courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 06/11/2025

(2006) 02 CAL CK 0035

Calcutta High Court

Case No: C.R.A. No. 216 of 2000

Arya Chowdhury APPELLANT

Vs

The State RESPONDENT

Date of Decision: Feb. 24, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 311, 313
- Evidence Act, 1872 - Section 101, 114
- Penal Code, 1860 (IPC) - Section 161
- Prevention of Corruption Act, 1988 - Section 13(1), 13(2), 20, 20(1), 4(1)

Citation: (2006) 1 ILR (Cal) 263

Hon'ble Judges: P.N. Sinha, J

Bench: Single Bench

Advocate: Sudipto Moitra, Subir Banerjee, Jayanta Banerjee and Ruxmini Basu, for the Appellant;Ranjan Roy, for C.B.I., for the Respondent

Final Decision: Allowed

Judgement

P.N. Sinha, J.
This appeal is directed against the judgment and order of conviction under 7 and 13 (2) read with 13(1)(d) of the Prevention of Corruption Act (hereinafter called the P.C. Act), 1988 dated June 29, 2000 Passed by the learned Judge, South 24-Parganas, 1st Special Court, Alipore in Special Case No. 23 of 1995 thereby sentencing the accused Appellant to suffer rigorous imprisonment for six months and to pay fine of Rs. 1000/- in default to suffer rigorous imprisonment for one year and to pay a fine of Rs. 2000/- in default to suffer rigorous imprisonment for 6 months under 13(2) read with 13(1)(d) of the RC. Act. Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence the accused Appellant has preferred the instant appeal.

2. The prosecution case was started on the basis of written complaint / FIR submitted by Hiten Majumder (P.W.2) on June 14, 1995 before the Superintendent of Police,

C.B.I./ACB/CAL, 13, Lindsay Street, Calcutta. It was alleged in the said written complaint that P. W. 2, the de facto complainant, purchased one flat at 6/1, Phase II, Golf Green, Calcutta - 45 from one Smt. Ibha Mitra, the then an employee of All India Radio (hereinafter called AIR), Calcutta. The Appellant Arya Chowdhury, the then music composer of AIR, Calcutta was one of the witnesses in the deed of P.W. 2 for purchasing the said flat. Wife of P.W. 2 Smt. Maitreyee Majumder is a singer of light music namely, "Atul Prasad", "Rajani Kanta" and "D. L. Roy" and she got a call letter from AIR, Calcutta for audition test on June 20,95 of "B" Grade for light music. On June 6,95 in the evening after returning home P. W. 2 heard from his son Debdutta Majumder that Arya Chowdhury had phoned them for urgent discussion and the accused also gave his telephone number to their son for calling him back. P. W. 2 then called the Appellant over telephone but he was not available at his home. In the same night at about 10 P.M. the Appellant Arya Chowdhury telephoned him again and told him that he would meet P. W. 2 for some urgent matter and also expressed his desire to visit residence of P. W. 2 on June 7, 95 at afternoon, the Appellant visited the residence of P. W, 2 on June 7, 95 at about 3.30 P.M.

3. In course of discussion the Appellant suddenly told P. W. 2 "Did your wife receive the call letter for audition for Grade "B" to be held on June 20. 95 at AIR, Calcutta." P. W. 2 was surprised as to how the Appellant could acquire that information. But however, P. W. 2 confirmed receipt of call letter by his wife for the audition test. P.W.2 also asked the Appellant as to how he could know the matter and the Appellant replied that he learnt it from his office namely AIR, Calcutta and for that reason he has come to the residence of P. W. 2 to help him in this matter. The Appellant assured P.W. 2 that he would get his wife approved fro audition test for "B" Grade in AIR, Calcutta. Thereafter, the Appellant demanded Rs. 25,000/- as illegal gratification. P. W. 2 expressed his inability to take any decision over the matter at that moment. Thereafter, the Appellant made some local calls from the telephone of P. W. 2 and at about 5.30 P.M. the Appellant left residence of P. W. 2 saying "Think yourself, I would contact you again." P. W. 2 discussed the matter with his wife and both of them decided not to give any bribe or illegal gratification amount to the Appellant.

4. On June 13, 9"5 at 7 P.M. the Appellant again telephoned P. W. 2 and proposed to give him bribe money of Rs. 25,000/- in installments if P. W. 2 is unable to pay the entire amount at a time. The Appellant also told to give him Rs. 5000/- June14,95 at the residence of P. W. 2 and also informed that he would come around 4.30 P.M. at the residence of P. W. 2 to collect the said amount. The Appellant also told P. W. 2 to supply him three matters at the morning of June 14, 95 at his residence which are (1) Xerox copy of call letter for audition test of wife of P. W. 2, (2) a letter signed by wife of P. W. 2 addressed to the Station Director, AIR for changing the date audition and (3) one audio cassette with some songs of "Rajani Kanta" and "Atul Prasad" in the voice of wife of P. W. 2.

5. On June 14,95 morning P. W. 2 decided to inform the entire matter to the CBI and accordingly at about 9 A.M. he went to the residence of the Appellant and handed over him the above mentioned three items as desired by him. At that time also the Appellant demanded money from P. W. 2 and asked him to make ready the money and he will come to his residence at 4.30 P.M. for collecting the same. Thereafter, P. W. 2 came to the office of the CBI and lodged the written complaint. Receiving the written complaint one FIR bearing Crime No. RC-23/95 - Cal dated June 14,95 was registered at 12.30 hours. The written complaint submitted by P. W 2 was marked exhibit 2 in Court during trial and the formal FIR filled up by Inspector of Police B. Sarkhel (P.W.11) was marked ext. 2/1.

