Ghasiram Behera Vs State Of Odisha (Vigilance)

Court: Orissa High Court

Date of Decision: Oct. 9, 2023

Acts Referred: Prevention of Corruption Act, 1988 â€" Section 2, 7, 13, 13(1)(d), 13(1)(d)(i), 13(1)(d)(ii), 13(2), 20 Evidence Act, 1872 â€" Section 154

Hon'ble Judges: S.K. Sahoo, J

Bench: Single Bench

Advocate: Deba Prasad Das, Niranjan Moharana

Final Decision: Allowed

Judgement

S.K. Sahoo, J

1. The appellant Ghasiram Behera faced trial in the Court of learned Special Judge (Vigilance), Cuttack in T.R. Case No.314 of 2007 for offences

punishable under section 13(2) read with section 13(1)(d) and section 7 of the Prevention of Corruption Act, 1988 (hereafter 81988 Act9) on the

accusation that on 14.11.2003 he being a public servant functioning as Dealing Clerk in the office of Sub-Treasury, Pallahara in Angul district obtained

for his pecuniary advantage to the extent of Rs.1,100/- (rupees eleven hundred) from the informant Mahendra Kumar Sahoo (P.W.1) for processing

the gratuity and arrear provisional pension bills of his widow mother and accepted the said amount for himself as gratification other than legal

remuneration for the above purpose.

The learned trial Court vide impugned judgment and order dated 19.05.2017 found the appellant guilty of the offences charged and sentenced him to

undergo rigorous imprisonment for one year and to pay a fine of Rs.3,000/-(rupees three thousand), in default, to undergo rigorous imprisonment for

two months for the offence under section 13(2) read with section 13(1)(d) of the 1988 Act and to undergo rigorous imprisonment for one year and to

pay a fine of Rs.1,000/- (rupees one thousand), in default, to undergo rigorous imprisonment for two months for the offence under section 7 of the

1988 Act with a direction that the sentences shall run concurrently.

2. P.W.1 lodged the written report (Ext.1) before the Superintendent of Police, Vigilance, Cuttack through the Inspector, Vigilance, Angul on

13.11.2003 stating therein that his father late Harihar Sahoo was serving as a teacher of Government Primary School and he expired on 29.03.2003.

About two months prior to the lodging of F.I.R., the bill of unutilized leave of his deceased father in the name of his mother was submitted by B.D.O.,

Pallahara to Sub-Treasury office, Pallahara for passing the same and for payment. As the processing of such bill got delayed, on the request of P.W.1

for processing the bill file, the appellant demanded a bribe of Rs.1,000/- (rupees one thousand) for such purpose and out of the demanded amount,

P.W.1 made payment of Rs.200/-(rupees two hundred) under compulsion and he was instructed by the appellant to pay the balance amount later on

and thereafter gratuity and arrear provisional pension bills amounting to Rs.90,800/- was submitted by B.D.O., Pallahara on 01.11.2003 to the Sub-

Treasury along with provisional pension bill of the mother of P.W.1. Though the provisional pension bill was passed by the treasury, the other two bills

were returned to the Block office. When P.W.1 came to know about the same, he came to the treasury on 03.11.2003 and met the appellant, but the

appellant on seeing P.W.1 got angry and charged him for non-payment of the balance amount of bribe and further warned him not to process any of

the bills if his demand was not fulfilled. The appellant demanded bribe of Rs.1,500/- from P.W.1 to process the bills and did not listen to P.W.1 in spite

of his repeated request on 04.11.2003. P.W.1 again met the appellant in his office and requested him but the latter remained firm on his demand.

Finding no other alternative and under compulsion and against his will, P.W.1 paid Rs.400/- to the appellant who took the same and asked P.W.1 to

get the bills resubmitted from the Block office and further asked him to come up with the balance amount of Rs.1,100/- on 14.11.2003 and to pay him

in his office. The appellant made it clear that unless the balance amount was paid, he would not process the bill. The bills were resubmitted to the

treasury by the Block office on 10.11.2003. P.W.1 further mentioned in his written report (Ext.1) that he was going to pay the bribe amount of

Rs.1,100/- as demanded by the appellant to him against his will and under compulsion and requested the vigilance officials to take necessary action

against the appellant.

