(2017) 12 PAT CK 0044

Patna High Court

Case No: Criminal Appeal (SJ) No. 273 Of 2012

Prakash Prasad Sinha APPELLANT

Vs

State Of Bihar RESPONDENT

Date of Decision: Dec. 21, 2017

Acts Referred:

- Prevention Of Corruption Act, 1988 - Section 7, 13, 13(1)(d), 13(2)
- Code Of Criminal Procedure, 1973 - Section 313
- Indian Penal Code, 1860 - Section 379

Citation: (2018) 2 PLJR -386

Hon'ble Judges: Prakash Chandra Jaiswal, J

Bench: Single Bench

Advocate: Sanjeev Kumar Mishra, Piyush Saurav, Bipin Kumar Sinha

Final Decision: Dismissed

Judgement

1. Heard learned counsel for the appellant as well as learned Standing Counsel for the C.B.I. on this criminal appeal.

2. This appeal has been preferred against the judgment and order of conviction and sentence dated 19.03.2012 passed by the Special Judge, C.B.I.

1st, Patna in Special Case No.22 of 2011 [Special Case No.22/94 (old)], arising out of R.C. Case No.38A/1994, whereby the learned trial court

convicted the accused Prakash Prasad Sinha for the offence punishable under Sections 7, 13 (1) (d) read with Section 13 (2) of the Prevention of

Corruption Act, 1988 and sentenced him to undergo R.I. for one year and slapped him with a fine of Rs.1000/- for the offence punishable under

Section 7 of the Prevention of Corruption Act and further sentenced him to undergo R.I. for one year and slapped him with a fine of Rs.1000/-under

Section 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act and, in default of payment of fine, to further undergo S.I. for six

months. Both the sentences were directed to run concurrently.

3. The factual matrix of the case is that R.C. Case No.38A/1994 was instituted on the basis of a written complaint filed by Shri Anil Kumar, son of

Shri Ram Pravesh Prasad, Senior Development Manager, Nidhi Sri Finance and Investment (India) Ltd., Patna addressed to the S.P., C.B.I., Patna

with the case in succinct that the complainant happens to be Senior Development Manager, of Nidhi Sri Finance & Investment (India) Ltd.

(hereinafter referred to as the Ã¢â‚¬ËœCompanyÃ¢â‚¬â„¢), Patna. One Yamaha motorcycle, bearing registration no.BR 1D-8056, was provided to him by the

Company. The said vehicle was insured with the New India Assurance Company Limited, Branch-I, West Gandhi Maidan, Patna. The said vehicle

met with an accident for which he lodged a claim with the New India Assurance Company Limited. The surveyor of the Company also submitted his

report for settlement of the claim but his claim for the loss worth of Rs.2000/- was not paid by the Company for the last six months. When he met

Prakash Prasad Sinha, claim incharge of the said Company on 24.10.1994 he demanded graft of Rs.400/- in lieu of payment of claim amount to him.

He also instructed to submit receipt [F. No. Spl.9 (H)] after taking the signature of the authorized Director of the Company on revenue stamp. He

also extended threatening to the effect that claim would not be passed/made unto the payment of the aforesaid graft. He does not want to give any

graft to Prakash Prasad Sinha for the said work, hence necessary action as per law be taken against him.

4. On receiving the aforesaid complaint petition, S.P., C.B.I. got the veracity of the allegation verified by its officer, namely, Shri Ashish Kumar,

Inspector, C.B.I., Patna and after verification F.I.R. was lodged against the aforesaid accused. The charge of the case was given to Shri Nagendra

Prasad, Inspector of Police, C.B.I., SPE, Patna, for laying down a trap and investigation. On 27.10.1994, a trap team was constituted comprising eight

personnel of the C.B.I. and two independent witnesses, namely, Shri K.M. Dubey and Shri Anand Prakash Poddar, both personnel from the Central

Bank of India, Zonal Office, Patna. Out of them Shri K.M. Dubey was directed to act as shadow witness including the complainant and demonstration

formalities was carried out in the office and complainant was asked to produce a sum of Rs.400 whereupon he produced the same consisting of one

currency note of Rs.100 denomination, five currency notes of Rs.50 denomination and five currency notes of Rs.10 denomination. The description and

number of the said currency notes was noted down in the preliminary memorandum. Said currency notes were treated with phenolphthalein powder

and was given to the complainant with a direction to hand it over to the accused only on demand and a preliminary memo was prepared. Thereafter,

on 27.10.1994 at 11:15 AM the trap team and the complainant arrived at the Branch Office of the New India Assurance Company Limited located on

the first floor of Nasima House, West Gandhi Maidan, Patna. The complainant and the shadow witness approached the accused while other members

of the team took their respective position in the office keeping safe distance. The complainant Anil Kumar on questioning about the identity of his

companion, introduced him as the agent of the said Company. On asking by the accused about bringing of the receipt obtaining signature of his

