lal Rai in Special Case No. 26 of 2006 and said D.S. Singh was the I.O. of the said case and the appellant had no concern with the Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 aforesaid case. It is further submitted that the aforesaid graft amount has not been recovered from the possession of the appellant rather from the ground and the appellant has been falsely implicated in the case by the personnel of the CBI with ulterior motive to save the said D.S. Singh. It is further submitted that demand, acceptance and recovery of graft money from the possession of the appellant has not been successfully established by the prosecution by adducing consistent, trustworthy and worth credence evidence. Hence, the aforesaid judgment and order of conviction and sentence passed against the appellant is liable to be set aside and the appellant is entitled to be acquitted.

14. On the other hand, learned Standing Counsel for the C.B.I. advocating the correctness and validity of the impugned judgment and order of conviction and sentence submitted that all the witnesses examined by the prosecution have supported the prosecution case in toto and the ocular evidence also stands corroborated by the documentary evidence filed by the prosecution regarding demand and acceptance of graft money by the appellant and recovery of the same from his possession and learned trial court correctly appreciating the facts and evidence on record has rightly passed the impugned judgment and order of conviction and sentence which is liable to Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 be upheld and this appeal is shorn of merit and is liable to be dismissed.

15. To establish the offence under Sections 7 and 13(1)

(d) read with Section 13(2) of the Prevention of Corruption Act 1988, the prosecution is required to establish three things, firstly, demand of graft by the government officials in lieu of any work to be done, secondly acceptance of the graft and thirdly recovery of the same from the possession of the accused beyond all shadow of doubt. To substantiate the aforesaid ingredients and the prosecution case, prosecution has examined ten prosecution witnesses. Out of them PW-1 namely Jai Prakash Mishra Dy. SP CBI Portblair happens to be the formal witness who has proved the formal F.I.R. marked as Exhibit-1, PW-2 Lalit Prasad, Joint Commissioner, Service Tax, New Delhi happens to be sanctioning officer who had accorded sanction for prosecution against the appellant, PW-5 Salman Imtiaz Hussaini Inspector Central Excise Raipur happens to be Investigating Officer of D.R.I. Case No. 26 of 2006 lodged against the brother of the complainant namely Chhote Lal Rai regarding seizure of some contraband from the truck of the said accused, PW-9 Vimal Chandra Purkait happens to be Retired Senior Scientific Officer CFSL Kolkata who has furnished the CFSL report after examining the solution sent to the CFSL for its chemical Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 examination and PW-10 Anil Kumar Jha happens to be 2 nd I.O. of the case under hand. Thus, the prosecution has examined five material witnesses namely PW-3, PW-4, PW-6, PW-7 and PW-8 to substantiate its case. Out of them, PW-4 namely Ram Awadh Singh Yadav and PW-7 namely Shashi Mohan happen to be witnesses of the occurrence. PW-4 happens to be Assistant while PW-7 Dy. Director CAPART and both are posted at New Delhi.