The written report was received from P.W.1 by the Inspector, Vigilance, Angul and the same was forwarded to the office of Superintendent of

Police, Vigilance, Cuttack Division, Cuttack, where on 13.11.2003 Mr. Mahesh Chandra Mohanty, Superintendent of Police, Vigilance, Cuttack,

directed the O.I.C., Vigilance police station, Cuttack Division, Cuttack to register the case and simultaneously directed Lingaraj Panda (P.W.4), the

Inspector, Vigilance Squad, Dhenkanal and Kunja Bihari Pani (P.W.7), the Inspector of Police, Angul Vigilance Unit for laying of trap and taking up

investigation respectively. The O.I.C., Vigilance police station registered Cuttack Vigilance P.S. Case No.64 dt. 13.11.2003 under section 13(1)(d)

and section 7 of the 1988 Act.

Pre-trap proceeding was taken up at Angul Vigilance Unit office on 14.11.2003 around 7.45 a.m. procuring attendance of independent official

witnesses, namely, Rabindra Kumar Behera (P.W.3), Dillip Kumar Swain (P.W.8) and one Girish Chandra Rath (not examined due to his death) in

presence of P.W.1 and other trap party members. Following introduction of P.W.1 to the witnesses, P.W.1 narrated his grievance, inter alia, told that

the appellant being the Dealing Clerk of Sub-Treasury office, Pallahara was demanding bribe of Rs.1,100/- (rupees eleven hundred) for processing the

gratuity arrear bill of his late father. P.W.1 produced two numbers of 500 rupee denomination G.C. notes and one 100 rupee denomination G.C. note.

The serial numbers and denominations thereof were noted down in a chit of paper (Ext.18). The said chit of paper was handed over to witness Girish

Chandra Rath for comparison of the serial numbers and denomination of the tainted notes after its recovery at the spot. Followed by demonstration

conveying the witnesses about the chemical reaction of phenolphthalein powder with sodium carbonate solution, the produced G.C. notes of P.W.1

were being smeared with phenolphthalein powder, made over to P.W.1 to hand over the same to the appellant on demand only. P.W.3 was instructed

to accompany P.W.1 to overhear the conversation, to witness the transaction and to relay the signal on completion of transaction. P.W.8 was

instructed to accompany witness Girish Chandra Rath to the spot to witness the post-detection transaction. Pre-trap demonstration report (Ext.2) was

accordingly prepared.

On completion of preparation around 11.00 a.m. on 14.11.2003, the trap party members proceeded to the spot i.e. Sub-Treasury office, Pallahara

including P.W.1, P.W.3 and P.W.8. On their arrival near the spot, P.W.1 being accompanied by P.W.3 proceeded inside the office premises whereas

the other trap party members remained scattered outside awaiting pre-arranged signal. It is the further prosecution case that the appellant on seeing

P.W.1 instantly demanded the bribe and accepted the tainted notes on being handed over by P.W.1. The appellant receiving the currency notes from

P.W.1, kept the said money in his left side wearing shirt pocket and then he kept it in between bunch of files kept in his office almirah. Observing the

completion of transaction, P.W.3 relayed pre-arranged signal. Getting such signal, the trap party members rushed to the spot and gave their identity to

the appellant who became nervous and pale. P.W.3 told to others at the spot that the appellant accepted the tainted G.C. notes pursuant to his

demand. Both the hand wash of the appellant was taken separately in sodium carbonate solution, which changed to pink colour on each occasion. At

the instance of the appellant, the tainted G.C. notes were recovered from his office almirah in between the bunch of files. The witness Girish Chandra

Rath in presence of P.W.8, compared the serial numbers and denomination of the recovered tainted G.C. notes with that of serial numbers and

denominations noted by him earlier and found the same got tallied. The shirt pocket wash of the appellant on being taken in sodium carbonate solution,

released pink colour. Similarly, the cotton wash of the almirah where the tainted G.C. notes were kept, on being taken in sodium carbonate solution,

released pink colour. The concerned bills in question were seized from the office table of P.W.5 (Treasury Officer). Each of the pink colour solution

of the afore-stated wash was preserved in bottle containers being duly packed and sealed.

The tainted G.C. notes, each of the sealed bottle containers, fourfold paper, shirt of the appellant, chit of paper containing serial numbers and

denomination of G.C. notes were also seized besides others. P.W.7 receiving the seized articles and the case record from P.W.4, took up

investigation, visited the spot, examined the witnesses, prepared the spot map (Ext.15), sent the bottle containers to S.F.S.L., Rasulgarh, received the

C.E. report (Ext.16), seized original service book of the appellant, made pre-sanction discussion with the sanctioning authority and obtained the

sanction order (Ext.17) and on completion of investigation, submitted charge sheet against the appellant on 20.12.2003 under section 13(2) read with

section 13(1)(d) and section 7 of the 1988 Act.