Director, the complainant handed over him the voucher bearing the signature of the Director of the Company on revenue stamp. Then the accused

grilled him about bringing of the money as demanded by him. The complainant replied in affirmative, whereupon the accused asked the complainant to

come back at 3 PM to collect the cheque as the Branch Manager was not available, while other members of the team took their respective position

around the said Nasima House. Then, they regressed to the C.B.I. office. Thereafter, again they went to Nasima House at 2:55 PM and the complainant and shadow witness approached the accused while other team members took their respective position keeping safe distance. On asking

by the complainant as to whether his work has been completed the accused replied in affirmative and took out the cheque from almirah and handed it

over to the complainant and obtained his receipt thereof on the disbursement voucher. The accused asked the complainant to give him Rs.400 as fixed

earlier. Whereupon, the complainant took out the tainted G.C. note of Rs.400 from his upper left pocket of the shirt and handed it over to the accused

and asked it to count the same. On asking by the accused about the amount of money, he replied that it is complete Rs.400 and again asked him to

count the same. The accused accepted the said note and after counting the same by his both hands kept in the left side of the pocket of his trouser.

Then the shadow witness came out inside the room and passed on prefixed signal by scratching his hairs with his fingers. Shri Nagendra Prasad in

turn passed on the signal to the other team members and rushed towards the room of the accused. Inspector Nagendra Prasad and other witness,

namely, Anand Prakash Poddar entered into the room and disclosing his identity challenged the accused that he had accepted the gratification of

Rs.400 from the complainant and caught hold his both hands, whereupon the accused became perplexed and kept mum. On the instruction of

Nagendra Prasad, the independent witness Shri A.P. Poddar took out the tainted graft money from the pocket of the accused and the same was

compared with the numbers and denominations as mentioned in the preliminary memorandum and it was found matching, then the said money was

kept in envelop and sealed. Thereafter, solution of sodium carbonate was prepared and both the hands of the accused was dip in the same which

turned pink. The solution was preserved and sealed. Wash of the solution was also preserved and sealed. The concern file along with the

disbursement & discharge voucher were seized from the accused and the accused was taken to the C.B.I. office as no alternative of trouser to be provided to the accused was available there. In the C.B.I. office, the pajama was managed and handed over to the accused and the inner linings of

the left side pocket of trouser of the accused was dipped in the sodium carbonate solution which also turned pink. The said trouser and the wash of

the trouser were sealed. The envelope containing the money was also sealed. Rs.51.10 paisa along with a letter were also seized from the possession

of accused and they were kept in an envelop and sealed. Thereafter, the final recovery memo was prepared and all the members of the trap team,

witnesses, complainant and the accused put their signature on the same.

5. The aforesaid case was investigated by Shri Nagendra Prasad, Inspector C.B.I. and after conclusion of the investigation he submitted chargesheet

against the accused under Section 7, Section 13 (1) (d) read with Section 13(2) of the Prevention of Corruption Act.

6. On receiving the chargesheet learned Special Judge, C.B.I., Patna took cognizance of the offence against the accused under the aforesaid

Sections.

7. Charge against accused was framed under Section 7 and Section 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act. The

charge was read over and explained to him to which he pleaded not guilty and claimed to be tried.

8. To substantiate its case, in ocular evidence, the prosecution has examined altogether nine prosecution witnesses, namely, Shri S.C. Pothen as

P.W.1, Shri Vinod Prasad as P.W.2, Shri Ashish Kumar as P.W.3, Shri Anand Prakash Poddar as P.W.4, Shri Bimlendu Das as P.W.5, complainant

Anil Kumar as P.W.6, Shri Krishna Murari Dubey as P.W.7, Shri Jai Prakash Mishra as P.W.8, and the Investigating Officer, Shri Nagendra Prasad,

Inspector C.B.I. as P.W.9. In documentary evidence, the prosecution has filed and proved several documents. The appellant has neither adduced any

ocular or documentary evidence in buttress of his case.

9. The 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 claiming himself to be innocent and falsely implicated in this case.

10. After hearing the parties and perusing the record, the learned trial court passed the impugned 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, the convict 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 charges levelled against the appellant

beyond all reasonable doubts or not.

13. It is submitted by learned counsel for the appellant that he never demanded and accepted the aforesaid money from the complainant and the said

money was not recovered from his possession. The complainant has deposited the salvage (damaged part of the motorcycle) on 26.10.1994 i.e. on the

date of filing the complaint and submitted the discharge voucher with the signature and seal of the Director of the Company on 27.10.1994 i.e. on the

date of trap, so before the completion of the aforesaid formality no question of settlement or disbursement of the claim arises. Hence, the allegation

made by the complainant that he was pursuing the matter for last six months and the appellant did not pay the claim amount rather demanded the graft

is false and frivolous. It is further submitted that as the aforesaid motorcycle was registered and insured in the name of the Company and the

complainant happens to be only its user, hence he was not entitled to file complaint petition and receive any claim amount. It is also submitted that as

the accused had already handed over the cheque of the claim amount to the complainant, hence there was no occasion to demand any graft from him

for the same. It is further submitted that no verification of the authenticity of the complaint was ever made and name of the verifier has also not been

mentioned in the F.I.R. and no endorsement of any superior officer of the Branch on the verification report has been made. Shri K.M. Dubey and Shri