16. PW-7 Shashi Mohan has stated in Para-4 of his cross-examination that a summon was received in his Delhi Office from the CBI Office and after receiving of the summon, he wrote letter to the Deputy Director General/C.B.O. for approval which was approved for proceeding by him to Patna. The Court may summon aforesaid summon from the office. From perusal of the aforesaid testimony of PW-7 and aforesaid aspect of the case, it appears that aforesaid two witnesses are posted in CAPART in New Delhi and they had arrived in CBI Office Patna to become witnesses of the case under hand on sending summon by the CBI Office to their office and on getting approval of the competent authority of CAPART Delhi. It is the case of the prosecution and the account of the witnesses that the aforesaid two witnesses were present in the CBI office right from the demonstration process till end of the preparation of the recovery memo i.e. from 11 AM till evening of 09.10.2006 and Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 from perusal of the record, it appears that the complaint petition in the case was received on 09.10.2006 and on receiving the said complaint petition, F.I.R. was lodged on the said date at 11 AM and it took whole day in culmination of the process of the recovery etc. From perusal of the testimony of PW-7, it appears that he had received summon from the CBI office summoning him in the case under hand to become witness of the case and on getting approval of the competent authority CAPART, PW-4 and PW-7 had rushed from Delhi to Patna. Aforesaid testimony of the said witness and aforesaid aspect of the case indicates that the aforesaid witnesses must have been summoned by the CBI office preceding to 09.10.2006 which means that they were summoned by the CBI office in anticipation of lodging the complaint petition by the complainant in the case and CBI had anticipated that such case would be lodged by such complainant against the appellant and another accused and they have made prior preparation of laying trap, etc. against the accused which means that the CBI office was making preparation for carrying trap proceeding against the appellant from before the occurrence which creates serious doubt about the prosecution case. PW-4 Ram Awadh Singh Yadav has stated in Para-7 of his cross- examination that he had visited CBI office on two occasions in connection

with the case and PW-7 Shashi Mohan had also Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 visited CBI office, Patna to give evidence along with him. Thus it appears that the said witnesses happen to be visitor of the CBI office, Patna and have given evidence in the case under the influence of CBI and are not independent witness of the case.

17. As per the prosecution case and witnesses' account, place of occurrence is near betel shop located near the gate no.1 of the Revenue Colony and PW-7 has stated in para-5 of his cross-examination that at the time of occurrence, betel shop was opened. 1-2 persons were present at the betel shop and owner of the betel shop was also present there. When Bhagwan Mahto was apprehended on the betel shop, 15-20 persons had swarmed there. Complainant Jagdevan Prasad (PW-6) has stated in Para-3 of his cross-examination that people of nearby were witnessing the occurrence. PW-8 Lalit Kishore has stated in Para-8 of his cross-examination that 15-20 people had congregated at the place of occurrence at the time of occurrence. He has further stated in the said Para that he has nowhere written that he had requested the aforesaid persons to be witness of the case. Aforesaid testimony of the aforesaid witnesses eloquently indicates that at the time of occurrence several persons were present at the place of occurrence and witnessed the alleged occurrence of demand, acceptance and recovery of the graft money from the possession of the appellant, but none Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 of them has been requested by the CBI personnel to become witness of the case and they have also not been made witness in the case. Thus there is no independent witness of the said demand and acceptance of the graft money by the appellant and recovery of the same from his possession. Thus, the prosecution case does not stand corroborated by any independent witness of the occurrence.

18. As per the prosecution case, on receiving of the complaint petition of the complainant Jagdevan Prasad (PW-6), veracity of the allegations made in the aforesaid complaint petition was got verified by the Constable Onkar Nath Singh (PW-3) of CBI and after verification and finding the case true, the aforesaid constable submitted the verification report and then the F.I.R. was lodged against the appellant and one other accused namely D. S. Singh. From perusal of the F.I.R., it appears that the aforesaid F.I.R. was lodged on the basis of written complaint submitted by the said complainant on 09.10.2006 at 11 AM. The aforesaid F.I.R. has been appended with the copy of the complaint petition while the same has not been appended with the verification report. From perusal of the verification report marked as Exhibit-3, it appears that the said verification report neither bears the date nor time of submitting of the report though the same was received by SP/CBI on Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 09.10.2006. Moreover PW-3 has stated in Para-2 of his examination-in-chief that the aforesaid verification report was written by Inspector B. K. Singh on his instruction, but neither aforesaid verification report bears signature of the said scribe nor aforesaid scribe of the aforesaid verification report has been examined by the prosecution in substantiation of the writing of the verification report by him. The complainant Jagdevan Prasad (PW-6) has stated in Para-10 of his cross-examination that after giving complaint petition, the constable of the CBI namely Onkar Nath Singh made inquiry. They had left the CBI office at around 10:45 to 11:00 AM and the personnel of the CBI had regressed to the office after making inquiry at 11:30 AM and then they congregated in the chamber of the SP/CBI. The aforesaid statement of the complainant (PW-6) and aspect of the case indicates that after making inquiry, constable Onkar Nath Singh (PW-3) had returned to the office at 11:30 AM on 09.10.2006 and thereafter had filed