Defence Plea:

3. The defence plea of the appellant is one of denial and false implication. The further plea of the defence is that P.W.1 claiming himself to be a

politician was usually coming to the office of the appellant in connection with the works of the public prior to the initiation of the case. He was in a

habit to threaten the staff of the treasury office for performing the work of the people. The appellant on one occasion protesting such activities of

P.W.1 warned him not to come to the office to pollute the official environment for which there was hot exchange of words between the appellant and

P.W.1. The appellant had threatened him to see in future. It is stated that on the date of occurrence with a view to harass the appellant on account of

the previous grudge, P.W.1 coming to his office while he was busy in performing works, shook his hands and all of a sudden thrust some currency

notes into the chest pocket of the wearing shirt of the appellant and immediately fled away from the office room despite resistance and protest of the

appellant. At the nick of the moment, the vigilance officials came and caught hold of him. On being asked, he brought out the tainted G.C. notes from

his pocket and counted. It is further pleaded by the appellant that he neither demanded nor accepted any bribe from P.W.1 and he had already sent

the concerned file to the accountant two days prior to the date of trap and therefore, there was no work of P.W.1 pending with him.

Prosecution witnesses, documents exhibited and material objects proved on behalf of prosecution:

4. In order to prove its case, the prosecution examined nine witnesses.

P.W.1 Mahendra Kumar Sahoo is the informant in the case and he has stated in detail relating to the demand of bribe by the appellant, lodging of the

written report vide Ext.1 by him, preparation for the trap, demand and acceptance of bribe money by the appellant and assurance given by the

appellant to do the work. He further stated that since he was feeling uneasy, he was allowed to sit at the spot and the vigilance personnel prepared

their papers and prepared the detection report (Ext.3) at the spot.

P.W.2 Niranjan Patnaik was the Senior Clerk in the Sub-Treasury Office, Pallalahara. He stated that the appellant was serving as Junior Clerk in the

said office. He further stated that on his production, the vigilance police seized the service book of the appellant under seizure list Ext.4 and gave it in

his zima vide Ext.4/2.

P.W.3 Rabindra Kumar Behera was the Junior Clerk in the Collectorate, Angul and as per the direction of the A.D.M., Angul, he had attended the

office of the D.S.P., Vigilance, Angul. On 14.11.2003 he accompanied the trap party members to the Sub-Treasury office, Pallahara and further

stated that in the Treasury Office, a treasury clerk was trapped by the vigilance police and there was gathering. He was declared hostile by the

prosecution.

P.W.4 Lingaraj Panda was working as Inspector, Vigilance, Dhenkanal Squad, who stated that as per the direction of the Superintendent of Police,

Vigilance, Cuttack on 13.11.2003 night to lay a trap in Cuttack Vigilance P.S. Case No.64 dated 13.11.2003, he proceeded to Vigilance Squad Office,

Angul on the next day morning. He is a witness to the pre-trap preparation proceeding who accompanied the pre-trap party members to the Sub-

Treasury office, Pallahara and stated about the recovery of the G.C. notes from the almirah of the appellant, hand wash and pocket wash of the

appellant being taken in sodium carbonate solution. He is a witness to the detection report, seizure of the bottles containing the washes, seizure of

original bills from the Sub-Treasury office, Pallahara and giving the same in the zima of the accountant.

P.W.5 Akhaya Kumar Sethi was serving as Sub-Treasury Officer at Sub-Treasury office, Pallahara and he is a witness to the seizure of the service

book of the appellant by the vigilance officials as per seizure list Ext.4. He is also a signatory to the detection report vide Ext.3.

P.W.6 Dushasan Nayak was the accountant in the office of the Sub-Treasury Officer, Pallahara who stated that the appellant had handed over one

G.P.F. and pension bill of an employee to him for its final check up and submission before Sub-Treasury Officer and accordingly, the same was sent

to Sub-Treasury Officer on 14.11.2003 at about 10.30 to 11.00 a.m. He is also a witness to the seizure of pension and gratuity bill of the father of

P.W.1 as per seizure list Ext.13.

P.W.7 Kunja Bihari Pani was the Inspector of Police, Vigilance who took over the charge of investigation from P.W.4, examined the informant and

other witnesses, visited the spot and prepared the seizure list, sent the seized bottle containers to S.F.S.L., Rasulgarh for chemical examination and

opinion, seized the original service book of the appellant and released the same in the zima of P.W.2, received the C.E. report, obtained the sanction

order (Ext.17) from Director, Treasury and Inspection, Odisha, Bhubaneswar and on completion of investigation, submitted charge sheet against the

appellant.