A.P. Poddar were not the independent witnesses rather they were officers of the Central Bank of India and were acting under the threat of the

C.B.I. No such trap was laid and nothing was recovered from the possession of the appellant and no officer or the staff present in his office has come

forward to support the aforesaid case. The recovery memo was also not prepared at the place of occurrence rather in the C.B.I. office which creates

serious doubt about the genuineness of the trap. It is further submitted that the complainant himself is not trustworthy as he happens to be an accused

in the theft case. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case by adducing consistent, trustworthy and

reliable ocular and documentary evidence, hence the appellant is entitled for acquittal.

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 and the learned lower court correctly appreciating the facts

and evidence on record has rightly passed the impugned judgment and order of conviction and sentence, and the same is liable to be upheld and this

appeal has no substance in it and is liable to be dismissed.

15. To establish the offence under Sections 7, 13 (1) (d) and 13 (2) of the Prevention of Corruption Act, 1988, the prosecution is required to

substantiate 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. Regarding the aforesaid ingredients, it is the case of the

prosecution that claimant, namely, Shri Anil Kumar happens to be a Senior Development Manager of Nidhi Sri Finance & Investment (India) Ltd.,

Patna. One Yamaha motorcycle, bearing registration no.BR 1D-8056, was provided to him by the Company for his use. The said vehicle was insured

with the New India Assurance Company Limited, Branch-I, West Gandhi Maidan, Patna. The said vehicle met with an accident for which he lodged a claim with the New India Assurance Company Limited. The surveyor of the Company also submitted his report for settlement of the claim but his

claim for the loss worth of Rs.2000/-was not paid by the Company for the last six months. When he met Prakash Prasad Sinha, claim incharge of the

said Company, he demanded graft of Rs.400/- in lieu of payment of the claim amount to the complainant. He also instructed to submit receipt after

taking the signature of the authorized Director of the Company on revenue stamp. He also extended threatening that claim would not be passed unto

the payment of the aforesaid graft. As the complainant did not want to give any graft to Prakash Prasad Sinha for the said work, he approached the

C.B.I., Patna and lodged a complaint on 26.10.1994. On receiving the aforesaid complaint petition, S.P., C.B.I. got the veracity of the allegation

verified by its officer, namely, Shri Ashish Kumar, Inspector, C.B.I., Patna and after verification F.I.R. was lodged against the aforesaid accused. The

charge of the case was given to Shri Nagendra Prasad, Inspector of Police, C.B.I., SPE, Patna, for laying down a trap and investigation. On

27.10.1994, a trap team was constituted comprising eight personnel of the C.B.I. and two independent witnesses, namely, Shri K.M. Dubey and Shri

Anand Prakash Poddar, both personnel from the Central Bank of India, Zonal Office, Patna. Out of them Shri K.M. Dubey was directed to act as

shadow witness and demonstration formalities was carried out in the office. Complainant was asked to produce sum of Rs.400 whereupon he

furnished the same consisting of one currency note of Rs.100 denomination, five currency notes of Rs.50 denomination and five currency notes of

Rs.10 denomination. The description and number of the said currency notes was noted down in the preliminary memorandum. The said currency notes

were treated with phenolphthalein powder and were given to the complainant with a direction to hand it over to the accused only on demand and a

preliminary memorandum was prepared in the office of C.B.I., Patna. Thereafter, on 27.10.1994 at 11:15 AM the trap team and the complainant arrived at the Branch Office of the New India Assurance Company Limited located on the first floor of Nasima House, West Gandhi Maidan, Patna.

The complainant and the shadow witness approached the accused. While other members of the team took their respective position in the office

keeping the safe distance. On questioning about the identity of his companion by the accused the complainant introduced him as the agent of the said

Company. On asking by the accused about bringing of the receipt obtaining signature of his Director, the complainant handed him over the voucher

bearing the signature of the Director of the Company on revenue stamp. Then the accused grilled him about bringing of the money as demanded by

him whereupon the complainant replied in affirmative. Then the accused asked the complainant to come back at 3 PM to collect the cheque as the

Branch Manager was not available. Then, they regressed to the C.B.I. office. Thereafter, again they went to Nasima House at 2:55 PM and the

complainant and shadow witness approached the accused while other team members took their respective position keeping safe distance. On asking

by the complainant as to whether his work has been completed, the accused replied in affirmative and took out the cheque from almirah and handed it

over to the complainant and obtained his receipt on the disbursement voucher. Then the accused asked the complainant to give him Rs.400 as fixed

earlier. Whereupon, the complainant took out the tainted G.C. note of Rs.400 from his upper left pocket of the shirt and handed it over to the accused

and asked him to count the same. On asking by the accused about the quantum of money, he replied that it is complete Rs.400 and again asked him to

count the same. The accused accepted the said notes and after counting the same by his both hands kept it in the left side of the pocket of his trouser.