6. Thereafter, the CBI officers decided to lay a trap on the Appellant and formed a trap laying party. They also arranged for two independent witnesses namely, P. W. 3 Ranjit Kumar Haider and P.W. 4 Dipak Kumar Banerjee, Officers of Bank of India, Lindsay Street Branch. As per the direction of the CBI Officer, the complainant P. W. 2, the said two independent witnesses and other officers of CBI who joined in the trap laying party came to the CBI Office at 14.20 hours and the complainant was introduced to the independent witnesses and other CBI Officers. On being asked by P. W. 11 B. N. Sarkhel, P W 2 produced Rs. 5000/- in fifty numbers of government currency notes (in short G.C. notes) of Rs. 100 denomination each and numbers of the notes were recorded in the pre-trap memorandum (exhibit 3). The said G. C. notes then were treated with phenolphthalein powder (in short P. powder) by P. W. 7 namely, Biswajit Roy, Inspector of CBI. Clean water was brought in a clean pot and sodium carbonate, i.e. washing soda was added to that water. It was shown that the colour of the solution did not change. Thereafter, P. W. 11 requested the witness P. W. 4 to count the G.C. notes and he counted the notes and his hands were washed with the said solution which immediately turned into pink, the pink colour solution was then kept in a clean bottle and was corked, labeled and marked "A". It was also sealed then and it was signed by the complainant, the witnesses and the CBI officers present there.

7. The significance of the pre-trap demonstration was then duly explained to the witnesses and the complainant was told by P. W. 11 that, if any part of any person or any object comes in contact with the said powder treated object and if that part of the person or the object which has already been come in contact with the said powder treated object is washed in the solution of sodium carbonate and water, the colour of the solution would turn pink due to the chemical reaction.

8. The said G. C notes were thereafter treated with the said powder and were returned to P. W. 2 who kept those notes in the right inside front pocket of his wearing jeans trouser. P. W. 2 was instructed by the CBI Officers to handover the said G. C. notes to the Appellant only on demand and not otherwise. The pot and the funnel used for the preparation of the solution was washed with soap water and thereafter P. W. 2, P. W. 4, P. W. 7 and other CBI Officers washed their hands with soap and water.

9. The CBI. Officers then took one investigation kit consisting of stationeries like sodium carbonate, P. powder etc. and they also took with them t-heir identity cards, plain papers etc. Mr. R. K. Sarkar, the then D.S.P., CBI was allowed to carry a sum of Rs. 200/- only to meet emergency incidental expenses. P. W. 2 was allowed to carry the said G. C. notes. The entire fact was recorded in this said pre-trap memorandum.

10. The team of CBI Officers accompanied by complainant and independent witnesses then proceeded for the residence of complainant at Golf Green and reached there at about 4.15 P.M. The CBI Officers, witnesses and the complainant took their position suitably very close to the room of the flat of the complainant. There were two entrance doors to enter into the flat of complainant (P. W. 2). It was learnt from complainant that normally visitors come to flat through the southern entrance attached to the drawing room. There was a common door between drawing room and dinning space. It was noticed that inside of the drawing room was not visible from outside during day time. Both the doors and the windows of the drawing room had curtains. The independent witnesses P. W. 3 and P. W. 4 took their position by standing behind the common door and outside the drawing room under the coverage of curtain and the common door was kept slightly open so that the witnesses could hear the conversation between the complainant and the Appellant and also could see the transaction of the bribe amount. The CBI Officers namely, P. W. 10 and P. W. 11 took position with the witnesses just behind the common door and the drawing room and dinning space. The other CBI Officers and men took their position at different places by surrounding the areas.

11. One Panasonic tape recorder was lying on the centre table and it was decided to record the conversation between the Appellant and the complainant during the transaction of bribe money. Complainant was requested to provide a blank audio cassette but P.W. 2 told that he had no blank cassette. The complainant produced one pre-recorded cassette for this purpose and the cassette was placed inside the tape recorder and the tape recorder was kept under the centre table covered with jute string.

12. Thereafter, all of them were waiting for the arrival of the Appellant and at about 4.35 P.M., the Appellant arrived in front of the flat of P. W. 2 on a cream colored Ambassador car bearing No. WB 02-5199 driven by himself. After getting down from the car the Appellant came to the southern door and rang the calling bell. P. W. 2 opened the door and welcomed the Appellant and the Appellant then entered inside the drawing room and took seat on a sofa situated on the south just beside the southern entrance. Before opening the entrance door, the complainant as per earlier instruction switched on the tape recorder and thereafter opened the entrance door to welcome the Appellant. The Appellant after taking seat started conversation with the complainant and during conversation Appellant asked for a glass of water which was supplied by Smt. Maitreyee Majumder, wife of complainant. After taking water, the Appellant extended his hand towards the complainant and by gesture of fingers of his right hand demanded the bribe money. The complainant then brought out the bribe money from right side pocket of his wearing full pant and handed over the said money to the accused saying "apnar

kathamoto apnake Rs. 5000/- dichchi. Apni amar strir byaparta dekhben" (according to your talk I am giving Rs. 5000/-to you and you will see the matter of my wife). The Appellant after taking the money with both of his hands told to the complainant "ami dalal noi. Ami agent noi. Aai takata ooder dite habe. Ooder na dile kono kaj hoi na. Ami akhon okhane nei. Thakle takata dite hoto na" (I am not dalal. I am not agent. This amount is to be given to them. No work is possible unless they are paid. I am not there now. Had I been there the money would not have been paid).

13. The Appellant thereafter kept the said money in his left side pocket of wearing white colored khadi pujabi. The Appellant then stood up and started to leave the drawing room. At that moment the CBI Officers namely, P. W. 11, P. W. 12 and the witnesses rushed into the drawing room and after disclosing their identity challenged the Appellant. Hand wash of the Appellant was taken in a solution of water and sodium carbonate and the colour of the solution turned pink which was preserved in a bottle market "B" and the bottle was corked, labeled and sealed and was signed by witnesses and other CBI Officers. On being asked by CBI Officers the accused took out the bribe money of Rs. 5000/- from his left side pocket of the wearing Punjabi. the number of the G.C. notes were tallied with the number of the notes which were noted in the pre-trap memorandum (ext. 3) and were found identical. On Search of the pocket of the wearing apparel of the Appellant currency note of Rs. 5/- i.e. two notes of Rs. 21- denomination and one note of Rs. 1/-denomination, one pen, some chits of papers with some address, his identity card of AIR, Calcutta and driving licence in his name were found.

14. The Appellant was requested to take off his wearing Punjabi and the pocket wash of the Punjabi was taken with a solution of sodium carbonate and water. The colour of the water was turned pink and the pink coloured solution was preserved in a bottle marked "C and the bottle was sealed and labeled and was signed by CBI Officers and witnesses.