P.W.8 Dillip Kumar Swain was the Junior Clerk of Collectorate, Angul who stated about pre-trap preparation and accompanying the trap party to the

office of Sub-Treasury, Pallahara. He further stated about the recovery of the tainted G.C. notes from the almirah of the appellant and hand washes

of the appellant being taken by the vigilance officials and other formalities which were completed in the office of the appellant. He is a signatory of the

different seizure lists.

P.W.9 Mahesh Chandra Mohanty was the S.P., Vigilance, Cuttack who on receipt of Ext.1 from Inspector, Vigilance, Angul directed the O.I.C.,

Vigilance, Cuttack to register the case and further directed P.W.4 for laying the trap and P.W.7 to investigate the case.

The prosecution exhibited eighteen documents. Ext.1 is the F.I.R., Ext.2 is the preparation report, Ext.3 is the detection report, Ext.4, Ext.5/1, Ext.6/1,

Ext.7/1, Ext.9, Ext.10, Ext.11, Ext.12 and Ext.13 are the seizure lists, Ext.8 is the paper containing facsimile seal impression, Ext.14 is the photocopies

of documents containing nine pages, Ext.15 is the spot map, Ext.16 is the C.E. Report, Ext.17 is the sanction order and Ext.18 is the chit of paper.

The prosecution proved seven material objects. M.O.I is the bottle containing pink colour solution relating to left hand wash of the appellant, M.O.II to

the bottle containing pink colour solution relating to right hand wash of the appellant, M.O.III is the packet containing tainted notes, M.O.IV is the

bottle containing pink colour solution relating to both hand wash of the witness G.R. Rath, M.O.V is the seized shirt of the appellant, M.O.VI is the

bottle containing shirt pocket wash of the appellant, M.O.VII is the bottle containing cotton wash of the shelf of office almirah of the appellant. The

chemical examination report (Ext.16) indicates that the exhibits marked as B, C, D, E, F and G were found to contain phenolphthalein in Sodium

Carbonate solution.

Defence witness and document exhibited by defence:

5. In order to prove his case, the appellant Ghasiram Behera examined himself as D.W.1. One document i.e. Ext.A was exhibited on behalf of

defence which is the forwarding report of articles by I.O. (P.W.7).

Points for determination formulated by trial Court:

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

(i) Whether the work of processing the gratuity bill of the father of P.W.1 was pending before the accused on the date of F.I.R. onwards and prior to it and the

accused was dealing with such files as a Clerk of Sub-Treasury office, Pallahara?

(ii) Whether the accused advanced demand of bribe of Rs.1,100/- prior to lodging of F.I.R. at his office from the complainant for processing the concerned bill of

gratuity?

(iii) Whether the accused demanded and accepted bribe of Rs.1,100/- from the complainant for processing the gratuity bill in question and he obtained such illegal

gratification for his pecuniary advantage abusing his official position as a reward or motive for doing official act?

(iv) Whether the tainted notes were recovered from the office almirah of the accused on 14.11.2003 around 11.45 a.m. onwards?

(V) Whether the hands wash as well as shirt pocket wash of the accused being taken in sodium carbonate solution, gave positive result and the same has been

affirmed through the opinion of the expert on detection of phenolphthalein substance thereon?

Finding of trial Court:

7. After assessing the oral and documentary evidence, the learned trial Court has been pleased to hold that the testimonies of P.W.1, P.W.5 and

P.W.6 coupled with the admission of the appellant lead to the conclusion that the appellant was a public servant within the meaning of section 2 of the

1988 Act being the Junior Clerk of Sub-Treasury Office, Pallahara. It is further held that the sanctioning authority has validly passed the order of

sanction, being competent to remove the appellant from service and the sanction order for launching prosecution against the appellant is not vitiated in

any manner. It is further held that absence of primary evidence of P.W.3 as to relay of signal did not matter since the evidence of other witnesses i.e.

P.W.1, P.W.4 and P.W.8 to that effect is found to be consistent and the contents of Ext.2 in that regard appears to have been substantiated. It is

further held that the tainted notes recovered from office almirah of the appellant had got contact with the hands and shirt pocket of the appellant. It is

further held that the appellant pursuant to his demand of bribe, accepted the tainted notes and kept it at first in his shirt pocket then he kept it in the

bunch of files of his official almirah and in view of the proof of demand and acceptance of bribe, the tainted notes recovered from the possession of

the appellant was nothing but illegal gratification received as a reward or motive for doing official act and it was so presumed applying section 20 of

1988 Act and thus the prosecution has succeeded in bringing home the charge against the appellant.

Contentions of respective parties:

8. Mr. Deba Prasad Das, learned counsel appearing for the appellant contended that there was strong animosity between the appellant and P.W.1 as

the latter was threatening the employees of the treasury. Learned counsel further argued that P.W.1 lodged the F.I.R. on 13.11.2003 alleging therein

that on 01.11.2003 the bills for gratuity and provisional pension were submitted to the treasury and thereafter he went to the treasury on 03.11.2003

and met the appellant, who demanded Rs.1,500/-from him to process the same and again on 04.11.2003, when he met the appellant, the latter

remained rigid for which finding no other alternative, he paid Rs.400/- to the appellant and the appellant asked him to come with the balance amount

on 14.11.2003. Though P.W.1 has mentioned in the F.I.R. that the bills (Ext.14) were re-submitted by the Block Office on 10.11.2003, but from

Ext.14, it is evident that the same was received in the Sub-Treasury only on 11.11.2003 and not prior to that and the official seals of the treasury with

the date establishes this fact.

Learned counsel argued that if as per the evidence of the T.L.O. (P.W 4) as well as from the bill in question under Ext.14, it was received only on

10/11.11.2003 in the Sub-Treasury, Pallahara from the Block office and not prior to that, there could not have been any occasion for P.W.1 to

approach the appellant on 3.11.2003 or 4.11.2003 and to pay money for processing the bills. Prior to 11.11.2003, there was no occasion for the

appellant to demand any bribe from P.W.1. Learned counsel further argued that it cannot be believed for a moment that one would meet a person and

pay money to him with whom no work was pending and thus, the evidence of P.W.1 casts serious doubt about his version.

Learned counsel further argued that the overhearing witness (P.W.3) has not whispered a word about the occurrence, rather he deposed that he could

not identify the person who was trapped and he could not say if the appellant standing in the dock was the person who was trapped. P.W.1 in his

examination in chief though stated about the demand of bribe, but if his evidence if read as a whole, the same does not inspire confidence.

Learned counsel further argued that the plea of defence that there was no reason/cause/ground for demand of illegal gratification has sufficient force

and it has not only been established through oral testimony but also through the contemporaneous official documents such as the bills under Ext.14.

Learned counsel further argued that the bills under Ext.14 discloses that the appellant processed the same and put up before the accountant and the

accountant in his turn signed the bills on 12.11.2003 and later the bills reached the Treasury Officer who also signed the bill on 14.11.2003. Thus, it is

crystal clear that the appellant promptly dispatched after processing the bills on the day it was received by him and the bills were then placed before

the accountant and when the accountant has put his signature on 12.11.2003, it pre-supposes that no further work was pending with the appellant and

the bills would be transmitted onwards which was in fact being done as the Treasury Officer himself has signed the bills on 14.11.2003. P.W.5, the

Treasury Officer also corroborates the same, who deposed that the bill file dealt by the appellant was sent to the accountant on 12.11.2003.

Learned counsel further argued that the defence plea has been lightly brushed aside by the learned trial Court. The recovery of the tainted notes is

shrouded with mystery and though P.W.1 at first deposed that the money was recovered from the almirah but on the next moment, he has given a

different version and since the evidence adduced by the prosecution is not reliable and cogent, benefit of doubt should be extended in favour of the

appellant.

9. Mr. Niranjan Moharana, learned Addl. Standing Counsel appearing for the Vigilance Department, on the other hand, supported the impugned

judgment. It is his submission that on the date of trap, when P.W.1 met the appellant in his office, the appellant asked him as to whether he had

brought the money and it reflects that on the of trap he again made the demand. The evidence to that effect has not been dispelled by the appellant.

Learned counsel further argued that the deposition of P.W.1 in his cross-examination, fortifies the fact of deliberate acceptance of the tainted bribe

money from P.W.1 by the appellant, knowing the same as bribe and not his legal remuneration. Thus, the demand and acceptance is well proved.

Learned counsel further argued that the T.L.O. (P.W.4) fully corroborated the case of the prosecution and the fact of recovery of the tainted money

from the office almirah and therefore, there is no merit in the appeal, which should be dismissed.

Gravamen of offences under section 7 and section 13(2) read with section 13(1)(d) of the 1988 Act:

10. Law is well settled that mere receipt of money by the accused is not sufficient to fasten his guilt, in the absence of any evidence with regard to

demand and acceptance of the same as illegal gratification. In order to constitute an offence under section 7 of 1988 Act, proof of demand is a sine

qua non. The burden rests on the accused to displace the statutory presumption raised under section 20 of the 1988 Act by bringing on record

evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or

reward as referred to in section 7 of the 1988 Act. While invoking the provision of section 20 of the 1988 Act, the Court is required to consider the

explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all

reasonable doubt. For arriving at the conclusion as to whether all the ingredients of the offence i.e. demand, acceptance and recovery of illegal

gratification have been satisfied or not, the Court must take into consideration the facts and circumstances brought on the record in its entirety. The

standard of burden of proof on the accused vis-Ãƒ -vis the standard of burden of proof on the prosecution would differ. The proof of demand of illegal

gratification is the gravamen of the offence under sections 7 and 13(1)(d)(i) and (ii) of 1988 Act and in absence thereof, unmistakably the charge

therefore, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso

facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the

demand for illegal gratification would be fatal and mere recovery of the amount from the person of accused of the offence under sections 7 or 13 of

the Act would not entail his conviction thereunder. The evidence of the complainant should be corroborated in material particulars and the complainant

cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has

to be insisted upon.

In case of Krishan Chander -Vrs.- State of Delhi reported in (2016) 3 Supreme Court Cases 108, it is held that the demand for the bribe money is sine

qua non to convict the accused for the offences punishable under sections 7 and 13(1)(d) read with section 13(2) of the 1988 Act. In case of

P. Satyanarayana Murthy -Vrs.- District Inspector of Police reported in (2015) 10 Supreme Court Cases 152, it is held that the proof of demand has

been held to be an indispensable essentiality and of permeating mandate for offences under sections 7 and 13 of the Act. Qua section 20 of the Act,

which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under section 7 and not to those under

section 13(1)(d)(i) & (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official

act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held

that in absence of proof of demand, such legal presumption under section 20 of 1988 Act would also not arise.

It is well settled that the presumption to be drawn under section 20 of 1988 Act is not an inviolable one and it is a rebuttable presumption. The accused

charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the

accused fails to disprove the presumption, the same would stick and then it can be held by the Court that the prosecution has proved that the accused

received the amount towards gratification. It is equally well settled that the burden of proof placed upon the accused person against whom the

presumption is made under section 20 of 1988 Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt.

The burden placed on the accused for rebutting the presumption is one of preponderance of probabilities.

Whether there was any occasion for the appellant to demand bribe and any pending work was there with the appellant:

11. Adverting to the contentions raised by the learned counsel for the respective parties, let me now first analyse the evidence on record to find out

whether there was any occasion prior to 11.11.2003 on the part of the appellant to demand bribe and whether there was any pending work of P.W.1

with the appellant as on 14.11.2023 to make demand of bribe.

As per the charge framed, for processing the gratuity and arrear provisional pension bills of the widow mother of P.W.1, the appellant demanded bribe

of Rs.1,500/-. As per the F.I.R., such bills were submitted by B.D.O., Pallahara to the Sub-Treasury, Pallahara first on 01.11.2003 and though the

provisional pension bills was passed by the treasury, the other bills were returned to the Block office. As per the F.I.R., the demand of Rs.1,500/- was

made by the appellant on 03.11.2003 which was reiterated on 04.11.2003, on which day Rs.400/- was paid by P.W.1 to the appellant and the balance

amount of Rs.1,110/- was asked to be paid by the appellant on 14.11.2003. As per the F.I.R., the bills were resubmitted to the treasury by the Block

office on 10.11.2003.

In the evidence, P.W.1 is completely silent as to on which dates the demand was made by the appellant, on which date he paid Rs.400/- and on which

date he was asked to pay the balance amount of Rs.1,110/-. The evidence is also silent that one of the bills was passed, whereas the other bills were

returned to the Block office and then it was re-submitted. P.W.1 has stated in the cross-examination that he did not remember the date on which the

bill of his mother was presented in the Block Office and he could not say on which date the said bill was received by the treasury. The bills which was

proved the prosecution is Ext.14 and it is photocopies of documents containing nine pages, which does not indicate that it was a re-submitted bill after

correction. If Ext.14 was the freshly prepared bills by the Block Office, then the prosecution should have proved the bills which were stated to have

been returned from the treasury to the Block office to corroborate the evidence of P.W.1. The same having not been done, there is no documentary

evidence on record that any bills were returned from the treasury to the Block office. F.I.R. by itself is not a substantive piece of evidence. Therefore,

in absence of any evidence of P.W.1, the F.I.R. version that one bill was passed, other bills were returned to the Block office from the treasury and it

was re-submitted, cannot be accepted particularly when no corresponding documents were proved by prosecution. Ext.14 reveals that it was received

only on 11.11.2003 in the Sub Treasury which would be evident from the official seals and signatures. Therefore, there is neither any oral evidence

nor documentary evidence that any bills of the mother of P.W.1 had come to Sub-Treasury Office, Pallahara prior to 11.11.2003. If that be so, it is

rightly contended by Mr. Das that prior to that day, there was no occasion for the appellant to demand any bribe from P.W.1. Moreover, the bills

under Ext.14 indicates that the appellant processed it and then it was put up before the accountant who signed the bills on 12.11.2003 and later the bills

reached the Treasury Officer who also signed the bill on 14.11.2003. Thus, it pre-supposes that no further work was pending with the appellant as on

14.11.2003 and he had performed his part. P.W.5, the Treasury Officer also deposed that the bills file dealt by the appellant was sent to the

accountant on 12.11.2003 and it was approved by him on 14.11.2003 on being placed by the accountant.