Then the shadow witness came out of the room and passed on prefixed signal by scratching his hairs with his fingers. Shri Nagendra Prasad in turn

passed on the signal to the other team members and rushed towards the room of the accused. Inspector Nagendra Prasad entered in the room and disclosing his identity challenged the accused that he had accepted the gratification of Rs.400 from the complainant and caught hold his both hands,

whereupon the accused became perplexed and kept mum. On the instruction of Nagendra Prasad, the independent witness Shri A.P. Poddar took out

the tainted graft amount from the pocket of the accused and the same was compared with the numbers and denominations as mentioned in the

preliminary memorandum and it was found matching, then the said money was kept in envelop and sealed. Thereafter, solution of sodium carbonate

was prepared and both the hands of the accused was dip in the same which turned pink. The solution was preserved and sealed. Wash of the solution

was also preserved and sealed. The concern file along with the disbursement and discharge voucher were seized from the accused and the accused

was taken to the C.B.I. office as no alternative of trouser to be provided to the accused was available there. In the C.B.I. office, the pajama was

managed and handed over to the accused and the inner linings of the left side pocket of trouser of the accused was dipped in the sodium carbonate

solution which also turned pink. The said trouser and the wash of the trouser were sealed. The envelope containing the money was also sealed.

Thereafter, the final recovery memo was prepared and all the members of the trap team, witnesses, complainant and the accused put their signature

on the same. The said wash was sent to the C.F.S.L., Calcutta for its chemical examination. The C.F.S.L. in its report opined the solution to be

mixture of phenolphthalein power and sodium carbonate.

16. The complainant Anil Kumar examined in this case as P.W.6 appears to have substantiated the prosecution case by stating in his examination-in-

chief that his motorcycle bearing registration no.BR 1 D 8056 was damaged in the accident so he had lodged a claim in the New India Assurance

Company Limited, Patna. When he met with the claim incharge Prakash Prasad Sinha, he demanded Rs.400/- as graft. Then he made a complaint on

26.10.1994 against Prakash Prasad Sinha in the C.B.I. who was posted as a Dealing Assistant (Claims) in the said office. On his complaint, the C.B.I.

got the veracity of his complaint verified and found the same to be true. Then on 27.10.1994 the procedure of trap was undertaken. He arrived at the

C.B.I. office at 10 AM and met with the Inspector Nagendra Prasad there. Eight members of the C.B.I. were present there from before. Two

witnesses of Central Bank of India, namely, Shri K.M. Dubey and Shri A.P. Poddar were also present there. After congregation of all the persons

they were read over his complaint. Thereafter a formality of demonstration was undertaken. On demand by the Inspector, he handed him over

Rs.400/- consisting of one currency note of Rs.100 denomination, five currency notes of Rs.50 denomination and five currency notes of Rs.10

denomination. The number and description of said currency notes was noted down and they were treated with the phenolphthalein powder and then it

was returned to him with a direction to give it to the accused only on demand. Shri K.M. Dubey was made shadow witness and he was directed to

give the prefix signals by scratching his hair after completion of transaction. Thereafter, a preliminary memorandum was prepared. He put his

signature on the same. Then they arrived at the office of the accused at 11:15 AM. He and witness K.M. Dubey entered into the office of the

accused and introduced the witness as an agent of his Company. On asking about bringing of the paper after obtaining signature of the Director of the

Company on it, he replied in affirmative and handed it over to him. Then he perused the voucher and asked him to come back after 3 PM as the

Branch Manager was absent. Then again they arrived at his office at around 3 PM. He and K.M. Dubey entered into the room of the accused while

Inspector Nagendra Prasad and 2-3 members of the trap team entered in the office located in the first floor. On approaching the accused he handed

over cheque worth Rs.2399/- against his receipt on the voucher and asked him for giving the money demanded by him and on his demand he handed

over tainted note of Rs.400/- to him. Taking the money, he counted the same by his both hands and then put it into left pocket of his trouser.

Thereafter, K.M. Dubey gave a prefixed insinuation. Whereupon Nagendra Prasad and independent witness, namely, A.P. Poddar arrived in the

Chambers and other members of the team also arrived there following them and on giving challenge to the accused by Nagendra Prasad and on his

instruction K.M. Poddar took out the aforesaid money from his pocket and on matching the number of the aforesaid currency note with that noted

down in the preliminary report it was matched. The said currency notes were handed over to Sri Poddar. Thereafter the solution of sodium carbonate

was prepared and wash of both the hands of the accused was taken which turned pink. The said wash was sealed in the bottle. The file relating to his

claim was also seized. Thereafter, they rushed to the C.B.I. office and a pajama was provided to the accused in the C.B.I. office and pocket of his

paint was also washed in the sodium carbonate which turned pink. Wash of the paint was also sealed in the bottle. The seized currency notes were

kept in the envelop and were sealed. Thereafter, the recovery memorandum was prepared. He and the witnesses put their signature on the aforesaid

sealed wash, currency notes and recovery memorandum etc. He has proved the recovery memorandum. He was subjected to lengthy cross-

examination by the defence but nothing convincing and cogent has been elicited in his cross-examination warranting to rule to out his aforesaid

testimony.