15. All the aforesaid G. C. notes of Rs. 5000/-, the bottle, I.D. Card, driving licence of Appellant, audio cassette, tape recorder and Punjabi of Appellant were seized under a seizure list (ext.7) in presence of witnesses. The tape recorder was kept in zimma of the complainant under a zimmanama.

16. Thereafter, the CBI Officers and the witnesses went to the residence of Appellant taking away the Appellant with them. The Appellant was arrested and was taken into custody. One post-trap memorandum (ext. 5) was prepared stating therein the entire facts. House of the Appellant was searched on the same day between 8.30 P.M. to 8.55 P.M. and during search one application dated July 15, 94 of one Smt. Tanusree Das and one application of same date of one G. Prasad Das addressed to the Director, Doordarshan Kendra, Calcutta, one call letter dated may 9, 95 of AIR, Calcutta in the name of Smt. Maitreyee Majumder and one audio cassette of Maitreyee Majumder containing songs of "Atul Prasad" and "Rajani Kanta" were recovered and seized under a seizure list.

17. R. Biswas (P.W.12), D.S.P. / CBI/ACB, Calcutta took up investigation and he obtained necessary sanction for prosecution against the Appellant and submitted charge-sheet before the Special Court against the Appellant on December 4, 95 under 7 and 13(2) read with 13(1)(d) of the P.C. Act.

18. After receiving the charge-sheet and perusing the sanction order and other materials, the learned Special Judge took cognizance of offence against the Appellant and the trial that followed ended in conviction of the Appellant as mentioned above, and hence this appeal.

19. In order to prove its case the prosecution (CBI authority) examined 12 witnesses in all namely, P. W. I Shashikant Kapoor, the Director General of AIR, who accorded sanction for prosecution against the Appellant. The sanction order was market ext. 1. P. W. 2 Hiten Majumder is the de facto complainant on the basis of whose written complaint the aforesaid case was started. P. W. 3 Ranjit Kumar Haider, P. W. 4 Dipak Kumar Banerjee are employees of Bank of India, Lindsay Street Branch and according to prosecution they are the independent witnesses of the case. P.W. 5 Bimalendu Das is the Senior Scientific Officer (Chemistry) of F.S.L., Calcutta who after examining the contents of the three sample bottles marked as "A", "B" and "C submitted his report which is ext. 13. His report reveals that P. powder and sodium carbonate could be detected in all the three aforesaid bottles. P. power is a colorless powder chemical substance which is used in laboratories and sodium carbonate is white in colour and soluble in water. When P. Power comes in contact with sodium carbonate water solution* the colour of the solution turns pink by chemical reaction.

20. P. W. 6 is Smt. Bandana Chattopadhyay who was Programme Executive, AIR, Calcutta at the relevant time of incident. P. W. 7 Biswajit Roy, P. W. 8 Syed Iqbal Jha and P. W. 9 Manik Lai Sharma were the Inspectors, CBI/ ACB/ Calcutta who were members of the trap raiding party on June 14, 95 in respect of the Appellant. P. W. 10 Ratan Kumar Sarkar was posted as D.S.P. of CBI/ACB/ Calcutta on June 14, and was also a member of the trap raiding party. P. W. 11 Biswanath Sarkhel was Inspector, CBI/ACB/Calcutta on June 14,95, who received the written complaint submitted by P. w.-2 and filled up formal FIR and registered the case as RC 23/95 - Calcutta dated June 14, 95. He also arranged the pre-trap memo and preformed other formalities and also was a member of the trap raiding party. P. W. 12 Ranjan Biswas was the D.S.P. of CBI/ACB/Calcutta who submitted charge-sheet in this case.

21. On behalf of the Appellant five witnesses were examined namely D.W. 1 Dipak Roy, D. W. 2 Smt. Soma Dutta, D. W. 3 Chandi Sarkar, D. W. 4 Shyamal Kumar Banerjee who was posted as accountant, AIR, Calcutta in 1995 and D. W. 5 Arya Chowdhury, the Appellant himself.

22. In order to prove its case besides the oral evidence, the prosecution also led documentary evidence which are exhibits 1 to 22. Ext. 1 is the sanction order dated

October 18, 95 issued by the P.W. 1 for initiation of prosecution against the Appellant. Ext. 2 is the written complaint dated June 14,95 submitted by P. W. 2 before P.W. 11. Ext. 2/1 is the formal FIR which was filled up by P. W. 11. Ext. 3 is pretrap memorandum dated June 14, 95 and Ext. 4 is the zimmanama dated June 14, 95. executed by the complainant himself taking custody of the cassette. Ext. 5 is the post-trap memorandum dated June 14, 95. Ext. 6 is the application form for audition submitted by Smt. Maitreyee Majumder dated March 23, 95.

23. Ext. 7 is the search list dated June 14,95. conducted between 4.40 P.M. to 6.30 P.M. at the residence of P. W.2. This was concerning personal search to the Appellant after the trap and after his arrest. The articles which were seized through the said document are Rs. 5000/- which was allegedly taken by the Appellant from P. W. 2 as bribe. Besides that, the sample bottles, identity card of AIR standing in the name of Appellant, his driving licence the audio cassette and the Punjabi which the Appellant was wearing were seized through ext. 7. Ext. 9 is seizure list dated June 14, 95. made between 8.30 P.M. to 8.55 P.M. at the residence of accused and four items were seized through it which are one application dated July 15, 1994 of Smt. Tanushree Das and another application of same date of Sri Gobinda Prasad Das and these two applications were addressed to the Director, Doordarshan Kendra, Calcutta. Other two items seized through ext. 9 are the copy of call letter standing in the name of Smt. Maitreyee Majumder dated May 9, 95 issued by AIR, Calcutta and one audio cassette containing songs of "Atul Prasad" and "Rajani Kanta" in the voice of Smt. Maitreyee Majumder. The application of Tanushree Das and Gobinda Prasad Das were again subsequently marked as ext. 10/1 and 11/1 respectively. Ext. 12/1 is the copy of the letter for the audition test of Smt. Maitreyee Majumder issued by AIR, Calcutta to be held on June 20, 95.. Ext. 10/1, 11/1 and 12/1 are the items which were seized through the seizure list already marked ext. 9. Ext. 13 is the report of the chemical examiner.