verification report, but the F.I.R. has been lodged on the said date at 11:00 AM i.e. preceding to receiving the verification report of PW-3. Thus the F.I.R. was lodged without making any verification of the veracity of the allegations made in the complaint petition merely on the basis of the complaint petition lodged by the complainant.

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19. From perusal of the complaint petition marked as Exhibit-5, it appears that the allegation of demanding graft has been made by the complainant against two accused persons namely Hawaldar Bhagwan Mahto (appellant) and D.S. Singh, I.O. of the DRI Case No. 26 of 2006 and accordingly F.I.R. has been lodged against aforesaid two accused persons. But from perusal of the account of PW-3 as made by him in Para-23 and Para-65 of his cross-examination, it appears that no verification against D.S. Singh was made by him albeit the allegation was against both Bhagwan Mahto and D.S. Singh as in the said paras, he has stated that verification against D.S. Singh was not made by him though there was allegation against both Bhagwan Mahto and D.S. Singh. Thus, verification only against the appellant Bhagwan Mahto was made. On finding the allegation made against him true, PW-3 has submitted verification report which might have been made ground for lodging the F.I.R. As the verification has been made only against the appellant, hence F.I.R. ought to have been lodged only against the appellant and not against the another accused namely D.S. Singh. But aforesaid F.I.R. has been lodged against aforesaid two accused persons including D.S. Singh which also creates serious doubt about carrying out the verification in the case preceding to lodging the F.I.R. as had the F.I.R. been lodged on the basis of Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 the verification which has been made only against the appellant, it would have been lodged only against the appellant and not against the accused D.S. Singh as well.

20. From perusal of the verification report marked as Exhibit-3, it appears that as per the verification report, appellant Bhagwan Mahto had demanded Rs.5000/- from the complainant as a graft for getting his work done by the I.O. D.S. Singh which happens to be in quite contradiction to the prosecution case and witnesses' account. As as per the prosecution case as adumbrated in the complaint petition and the account of the witnesses, appellant demanded Rs. 35000/- as graft from the complainant in lieu of the work of the complainant and on request made by the complainant venting scarcity of the money, he demanded Rs.5000/- at first and rest money in 2-3 installments. Aforesaid contradiction between the prosecution case and witnesses account and verification report also creates serious doubt about the verification of the allegation made in the complainant petition by PW-3.

21. Complainant (PW-6) has stated in Para-2 of his examination in chief that after filing complaint petition by him, he was sent to the Central Excise Colony, Ashiyana Road, Patna along with Onkar Nath Singh (PW-3) for inquiry and verification. He interacted with Bhagwan Mahto and D. S. Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 Singh there in presence of Onkar Nath Singh and asked them to extend help to him. Then they grilled him about Onkar Nath Singh whereupon he disclosed his identity as his relative. Then Bhagwan Mahto and D. S. Singh asked him as to whether he has brought money whereupon he divulged that he is just going to Bank to fetch Rs.5000/-. Then both the persons asked him to arrive at betel shop located near the gate of Central Excise Colony,