17. P.W.7-Shri Krishna Murari Dueby and P.W.4-Shri Anand Prakash Poddar, who happen to be independent witnesses and personnel of the Central

Bank of India have stated in their respective examination-in-chief that on 27.10.1994 they had gone to the C.B.I. office, Patna. There were 7-8 C.B.I.

officer present there. Complaint was introduced to them. The C.B.I. Inspector read over complaint of Mr. Anil Kumar to them. Thereafter, the

demonstration formality was carried out. The complainant gave currency notes of Rs.400 to the Inspector who treated the same with phenolphthalein

powder and returned the same to him with instruction to give it to the accused on demand and Shri K.M. Dubey was instructed to act as shadow witness. The preliminary memorandum was prepared. They put their signature on the memorandum. Thereafter, they went to the office of New India

Assurance Company. K.M. Dubey (P.W.7) went inside the room of the accused with the complainant. The complainant introduced him as the agent

of the Company. Shri K.M. Dubey (P.W.7) has further stated that the accused grilled the complainant about bringing of money by him. On reply in

the affirmative, he asked him to come around 3 PM and receive his cheque as the Branch Manager was absent. The aforesaid witnesses further

stated that thereafter they regressed to the C.B.I. office and again arrived in the office of the appellant at around 2:45 PM. K.M. Dubey entered into

the office of the accused along with the complainant. P.W.4-Nagendra Prasad remained at the main gate and after handing over the cheque the

accused demanded the money from the complainant. Then the complainant taking out the money from his pocket handed it over to him, on quizzing

about the quantum of the money, he replied that it is as per the demand and asked him to count the same. Thereafter, the accused counted it and put

the said note in the pocket of his trouser. Thereafter, as per the direction K.M. Dubey gave prefixed signal by scratching his hair. Responding the

same, the Inspector Nagendra Prasad and other witnesses entered in the office of the accused and caught hold his both hands. On quizzing about

taking bribe by him, he accepted the same and divulged that he has kept the money in his left pocket of his trouser, then on instruction of the Inspector

Nagendra Prasad, A.P. Poddar took out the money from his pocket. The number of the said currency notes were verified from the number noted in

the memorandum and was found the same matching.Thereafter, both the hands of the accused were washed with the solution of sodium carbonate

which turned pink. The wash of his hands were sealed in the bottle. The seized currency notes were also kept in envelop and sealed. The concerned

claim file was also seized and sealed. As there was no alternative arrangement of the paint, the accused was taken to the C.B.I. office and a pajama was provided to him in the C.B.I. office and the pocket of his paint was washed in the solution of sodium carbonate which turned pink. The said wash

was also sealed in the bottle and the paint was also sealed in the envelope. They put their signature on the sealed wash and envelop. Thereafter

recovery memo was prepared and they also signed the same. The aforesaid witnesses were also subjected to lengthy cross-examination but nothing

convincing and cogent has been elicited to rule out their testimony.

18. From perusal of the testimonies of P.Ws.4, 6 & 7, it appears that the aforesaid witnesses have supported the case of demand of graft by the

accused, acceptance of the same by him and recovery of it from his possession by their consistent, unblemished and worth credence evidence.

19. P.W.3-Shri Ashish Kumar who happens to be the Inspector of the C.B.I. and who has carried out the verification of the veracity of the complaint

has proved the verification report, marked as Ext.5. Shri Jai Prakash Mishra (P.W.8) and Shri Nagendra Prasad (P.W.9) who happens to be the

member of the trap team, appears to have supported the aforesaid case of the prosecution of making verification of the allegation by Ashish Kumar

carrying out the formalities of the demonstration, constitution of the trap team providing of Rs.400/- consisting of one note of denomination of Rs.100/-,

five notes each of denomination of Rs.50/- and five notes each of denomination of Rs.10/- by the complainant, treating the same with the

phenolphthalein powder and then returning it to the complainant with a direction to hand it over to the accused on demand, preparation of preliminary

report, constitution of the trap team, arrival at the office of the accused with complainant and P.W.4 & P.W.7, demand of graft of Rs.400/- by the

accused from the complainant, handing over the aforesaid tainted money by the complainant to the accused, counting of the same by the accused and

putting it in the pocket of his trouser, apprehension of the accused red - handed, recovery of the tainted currency notes from the possession of the

accused, tallying of the number of currency notes with the number as mentioned in the preliminary report, taking wash of both the hands of the accused turning it pink, sealing of the said wash in the bottle, sealing of the aforesaid currency notes in the envelope, seizing and sealing of concerned

file and then taking the accused to the C.B.I. office, providing him pajama there and thereafter taking wash of the pocket of the pajama with the

sodium carbonate, turning the same pink, sealing of the aforesaid wash in the bottle and sealing of the paint by giving consistent statement regarding

the aforesaid aspect of the case. They were also subjected to lengthy cross examination but nothing cogent and convincing has been elicited in their

cross - examination having potential to rule out their aforesaid testimonies.