Therefore, I am of the humble view that there was no occasion on the part of the appellant prior to 11.11.2003 to demand bribe and there was no

pending work of P.W.1 as on 14.11.2003 with the appellant to make demand of bribe.

Demand prior to the date of trap:

12. There is no corroborating evidence to P.W.1 that Rs.1,500/- was demanded prior to the date of trap, out of which Rs.400/- was paid and balance

amount of Rs.1,100/- was there to paid to the appellant as on the date of trap. P.W.1 has stated that he was a supporter of Congress Party and was a

Ward Member and used to do social service and he had gone to Sub- Treasury on some occasion even prior to the date of occurrence in connection

with the work of some other person in the treasury. P.W.1 has stated that he had not complained about the matter before the Treasury Officer or

B.D.O. at any time and he had not given any report to any other authority. The demand of bribe from such a person when the bills were of his mother

is a doubtful feature. If the demand was made on 03.11.2003 and even in spite of request of P.W.1, it was reiterated by the appellant on 04.11.2003, it

is not known as to why the F.I.R. was lodged on 13.11.2003 i.e. after eight days. Since I have already held that there is neither any oral evidence nor

documentary evidence that any bills of the mother of P.W.1 had come to Sub Treasury Office, Pallahara prior to 11.11.2003 and the bills (Ext.14) was

received only on 11.11.2003 in the Sub Treasury, the demand of bribe prior to the date of trap is not acceptable.

Demand as on the date of trap:

13. P.W.1 has stated that when he met the appellant on 14.11.2003, the latter asked him if he (P.W.1) had brought the money to which he (P.W.1)

answered in affirmative. Though P.W.1 stated that in presence of the vigilance officials, he was given a small tape recorder which was kept in the

inner side pocket of his shirt, but neither the said tape recorder was seized nor produced in Court during trial to be marked as a material object. In the

cross-examination, P.W.1 on the other hand has stated that the appellant told him that his (P.W.19s) work had already been done and he (appellant)

was telling at the time of giving money that he should give the cash subsequently.

P.W.3 who accompanied P.W.1 to act as overhearing witness has not stated about the demand part and he has been declared hostile by the

prosecution under section 154 of the Evidence Act and with the permission of the Court, leading questions were put to him by the learned Public

Prosecutor in which he even failed to say whether he had been examined by the I.O. He even failed to identify the appellant in the dock. The settled

legal proposition that evidence of a prosecution witness cannot be rejected in toto, merely because the prosecution chose to treat him as hostile and

cross examined him. The evidence of such a witness cannot be treated as effaced, or washed off the record altogether. The same can be accepted to

the extent that his version is found to be dependable, upon a careful scrutiny thereof if it is duly corroborated by some other reliable evidence available

on record.

In view of the available materials on records, it is very difficult to hold that the prosecution has successfully established that on the date of trap, there

was demand made by the appellant to P.W.1.

Acceptance of bribe by the appellant:

14. P.W.1 has stated that he brought out the tainted money of Rs.1,100/- from his left side chest pocket and gave the same to the appellant which was

accepted by the appellant and was kept it in his left side pocket of his wearing shirt and then the appellant kept the money below some files in the

Office steel almirah. In the cross-examination, however P.W.1 has stated that he himself had kept the money in the shirt pocket of the appellant, but

he did not remember the exact pocket in which he kept the money. He further stated that the GC notes were recovered from the pocket of the

appellant. Therefore, the evidence of P.W.1 in the chief examination is contrary to the evidence in the cross-examination. The overhearing witness

P.W.3 is completely silent regarding acceptance of bribe money by the appellant from P.W.1. The word Ã¢â‚¬Ëœacceptanceâ€™â„¢ connotes receipt or

acknowledgment with consenting mind. It is a deliberate act by which one was willing to receive or acknowledge something for the act/favour he

intends to show. Accidental, unintentional receipt or receipt under misrepresentation or planting of money clandestinely without the knowledge of the

person or thrusting of money into the possessionÃ, ofÃ, theÃ, accusedÃ, wouldÃ, notÃ, beÃ, Ã¢â‚¬Ëœacceptanceâ€™â„¢Ã, asÃ, is required to constitute

one of the ingredients of offence under section 13(1)(d) or section 7 of 1988 Act. If as per the evidence of P.W.1, he himself thrust the money into

the shirt pocket of the appellant, it cannot be said that the appellant voluntarily accepted the money. Therefore, the prosecution has not successfully

established that on the date of trap, there was acceptance of bribe money by the appellant from P.W.1.