Ashiyana Road, Patna with the aforesaid money at 01:30 PM. From perusal of the aforesaid testimony of the complainant, it appears that at the time of verification of the allegations made by the complainant against D. S. Singh and the appellant by Onkar Nath Singh (PW-3), both D. S. Singh and Onkar Nath Singh were present at the Central Excise Colony, Ashiyana Road, Patna and both had asked him about bringing money by him and on telling him that he had to rush to the Bank to fetch graft money of Rs.5000/-, both of them asked him to arrive at the betel shop located near the gate of Central Excise Colony Ashiyana Road, Patna at 01:30 PM with the aforesaid money. Thus the allegation appears to have proved against both the accused persons i.e. the appellant and D.S. Singh but the said Onkar Nath Singh (PW-3) has given the verification report only against the appellant. PW-3 has also stated in Para-65 of his cross-examination that he had not made verification of D.S. Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 Singh. In Para-23 of his cross-examination he has further stated that the complaint petition was against both the Bhagwan Mahto and Inspector D. S. Singh but he had not made verification against D. S. Singh and he has not made inquiry against D.S. Singh. SP and DSP had not directed him to make verification only against Bhagwan Mahto. Aforesaid testimony of the said witnesses also creates serious doubt about the alleged verification made by PW-3 as it eloquently indicates that both D.S. Singh and appellant had demanded money from the complainant for doing his work and directed him to bring money at the place of occurrence at the time of occurrence and allegation made in the complaint petition appears to be true against both the accused persons but verification report has been filed only against the appellant and said D.S. Singh appears to have been given clean chit and was let free for the reason best known to the CBI.

22. From perusal of the testimony of PW-3, PW-4, PW-7 and PW-8, it appears that they have made an abortive bid to support the prosecution case of demand and acceptance of graft by the appellant and recovery of graft money from the possession of the appellant by giving statement in consonance to the prosecution case in their respective examination-in-chief. From perusal of the testimony of the aforesaid witnesses, it Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 appears that the aforesaid witnesses have stated that on arriving near the betel shop located near the gate no.1 of the Revenue Colony where meeting was fixed earlier with the appellant for giving graft and on witnessing the appellant wandering near the place of occurrence in search of the complainant they asked the complainant to approach the appellant and on approaching the appellant he demanded graft money from the complainant and then the complainant gave the aforesaid money to him whereupon appellant was apprehended by the personnel of the CBI and graft money was recovered from his possession. Then he was taken to CBI office by the members of trap team and his both hands were washed with solution of sodium carbonate which turned pink. Aforesaid testimony of the witnesses eloquently indicates that at the place of occurrence only the appellant was present and he had demanded graft money from the complainant and only hands of the appellant was washed with solution of sodium carbonate. As per the witnesses' account, on disclosing by the appellant that he has taken graft money on behalf of D. S. Singh and had to hand it over to him, said D. S. Singh was called in the CBI office on the date of occurrence at around 04:15 PM. He was confronted with the complainant and the appellant and on keeping mum, he was apprehended in the CBI office at around 04:30 PM. But in quite Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 contradiction to the aforesaid account of the witnesses, Complainant Jagdevan Prasad (PW-6) has stated in Para-3 of his examination-in-chief that on the date and time of occurrence when he arrived