24. Ext. 14 is note sheet with notes of AIR, Calcutta fixing programme for light music and this note sheet bears signature of T.K. Das, the then Deputy Director of AIR, Calcutta whose Xerox is annexure "C and ext. 14/1 is the original signature of T.K. Ds. Ext. 15 is a register showing schedule of booking of Judges by AIR, Calcutta. Ext. 16 is the note Sheet of AIR, Calcutta. Ext. 16 is the note sheet of AIR, Calcutta. Ext. 17 is entry in a register of AIR, Calcutta bearing No. 998/11/024168 standing in the name of Smt. Maitreyeee Majumder. Ext. 18 is the call letter for audition test to be held on June 20, 95 which was sent to Smt. Maitreyee Majumder by AIR, Calcutta. Ext. 19 is one entry in a register of AIR Calcutta standing in the name of Smt. Maitreyee Majumder. Ext. 20 is the office copy of same call letter for the audition test sent to Smt. Maitreyee Majumder which is already marked ext. 18. Ext. 21 and Ext. 22 are two production memos.

25. On behalf of the Appellant certain documents were also admitted in evidence during trial which are exhibits A to P/1. Ext. A is a news item in the newspaper "Aajkal" dated June 15, 1995 and the first page covers the alleged news of taking bribe by the Appellant with his photograph. Ext. C is signature of TKD, i.e. T.k Das, the then Deputy Director,

AIR, Calcutta in note sheet dated 9.5.95 whose original is ext. 14 and signature of TKD in the original is ext. 14/1 and ext. C is the Xerox copy of ext. 14 and ext. C is the Xerox copy of ext. 14 and ext. C is particularly the signature of TKD in the Xerox whose original is ext. 14/1. Ext. E/1 is signature of TKD in a typed memo or note. Ext. F is news item about irregularities in AIR and making the Appellant as scapegoat in the said news item published in "Jela Bichitra" of Malda dated September 1, 1995. Ext. J is order of the Central Administrative Tribunal (CAT) dated May 2, 1995. Which reveals that the Appellant moved CAT against his transfer order. Ext. N is order of AIR, Calcutta dated July 3, 1990 regarding duties of the Appellant in AIR, Calcutta. Ext. P is the complaint in writing by Appellant dated July 4, 1995 addressee! to the Hon"ble Minister, Government of India. New Delhi. Ext. P/1 is reply be one Binod Kumar, Senior Analysis of the Ministry of Personnel, Public Grievances and Pensions (Department of Administrative Reforms and Public Grievances), Sansad Marg, New Delhi dated September 18, addressed to the Appellant relating to complaint against harassment, misbehavior by government officials. Ext. P/1 shows that the said Ministry received letter of the Appellant dated July 9, 1995 and one Joint Secretary of the Ministry of Home Affairs was requested to review case of the Appellant. Apart from that some their documents placed by the Appellant to establish his credentials, certificates etc. and his background as a famous musicians were marked as ID / H, ID/HI, ID/H2, ID/H3, ID/H4, ID/H5 and ID/H6. ID/I is the transfer order dated April 25, of Appellant. ID/L is another transfer order of Appellant dated May 22, 1995. ID/M is a newspaper item published in "Pratidin" dated May 24,1995 containing some allegations against TKD. ID/M1 is another news item published in "Pratidin" dated May 15, 95 concerning irregularities in AIR. ID/M2 is the complaint against T.K. Das by the Appellant on behalf of Akashbani Staff Musician Association dated May 20, 1995 addressed to the Station Director, AIR, Calcutta. ID/M3 is another complaint against T.K. Das by the Appellant on behalf of the same union dated May 21, 1995 addressed to the Deputy Commissioner of Police (S.B.), Calcutta. ID/O is another news item published in the newspaper "Aajkal" dated July 41, 1995 concerning search in the office room of the Appellant in AIR, Calcutta. ID/E is the typed note which bears name of complainant Hiten Majumder and according to the Appellant this note was sent by T.K. Das to complainant and it contains signature of T.K. Das which has been marked ext. E/1.

26. Mr. Sudipto Moitra, the learned advocate who led the team of the learned advocates appearing for the Appellant submitted that the Appellant is a famous musician and has fame around the world as a famous folk music singer. He won gold medal at Berlin and attended Bangladesh as one of the representatives of India in a music conference for raising fund to help the victims of flood. The Appellant and the team who accompanied him at Dhaka during the said musical conference donated Rs. 2 lakhs for the victims of flood. He has also won several prizes, medals and was awarded different certificates from various music organizations. A man of such caliber and a man who can donate Rs. 2 lakhs for the flood victims will not smell rat by taking bribe of Rs. 5000/- only. The prosecution story is not believable at all, if the credentials, certificates, the medals and the background of the Appellant as a musician is considered.

27. I am not at all impressed with this submission as my view is that there is no hard and fast rule that a famous man having good background, good academic record and fame around India or world cannot take bribe. Everything depends upon circumstances and the particular moment when the incident takes place and what was the reflection in the mind of the person at the time of any such alleged incident. Rich men often hanker for more money and wealth and it is not impossible for a man to earn more by any method using his fame and position. Therefore, in this case the background of Appellant as a famous musician is admitted by me but, I am not convinced that this itself is a ground to disbelieve the prosecution story. Each case depends upon its own facts and circumstances and we have to consider on the basis of evidence and materials on record whether the prosecution story and the evidence that the prosecution have introduced in the trial Court are sufficient to establish the charges against the Appellant.

28. Mr. Moitra thereafter drew my attention relating to some discrepancies in evidence of the witnesses and seized articles. He pointed out that the news item along with the photograph of the Appellant published in "Aajkal" Bengali newspaper dated June, 15, 1995 market as ext. A would reveal that the Appellant is wearing a half sleeve Punjabi. The search-eum-seizure list dated 14.6.1995 made in the house of P. W. 2 at the time of personal search of Appellant would reveal that it was a full sleeve Punjabi as the witnesses stated in evidence in Court and identified the Punjabi at the time of evidence in Court and it was found from their evidence that the said Punjabi produced in Court is a full sleeve Punjabi. Evidence of P. W. 2 and P.W. 8 reveals that it was a full sleeve Punjabi which was produced in Court. Besides that, there are other discrepancies relating to recovery of bribe money as P. W. 3 stated that after taking money* the Appellant went out of the room and when the CBI Officers detained him he dropped the packet of money on "varandah". P. W. 2 stated that when the Appellant was about to leave the drawing room the CBI Officers apprehended him. P. W. 4 stated that when the Appellant came out of the drawing room the CBI Officers apprehended him and P. W. 7 stated that the Appellant was apprehended by them inside the drawing room. According to Mr. Moitra these discrepancies are vital and it establishes that prosecution witnesses are not reliable and taking of bribe money by the Appellant was not established.

