(2004) 09 JH CK 0017

Jharkhand High Court

Case No: Criminal Appeal No. 47 of 2000

Udai Bhan	APPELLANT
Vs	
State of Bihar	RESPONDENT

Date of Decision: Sept. 17, 2004

Acts Referred:

- Prevention of Corruption Act, 1988 - Section 13(1), 13(2), 19, 7

Citation: (2004) 4 JCR 713

Hon'ble Judges: Vishnudeo Narayan, J

Bench: Single Bench

Advocate: N.N. Sinha, for the Appellant; Rajesh Kumar, for the Respondent

Final Decision: Allowed

Judgement

Vishnudeo Narayan, J.

This appeal at the instance .of the appellant stands directed against the impugned judgment and order dated 27.1.2000 passed by Shri P.K. Sinha No. II, 1st Additional Judicial Commissioner-cum-Special Judge (CBI), Ranchi in R.C. 7(A)/92R whereby and whereunder the appellant was found guilty for the offence punishable Under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, (hereinafter referred to as the said Act) and he was convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 500/- and rigorous imprisonment for one and half years and to pay a fine of Rs. 500/- respectively''and in default thereof to under rigorous imprisonment for one month each under both the counts. However, the sentences were ordered to run concurrently.

2. The prosecution case has arisen on the basis of the first information, report (Ext. 10) lodged before Delhi Special Police Establishment Ranchi Branch by PW 8, P.K. Panigrahi, Inspector CBI, SPE, Ranchi on 16.4.3 992 at 8 hours regarding the occurrence which is said to have taken place on 14.4.1992 at 20.00 hours on the

basis of the written report (Ext. 13) of PW 5 Gopal Prasad Sahu lodged before the Superintendent of Police, CBI Ranchi.

3. The case of the prosecution, in brief, is that PW 5 Gopal Prasad Sahu lodged a complaint in writing to S.P., CBI, Ranchi stating therein that he had give a telephonic information to the Divisional Security Commissioner, Railway Protection Force, Adra, on 10.41992 at 22.00 hours that the properties of the railway worth rupees one lac has been kept in the house of one Nehar Kant Dubey, a Railway Contractor, and also in his other thereof four houses and on this information the appellant, who was the Sub- Inspector of Railway Protection Force, Muri, as per the direction and instruction of the said Divisional Security Commissioner, R.P.F. Adra made raid and conducted search at the several houses of the said contractor and several articles and properties belong to the railway were recovered from there but the appellant only made a seizure of two pieces of railway-lines. It is alleged that thereafter the appellant also made a raid at the house of this complainant and has falsely shown the recovery a line-key" from his house taking it out of his pocket and the appellant also arrested him alone with said Nihar Kant Dubey and brought them and confined them in the lockup of R.P.F It is alleged that the appellant released Nihar Kant Dubey from the lockup after five hours out he has forwarded him to Chakradharpur Court on 1 1.4.1992 where he was released on bail on 13.4.1992. It is further alleged that the appellant came to his shop on 14.4.1992 at about 20.00 hours and on being said to him that he has helped the railway protection force but inspite of that he has been falsely implicated in a got-up case and at this the appellant promised to help him in the case on payment of Rs. 500/- to him by the complainant as illegal gratification and on his refusal to make payment of Rs. 500/- aforesaid he was told that he will have to go behind the bars once again. It is also alleged that he does not intend to pay illegal gratification as demanded by the appellant but he has stated to him that he will come to his residence with the said amount on 16.4.1992 after making arrangement.

4. It is alleged that after verification of the allegation by interrogating the complainant, this case was instituted.

5. The prosecution case further is that after registration of the case, a trap party was constituted and the presence of two independent witnesses were secured with a view to catching the appellant redhanded while demanding and accepting the illegal gratification from the complainant. The members of the CBI trap party headed by PW 7 Narayan Jha, Deputy Superintendent of Police, CBI and two independent witnesses i.e., PW 3 Shailendra Nath, Superintending Geologist and PW 4 Amaresh Kumar, Executive Engineer (E & M), both of C.M.P.D.I. Ltd. assembled in the CBI Office, Ranchi on 16.4.1992 along with the complainant and they were told the purpose for which they have been called and written complaint of the complainant was also shown to them and explained the purpose and use of phenolphthalein powder and its chemical reaction with the sodium carbonate were also explained to

them followed by a practical demonstration. It is alleged that the complainant on being asked produced four Government currency notes each of Rs. 100/- denomination besides two Government currency notes of Rs, 50/- denomination each, which he had brought to pay the appellant as bribe in pursuance of his demand and during the pre-trap formalities the said Government currency notes were treated with phenolphthalein powder and handed over to the complainant aforesaid with a direction to pay the same to the appellant only on demand and pre-trap memorandum was also prepared and the members of the trap party along with the witnesses and the complainant came in. the vicinity of the residential quarter of the appellant at 12.30 hours on 16.4.1992 where they stayed PW 7 Narayan Jha, Deputy Superintendent of Police and PW 8, P.K. Panigrahi, Inspector CI3I surveyed the place of occurrence i.e., the residential quarter of the appellant and thereafter the members of trap team inspected the topography of the place and the position to be taken by each of them and accordingly every member of the trap team proceeded to the place of occurrence and took their respective position incognito to about 13.40 hours on that day.

6. The prosecution case further is that after fifteen minutes, the appellant came to his residence and after opening the lock of the door, went inside the room and bolted the door from inside and thereafter he opened the windows of his bedroom in the eastern and the northern side though the eastern side window of his bedroom remained half closed. It is alleged that the residential railway quarter of the appellant bears number DS- 143/4 and is situated in the corner of a row of quarters and there is a public road in the east and north of the said railway quarter and the witnesses and the members of the trap team took, their position by the side of the two open windows and other suitable places nearby. It is alleged that the complainant knocked the door of the appellant at 13.40 hours and the appellant in response thereto opened the door and seeing the complainant, the appellant asked him to come inside the room and the complainant followed him and the door of his railway quarter remained open and the appellant and complainant sat on a wooden chouki kept In the bedroom of the appellant. It is alleged that while sitting on the chouki, the appellant asked the complainant as to whether he has brought the money and on his reply in affirmative, the appellant demanded the bribe amount and the complainant took out the tainted Government currency notes from his packet and handed over the same to the appellant who accepted the same with his right hand and kept it holding as he was wearing a lungi only at that time. The above conversion and transaction of bribe amount were overheard and seen by both the Independent witnesses and also by the members of the trap party and on giving prefixed signal by the complainant, the members of the trap party along with the said witnesses rushed inside the room of the appellant and oh challenge the appellant became non-pulsed and started sweating and admitted the same without any explanation and at that time the appellant was still holding the trained Government currency notes in his right hand and on being asked the appellant kept

the tainted Government currency notes on the said wooden chouki. Thereafter right hand fingers of the appellant were washed in a solution of sodium carbonate, as a consequence of which, the colour of the solution turned pink which was preserved in a glass bottle and it was sealed and signed by all present there and thereafter the left hand fingers of the appellant was washed, in other solution of sodium carbonate as a consequence of which, the colour of solution turned pink and it was also kept in other glass bottle which was duly sealed and signed by all present there. It is also alleged that the numbers and denominations of the tainted Government currency notes recovered from the possession of the appellant were verified from the pre-trap memorandum in presence of all and they tallied in toto with them and the said tainted Government currency notes were kept in an envelop duly sealed and signed by all present there and post trap memorandum was prepared in presence of the witnesses and the members of the trap party and a copy of the said memorandum was also handed over to the appellant who was arrested.

7. The appellant has pleaded not guilty to the charges levelled against him and he claims himself to be innocent and to have committed no offence and he has been falsely implicated in this case at the instance of the complainant who was antagonistic to him due to his prosecution in R.P.F. (Muri) Police Station Case No. 20 of 1992 u/s 3 of the R.P. (U.P.) Act by this appellant and no recovery of the tainted Government currency notes has ever been made from his possession.