at the gate, Bhagwan Mahto and D. S. Singh arrived on the said gate. There was exchange of wishes between them. Then he went to the betel shop along with them and asked three betels from the shop owner. Thereafter, he went 10 steps ahead of the shop along with aforesaid two persons. He handed over the copy of the F.I.R. pertaining to his brother Chhote Lal Rai to D.S. Singh which was in six pages. D.S. Singh went through the aforesaid F.I.R. and told him that his work will be done and his brother Chhote Lal Rai and the truck will be released. He demanded Rs.5000/- from him which he had brought and asked him to furnish rest amount within 3-4 days. Then he took out Rs.5000/- from his pocket and after counting the same at the instruction of Daya Shankar gave it to Bhagwan Mahto. Thereafter, the personnel of CBI and other persons who were the member of the trap team apprehended Bhagwan Mahto and D.S. Singh. The money was snatched from Bhagwan Mahto while the paper from the possession of D.S. Singh. They arrived at the CBI office along with the aforesaid two accused persons. He, Bhagwan Mahto and D.S. Singh were made stand in the hall of the CBI office. On quizzing by Lalit Kaushik (PW-8), D. S. Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 Singh admitted to identify the complainant Jagdevan. In Para-11 of his cross-examination, he has further stated that both hands of both D. S. Singh and Bhagwan Mahto were washed on the date of occurrence with the solution of Sodium Carbonate and hand wash of both the accused persons turned pink. Hand wash of both the accused persons were sealed in three bottles. Aforesaid testimony of the complainant goes to indicate that besides the appellant D.S. Singh was also present at the place of occurrence. Complainant furnished him the copy of the F.I.R. of his brother Chhote Lal Rai and after going through the aforesaid F.I.R. he demanded money from him and both the aforesaid accused persons were apprehended by the personnel of CBI and taken to CBI office and their hands were washed with the solution of Sodium Carbonate and the solution turned pink which were sealed in three bottles. As per the account of the aforesaid witnesses, only Bhagwan Mahto was present at the place of occurrence and he demanded graft money and was apprehended and taken to CBI office and his hand was washed which turned pink while D.S. Singh was called at CBI office at 04:30 PM and was apprehended there. But according to aforesaid testimony of the complainant (PW-6), besides Bhagwan Mahto accused D.S. Singh was also present at the place of occurrence at the time of occurrence and he demanded graft money and was apprehended Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 along with Bhagwan Mahto and taken to CBI office and his hand was also washed with the solution of Sodium Carbonate which turned pink. Aforesaid vital contradiction between the testimony of the witnesses namely PW-3, PW-4, PW-7 and PW- 8 and said testimony of PW-6 creates serious doubt about the prosecution case of demand, acceptance and recovery of the graft money from the possession of the appellant and rules out witnessing of the occurrence by PW-3, PW-4, PW-7 and PW-8.

23. As per the prosecution case and account of PW-3, PW-4, PW-7 and PW-8, it is the appellant who demanded graft money from the complainant. But from perusal of the account of the complainant, it appears that not the appellant rather D.S. Singh had demanded graft money from the complainant. As in Para-3 of his examination-in-chief, the complainant has stated that on approaching D.S. Singh and Bhagwan Mahto at the place of occurrence at the time of occurrence, he handed over the copy of the F.I.R. pertaining to his brother Chhote Lal Rai to D.S. Singh who after going through the F.I.R. told him that his work will be done and Chhote Lal Rai and the truck will be released and demanded Rs. 5000/- brought by him and asked him to furnish rest money within 3-4 days. Thus, the aforesaid account of the complainant happens to be in quite contradiction to the prosecution case

and account of witnesses namely PW-3, Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 PW-4, PW-7 and PW-8 and creates serious doubt about demand of graft by the appellant. Thus the demand of graft by the appellant does not stand established by the prosecution by adducing consistent, convincing, trustworthy and reliable evidence.

24. As per the prosecution case and witnesses account, graft money to the tune of Rs.5000/- was given to the appellant and while the appellant, after counting the said tainted graft money was keeping in his pocket, he was apprehended by Lalit Kaushik (PW-8) and his both hands were washed with the solution of Sodium Carbonate taking him in the office of CBI and hand wash of his both hands turned pink. But PW-4 Ram Awadh Singh Yadav who happens to be shadow witness and member of the raiding party has stated in Para-3 of his examination-in-chief that at first right hand of Bhagwan Mahto was washed with the milky solution which turned pink, again left hand of Bhagwan Mahto was washed in the milky solution by CBI, but it did not turn pink rather remained milky. Aforesaid testimony of PW-4 creates serious doubt about acceptance and recovery of graft money from the possession of the appellant. As had the appellant taken tainted graft money from the complainant and counted it, solution of both his hands would have turned pink and not of single hand as stated by the said Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 witness as money can be counted not by single hand rather by both hands. The aforesaid aspect of the case also creates serious doubt about acceptance and recovery of graft money from possession of appellant.