29. I am not convinced at all with the above arguments advanced by Mr. Moitra concerning the discrepancies in evidence. In my opinion all these discrepancies are minor in nature and ignorable. There are catena of decisions to the effect that minor discrepancies which are not vital or fatal should always be ignored. The principles of law on this point is settled and I do not like to make my judgment lengthy citing several decisions on this point; still I refer some of the decisions namely, State of West Bengal v. Kailash Chandra Pandey 2005 Cr. LT, 135; Angnoo v. State of Uttar Pradesh 1971 Cr. L J 285 : AIR 1971 SL 296; Banwari v. The State of Rajasthan 1979 Cr. LJ. 161 ; Appabhai and Another Vs. State of Gujarat, and Narotam Singh Vs. State of Punjab and Another,

30. The Supreme Court in several decision has laid down that whether the money was recovered from the right side pocket of the Appellant or left side pocket of the Appellant or

inside the room or outside the room are minor discrepancies and ignorable. Relating to Punjabi I am of opinion that, if the evidence of the witnesses are construed and appreciated properly it would reveal that the CBI Officers asked the Appellant to put off the Punjabi as they wanted to have the solution mixed with P. Powder and sodium carbonate relating to the pocket of Punjabi in which the money was kept. The evidence and the ext. 7, if read together, would reveal that the said Punjabi was seized and an accused cannot be allowed to remain bare bodied and after seizure of that Punjabi he was definitely allowed to wear a different Punjabi when his photograph was taken. For this reason there is discrepancy between half sleeve and full sleeve of Punjabi and in my opinion this discrepancy is not vital at all. The solution of the Punjabi pocket of the Appellant was preserved in a bottle which was marked "C the hand wash of the Appellant was taken in a bottle and that solution was marked "B". At the time of preparation of pre-trap memo the hand wash of P. W. 4 was kept in a bottle which was marked ext. A. P.W. 5 examined all these three sample bottle containing solution marked as ext. "A", "B" and "C and opined in all the solutions of three bottles P. powder and sodium carbonate was detected. It is therefore, clear that the Punjabi produced in court being a full sleeve Punjabi is the Punjabi which the Appellant was wearing when he was apprehended by the CBI Officers. The discrepancy concerning apprehension of Appellant by CBI Officers whether on "varandah" or just at the time of leaving the drawing room or inside the drawing room are inconsequential and these discrepancies do not destroy the prosecution case.

31. Mr. Moitra also contended that P. W. 7, P.W. 8, P. W. 9 and P.W. 10 were not examined by the Investigation Office as they stated in their evidence. If during course of investigation witnesses are not examined by Investigation Officer and their statements are not recorded, no reliance can be placed on evidence of such witnesses. He further submitted that prosecution evidence is not consistent and coherent. The tape recorded version between the Appellant and P. W. 2 is disputed and the learned trial Court himself did not place reliance on the alleged tape recorded version to establish that the Appellant demanded bribe. It would become clear from the judgment of the learned trial Court appearing at pages 273 to 274 of the paper book.

32. Considering the evidence and materials on record I am of opinion that this submission of Mr. Moitra has some force. The learned trial Court in the judgment observed that in view of the proposition of law conversation between complainant and accused recorded in the cassette may be considered as admissible in evidence. Thereafter, in the next para in page 273 of the paper book the learned trial Judge clearly observed that, " But even then I am unable to accept the said cassette (Mar. Ext. V) as admissible in evidence in view of the fact that the said cassette was not kept under sealed condition at the. custody of CBI." In this connection the learned trial Court placed reliance on the decision of C.R. Mehta v. State of Maharastra 1993 GLJ 2863, I like to add few more words here which I think is essential as it appears from appreciation of evidence and, I am unable to agree with the learned trial Judge that the alleged conversation recorded in cassette was

corroborated by two independent witnesses namely P. W. 3 and P. W. 4 and other CBI Officers, the evidence of P. W. 3 reveals that one Hindi song was recorded in the cassette and he could hear the Hindi song when the conversation was replayed. Evidence of P.W. 2, the complainant in question No. 40 reveals that CBI Officers played the conversation recorded in the tape recorder and the statement of accused was not corroborated by the conversation recorded in the tape recorder as it became faint. Therefore, the alleged recorded conversation in tape recorder did not at all establish the prosecution case that accused made demand of bribe money from P. W. 2, the de facto complainant and, on such demand the de facto complainant paid the bribe amount to Appellant. The evidence of the CBI Officers that conversation was corroborated cannot be accepted at all when evidence of P. W. 2 and P. W. 3 totally goes against the prosecution case and established the fact that statement of accused was not corroborated and conversation was faint. It has been established from evidence that the alleged recorded conversation between Appellant and de facto complainant in the tap recorder could not at all establish demand of bribe money by the Appellant.

33. Mr. Moitra thereafter submitted that it is not a case where the Appellant denied taking of money. The Appellant admitted taking of money and recovery of money from the Appellant is also admitted. The specific case of the Appellant is that he advanced Rs. 8000/- as loan to the de facto complainant when de facto complainant purchased flat. In spite of several requests the de facto complainant did not pay back the said amount of loan. The Appellant demanded money when his mother was seriously ill but the complainant did not refund the money. The Appellant had to move CAT against his transfer order and he had to spent some money for meting litigation costs. The Appellant demanded'' refund of the said amount as he was in need of money to meet litigation costs and also wrote a letter to the complainant asking him to refund the loan. He even sent D. W. 2 and D''.''W. 3 to the residence of de facto complainant with a request to refund the said amount. The Appellant''s case has been disclosed by him in his evidence as D.W. 5 and also in response to answer of question No. 32 during his examination under 13 of the Code of Criminal Procedure (in sort Code).