8. The prosecution has, in all examined eight witnesses to substanuate its case. PW 5 Gopal Prasad Sahu is the complainant and Ext. 13 is the complainant petition per his pen. PW 3 Shailendra Nath and PW 4 Amaresh Kumar are the members of the trap team and the independent witnesses of the recovery in question and both these witnesses have proved their signatures over the material Exhibits in relation to the pre-trap memorandum as well as of the post-trap memorandum. PW 7 Shri Narayan Jha, Deputy Superintendent of Police, CBI, S.P.E. Ranchi has headed the trap team and PW 8, P.K. Panigrahi, Inspector of CBI is the Investigating Officer of this case and also a member of the trap team. PW 1 C.R. Alurmu and PW 2 Baba Charan Sheikh are the Inspectors of R.P.F. then posted at Muri, PW 6 Bani Pado Sah, the then Chief Security Commissioner, South Eastern Railway, Calcutta is the sanctioning authority for according the sanction for the prosecution of the appellant and the sanction order containing his signature thereon is Ext. 12. Prelrap memorandum and posttrap memorandum which contain the signatures of the prosecution witnesses thereon and the reports of the Forensic Expert of the solution of the Sodium Carbonate and Sodium Phenolphthalein containing in the bottle glasses in question have also been marked Exhibits in this case for the prosecution. No oral evidence has been brought on behalf of the appellant. Ext. A is the statement of C.R. Murmu, Inspector. Railway Protection ''Force, recorded by the Investigating Officer on 24.4.1992 Ext. D, is S.P. Report No. 8 of 1992 dated 5.6.1992 sent to the Chief Vigilance Officer. South Eastern Railway for grant of sanction for the prosecution. Ext. B is the certified copy of the first information report of Silli

Police Station Case No. 59 of 1986 u/s 376/384 of the Indian Penal Code along with its report and Ext. C is the charge-sheet submitted in the said case Ext. B/l is the certified copy of the first information report of Silli Police Station Case No. 91 of 1992 Under Sections 147, 148, 149, 353, 448, 324, 307 and 330 of the Indian Penal Code along with its written report and Ext. C/l is the chargesheet of the said case Ext. B/2 is the certified copy of the first information report of the Silli Police Station Case No. 41 of 1991 u/s 7 of the Essential Commodities Act along with its report and Ext. C/2 is the charge-sheet of that case and PW 5 Gopal Prasad Sahu, the complainant, figures as an accused in all the three cases aforesaid.

9. In view of the evidence oral and documentary on the record, the trial Court came to the finding of the guilt of the appellant and accordingly convicted and sentenced him as stated above.

10. Assailing the impugned judgment it has been submitted by the learned counsel for the appellant that the impugned judgment in the facts and circumstances of this case is not at all sustainable either in law or on facts and this appellant has been falsely implicated in this got-up case at the instance of PW 5 Gopal Prasad Sahu, the complainant, to wreak engeance in collusion with the CBI officials as the complainant was admittedly earlier prosecuted for the offence u/s 3 of the R.P. (U.P.) Act in R.P.F. (Muri) Police Station Case No. 20 of 1992 by this appellant and after completing investigation, the report has already been submitted by him for issuance of charge- sheet against the complainant on 11.4.1992 itself in the said case and in this view of the matter, there was no occasion for the appellant to make demand of any illegal gratification for helping the complainant in the said case and for this, the statement u/s 313 of the Code of Criminal Procedure of this appellant coupled with the statement (Ext. A) of PW 1 C.R. Murmu has been referred to. It has also been submitted that PW 5, the complainant has criminal antecedent and he figures as an accused in several heinous offences and his name appears in the relevant crime diary of the Muri Police Station as a confirmed criminal and without verifying the correctness of the allegation as averred in his complaint petition by a verifier, the CBI, Ranchi has proceeded in the matter illegally. In support of his contention a reference has been made to Exi. B and C series and the ratio of the case of Sat Paul Vs. Delhi Administration, . It has also been submitted that when the complainant has a poor moral fibre and has to his discredit a heavy load of bad antecedent which indicates his having a possible motive to harm the appellant who was an obstacle in his immoral activities, it is always hazardous to accept the testimony of such witness without co-rroboration of crucial points from independent sources. It has further been submitted that PW 5, the complainant in para 20 of his cross-examination has deposed that the appellant opened the door of his house at his knock and he went inside the room and the appellant went to bathroom and he kept the trained amount on the chouki and he came outside the room and gave the prefixed signal to the members of the trap party and they arrived in the room and they asked the appellant to pick-up the tainted currency notes from the said chouki and the

appellant pickedup the said tainted currency notes and PW 3 and PW 4, the alleged independent witnesses of the trap party at pages 12 and 19 as well as at pages 7 and 10 respectively have deposed that the tainted Government currency notes were found kept at the chouki from where the same were recovered and further these two witnesses have also deposed not to have seen the handing over the tainted Government currency notes by the complainant to the appellant and they have also not heard the conversation which has taken place between the complainant and the appellant and in this view of the matter, the false implication of the appellant in this got-up case is totally established and further in view of the evidence of PW 5 read with the evidence of PW 3 and PW 4 the evidence of the CBI officials in respect thereof is fit to be brushed aside. It has also been submitted that there is no iota of legal evidence on the record to establish the fact that the appellant has ever demanded illegal gratification from the complainant and has accepted the said tainted Government currency notes and the learned Court below has committed a manifest" error in view of the evidence aforesaid in coming to the finding of the guilt of the appellant. In support of his contention reliance has been placed upon the ratio of the cases of Ram Prakash Arora v. State of Punjab 1972 Cri LJ 1293 (SC); Laxmi Narain Mahto v. State of Bihar 1983 BLJ 519; Som Prakash v. State of Punjab AIR 1992 SCW 292; Subhas Parbat Sonvane v. State of Gujarat AIR 2002 SCW 1952. It has also been contended that in view of the evidence of PW 5 the complainant read with the evidence of PW 3 and PW 4 the alleged recovery of the tainted Government currency notes from the conscious possession of the appellant suffers from infirmity. In support of his contention reliance has been placed upon the ratio of the cases of Darshan Lal Vs. The Delhi Administration, Suraj Mal Vs. State (Delhi Administration), ; M.K. Harshan v. State of Kerala 1997 SCC (Cri) 283; Smt. Meena v. State of Maharashtra 2000 (2) Cri C 640 (SC) : 2000 (1) SC (Cri) 389 and State of Tamil Nadu v. Krishnan and Anr. AIR 2001 SCW 2415. It has further been contended that in view of the evidence on the record of the complainant read with the evidence of PW 3 and PW 4 there cannot be presumption of fact that the appellant has demanded illegal gratification and obtained it from the complainant as a motive or reward as mentioned in Section 7 of the said Act and burden of proving his innocence cannot be cast on the appellant in the facts and circumstances of this case. In support of his contention reliance has been placed upon the ratio of the cases of R.C. Mehta Vs. The State of Punjab, and M. Narsinga Rao v. State of Andhra Pradesh 2001 (1) Cri C 300 (SC) : 2001 SCC (Cri) 258. It has also been submitted that PW 5, the complainant and PW 3 and PW 4, who have categorically deposed that the tainted currency notes were found kept on the chouki in the room of the appellant have not supported the prosecution case regarding the acceptance of the said tainted currency notes as illegal gratification by the appellant but inspite of that these three witnesses were not declared hostile by the prosecution for the reasons best known to it and in this view of the matter, their evidence cannot be brushed aside which gives a death nail to the prosecution case and the learned Court below has not considered this aspect of the matter in proper perspective and has erred in coming to the finding of the

guilt of the appellant.