25. As per the prosecution case and witnesses' account, wash of both hands of the appellant and that of PW-7 Shashi Mohan taken during the demonstration process were sealed in bottle and the aforesaid three bottles were sent to CFSL for its chemical examination and on the examination of the same, it was found to be solution of Sodium Carbonate and phenolphthalein by PW-9 while PW-4 has stated in Para-7 of his cross-examination that he and Shashi Mohan had counted money both prior and after the occurrence and hand of Shashi Mohan was washed both before and after the occurrence and as per the account of the complainant (PW-6) as given by him in para-11 of his cross-examination, both the hands of D.S. Singh and that of Bhagwan Mahto were washed with the solution and the said solution turned pink which were kept in three bottles and the said solution might have been sent to CFSL for its chemical examination and on chemical examination, the same was found to be solution of Sodium Carbonate and Phenolphthalein. From perusal of the testimony of PW-9 Vimal Chandra Purkait, it appears that in Para-1 of his examination-in- Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 chief he has stated that he has received three sealed bottles of the solution which on examination was found to be solution of Sodium Carbonate and Phenolphthalein. Aforesaid testimony of the said witnesses and aforesaid aspect of the case also creates serious doubt about the prosecution case and recovery of the tainted graft money from the possession of the appellant. As as per the prosecution case and witnesses' account, three bottles of solution, one of the hand wash of PW-7 Shashi Mohan taken at the time of demonstration and two bottles containing hand wash of both the hands of the appellant which was taken after recovery of the tainted money from his possession in the CBI office were sent to CFSL for its examination. But as per the aforesaid account of the complainant (PW-6), three sealed bottles which contained hand wash of D. S. Singh and that of the appellant while as per PW-4 hand of Shashi Mohan was washed both before and after the occurrence so it is not certain as to which of the hand wash either of the Shashi Mohan taken twice, first at the time of demonstration process and secondly after recovery of

the graft money by him from the possession of the appellant or that of appellant and D.S. Singh or that of appellant and Shashi Mohan taken at the time of demonstration was sent to the CFSL for its chemical examination and was found to be solution of Sodium Carbonate and Phenolphthalein Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 on its chemical examination by PW-9 and creates serious doubt about recovery of tainted money from possession of the appellant.

26. As per the prosecution case and witnesses account, PW-7 Shashi Mohan had snatched the graft money from the hand of the appellant as per the instruction of PW-8 Lalit Kaushik and PW-4 Ram Awadh Singh Yadav who happens to be another witness of CBI and member of the trap team was shadow witness while PW-7 Shashi Mohan was present with PW-8 Lalit Kaushik and other members of the trap team near the betel shop a bit ahead of place of occurrence. So if the PW-4 was the shadow witness, the aforesaid graft money would have been recovered from the possession of the appellant by the said shadow witness who was present with the complainant near the appellant but the said graft money was not recovered by PW-4 rather by PW-7 Shashi Mohan which also creates serious doubt about the recovery of graft money from the possession of the appellant.

27. As per the prosecution case and the account of witnesses namely PW-3, PW-4, PW-7 and PW-8, complainant (PW-6) arrived near the betel shop located near the gate no.1 of the Revenue Colony and when the appellant arrived near the aforesaid gate and started searching the complainant, PW-8 sent Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 the complainant to the appellant then entire transaction of demand, acceptance and recovery of money took place and PW-4 was the shadow witness which means PW-4 must have also been present with the complainant at the time of occurrence at the place of occurrence along with the complainant. But in quite contradiction to the aforesaid prosecution case, complainant has stated in Para-3 of his examination-in-chief that on arrival near the Central Excise Colony, Ashiyana Road, Patna, Lalit Kaushik (PW-8) dropped him at 10 bass ahead of the colony from the vehicle and members of the trap team took betel and cigarette from the betel shop located near the gate of the colony and he alone arrived at the gate and met Bhagwan Mahto and D.S. Singh there. Aforesaid testimony of the complainant rules out the presence of PW-4 with him as the shadow witness of the case and also sending him to the appellant by PW-8 Lalit Kaushik and creates serious doubt about the prosecution case and credibility of the testimony of PW-3, PW-4, PW-7 and PW-

8.