34. Mr. Moitra further submitted that the Appellant requested the complainant to refund at least Rs. 5000/-out of Rs. 8000/-, if the complainant is not in a position to pay the entire amount at a time Even from cross examination of prosecution witnesses it would be apparent that, the Appellant when he was apprehended by CBI Officers stated that he came to take refund of loan amount paid by him earlier to complainant when the complainant purchased flat. The complainant is not a reliable witness as he in his evidence in cross examination even denied that Appellant was a witness in the deed by which he purchased his flat. The written complaint submitted by P. W. 2 marked as ext. 2 in the very first paragraph reveals that the complainant himself stated therein that the Appellant Arya Chowdhury was one of the witnesses of the sale deed of the aforesaid flat purchased by him from Smt. Ibha Itra. P. W. 12 in his evidence in cross examination stated that it is a fact that in the petition of complaint it was stated that accused was a

witness of the deed of purchase of flat by the complainant. Mr. Moitra submitted that if the chain of circumstances are linked together in this respect relating to purchase of flat by complainant it would make clear that Appellant was a witness in the deed at the time of purchasing flat by complainant. Being so, there is no ground to disbelieve the Appellant"s case that he advanced Rs. 8000/- to the complainant at the time of purchasing his flat in 1983. The evidence of D. W. 1 to D.W. 5 would reveal that in spite of several requests the complainant did not pay back the amount of loan advanced by Appellant to him. After repeated requests and several attempts the complainant agreed to pay back Rs. 5000/- and for this reason the Appellant came to the residence of complainant on June 14, 1995 to receive Rs. 5000/- as refund of loan amount taken by the complainant from Appellant earlier.

35. Mr. Moitra also contended that there was no suggestion to D.W. 2 that she is not a relative of P. W. 2. D.W. 2 stated that she used to take music lesson from the Appellant and when the Appellant learnt that Mrs. Maitreyee Majumder is a relative of D.W. 2, the Appellant requested D.W. 2 to go to the residence of P.W. 2 to request Mr. Majumder (P.W. 2) to refund the amount of loan advanced by him at the time of purchasing flat. ID/ E which contains signature of T.K. Das marked as ext. E/ 1 was given by wife of P. W. 2 to D.W.1. Ext. F was not challenged by the prosecution in the cross examination of Appellant and ext. F contains a news item regarding irregularities in AIR and making the Appellant a scapegoat.

36. Mr. Moitra also drew my attention submitting that the most vital witness was not examined by CBI who is none but Smt. Maitreyee Majumder, concerning her audition the entire episode originated. Evidence of P. W. 12 the Investigating Officer reveals that during course of investigation he examined Smt. Maitreye Majumder and other witnesses namely, one G. Kumar and one Madhumita Bose. Even if the non-examination of witnesses G. Kumar and Madhumita Bose during trial is excluded., the non-examination of Maitreyee Majumder is a ground to draw adverse presumption against prosecution under 114(g) of the Evidence Act. Mr. Moitra submitted that from evidence it transpires that on June 14, when the Appellant came to the flat of P.W. 2 he demanded a glass of water after taking seat in the drawing room and Mrs. Maitreyee Majumder supplied glass of water to the Appellant. It proves the fact that Smt. Maitreyee Majumder was in house at that time when the alleged trap was made and the Appellant was apprehended. Her evidence would have revealed the truth as to whether Appellant came to the flat of P. W. 2 to take bribe money or to take refund of a portion of the loan amount which he earlier advanced to P. W. 2 at the time of purchasing flat.

37. Mr. Moitra further contended that recovery of money is not sufficient and enough to prove the prosecution case of taking bribe money by Appellant. The prosecution must establish demand of gratification and demand of gratification must be established by convincing evidence. The presumption under 20 of the P. C. Act would be applicable under what circumstances and back ground has been laid down by the Hon"ble Supreme court inM. Narsinga Rao v. State of A.P 2001 SCC (Cri) 258 and other decisions. The

statutory presumption under 20 of the P.C. Act cannot override the cardinal principal that prosecution has to prove its case beyond all reasonable doubts. There is no need of proving the defence case beyond doubts and it is the duty of the prosecution to prove its case beyond all reasonable doubts. If the Appellant by defence witness or from the evidence of the prosecution witnesses can establish doubt or suspicion- on the prosecution case relating to demand of bribe and taking of bribe that would be sufficient. In this case from evidence and materials on record it is clear that the moment the Appellant was apprehended by CBI Officers he gave the explanation that at the request of complainant he came to house of complainant to take a portion of refund of the loan amount which the Appellant earlier paid to complainant at the time of purchasing flat. In this case from evidence and circumstances it is clear that the Appellant was able to make out his case and was able to establish doubt and suspicion on the prosecution case and his explanation was satisfactory and was also proved from oral and documentary evidence.

38. Mr. Motra continued his submission by stating that Ext. E and E/1 would establish that Appellant was a victim of circumstances as he on behalf of his union made several complaints against the then Deputy Director of AIR, Calcutta Sri T.K. Das. For this reason the Appellant was transferred to Agartala in April, 1995 which transfer order the Appellant prevented by moving CAT. But, thereafter, again by another order dated May 22, 1995 he was transferred to Agartala and the alleged incident originated at the instance of T.K. Das so that Appellant is humiliated and his image is tarnished before the people who know him and it would serve purpose of T.K. Das so that Appellant cannot make any further complaint and P. W. 2 would not have to refund loan to Appellant. Mr. Moitra also submitted that from evidence it has been transpired that P. W. 2 was very close to T.K. Dasand they had visiting terms between themselves. Accordingly, the judgment and order of the learned trial Court convicting the Appellant being bad in law should be set aside. In support of his contention Mr. Moitra placed the decisions namely.Bal Krishan Sayal v. State of Punjab 1987 Sec (Cri) 408; Lakshmi Singh and Ors. v. State of Bihar 1976 SCC (Cri) 671; Bhaiya Bahadur Singh v. State of Madhya Pradesh 1996 (3) Cris 25 (SC); Man Singh Vs. Delhi Administration, ; Suraj Mal Vs. State (Delhi Administration), ; Pradip Kumar Banerjee v. The State through CBI 2004 Cr. LR (Cal) 1128; State v. Satish Chand Sharma 1986 (2) Cri 102; The State (CBI) v. Karan Lal Shaw 2002 (2) CU 316; Tarun@Gautam Mukherjee v. State of West Bengal 2003 Sec (Cri) 1052; State of Andhra Pradesh v. T. Venkateswara Rao 2004 C Cr. LR (Sc) 225; Vimal Suresh Kamble v. Chaluverapinake Apal. S.P.I (2003) 3 Sec 175 and Duraisami v. State of T.N. 2005 Sec (Cri) 1508