In support of his contention reliance has been placed upon the ratio of the cases of Jagan M. Seshadri v. State of Tamil Nadu 2002 (1) Cri C 311 (SC) : 2002 (1) JCJR 148 (SC) : 2003 SCC (Cri) 1494 Sat Paul (supra) and Lachman Das v. State of Punjab AIR 1970 SC 450. Relying upon the ratio of the case of State of M.P. v. J.B. Singh 2000 (3) Cri C 814 . It has been submitted that here in this case PW 5, the complainant himself does not support the factum of demand and acceptance of bribe by the appellant and PW 3 and PW 4, the alleged witnesses have also found the tainted currency note lying on the chouki in the room of the appellant and they have also not supported the factum of demand and acceptance of bribe by the appellant and in this view of the matter, the order of conviction of the appellant by the learned Court below is illegal and unwarranted and it is nothing but the abuse of the process of the Court. Lastly, it has been contended that the sanction of the prosecution of the appellant suffers from infirmities and the sanctioning authority without independent application of mind to the facts of this case has accorded sanction for the prosecution of the appellant and the sanction order (Ext. 12) does not contain the lads of this case on its face which has been considered by the sanctioning authority for according sanction and the facts constituting the offence have not been referred to on the face of the sanction and thus the sanction for prosecution of the appellant is invalid and due to the infirmity in the sanction the entire proceeding is ah ini tio void and it must fail. It has been submitted that there is also no evidence on the record to substantiate the fact that the-materials and the evidence collected in course of investigation has been placed before the sanctioning authority for its application of mind and burden of proving that the requisite sanction has been obtained rests on the prosecution and such burden includes proof that the sanctioning authority had given the sanction in reference to the facts on which the proposed prosecution is to be based and where this is not done sanction is defective and invalid sanction cannot confer jurisdiction upon the Court to try the case in support of his contention reliance has been placed upon the ratio of the cases of Madan Mohan Singh v. State of U.P. AIR 1954 SC 637; Jagdish Prasad Verma Vs. The State, Gokulchand Dwarikadas Morarka v. State AIR (35) 1948 PC 82; Raghubir Singh Vs. State of Haryana, Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, and Mansukhlal Vithaldas Chauhan v. State of Gujarat 1997 Cri C 818 (SC) : 1997 SCC (Cri) 1120. Thus, the impugned judgment is unsustainable.

11. In contra, it has been submitted by the learned Standing Counsel of CBI that the learned trial Court has properly scrutinized and considered the evidence in proper perspective in coming to the finding of the guilt of the appellant and there is no infirmity at all in the sanction for the prosecution of the appellant and the sanctioning authority after proper application of its mind and after considering the report of the S.P. containing material facts and the evidence collected in course of investigation has accorded sanction for the prosecution of the appellant. It has also been submitted that the sanction order (Ext. 12) clearly shows that the sanction,

authority has carefully gone through the report of the S.P. vis-a-vis the calendar of the evidence and being satisfied that the prosecution has brought adequate evidence which prima facie establishes the case against the appellant, the sanction for prosecution has been accorded an PW 6, the sanctioning authority, has also deposed in para 3 of his evidence that he has considered the S.P. report dated 5.6.1992 for according sanction for the prosecution of the appellant and in this view of the matter there is no infirmity in the sanction order. In support of his contention reliance has been placed upon the ratio of the case of Balaram Swain Vs. State of Orissa, . It has also been submitted that the ratio of the cases relied upon by the appellant regarding according sanction for prosecution has no relevancy in the facts and circumstances of this case. It has also been submitted that though the complainant has criminal antecedent and he may have also grudge against the appellant for prosecuting him in a case under the provisions of R.P. (U.P.) Act but his evidence cannot be jettisoned on that score and no such interference can be drawn that the appellant has been falsely implicated in this case in view of the fact that no bribe giver can get away from such a stigma in any graft case, rather, his evidence has to be scrutinized with greater care by the Court. In support of his contention reliance has been placed upon the ratio of the cases of State of U.P. v. Zakaullah 1988 (1) SCC 557 and Sarup Chand Vs. State of Punjab, . It has also been submitted that having been satisfied with the correctness of the allegation on interrogation of the complainant, the complaint petition of the complainant was received and trap team was constituted including the two responsible independent witnesses and after performing the pre-trap formalities, the trap team went to the residence of the appellant where on demand the tainted money was given by the complainant to the appellant and the same was accepted by the appellant and members of the trap team including the two independent witnessed have testified the demand and acceptance of the tainted money by the appellant from the complainant and its recovery from the possession of the appellant and the fingers of both the hands of the appellant when washed in the solution of the sodium carbonate, it has turned pink and the testimony of the independent witnesses read with the other members of the trap party coupled with the turning of the solution into pink colour does establish the fact that the appellant has on demand accepted the tainted money. Referring the ratio of the case of State of U.P. v. Zakaullah, (supra) it has been submitted that the testimony of PW 7 Narayan Jha, Deputy Superintendent of Police, CBI Ranchi who has conducted the trap can be acted upon even without corroboration as he had no interest against the appellant and the very shown by him to bring his trap to a success is no ground to think that he had any animosity against the appellant. It has also been submitted that it shall be presumed under the provisions of the said Act that the appellant on demand has accepted the illegal gratification in view of the fact that the solution of sodium carbonate in which the fingers of his both hand when washed has turned pink and the learned Court below has on the basis of the evidence on the record found the prosecution case legally proved in respect thereof. Referring the ratio of the cases of Satpal Kapoor Vs. State

of Punjab, read with the ratio of the cases of C.K. Damodaran Nair Vs. Govt of India, and Madhukar Bhaskarrao Joshi Vs. State of Maharashtra, , besides the ratio of the case of State of U.P. v. Zakaullah, (supra) it has been submitted that in the facts and circumstances of this case, the ratios of the case of Smt. Meena (supra) and Jagan M. Sheasadri, (supra) have no application lastly, it has been submitted that once it is established by legal evidence on the record that illegal gratification was demanded and accepted by a public servant presumption arises that it was paid and accepted as a motive or reward to do or to forebear from doing any official act and the mere fact that the currency notes have reached the hands of the appellant is a sufficient corroboration of the trap witnesses and it is for the appellant to prove that the Government currency notes which have been recovered from his conscious possession was not accepted by him as a reward or motive for the official act done by him and thus, there is no illegality in the impugned judgment.

12. It will admit of no doubt that appellant Udai Bhan was posted as Sub-Inspector, K.P.F Post, Muri in the district of Ranchi at the relevant time and on the direction and instruction of the Divisional Security Commissioner, R.P.F. Adra as per the information furnished by the complainant on 10.4.1992 at 22.00 hours, he had made raid and conducted search of the several houses of Nihar Kant Dubey, a Railway Contractor, and some properties belonging to the railway were recovered and said Nihar Kant Dubey was arrested and thereafter the appellant had also made a raid at the house of PW 5 Gopal Prasad Sahu, the complainant, and a "line-key" belonging to the railway was also recovered from there and the complainant was arrested and the said raid was conducted on 11.4.19992 and this complainant was forwarded to Chakradharpur Court on that very day and R.P.F. (Muri) Police Station Case No. 20 of 1992 was instituted and the complainant was released on bail in the said case on 13.4.1992, Ext. A is the statement of PW 1 C.R. Murmu recorded by.PW 8 P.K. Panigrahi Inspector, CBI the Investigating Officer, in which he has stated on being shown the case diary of R.P.F. (Muri) Police Station Case No. 20 of 1992 that the enquiry in the said case against complainant Gopal Prasad Sahu was completed by appellant Udai Bhan on the same day i.e., onl 1.4.1992 and this statement further finds support from Ext. 5. Even PW 8 P.K. Panigrahi, in para 19 of his evidence has deposed that PW 1 C.R. Muhnu has stated before him that the appellant had completed the enquiry of R.P.F. (Muri) Police Station Case No. 20 of 1992 on 11.4.1992 itself. It is equally relevant to mention here that this appellant in his Statement u/s 313 of the Code of Criminal Procedure has also reiterated the said fact. I will dilate in respect thereof later on at the appropriate place. Before adverting to the evidence on the record it is relevant to mention at the very outset that PW 5, the complainant, is a recorded B.C. of the R.P.F. (Muri) Police Station and his name does appear in the crime diary of the said police station and PW 2 in his cross- examination has deposed in respect thereof. Besides that PW 5, the complainant, figures as an accused in Silli Police Station Case No. 59 of 1986 u/s 376/384 of the Indian Penal Code and also he figures as an accused, of Silli Police