28. The verdict of Hon'ble Apex Court rendered in S. Dinesh Kumar v. State Th. Inspector and another reported in AIR 2015 SC (Supp) 62 to the effect that where illegal gratification proof, accused a Commercial Tax Inspector (Recovery) alleged to have demanded and accepted Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 bribe of Rs. 1,000/- from complainant for removal of seal and there is no evidence showing that amount in question was received towards arrears of taxes and recovery of bribe amount from person or possession of accused firmly established, no two views are possible in matter since aspects of demand and acceptance established. Order of the High Court interfering with acquittal order passed by special Judge and convicting accused is proper, relied upon by the respondent is not applicable in the case under hand as in the case under hand prosecution has utterly and miserably failed to substantiate demand and acceptance of graft money

by the appellant and recovery of same from his possession by adducing consistent, trustworthy and reliable evidence. The verdict of Hon'ble Apex Court rendered in Kallappa Mallappa Kamble v. State of Karnataka reported in AIR 2015 S.C. (criminal) 1062 to the effect that when twin requirements of demand and acceptance of illegal gratification of Rs. 1000/- was proved on the basis of evidence adduced by the prosecution against the appellant, the conviction and sentence of accused is proper, relied upon by the respondent is not applicable in the case under hand as in the case under hand the requirement of demand and acceptance of illegal gratification does not stand established by the prosecution by Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 adducing consistent, trustworthy and reliable evidence. The verdict of Hon'ble Apex Court rendered in Chaturdas Bhagwandas Patel Vs. The State of Gujarat reported in (1976) 3 Supreme Court Cases 46 to the effect that once it is established that the public servant accepted a gratification which was not his legal remuneration, the burden shifts on him to prove that money was not accepted as a motive or reward as is mentioned in Section 161 I.P.C. The burden which rests on an accused to displace this presumption, is not as onerous as that cast on the prosecution to prove its case. Nevertheless, this burden on the accused is to be discharged by bringing on record evidence, circumstantial or direct, which establishes with reasonable probability, that the money was accepted by the accused, other than as a motive or reward such as is referred to in Section 161 of I.P.C, relied upon by the respondent is not applicable in the case under hand because in the case under hand the acceptance of money by the appellants does not stand established by the prosecution. The verdict of Hon'ble Apex Court rendered in Narendra Champaklal Trivedi v. State of Gujarat reported in AIR 2012 SC (Criminal) 1006 to the effect that where the accused alleged to have taken bribe for providing survey report, bribe money was recovered from possession of the accused by Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 raiding party. There is clear evidence of shadow witness that there was demand and acceptance of bribe and no evidence adduced by accused to rebut presumption under Section 20, the conviction of accused is proper, relied upon by the respondent is not applicable in the case under hand as in the case under hand, the prosecution has utterly and miserably failed to substantiate the recovery of bribe money from the possession of the appellants. The verdict of Hon'ble Apex Court rendered in Chaitanya Prakash Audichya v. C.B.I. reported in AIR 2015 SC (Criminal) 1451 to the effect that where evidence of complainant and panch witnesses is completely consistent, establishing basic ingredients of demand and acceptance and tainted currency notes were found on person of accused, the explanation given by accused soon after incident through letter is completely different from theory put forth while accused himself examined as defence witness. Not only demand and acceptance established but the presumption invocable under Section 20 of the Act also stood unrebuted. Hence, the conviction of accused is proper, relied upon by the respondent is not applicable in the case under hand as in the case under hand, demand, acceptance and recovery of the tainted money from possession of the appellant also does not stand substantiated by the prosecution. Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 The verdict of Hon'ble Apex Court rendered in Somabhai Gopalbhai Patel v. State of Gujarat reported in AIR 2015 SC (Criminal) 95 to the effect that where there is the demand and acceptance of bribe by accused and testimony of complainant fully corroborated by shadow witness and recovery of currency notes from possession of accused stood proved and the explanation by accused, Talati that he accepted said amount from complainant towards tax not substantiated, the conviction of accused not interfered, relied upon by the respondent is not applicable in the case under hand as in the case under hand, the prosecution has utterly and miserably failed to substantiate demand and acceptance