20. P.W.2-Shri Vinod Prasad who was posted as Senior Assistant in the New India Assurance Company Limited at Nasima House, Branch-I, West

Gandhi Maidan, Patna at the relevant period has deposed that the claim of the complainant was registered in its Branch Office. He has also stated

that against claim Rs.2399/- was paid to him on 26.10.1994 through cheque which bears his signature and that of Branch Manager Pravin Kumar

Sinha. He has further stated that the claim form was issued by the accused P.P. Sinha on 17.03.1994 under his signature which is marked as Ext.2/2.

The Surveyor R. Prasad deputed by him had submitted claim report of Rs.2693/-. The bill was received on 27.10.1994 in the Branch and the payment

was to be made to M/s Nidhi Sri Finance Company. He has proved the claim file which was seized by the trap team from the aforesaid office,

disbursement voucher and receipt.

21. P.W.1-Shri S.C. Pothen, who happens to be Regional Manager in the New India Assurance Company Limited at the relevant period, has also

supported the prosecution case regarding giving sanction for the prosecution of the accused. He has proved the sanction order marked as Ext.1. He

has also stated that he was the competent authority for according sanction and also for removing the accused and after perusing and considering the

report of I.O., complaint petition and all relevant documents and after applying his mind, he accorded the aforesaid sanction. From perusal of said sanction order marked as Exhibit-1 it appears that the sanction for the prosecution of the appellant was accorded by the said witness after carefully

examining the facts and circumstances of the case and perusing all the relevant documents produced before him and finding making out of prima facie

case for prosecution against the appellant by applying his mind.

22. P.W.5-Shri Bimlendu Das who happens to be Junior Scientific Officer of C.S.F.L., Culcatta at the relevant point of time has proved the C.S.F.L.

report marked as Ext.7 and he has stated that he had received four sealed bottles. The impressions of the seal used in the sealing of the bottles were

matched with the seal impression sent along with the forwarding note and was found matching. On test of the contents of the bottles, both

phenolphthalein and sodium carbonate was detected in the contents of each of the bottle. Thus on chemical examination of the wash of the hands of

the accused and that of the pocket of the paint of the accused it was found containing sodium carbonate and phenolphthalein & it has proved the

recovery of the said tainted money from the possession of the appellant.

23. The submission of learned counsel for the appellant that no verification of the authenticity of the complaint was ever made and name of the

verifier has also not been mentioned in the F.I.R. and no endorsement of any superior officer of the Branch of C.B.I. on the verification report has

been made which creates serious doubt about the aforesaid aspect of the case, does not appears to be convincing and acceptable. As discussed by me

in earlier paragraph P.W.3-Ashish Kumar, Inspector of C.B.I. who has verified the authenticity of the complaint of the complainant has

unblemishingly proved the aforesaid verification made by him and finding the complaint made by the complainant to be true. From perusal of the

F.I.R., marked as Ext.11, it appears that it contains the factum of making verification of the veracity of the allegation contained in the complaint by an

Officer of the C.B.I. and after verifying the same submitting of report by him on 26.10.1994 confirming the authenticity of the contents of the complaint. So mere not mentioning the name of the verifying officer in the F.I.R. and not making any endorsement on it by the officer of the C.B.I., in

my considered opinion, has no potential to shatter the aforesaid prosecution case.

24. The submission of learned counsel for the appellant that Shri K.M. Dubey (P.W.7) and Shri A.P. Poddar (P.W.4) were not the independent

witnesses, rather they were the officers of the Central Bank of India and they were acting under the threat of the C.B.I., hence the evidence of the

aforesaid witnesses is not worth reliable and trustworthy also does not appears to be convincing, plausible and acceptable. As the aforesaid witnesses

happens to be the officers of the Central Bank of India and not of the officer of the C.B.I. and the appellant has also not substantiated any sort of

relation with the said witnesses with the complainant. They have also not substantiated that the aforesaid witnesses were inimical to the appellant and

having grudge with him. So the million dollar question arises as to why aforesaid witnesses who are not inimical to the appellant and are not having any

grudge with him and also have no relation with the complainant will give statement against the appellant.

25. Further submission of the learned counsel for the appellant that no independent witness or the personnel of the office of the appellant who were

present at the office at the time of laying the trap has been examined by the prosecution which creates serious doubt about the prosecution case also

does not appears to be convincing and appreciable as it is the settled principle of law that it is the quality and not the quantity of the witnesses has to

be taken into consideration. As in the case under hand the prosecution has examined two independent witnesses who have succeeded to substantiate

the prosecution case by giving their unblemished evidence hence non-examination of the aforesaid person, in my considered opinion, is not going to

affect the merit of the case and has no potential to rule out the prosecution case.