39. Mr. Ranjan Roy, learned advocate appearing for the CBI submitted that the defence case is that the Appellant paid loan to P.W. 2 at the time of purchasing flat in 1983 and he demanded refund of the loan amount. As it is an alibi of defence the entire onus is upon the Appellant to discharge this onus and to prove the story introduced by him that he paid loan to P. W. 2 earlier and that on the date of incident he came to take back a portion of

refund of loan. The seizure cum search list marked as ext. 9 showing recovery of copy of audition letter and cassette from the flat of Appellant establishes that the defence case is not at all believable. If the Appellant visited the flat of de facto complainant P. W. 2 on June 14, 1995 to take refund of a portion of loan amount why the audition letter and cassette would be recovered from his house. The evidence of Appellant in respect of question 44 lying in page 202 of the paper book reveals that de facto complainant visited the residence of Appellant on June 14, 1995 at morning and at that time P.W. 2 kept one pre-recorded cassette containing songs of his wife and one photocopy of audition call letter of his wife. This evidence admitted by Appellant himself and recovery of cassette and copy of audition letter clearly proves that the defence alibi is not believable.

40. Mr. Roy further submitted that tape recorded conversation is admissible in evidence and no dispute raised by the Appellant during trial regarding tape recorded voice. The tape recorded conversation between the de facto complainant and the Appellant recorded in the cassette marked as material ext. V. has been corroborated by other witnesses and it will prove that the Appellant accepted bribe money. Mr. Roy also submitted that from the defence case it is clear that acceptance of money is admitted. He also submitted that even false promise is an offence under the P.C. Act.

41. Mr. Roy also submitted that the Appellant could not state the exact date when he advanced loan to P.W.2. there is no receipt or any paper to show advancement of loan to P.W. 2 by the Appellant for the purpose of purchasing flat. There is no consistency at all in the defence case relating to demand to refund of loan. Within 13 years there is not material or evidence to prove that the Appellant ever made demand for refund of alleged loan. The alleged postcard marked as ext. "G" is a created one and unbelievable. Evidence of D.W. 2 and D. W. 3 that they went to flat of P.W. 2 at the request of Appellant for the purpose of requesting P. W. 2 to refund the amount of loan is unbelievable. D. W. 2 stated that she is a relative of Smt. Maitreyee Majumder but she could not state when Maitreyee Majumder was married with P. W. 2 Hiten Majumder. The evidence of D.W. 1 and D.W. 2 are also not believable and these witnesses were introduced by the Appellant to save his skin. No suggestion was given to P. W. 2 and other witnesses during their cross examination relating to evidence of D.W. 1, D.W. 2, D.W. 3 and D.W. 4. When the prosecution witnesses were not confronted during cross examination relating to the materials and evidence disclosed by above named defence witnesses no reliance can be placed on such evidence. Not only that, the post card and the alleged typed note which according to defence contains signature of T.K. Das marked as ext. E/1 were not shown to any prosecution witnesses during cross examination and for this reason the defence cannot take advantage of these documents and the Court should totally overlook the post card marked as ext. "G" and the typed note marked as ID/E and the alleged signature of T.K. Das marked ext. E/1.

42. Mr. Roy contended that the answer to question Nos. 25, 26,29 and 32 given by the Appellant during his examination under 313 of the Code discloses the defence case and the defence case was not proved. Mr. Roy submitted that there is no ground at all to

disbelieve the prosecution witnesses. The minor discrepancies relating to apprehension of Appellant whether on "varandah" or, just at the door of drawing room or, inside the drawing room and the discrepancy relating to Punjabi are all minor in nature and should be ignored. The Supreme Court made the position clear in a recent decision in State of West Bengal v. Kailash Chandra Pandey.

43. Mr. Roy also contended that presumption u/s 20(1) of the P.C. Act can be legitimately drawn in the present case. Taking of money by the Appellant is admitted. The evidence of the prosecution witnesses clearly proves that the Appellant came to the flat of P. W. 2 for the purpose of taking Rs. 5000/- as bribe money. After he was apprehended his hand solution was taken, solution of Punjabi pocket was also taken and those samples of solution tallied with the pre-trap memo solution as per evidence of Scientific Officer P. W. 5. The G.C. notes as per pre-trap memo were recovered from Appellant and the notes tailed with the notes mentioned in the pre-trap memo. Not only that, after searching the house of Appellant on same night the audio cassette containing songs of "Rajani Kanta" and "Atul Prasad" in the voice of Smt. Maitreyee Majumder and copy of the call letter of Smt. Maitreyee Majumder were recovered. The direct evidence and the circumstance clearly proves that the money was taken by the Appellant as bribe or illegal gratification and the learned trial court rightly drew presumption u/s 20(1) of the P. C. Act. The Supreme Court in M. Narsinga Rao v. State of A. P. (Supra) clearly laid down that the only condition for drawing a legal presumption u/s 20 is that during trial it should be proved that the accused had accepted or agreed to accept any gratification. The Supreme Court also observed that the section does not say that the said condition should be satisfied through direct evidence.

44. Mr. Roy finally concluded his submission by stating that the prosecution was able to prove its case beyond all reasonable doubts, the evidence of the police officers namely, officers of CBI have the same evidentiary value like other witnesses. The prosecution also examined two independent witnesses namely P.W. 3 and P. W. 4 There is also no ground to disbelieve the evidence of de facto complainant P.W. 2. The oral evidence together with corroborating evidence, documents and circumstances have clearly established that the Appellant accepted the said amount of Rs. 5000/- as illegal gratification or bribe. Learned trial Court rightly convicted the Appellant and there is no merit in the appeal and it should be dismissed. In Support of his contention Mr. Roy cited the decisions namely, Shiv Raj Singh Vs. Delhi Administration, ; Trilok Chand Jain Vs. State of Delhi, ; C.K. Damodaran Nair Vs. Govt of India, ; State of U.P. Vs. Zakaullah, ; State of Maharashtra v. Narsingrao Gangaram Pimple 1984 Sec (Cri) 109 ; N. Sri Rama Reddy, etc. Vs. V.V. Giri, R.M. Malkani Vs. State of Maharashtra, ; Yusufalli Esmail Nagree Vs. The State of Maharashtra, and Raghubir Singh v. State of Haryana 1974 SCC (Cri) 596.