Recovery of tainted money:

15. Though the T.L.O. (P.W.4) has stated that the appellant pointed out the Almirah in which he had kept the money and Magisterial witness G.C.

Rath opened the Almirah and found the tainted money were kept under a bunch of files, but P.W.1 has stated that the GC notes were recovered from

the pocket of the appellant. P.W.8 has stated that on being asked to the appellant where he had kept the tainted notes, the appellant kept mum and

P.W.1 and P.W.3 told that the appellant receiving the bribe money kept the same in his shirt pocket first and then he kept it inside the his Office

Almirah and then witness Girish Chandra Rath brought out the tainted notes from the said Almirah which were kept there in between bunch of file.

However, P.W.8 admits that he had not stated before the Vigilance Police that P.W.1 and P.W.3 told that the appellant receiving the tainted notes

kept in his shirt pocket first and then he kept it inside the his Office Almirah and that Girish Chandra Rath brought out the tainted notes from inside

bunch of files kept in the Almirah. As already stated, P.W.3 has not supported the prosecution case and Girish Chandra Rath could not be examined

on account of his death. Therefore, the prosecution has not adduced any clinching and consistent evidence that the bribe money was recovered from

the appellant.

Defence plea:

16. At this stage, the defence plea is required to be considered carefully. The defence plea is that P.W.1 was claiming himself to be a politician and he

was usually coming to the office of the appellant in connection with the works of the public prior to the initiation of the case. He was in a habit to

threaten the staff of the treasury office for performing the work of the people. The appellant on one occasion protesting such activities of P.W.1

warned him not to come to the office to pollute the official environment for which there was hot exchange of words between the appellant and P.W.1.

The appellant had threatened him to see in future.

P.W.1 admits that he was a supporter of Congress Party and was a Ward Member and he had come to Sub Treasury Office prior to the date of

occurrence and he had misunderstanding with the appellant in connection with the work of some other person at the treasury.

The appellant being examined as D.W.1 has stated that P.W.1 used to represent himself as a political person and he was very often coming the office

taking work of various people prior to the initiation of the case and threatening the employees of the office to perform the works of the people and he

protested the activities of P.W.1 for which there was hot exchange of words between him and P.W.1.

The defence plea that on the date of occurrence P.W.1 shook his hands and all on a sudden thrust some currency notes into the chest pocket of the

wearing shirt of the appellant is corroborated by the evidence of P.W.1 who stated that he himself kept the money in question in the shirt pocket of the

appellant.

It is not in dispute that an accused is not supposed to establish his defence plea by proving it beyond reasonable doubt like the prosecution but by

preponderance of probability. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties

but also by reference to the circumstance upon which the accused relies. The burden can be discharged by an accused adducing cogent and reliable

evidence which must appear to be believable or by bringing out answers from the prosecution witnesses or showing circumstances which might lead

the Court to draw a different inference. The prosecution cannot derive any advantage from the falsity or other infirmities of the defence version, so

long as it does not discharge its initial burden of proving its case beyond all reasonable doubt. If the defence version is incorrect, it does not mean that

the prosecution version is necessarily correct. The prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness

of the defence.

The learned trial Court seems to have not considered the defence plea of the appellant on the touchstone of preponderance of probability.

Conclusion:

17. In view of the foregoing discussions, when the prosecution has not successfully established the demand aspect of bribe by the appellant beyond all

reasonable doubt, the acceptance of bribe money by the appellant and the recovery of bribe money from the possession of the appellant is a doubtful

feature and moreover the defence plea put forth by the appellant has been established by preponderance of probability, it would not be legally justified

to hold the appellant guilty of the offences charged.

Accordingly, the criminal appeal succeeds and is allowed. The impugned judgment and order of conviction of the appellant under section 7 and section

13(2) read with section 13(1)(d) of the 1988 Act and the sentence passed thereunder is hereby set aside and the appellant is acquitted of all the

charges. The appellant is on bail by virtue of the order of this Court. He is discharged from liability of his bail bond. The personal bond and the surety

bond stand cancelled.

Trial Court records with a copy of this judgment be sent down to the concerned Court forthwith for information.

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