Station Case No. 91 of 1992 under various sections of the Indian Penal Code including u/s 307 of the Indian Penal Code and also in Silli Police Station Case No. 41 of 1991 u/s 7 of the Essential Commodities and Exts. B and C series corroborate the aforesaid facts, PW 5 has deposed that he came back to his house on 14.4.1992 after being released on bail in R.P.F. (Muri) Police Station Case No. 20 of 1992. He has further deposed that the appellant came to his shop at 10.00 hours on 14.4.1992 and enquired from him as to when he has been released and on being and that this appellant has helped the R.P.F. but without taking notice of the said fact he has been falsely implicated in the said case and at this the appellant promised him to help on payment of Rs. 500/- as illegal gratification. He has further deposed that he did not intend to pay illegal gratification to him and he told him that after a day or two, he may fulfil the said demand. He has further deposed that he went to the CBI office at Ranchi and narrated the incident to the S.P. CBI and at his instance he has submitted a written complaint (Ext. 8) against the appellant in respect thereof, PW 7 Narayan Jha the then Dy. S.P. CBI has deposed that the S.P. CBI called PW 8, P.K. Panigrahi aforesaid and asked him to verify the said complaint. He has further deposed that he along with PW 8 interrogated the complainant and came to the opinion that there is semblance of truth in the complaint. PW 8 in para 20 of his evidence has deposed that on receipt of any complaint, the truth of the allegation is ascertained on enquiry with a view to exclude the possibility of the false implication. He has further deposed that he made enquires from the complainant but he did not make further enquiry in respect thereof from any other person or by going to Muri and only the complainant was interrogated in respect thereof in the CBI office itself and in para 21 of his evidence, he has deposed that he proceeded in the matter only after making the interrogations from the complainant. It is relevant to mention here that PW 7 and PW 8 did not ascertain the criminal antecedent of the complainant as well as the fact that the appellant had already completed the enquiry in the said R.P.F. (Muri) Police Station Case No. 20 of 1992 and submitted his report to the superior authority on 11.4.1992 itself for submission of the charge-sheet. In the case of Sat Paul (supra) the Apex Court has observed that there is no absolute rule that the evidence of an interested witness cannot be accepted without corroboration but where the witnesses have poor moral fibre and have to their discredit a load of bad antecedents which indicates their having a possible motive a harm the accused who was an obstacle in their immoral activities, it would be hazardous to accept the testimonies of such witnesses without corroboration on crucial points from independent sources. The Apex Court in the case of State of U.P. v. Zakaullah, (supra) has observed that the very fact that the complainant lodged a complaint with the Anti Corruption Bureau is reflective of his grievance and such a handicap in his evidence may require the Court to securitize with greater care but it does not call for outright rejection of his evidence at the threshold. In view of the background of the criminal antecedent of PW 5, the complainant, read with ratio of the cases hereinabove referred to his evidence has to be scrutinized and considered with care and caution. PW 5 has deposed that he was directed by the S.P. CBI to report in its

office on 16.4.1992 with Rs. 500/- and he came to the office of the CBI at 8.00 hours on 16.4.1992 and on his arrival he was introduced with the members of the trap team, which included two independent persons. His evidence is further to the effect that he produced four Government currency notes of Rs. 100/- denominations each and two Government currency notes each of denominations of Rs. 50/- and one paper was treated with Phenolphthalein powder and one of the independent witnesses touch the said paper and when the. fingers of his hands were washed in resolution, its colour turned pink and the said solution was scaled in a bottle of glass under his signature (Ext. 6/23) and the said paper was also kept in the envelop (material Ext. 2) on which he has put his signature (Ext. 6/24).

He has further deposed that the aforesaid Government currency notes were treated with Phenolphthalein powder and the serial number of the aforesaid Government currency notes were noted and the said Government currency notes were handed over to him with a direction to deliver the same to the appellant on demand. PW 7, PW 8 as well as PW 3 and PW 4 have in their evidence on oath also testified in respect thereof regarding the pre-trap formalities corroborating the testimony of the complainant in respect thereof the pre-trap memorandum is Ext. 7 and the witnesses aforesaid have also proved their respective signatures on Ext. 7.

13. PW 5, the complainant, has also deposed that he along with the members of the trap team arrived at Muri at about 12.30 hours on that day and the members of the trap team took their position, here and there, in the close vicinity of the official residence of the appellant and he was directed to meet the appellant. At this stage, it is pertinent to refer the topography of the official residence of the appellant as per the evidence available on the record. The official residence of the appellant is situated in the railway colony, Muri PW 5 in para 5 has deposed that the said residence of the appellant faces north and there are windows in the east and north in the said house. In para 19 of his evidence he has deposed that when he had entered in the room of the appellant, the windows aforesaid were closed PW 7 Narayan Jha, the then Dy. S.P. CBI in para 8 of his evidence has deposed that he along with PW 8 on arrival at the vicinity of the residence of the appellant surveyed the place of occurrence and briefed the members of the trap party about the topography of the said place and position to be taken by each of them PW 8 has deposed that the appellant came to his residence and opened the lock of his door and event inside and thereafter he opened the eastern and northern windows of his bedroom. He has further deposed that the northern window was fully open whereas the eastern window was half open. His evidence is further to the effect that PW 4 and PW 8 took their position near the eastern window and PW 3 and ASI B.N. Singh took their position near the northern window and from the aforesaid places the inner part of the room was clearly visible. We has further deposed that he along with A.S.I, D.B. Singh took their position under a tree 15 away from the said residence PW 8 in para 9 of his evidence has deposed that the members of the trap party took their position in the vicinity of the residence of the appellant. PW 3 has

deposed that he has taken the position at a distance of 25 from the residence of the appellant and thereby he contradicts the testimony as deposed by PW 7 as well as PW 4 in respect thereof. It. therefore means that PW 3 has not taken his position near the northern window of the said residence of the appellant. PW 4 has deposed in para 5 of his evidence that he had taken position along with PW 8 near the eastern window of the said residence and PW 3 along with one official of the CBI had taken their position near the northern window, PW 5 has deposed that the appellant came to his residence at 13.15 hours and after going inside his residence he closed the door from inside and on his knock, the appellant came out and at that time he was wearing only a lungi and enquired from him as to whether he has brought the money and on his answer in affirmative the appellant along with him'' came inside the room. He has further deposed that he gave him the tainted Government currency notes as directed by the CBI officials and he came out of the room and he gave the prefixed signal and at that time the tainted Government currency notes were kept on the said chouki. In para 20 of his cross-examination he has deposed that at the time when he had gone inside the residence of the appellant, the members of the trap team were at a distance of 100 to 150 yards from there. He has further deposed that when he entered into the said room the appellant went in the bathroom and he had kept the tainted Government currency notes on the chouki in the room and came outside the room and gave prefixed signal and thereafter the members of the trap team came in the said room and on the dictates of the CBI officials, the appellant picked-up the tainted Government currency notes from the said chouki PW 3 has deposed that on getting the prefixed signal from the complainant he along with the members of the trap team entered into the room of the appellant and the tainted Government currency were found kept on the chouki in the said room. He has further deposed that PW 7 got the right hand fingers of the appellant washed in a solution of sodium carbonate, the colour of which turned pink and the said solution was kept in a glass container and sealed and signed and thereafter his left hand fingers were also washed in another solution of sodium carbonate. the colour of which did not turn and said solution was also kept in another glass bottle (Material Ext. VII) and the serial numbers of the trained Government currency notes were got tallied from the pre-trap memorandum and on being tallied it was kept in an envelop which was sealed and signed and there is his signature on the said envelop. He has also deposed that the seizure memorandum was prepared at the place of occurrence on which he along with others put their signatures and a copy of the said seizure memorandum was handed over to the appellant, who has put his signature thereon, in token of its acceptance. In the concluding portion of his cross-examination he has categorically deposed that the . serial number of the tainted Government currency notes which were recovered from the chouki was got tallied with the pre-trap memorandum. He has further deposed that he could not hear the talk which took place between the appellant and the complainant inside the room PW 4 has deposed that after getting the prefixed signal he along with the members of the trap.--team went inside the

room of the appellant and he found the tainted Government currency notes lying on the chouki, He has also deposed that the right hand fingers of the appellant was washed in a solution, the colour of which turned pink and thereafter the left hand fingers of the appellant was also washed in a solution the colour of which did not turn and both the solutions were separately kept it, glass bottles which were sealed and also signed by him and others. His evidence is further to the effect that the serial number of the tainted Government currency notes which were found on the chouki were compared with the pre-trap memorandum and the appellant was brought to the CDI office and the said tainted Government currency notes were kept in an envelop and it was sealed and signed and the seizure memorandum was prepared which bears his signature along with others.