26. It is further submitted by learned counsel for the appellant that the recovery memo was not prepared at the place of occurrence rather in the

C.B.I. office which creates serious doubt about the genuineness of the trap proceeding also does not appears to be convincing, plausible and

acceptable as it is the prosecution case and the witnesses examined by the prosecution have fully substantiated the case of the prosecution that as no

alternative arrangement of the trouser to be provided to the appellant at the place of trap was available to enable them to take wash of the pocket of

the paint from where tainted currency note was recovered, they had no option but to take the appellant to the C.B.I. office where pajama was

accorded to him and pocket of his paint was washed in the solution of sodium carbonate which turned pink. Moreover, the entire occurrence of

acceptance, demand and recovery of the currency note from the possession of the appellant had taken place at the place of trap and only formality of

preparing the recovery memo was made in the C.B.I. office and copy of recovery memo was handed over to the appellant and said recovery memo

also bears signature of the appellant.

27. Further submission of learned counsel for the appellant that the complainant himself is not trustworthy as he happens to be an accused in the theft

case as admitted by him in his cross-examination also does not appears to be convincing and appreciable as if the complainant happens to be accused

of the theft case as the complainant in para-77 of his cross-examination has stated that a criminal case under Section 379 of the Indian Penal Code is

pending against him, he will face the music of the same and pendency of the said case against the complainant, in my considered opinion, is not going

to affect the merit of the case under hand by any stretch of imagination in view of substantiation of factum of demand of graft and acceptance of it by

the appellant and recovery of the same from his possession by the prosecution witnesses.

28. The submission of learned counsel for the appellant that as the complainant had deposited the salvage on 26.10.1994 i.e. on the date of filing the

complaint and submitted the lost voucher with the seal and signature of the Director of the Company on 27.10.1994 i.e. on the date of trap, so before completion of the aforesaid formality no question of settlement or disbursement of the claim arises, hence the allegation made by the complainant that

he was pursing the matter for last six months and the appellant d id not pay the claim amount rather demanded the graft is false and frivolous, does not

appears to be convincing and appreciable because from perusal of the record, it appears that the complainant had filed the claim case on 17.03.1994

and after receiving the claim case the appellant had deployed surveyor to submit a report after surveying the matter, who after making verification

submitted his report on 20.04.1994 to the Insurance Company. The vehicle was got repaired by the complainant and cash-memo dated 11.05.1994

was submitted to the appellant by the complainant but the accident claim of the complainant was kept pending since May, 1994 and if the formality for

payment of claim amount i.e. furnishing of the salvage and lost voucher after obtaining the seal and signature of the Director of his office was to be

completed by the complainant, the appellant ought to have written letter to the complainant regarding the same but for around five months he did not

undertake the said step rather kept mum and waited for the complainant to meet him and grease his palm and when the complainant met him on

24.10.1994, he demanded graft of Rs.400/- for payment of the claim and also asked him to complete the aforesaid formalities. The aforesaid conduct

of the appellant eloquently indicates his ulterior motive behind delaying in payment of claim to the complainant.

29. Further submission of learned counsel for the appellant that the aforesaid motorcycle was registered and insured in the name of Nidhi Sri Finance

and Investment (India) Limited and the complainant happens to be only its user, hence he was not entitled to filed claim case and receive claim

amount also does not appears to be convincing and appreciable as from perusal of Exts.2/45 and 2/47, it appears that the motorcycle in question was

registered and insured in the name of Nidhi Sri Finance and Investment Company Limited represented by the complainant and being the representative of the aforesaid Finance Company the complainant has every right to file the claim case for payment of compensation on account of damage caused

to the aforesaid motorcycle and receive the claim amount.

30. Further submission of learned counsel for the appellant that the appellant has already handed over the cheque of the claim amount to the

complainant on 27.10.1994, hence there was no occasion for demanding graft from him for the same also does not appears to be convincing,

appreciable and acceptable as from perusal of the prosecution case and account of the witnesses, it appears that as there was delay of around five

months in settlement of claim by the appellant, the complainant met him on 24.10.1994, then the appellant demanded graft of Rs.400/- from him in lieu

of settlement of the claim and also asked him to deposit the salvage and furnish the lost voucher after obtaining the seal and signature of the Director

of the Company on the same on 26.10.1994 and on 27.10.1994 the appellant again grilled the complainant about bringing of the said graft and on

affirmative, he asked him to come around at 3 PM and receive the cheque as the Branch Manager was absent and again on approaching the

appellant, the appellant demanded the aforesaid graft from the complainant after handing over the cheque to him. On furnishing the same to him by the

complainant on demand, he counted the same and put it in pocket of his trouser.