of graft money by the appellant and recovery of same from his possession by adducing consistent, trustworthy and reliable evidence. The verdict of Hon'ble Apex Court rendered in State of A.P. v. K. Punardana Rao reported in 2004 CRI. L. J. 4191 (Supreme Court) to the effect that where the demand and acceptance of bribe is proved and tainted money is recovered from possession of accused in trap laid by department and Phenolphthalein test conducted on his hand, pyjama and bed cover proved to be positive, the explanation offered by the accused highly improbable and the evidence of defence witness is not reliable. There was no enmity alleged against Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 the complainant. He is an independent witness having two business concerns and matters relating to tax come within jurisdiction of accused-officer for which bribe was demanded. There was perverse appreciation of evidence and serious miscarriage of justice by High Court and order of acquitting accused is erroneous. The accused is liable to be convicted, relied upon by the respondent is not applicable in the case under hand as in the case under hand as discussed by me hereinabove prosecution has utterly and miserably failed to substantiate the occurrence of demand and acceptance of graft money by the appellants and recovery of graft money from possession of the appellants by adducing consistent trustworthy and reliable evidence. The verdict of Hon'ble Apex Court rendered in The State of Gujarat vs. Navinbhai Chandrakant Joshi Etc. reported in 2018(3) PLJR (SC) 365 to the effect that to establish the offence under Section 7 and 13(1)(d), particularly relating to the trap cases, prosecution has to establish the existence of demand as well as acceptance by the public servant. Demand of the money by accused no. 1 and acceptance of the bribe amount by accused no. 2 at the behest of accused no. 1 proved. Further, under Section 20, the burden placed on the appellant for rebutting the presumption is one of preponderance of probabilities as the accused was Patna High Court CR. APP (SJ) No.611 of 2013 dt.11-12-2018 possessing bribe money, it was for them to explain that how the bribe money was received by them and if he fails to offer any satisfactory explanation, it will be presumed that he has accepted the bribe, but the accused have not offered any explanation to rebut the presumption under Section 20. While appreciating the evidence, the High Court should have given proper weight to the views of the trial court as to the credibility of all evidence of Pws. When the findings recorded by the trial court is based upon appreciation of evidence, the High Court was not right in reversing the judgment of the trial court, hence the impugned judgment is set aside and conviction affirmed, but sentence reduced from two years to one year considering the passage of time as occurrence was of about 27 years ago, relied upon by the respondent is not applicable in the case under hand as in the case under hand as discussed by me hereinabove, the prosecution has utterly and miserably failed to prove the demand and acceptance of bribe by the appellants and recovery of the aforesaid bribe from possession of the appellants and the learned trial court without correctly appreciating the ocular as well as documentary evidence adduced by the prosecution in its right perspective has perversely passed the impugned judgment and order of conviction and sentence.

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29. In the facts and circumstances of the case and discussions made by me hereinabove, I find and hold that the prosecution has utterly and miserably failed to substantiate the demand and acceptance of graft money by the appellant and recovery of the same from his possession beyond all reasonable doubts by adducing consistent, trustworthy, reliable and worth credence evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellant is

set aside and the appellant is acquitted of the charges levelled against him. As the appellant is on bail, he is discharged from the liability of his bail bonds. Accordingly, this appeal is allowed.

(Prakash Chandra Jaiswal, J) mantreshwar/-

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