In para 9 of his cross-examination he has categorically deposed that when he had entered in the room he had found the tainted Government currency notes lying on the chouki in para 10 of his evidence he has deposed thai he had taken the position under the window of the said room but he could neither see the transaction nor hear the conversion, which had taken place in- side the said room. As against the aforesaid evidence, there is testimony of PW 7 and PW 8. In para 9 of his evidence, PW 7 has deposed that the appellant came, to his residence and after opening the lock of his door, he went aside and thereafter he opened the windows in the east and the north of the said room and thereafter the complainant knocked at the door of the appellant who opened the door and asked the complainant to come inside the room. He has further deposed that few minutes thereafter, the complainant came out of the room and gave the prefixed signal. In para 10 of his evidence he has deposed that he along with the members of the trap team went inside the room and after disclosing their identity he challenged the appellant that he had accepted bribe and at this, the appellant became non-pulsed and did not answer and at that point of time, the tainted Government currency notes were in the fist of the appellant and at. his dictate the appellant put the tainted Government currency notes on the chouki. He has further deposed that the right hand fingers of the appellant was washed in the solution of the sodium carbonate, the colour of which turned pink and it was kept in a glass bottle under seal and also under the signature of the members of the trap party. He has further deposed that similarly the left. hand fingers of the appellant was also washed in another solution of the sodium carbonate which did not turn pink and that solution was also kept in another glass bottle under seal and their signatures. His evidence is further to'' the. effect that the serial number of the tainted Government currency notes were compared with the pre-trap memorandum and the said tainted Government currency notes were kept in an envelop and sealed and also signed and a post trap memorandum (Ext. 9) was prepared which was sealed and signed by the members of the trap party PW 8 in his evidence has corroborated the testimony of PW 7. He has deposed in para 10 of his evidence that the complainant went inside the room of the appellant and he sat on the chouki with the appellant who enquired from him as to whether he has brought

the bribe amount and getting the answer in affirmative he demanded the bribe amount and also promised to help him if his case and thereafter the complainant gave him i.e., bribe amount taking it out from his packet which the appellant accepted in his right hand. He has also deposed that he along with the members of the trap team had seen the said transaction. He has further deposed that thereafter on getting the prefixed signal he along with others entered into the said room and he confronted the appellant who admitted regarding the acceptance of the bribe amount. He has further deposed that the appellant was directed to keep the tainted Government currency notes on the chouki and thereafter his right hand fingers were washed in a solution which turned pink and thereafter his left hand fingers were also washed in another solution of sodium carbonate and the said solution did not turn pink and both the solutions aforesaid were separately kept in glass bottles. His evidence is further to the effect, that thereafter the serial number of the tainted Government currency notes was compared with the pretrap memorandum and the same tallied. He has deposed that he prepared seizure memorandum and the members of the trap party signed it. It appears from the evidence of the aforesaid witnesses that there are material contractions and inconsistencies in respect of seeing the transaction in question inside the room of the. appellant, demand and acceptance of the tainted Government currency notes by the appellant as well as the manner of the recovery of the said tainted Government currency notes which are detailed hereunder. According to the prosecution ease the right hand fingers and left hand fingers of the appellant were separately washed in separate solution of the sodium carbonate and the colour of both the solutions have turned pink. It is the consistent evidence of PW 5, PW 4, PW 5, PW 7 and PW 8 that the solution of the sodium carbonate in which the left hand fingers of the appellant were washed did not turn pink. This inconsistency creates reasonable doubt in the authenticily of the case of the prosecution in respect thereof. In the case of Sarupchand (supra) currency notes containing Phenolphthalein powder were given to the accused and the colour of. solution of sodium carbonate turned pink of dipping of fingers of accused and pocket of coat in which currency notes were kept in the said solution and in the absence of any explanation as to why accused was given money and why he had kept the same in his pock et, the Apex Court has found the allegation substantiated. In the case of Madhukar Bhaskarrao Joshi, (supra) the Apex Courthas also observed that the fact that public servant is found in possession of currency notes smeared with Phenolphthalein Powder is sufficient to draw legal presumption and the prosecution does not have any further duty to prove beyond the fact that prosecution witness had paid the demanded money to the appellant, a public servant. The larger Bench of the Apex Court in the case of Smt. Meena (supra) has observed that mere recovery of the currency notes and possible result of the Phenolphthalein test is not enough in the peculiar circumstances of the case to establish the guilt of the appellant on the basis of perfunctory nature of the materials and prevaricating type of evidence. It has further been observed that the charge must be proved beyond reasonable doubt. There- fore, in the facts and

circumstances of this case, there can be no presumption u/s 20 of the said Act against the appellant regarding his complicity in the case. The Apex Court in the case of R.C. Mehta (supra) has observed that presumption about acceptance by public servant gratification other than legal remuneration is not applicable to the prosecution of the accused as envisaged under the said Act and burden of proving his innocence cannot be cast on the accused.

In view of the inconsistencies appearing in the evidence referred to above regarding the positive finding of the solution of sodium carbonate no weightage can be allowed to the prosecution in respect thereof for drawing any presumption that the appellant in this case has accepted gratification as alleged PW 5 has deposed that on his knock at the door, the appellant came out and there has been a conversation between them and the appellant asked from him as to whether he has come with the money or not and on getting the answer in the affirmative he asked the complainant, to come inside the room. There is no iota of evidence on the record to corroborate the evidence of PW 5. the complainant, in respect thereof. PW 5 does not whisper in his evidence regarding any conversation between him and the appellant in the room PW 3 and PW 4 have categorically deposed that they have not heard any conversion between them when they were inside the room. However, PW 8 has deposed to the contrary that he had heard the conversation between the complainant and the appellant, which took place In the room. In view of his inconsistency there appears no ring of truth in the evidence of PW 8 in respect thereof PW 5. the complainant, has deposed that when he entered into the room, the appellant went inside the bathroom and he kept the tainted Government currency notes on the chouki and cajne out of the. room and gave prefixed signal to the trap party. PW 3 and PW 4 have categorically deposed in their evidence that they have neither seen the transaction of demand and acceptance of the tainted money by the appellant nor any conversation between them in respect thereof. It appears from the evidence on the record, which I have already referred to above that PW 4 and PW 8 were together at the eastern window of the residence of the appellant. PW 8 has deposed that he has seen the transaction and heard the conversation between the parties. It appears very queer enough that as to why two persons similarly situated have contradicted the evidence of each other on this score PW 3, who was on the southern window with Inspector B.N. Singh, has deposed that he could not hear the conversation that took place between the complainant and the appellant B.N. Singh, Inspector of CBI has not been examined in this case. In view of the testimony of PW 5 the complainant, read with the testimony of PW 3 and PW 4 no reliance can be placed in respect thereof upon the testimony of PW 8. Therefore, on this score I find no ring of truth in the evidence of PW 8 Again I will repeat the evidence of PW 5 in which he has deposed that he entered into the room with the appellant on being asked to come inside and the appellant went to the bathroom and he kept the tainted Government currency notes on the chouki and came out of the room and gave prefixed signal to the trap party. There is evidence on the record