31. Further submission of learned counsel for the appellant that as per the account of P.W.2, who happens to be Senior Assistant in the New India

Assurance Company Limited at the relevant time as given by him in para-11 of his cross-examination on the date of alleged trap he along with 6-7

staffs were present in the office but no step of trap was taken before him on the said date and he was also not called for at the place of trap. Hence,

the aforesaid statement of P.W.2 completely rules out the entire prosecution case of accepting the bribe and recovery of the same from his possession

by laying trap on the date of occurrence also does not appears to be convincing and appreciable as it has not been brought on record by the appellant that he was sitting in the same Chambers/room of P.W.2 at the relevant time where the aforesaid episode took place and moreover from perusal of

the seizure list of the relevant claim file, seized from the office of the Insurance Company, it appears that the seizure list (Ext.12) bears the signature

of the Branch Manager, namely, P.K. Sinha of the said Insurance Company. The said seizure list was made subsequent to the demand, acceptance

and recovery of the graft money from the possession of the appellant made by the trap team after laying trap. Hence, the aforesaid aspect eloquently

indicates that the entire trap proceeding and recovery of graft money from the possession of the appellant etc. was made in the aforesaid office of the

Insurance Company in presence of the Branch Manager of the said Insurance Company.

32. The tainted currency notes were recovered and seized from the pocket of the appellant and appellant has failed to substantiate as to how the

aforesaid currency notes came into his pocket. It is also not the case of the appellant that someone has thrusted the aforesaid currency note in his

pocket to falsely implicate him in this case and no evidence on his behalf has been given that some person was inimical to him. The appellant has also

failed to substantiate that the complainant, aforesaid two witnesses and officers of the C.B.I. were inimical to him and falsely implicated him in this

case due to the aforesaid animosity. Hence, in my considered opinion, there appears to be no reason for the aforesaid persons to falsely implicate the

appellant in the case.

33. The HonÃ¢â‚¬â„¢ble Apex Court in Narendra Champaklal Trivedi v. State of Gujarat reported in 2012 Criminal L.J. 3025 has been pleased to rule

that where the accused alleged to have taken bribe for providing survey report and bribe money was recovered from possession of accused by raiding

party and the shadow witness has clearly stated that there was demand and acceptance of bribe and no evidence was adduced by the accused to

rebut the presumption of commission of offence under Section 7 and 13 of the Prevention of Corruption Act by him, the conviction does not warrant any interference. HonÃ¢â‚¬â„¢ble Apex Court in Gian Singh v. State of Punjab reported in AIR 1974 Supreme Court 1024 has been pleased to rule that

the police officials cannot be discredited in a trap case merely because they are police officials, nor can other witnesses be rejected because on some

other occasion they have been witnesses for the prosecution in the past. Basically, the court has to view the evidence in the light of the probabilities

and the intrinsic credibility of those who testify. The HonÃ¢â‚¬â„¢ble Apex Court in Somabhai Gopalbhai Patel v. State of Gujarat reported in 2015

Criminal L.J. 255 has been pleased to rule that where there is demand and acceptance of bribe by accused and testimony of the complainant is fully

corroborated by the shadow witness and recovery of currency notes from possession of the accused stood proved, the explanation of accused that he

accepted the aforesaid money from the complainant towards tax not substantiated by him, the conviction recorded by the trial Judge and confirmed by

the High Court does not warrant any interference. The HonÃ¢â‚¬â„¢ble Apex Court inS . Dinesh Kumar v. State through Inspector and another reported

in AIR 2015 SC (Suppl.) 62 has been pleased to rule that where accused, a Commercial Tax Inspector (Recovery) alleged to have demanded and

accepted bribe of Rs.1,000/- from the complainant for removal of seal and there is no evidence showing that amount in question was received towards

arrears of taxes, 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, the order of the High Court interfering with acquittal order passed by special Judge and convicting accused is

proper.

34. Thus, in view of the aforesaid fact and from perusal of the evidence adduced by the prosecution, I find that the prosecution has fully succeeded to

establish the demand of bribe, acceptance of it by the appellant and recovery of the offending currency notes from the possession of the appellant by

adducing consistent, trustworthy and reliable ocular and documentary evidence.

35. It is settled principle of law laid down by the HonÃ¢â‚¬â„¢ble Apex Court in number of decisions that once the demand and voluntary acceptance of

illegal gratification knowing it to be the bribe are proved by the evidence, conviction must follow under Section-7 of the Prevention of Corruption Act

against the accused. Indeed these twin requirements are sine qua non for proving the offence under Section 7 of the Act. No explanation has been

given by the appellant as to how the tainted money came in his possession by brining on record any evidence direct or circumstantial. Hence, in view

of the aforesaid evidence of the prosecution and keeping in view of the aforesaid principle of law in mind, I come to the conclusion that the twin

requirements of demand and acceptance of illegal gratification of Rs.400/- by the appellant coupled with recovery of aforesaid tainted money from

possession of appellant has been proved by the prosecution by adducing cogent, consistent and trustworthy evidence and the appellant was rightly

convicted and sentenced for the offence punishable under Sections 7, 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 by

the learned lower court. Hence, the impugned judgment and order of conviction and sentence passed by the learned lower court does not suffer from

any illegality and impropriety warranting intervention of this court. Accordingly, it is upheld and the appeal is dismissed. As the appellant is on bail, his

bail bond is cancelled and he his directed to surrender before the learned lower court forthwith.