that all the members of the trap party on getting the prefixed signal simultaneously entered into the said room. According to PW 5, the tainted Government currency notes were kept on the chouki PW 5 has not deposed to have delivered the tainted Government currency notes to the appellant PW 3 and PW 4 have categorically deposed that they found the tainted Government currency notes lying on the chouki when they had entered in the said room PW 7 has deposed that when he entered in the room along with the other members of the trap party he found the tainted Government currency notes in the fist of the appellant PW 8 has corroborated the testimony of PW 7 in respect thereof. Therefore, there; is vital material contradiction on this score in the evidence of PW 5. PW 4 and PW 3 on the one hand and PW 7 and PW 8 on the other hand. It is equally relevant to mention here that both the independent witnesses of the trap party and the complainant do not corroborate the testimony of PW 7 and PW 8. the official witnesses of the CBI in respect thereof. It is equally relevant to mention here the evidence of PW 5, the complainant, who has specifically deposed in the most clear and unequivocal terms that CBI official directed the appellant to pick-up the tainted Government currency notes which were kept on the chouki and the appellant accordingly as directed picked-up the tainted Government currency notes. PW 7, on the contrary has deposed that he directed the appellant to keep the tainted Government currency notes on the chouki which was found in his fist PW 8 does not whisper in respect thereof. Similarly. PW 3 and PW 4 also do not whisper regarding that. It does not stand to reason as Lo why PW 5. PW 3 and PW 4 were not declared hostile when they are not supporting the prosecution case in material particulars regarding the demand and acceptance of the tainted Government currency notes and also the recovery of the said tainted money from the person the appellant. While considering the question of evidentiary value of testimony of a prosecution witness not. declared hostile, the Apex Court in the case of Jagan M. Seshadri (supra) has observed that the prosecution could not wriggle out of the statement of such a witness even though that witness is related to the accused. Here in this case. PW 5 is definitely inimical to the appellant having grudge and vendetta against him due to his alleged implication in the case u/s 3 of the R.P. (U.P) Act and the oilier two witnesses arc said to be the independent witnesses of the trap not at all connected with the appellant and in this view of the matter, their evidence has its bearing regarding the warp and woof of the prosecution case as alleged.

In the ease of Sat Paul (supra) the Apex Court has also observed that the discretion conferred u/s 154 of the Evidence Act is unqualified and untrammeled and is apart from any question of hostility and in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the Court by the party calling him, his evidence cannot, as a matter of law be treated as washed-off the record altogether and it is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony and if the

Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. Here in the case at hand, the evidence of PW 4 and PW 3 read with the testimony of PW 5 when they have not declared hostile by the prosecution if taken in totality definitely casts a cloud of suspicion to the credibility of the warp and woof of the prosecution case. It, therefore, appears that the evidence of PW 7 and PW 8 in respect of the demand and acceptance of the tainted money by the appellant, and its consequent recovery in the manner as deposed by them being inconsistent in. material particulars to that of the evidence of PW 5 read with the evidence of PW 3 and PW 4 lacks ring of truth, therein. Viewed thus, the inherent inconsistencies in material particulars referred to above totally belie the prosecution ease. Furthermore, the evidence of PW 5, the complainant, is itself self-inconsistent on its careful scrutiny with care and caution in respect of the demand and acceptance of bribe amount and because of his criminal antecedent he has a poor moral fibre to his discredit which indicates his having a possible motive to harm the appellant due to vendetta for his implication in the case under the provisions of R.P. (U.P.) Act. It also appears from the evidence on the record read with Ext. A and the statement of the appellant u/s 313 of the Code of Criminal Procedure that he has submitted his report on completing the investigation to the superior authority for issuance of charge-sheet against the complainant On 11.4.1992 i.e., much prior to the alleged trap and there is no iota of evidence on the record brought by the prosecution to controvert the said fact and as such, there appears no possibility for the appellant to ask for bribe amount with a promise to help him in the said case. In the case of State of Madhya Pradesh v. J.B. Singh, (supra) the Apex Court has observed that if the complainant himself does not support the facturn of demand and acceptance of the bribe, then in that case, all the necessary ingredients of the offence under the said Act cannot be said to have been established and thus no order of conviction can be passed. In the case of Subhas Parbat Sonvane (supra) it has been observed that where the complainant does not support the prosecution ease on the point of demand and acceptance and it is also not clear from the evidence of the independent witnesses of the seizure that there was any demand by the accused and amount was paid to him by the complainant, it cannot be inferred that the accused has demanded any amount from the complainant or that he has obtained the same. In the case of Bal Krishna Sayal v. State of Punjab 1987 BLJR 259 (SC), it has been observed that when the independent witnesses of search did not say what conversation preceded before passing of the currency notes to the accused and taking the unsatisfactory character of the prosecution evidence in regard to the conversation preceding passing of the currency notes the prosecution has failed to establish the case beyond reasonable doubt. In the case of Suraj Mal (supra) the Apex. Court has thus observed :-

"Where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses. It has further been observed that :-

"In a case of bribery, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable."

The tainted currency notes in this case was found lying on the chouki in the room of the appellant which is established as per the evidence of PW 5 read with the evidence of PW 4 and PW 3 and the evidence PW 7 and PW 8 materially stands contradicted in respect thereof and the independent witnesses of the search do not corroborate the testimony of the official witnesses and thus, there is total absence of independent and trustworthy corroboration or the evidence of PW 7 and PW 8 in the facts and circumstances of this case. The ratio of the case of Darshan Lal (supra) supports the case of the appellant. In the case of Som Prakash (supra) the Apex Court has observed that where the evidence regarding handing over money to the accused is unbelievable, the conviction of the appellant cannot be sustained. In the case of Laxmi Narain Mahto (supra) the Patna High Court has observed that independent witnesses obviously is a person who has no partisan attitude and has no motivated axe to grind and he must act independently and depose in Court without interest for presenting the truth of the occurrence to be witnessed by him literally. Here in this case, PW 3 and PW 4, the witnesses of the search have not deposed regarding the hearing of the conversation and seeing of the transaction of demand and acceptance of the tainted money by the appellant. Therefore, there is no iota of legal evidence to support the allegation levelled against the appellant. In the case of State of U.P. v. Zakaullah, (supra) the Apex Court has observed that the Dy. S.P. who arranged the trap had no fnterest against the accused but the verve shown by him to bring his trap to a success is no ground to think that he had any animosity against the delinquent officer and the evidence of such witnesses can be acted upon even without, any corroboration. It appears that in the said case the tainted currency notes were recovered from the pocket of the accused and Phenolphthalein test conducted showed a positive result and two independent witnesses in the evidence corroborated the facfum of the said recovery from the person of the accused and in such a situation the Allahabad High Court set aside the conviction of the accused and in appeal the Apex Court allowed the appeal of the State of U.P. and restored the conviction passed by the trial Court. The facts of this case is quite dissimilar to the facts of the case at hand. I have already dilated in detail regarding the recovery of tainted currency notes which were lying on the chouki of the room of the appellant and PW 5, the complainant, has categorically deposed that PW 7 had directed the appellant to pick up the tainted currency notes from the chouki aforesaid and therefore it cannot be said that the tainted Government currency notes were recovered from the person of the appellant and

furthermore, the plantation of the tainted Government currency notes by the complainant keeping it on the chouki when the appellant was in the bathroom cannot be totally ruled out in this case. It is the settled proposition of law that when it is established by legal evidence that illegal gratification was, paid and accepted by a pubic servant, presumption arises that it was paid and accepted as a motive or reward to do or forebear from doing any official act and the mere fact that the currency notes reached the hand of the appellant is sufficient corroboration of the trapped witness. There is no legal evidence on the record in this case to give an inkling of the fact that tainted currency notes were delivered to the appellant who accepted the same in this case. In this view of the matter, the ratio of the case of State of U.P. v. Zakaullah, (supra) is of no help to the prosecution in this case and there is also no independent and trustworthy corroboration of the evidence of PW 7 and PW 8 in the case in respect thereof. Admittedly, the tainted Government currency notes were not recovered from the person of the appellant, rather, it was found lying on the choukt from where the said currency notes were recovered and in this case the mere recovery of the tainted money divorced from the circumstances under which it is paid is not sufficient to bring home the guilt of the accused specially when substantive evidence of the prosecution witnesses is replete with inherent inconsistencies and material contradictions which create reasonable doubt regarding their authenticity in the absence of any clinching evidence to that effect. Therefore, in the facts and circumstances of this case, the defence version that the tainted Government ''currency notes were planted by PW 5 appears to be probable in view of the fact that while the appellant was in the bathroom, the complainant kept the tainted Government currency notes on the choiUd and gave the prefixed Signal to the members of the raiding party to falsely trap the appellant. Thus the ratio of the case of Sat Paul (supra) C.K. Damodaran Nair (supra) and Madhukar Bhaskarrao Joshi, (supra) are of no help to the prosecution in the facts and circumstances of the case. To sum up, for coming to the finding of the guilt for the offence in question firstly, there must be a demand and secondly, there must be acceptance in the sense that the appellant has accepted illegal gratification. The demand by itself is not sufficient to establish the offence. Acceptance is very important and when the tainted currency notes were found kept on the chouki and not recovered from the person of the appellant, there must be clinching evidence to show that it was with the tacit approval of the appellant that the tainted currency notes have been put on the chouki in the room as an illegal gratification. There is no iota of evidence on the record on this aspect in this case. Unless the Court is satisfied on this aspect it is difficult to hold that the appellant has tacitly accepted the illegal gratification or obtained the same within the provision of the said Act. In the light of the conflicting version emerging in the evidence of PW 5 PW 4 and PW 3 on the one hand and PW 7 and PW 8 on the other hand and suspicious features on the crucial aspect aforesaid the allegation against the accused appellant cannot be said to have been proved beyond all shadows of reasonable doubts. The learned Court below did not properly scan and scrutinize the evidence in proper perspective

and has committed a manifest error in coming to the finding of the guilt of the appellant and viewed thus, the impugned judgment cannot be sustained.

14. In view of my finding above the question of valid sanction for prosecution of the appellant in this case is now only academic one. However, the learned counsel for the appellant has laid specific stress regarding the patent infirmities in the sanction order for the prosecution of the appellant in respect of which I have stated in detail in the concluding portion of Para 10 above and in support of his contention ratio of several cases has been referred to. Section 19 of. the said Act mandates that no Court shall take cognizance of an offence punishable Under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant except with the previous sanction of the Central Government or of the State Government, as the case may be, regarding the accused in relation to his employment in connection with the affairs of the Union of the State Government and further in case of any otheraccused of the authority competent to remove him from his service. Sub-section (3) of Section 19 aforesaid is very relevant which mandates that "Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

"(a) no finding, sentence or order passed by a .Special Judge shall be reversed''or altered by a Court in appeal, confirmation or revision on the ground of the absence of or any error, omission of irregularity in the sentence required under Sub-section (1) unless in the opinion of that Court failure of justice has in fact been occasioned thereby."

(b) xx xx xx

(c) xx xx xx

It is relevant to mention here that Sub-section (1) and (2) of Section 19 of the said Act are part material with Sub-sections (1) and (2) of Section 6 of the Prevention of Corruption Act, 1947. Sub- section (3) of Section 19 of the said Act has been a new introduction in the said Act which was not in existence in the Act of 1947. Ext. 12 in this case is the order of sanction for the prosecution of the appellant accorded by the competent authority which has been proved by PW 6, Bani Pado Sah, the then Chief Security Commissioner, South Eastern Railway Calcutta who was admittedly the competent sanctioning authority for according the sanction for the prosecution of the appellant and the sanction order aforesaid contains his signature thereon. Ext. 12 reveals that S.P. CBI Ranchl has sent a copy of the S. Ps. report dated 5.6.1992 requesting PW 6 to accord sanction for the prosecution of the appellant and the said report contains exhaustive analysis of the evidence collected against the appellant including the calendar of evidence both oral and documentary and after going through the report vis-a-vis the calendar of evidence and being satisfied that the prosecution has brought out adequate evidence which has prima facie established a case against the appellant, sanction for prosecution has been accorded. The S.P. report dated 5.6.1992 aforesaid is Ext, D, in this case brought on

the record by the appellant. Now the matter for consideration is as to whether the sanction (Ext. 12) suffers from any legal infirmity rendering the proceeding ab initio void and secondly if the sanction order is not a proper sanction whether such infirmity has caused a failure of justice thereby in the opinion of the Court. In the case of Md. Iqbal Ahmad (supra), their Lordships of the Apex Court had made the following observations with regard to the requirement of a valid sanction :-

"It is incumbent on the prosecution to prove that a valid sanction has been granted by the sanctioning authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction, and (2) by adducing evidence aliunde to show the facts placed before the sanctioning authority and the satisfaction arrived at by it. Any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution the entire proceedings are rendered void ab initto."

In the case of Raghubir Singh (supra) the Apex Court has observed that if there is infirmity in the sanction the prosecution must fail. The Apex Court has further observed which runs thus :-

"While it is true that provision for sanction before prosecution of a public servant should not be an umbrella for protection of corrupt officers but a shield against reckless or malevolent harassment of officials whose upright discharge of duties may provoke un- pleasantness and hostility, that is an area of law reform covered, we find by the 47th report of the Law Commission of India."

In the case of Mansukhlal Vithaldas Chauhan (supra) the Apex Court has thus observed :-

"The validity, of the sanction would therefore depend upon the material placed before the sanctioning authority and the fact that all the relevant facets, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction and ex facie discharge that the sanctioning authority had considered the evidence and other material collected during investigation and placed before it. This fact can also be established by extrinsic evidence by placing relevant files before the Court to show that all relevant facts were considered by the sanctioning authority."

In the case of Madan Mohan Singh (supra) the Apex Court has observed whichruns thus :-

"The burden of proving that the requisite sanction has been obtained rests on the prosecution and such burden includes proof that the sanctioning authority had given the sanction in reference to the facts on which the proposed prosecution was to be based; and these facts may appear on the face of the sanction or may be

proved by extraneous evidence. Where the facts constituting the offence do not appear on the face of the letter sanctioning prosecution, it is incumbent upon the prosecution to prove by other evidence that the material facts constituting the offence were placed before the sanctioning authority. Where this is not done, the sanction must be held to be defective and an invalid sanction cannot confer jurisdiction upon the Court to try the case."

It is equally pertinent to refer here the ratio of the case of Gokulchand Dwarkadas Morarka (supra) in which the Privy Council has observed that :-

"A sanction which simply names the person to be prosecuted and specifies the provision of the order which he is alleged to have contravened is not a sufficient compliance with Clause 23. In order to comply with the provisions of Clause 23 it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is plainly desirable that the fact should be referred to on the face of the sanction, but this is not essential since Clause 23 does not require the sanction to be in and particular form, nor even to be in writing. But if the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority. The sanction to prosecute is an important matter, it constitutes a condition precedent to the institution of the prosecution and the Government have an absolute discretion to grant or withhold their sanction. They are not concerned merely to see that the evidence discloses a prima facie case against the person sought to be prosecuted. They can refuse sanction on any ground which commends itself to them for example,'' that on political or economic grounds they regard a prosecution as inexpedient. Where facts are not referred to on the face of the sanction nor is a proved by extraneous evidence that they were place before the sanctioning authority, the sanction is invalid, and the trial Court would not be a Court of competent jurisdiction. This being so the defect cannot be cured u/s 537. Criminal P.C. as a defect in the jurisdiction of the Court can never be cured u/s 537."

In the case of Jagdish Prasad Verma (supra) it has been observed by the Patna High Court which runs thus :-

"The prosecution must prove that the sanctioning authority had given the sanction in reference to the facts on which the proposed prosecution was to be based, and these facts might appear on the face of the sanction or might be proved by extraneous evidence.

xx xx xx

An order of sanction is a condition precedent, and a Court has got to take the strict legal view of the matter. In absence of the statement of any fact in - the order of sanction in question, it is incumbent upon the prosecution to satisfy the Court that the facts upon which the order of sanction was given by the sanctioning authority

were those in respect of which the delinquent public servant has been charged with in Court. When there is evidence to that effect it is difficult to hold that the order of sanction was validly obtained after placing all the facts of the case before the sanctioning authority."

In the case of Balaram Swain (supra) it was contended before the Apex Court relying upon the ratio of the case of Md. Iqbal Ahmad (supra) that if facts are not mentioned in a sanction order, nor does the sanction order contain any ground on which the satisfaction of the sanctioning authority was based and its mind applied the entire proceedings are void ab initio. Distinguishing the ratio of the case of Md. Iqbal Ahmad (supra) the Apex Court has observed, that in that case as a matter of fact the Court came to the conclusion that there was no evidence either primary or secondary to prove the contents of the note placed before the sanctioning authority nor were the witnesses examined in a position to state the contents of the note but in the case at hand the High Court not only on the strength of the evidence of PW 4 but also with reference to Ext. 6 found that the sanctioning authority has applied its mind to the materials and as such the sanction is a valid one. In paragraph 9 of the said case law the Apex Court has thus observed ;-

"The sanctioning authority, namely, PW 4 has stated on oath that he perused the consolidated report of the vigilance and fully applied his mind and, thereafter, issued the sanction order. Nothing has been brought in the cross-examination of PW 4 that all the necessary materials were not placed before him. Therefore, the sporadic ad- mission made by PW 7 does not in any way affect the veracity of PW 4 or invalidate the sanction. In fact, the High Court has examined this contention and was satisfied on perjasal of Ext. 6 that the sanctioning authority had fully applied his mind. Therefore, in our view, there is no force in this contention."

From the ratios referred to above it appears that sanction under the said Act is not intended to be nor is it an automatic formality and it is essential that the provisions in regard to sanction should be observed strictly. But for a sanction order no specific type, design, form or particular words have been prescribed. Therefore, in accordance with the common sense and the requirements of justice, all that the order of sanction must show is that all the relevant materials were placed before the sanctioning authority and the said authority considered those materials and the order sanctioning, the prosecution resulted therefrom and it should be clear from the order that the sanctioning authority considered the materials before it and after consideration of all the circumstances of the case sanctioned the prosecution. For the sanction to be valid it must be proved that the sanction was given in respect of the facts constituting the offence charged. Where facts constituting offence are not set out in the order sanctioning prosecution and no extraneous evidence is led in to prove .the facts constituting the offence were placed before the sanctioning authority, the sanction stands vitiated. Therefore, a sanction to prosecute a particular person for an offence implies first a full knowledge of the facts upon

which it is sought to prosecute him and secondly a deliberate decision of the sanctioning authority that he may be prosecuted. These two things are necessary to be proved before it can be said that a particular order amounts to sanction for prosecution. It further appears from the ratio of the cases, referred to above, that the facts constituting the offence should appear on the face of the sanction and where the facts constituting, the offence do not appear on the face of the order of sanction for prosecution, it is incumbent upon the prosecution to prove by other evidence that the material facts constituting the offence were placed before the sanctioning authority and where this is not done the sanction, must be held to be defective and invalid which cannot confer jurisdiction upon the Court to try the case. Let us no scrutinize the order of sanction for prosecution of the appellant on the basis of the guidelines referred to in the ratio of the aforesaid cases for proper appreciation I quote hereunder the sanction order for the prosecution of the appellant.

"SP/SPE/CBI/Ranchi has sent a copy of the SP''s report dated 5.6.1992 requesting to communicate sanction order for prosecuting Sub-Inspector/ Udai Bhan before the competent Court of law.

The SP''s report mentioned has analysed exhaustive the evidence collected against the accused Sub-Inspector. The SP''s report is also enclosing the calender of evidence both oral and documentary.

I have carefully gone through the report vis-a-vis the calender of evidence and I am satisfied that the prosecution has brought out adequate evidence, which has prima facie established a case against the accused Sub-Inspector/Udai Bhan for launching prosecution against him Under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. Being satisfied that there is prirna facie evidence against the accused Sub-Inspector I hereby accord sanction order u/s 19(1)(c) of the Prevention of Corruption Act, 1988 to prosecute Sub-Inspector/Udai Bhan before the competent Court of law."

It is relevant to mention here that in the sanction order (Ext. 12) the facts constituting the offence do not appear on the face of the sanction. However, it recites that the report, of the S.P. which contains the exhaustive analysis of the evidence collected against the appellant and the calender of evidence both oral and documentary has carefully gone through by the sanctioning authority and being satisfied that the prosecution has brought out adequate evidence which has prima facie established a case against the appellant Under Sections 7 and 13(2) read with Section 13(1)(d) of the said Act, sanction has been accorded by the competent authority le., PW 6 Ext. D is the report dated 5.6.1992 of the S.P. which has been placed before the sanctioning authority for according sanction Ext. D reveals that it contains all the relevant evidence collected against the appellant in course of investigation as well as calender of evidence both oral and documentary. PW 6 has deposed that he has accorded sanction for the prosecution of the appellant on the

basis of the report of SP/CBI and the sanction order contains his signature thereon which he has got typed in his presence by Sri Banerjee. It. therefore, appears that PW 6 being the sanctioning authority has accorded sanction for the prosecution of the appellant after its independent application of mind to the facts and evidence placed before him in the report aforesaid of the SP/CBI PW 8 in paragraph 17 has deposed that an appllcation was sent to the Chief Security Commissioner, South Eastern Railway. Calcutta for according sanction for prosecution of the appellant and after the receipt of the sanction charge-sheet was submitted against the appellant in the said case. Therefore, there is sufficient evidence on the record to establish the fact that an the relevant materials and evidence collected in course of the investigation along with the calender of events were placed before the sanctioning authority as per the report of the SP/CBL and the sanctioning authority after its application of mind to the facts aforesaid has accorded sanction for the prosecution of the appellant. The sanction order in the absence of facts constituting the offence on the face of it in view of Ext. D which has been brought by the appellant himself on the record does not suffer from any infirmity so as to vitiate the prosecution of the appellant and it does not render the proceeding void ab intio. And last but not the least, nothing has been brought on the record by the appellant no show that a failure of justice has in fact been occasioned in this case due to the facts constituting the offence not having appeared on the face of the sanction order. Viewed thus, the mandates contained u/s 19(3)(a) of the said Act has no relevancy in the facts and circumstances of this case I, therefore, hold In view of the evidence on the record that there is no infirmity in the sanction accorded by PW 6 for the prosecution of the appellant.

15. In view of my finding above that the demand of illegal gratification by itself is not sufficient to establish the offence and acceptance of the illegal gratification by the appellant is very important and when the tainted currency notes were found kept on the chouki and not recovered from the person of the appellant and in the absence of any clinching evidence to show that it was with the tacit approval of the appellant that the tainted currency notes have been put on the chouki in the room of the residence of the appellant as illegal gratification the charge against the appellant does not stand proved beyond all shadows of reasonable doubts, Viewed thus, the impugned judgment is unsustainable.

16. There is merit in this appeal and its succeeds. The appeal is hereby allowed and the impugned judgment is set aside. The appellant is found not guilty of the charges levelled against him and he is accordingly acquitted and discharged from the liability of the bail bonds. The appellant is also entitled for the refund of the amount of fine, if deposited by him.