45. I have carefully perused the evidence both oral and documentary, and the materials lying in lower Court record and duly considered the submissions made by the learned advocates for the parties. Learned advocate for the Appellant and the learned advocate

for the Respondent CBI canvassed before me their submissions relating to evidence of the witnesses in order to establish their respective cases. I am not bound to follow the submissions made by them relating to appreciation of evidence unless I find that he submission are of great significance and have evidentiary value in this case that was led by the parties before the trial Court. For this reason let me discuss the nature of evidence on my own way which I think would reveal the truth behind the entire incident.

46. Question Nos. 10, 12 and 14 of P. W. 2 Hiten Majumder, the de facto complainant as it appears from paper are important. His evidence reveals that on 13.6.95 the Appellant contacted him over phone and as per his proposal he (P. W.2) agreed to meet the Appellant at 4 P.M. at his residence. The Appellant also told him over phone to make ready and to handover to him in the next morning Xerox copy of call letter of audition, one application to the Director of AIR for shifting date of audition and one cassette containing song in the voice of wife of P.W. 2. P.W.2 stated that in the morning of June 14, 1995 he handed over the said three items as desired by the Appellant at the residence of the Appellant. The seizure list marked as ext. 9 relating to seizure of articles from the residence of the Appellant on June 14, 1995 is without seizure of letter of Smt. Maitreyee Majumder addressed to the Director, AIR for shifting date of audition. If P.W. 2 stated that he supplied the three things or the three items as demanded by the Appellant, why one of the said three items namely, letter of Maitreyee Majumder requesting Director of AIR for shifting date of audition was not found. This discrepancy has some importance which would be apparent later on when I would discuss other evidence and important features of this case.

47. In question No. 12 P.W. 2 stated that on June 13, 1995 he consulted with his wife and decided that they will inform the matter to the C Bi. In this perspective evidence of Smt. Maitreyee Majumder, the wife of P. W. 2 would have been of great significance to corroborate the prosecution case when from other evidence of witnesses it has been established that on junei4,1-695 Smt. Maitreyee Majumder was in her residence when the Appellant came for taking the money and she supplied a glass of water to the Appellant. Question No. 38 of P. W. 10 clearly proves that wife of complainant gave glass of water to the Appellant and she entered into drawing room through western side door. The raiding party consisting of CBI Officers were present there in the residence of P.W. 2 before arrival of the Appellant. Smt. Maitreyee Majumder was, therefore, a very vital witness in this case but, the prosecution i.e. CBI Authorities did not examine her. P.W. 12 stated that during investigation he examined Maitreyee Majumder on June 17, 1995. Considering the entire circumstances, evidence and materials on record I am constrained to hold that adverse presumption under 114(g) of the Evidence Act should be drawn against the prosecution of withholding vital evidence due to non-examination of Smt. Maitreyee Majumdar. Her evidence would have revealed whether there was at all any discussion between P. W. 2 and his wife relating to information the matter to CBI. She was present in the house at the time of alleged raid on June 14, 1995 and her evidence would have thrown much light before the Court as to what was the nature of demand of the Appellant

-whether it was demand for bribe money or demand for refund of loan according to defence case.

48. Evidence of P. W. 2 further reveals that from the house of Appellant he then straight went to CBI Office and submitted written complaint and the CBI Officers introduced with him two bank Officers as witnesses. It bears great significance and this Court cannot remain oblivious of the fact as to how two bank officers remained present in CBI Office before P. W. 2 reached CBI Office to lodge written complaint. It will indicate clearly that the alleged two independent witnesses namely, P. W. 3 and P. W. 4 were in true sense not independent witnesses; otherwise, how the CBI Officers can introduce the said two witness with P.W. 2 when the came to lodge the complaint. Question No. 40 of P. W. 2 bears great significance as it reveals that on query by CBI Officers the Appellant stated that he gave loan to him (P.W.2) and he took back refund of loan. The said question further shows that CBI Officers played the conversation recorded in tape recorder but the statement of Appellant was not corroborated by conversation recorded in tape recorder as it became faint.

49. Question Nos. 32 and 33 in the evidence of P. W. 6 are important as the evidence in these questions reveal that T.K Das Was their Deputy Director, Programme. P. W. 6 proved signature of T.K. Das regarding fixing of date of audition which was marker ext. "C. P. W. 6 at the relevant time was Programme Executive, AIR, Calcutta. From documentary evidence it appears that ext. "C. P. W. 6 at the relevant time was Programme Executive, AIR, Calcutta. From documentary evidence it appears that ext. *C is signature of T. K Das in note sheet of AIR, Calcutta dated 9.5.95 which is Xerox and the original signature of T.K. Das in the note sheet is ext. 14/1.

50. Learned trial Court observed that the signatures of T.K. Ds appearing as ext. 14/1 and ext. "C does not tally with the signature of T.K. Das on the typed memo marked as ext. E/1. It is clear that the learned trial Judge did not carefully compare the signatures of T.K. Das appearing as ext. 14/1, ext. "C, ext. E/1 and some other signatures of T.K. Das appearing in the register of music audition section of AIR, Calcutta which was marked as ext. 15. In ext. 15 there appears at least three signatures of T.K. Das dated February 20, 1995. March 14, and May 10, 1995. If the learned trial Judge took pains to go through ext. 15 he could have found these three signatures of T.K. Das and, if he compared these signatures of T.K Das in ext. 15 with signatures of T.K. Das marked as ext. 14/1, "C" and E/1 he could have found similarity in all the signatures. All the signatures which I have mentioned establishes that those were of same person. If the prosecution had any doubt they could have applied before the trial Court to exercise provisions of 311 of the Code to examine T.K. Das and to place before him ext. E/1 and other signatures as mentioned above to deny that the signature marked as ext. E/1 was not a signature of T.K. Das. The prosecution or the CBI Authorities could have submitted prayer before the learned trial Judge for sending all the signatures before the handwriting expert for comparison, examination and report as to whether all those signatures were of same hand or not and report of handwriting expert would have revealed the truth in this matter.

51. Evidence of P. W. 7, one of the Inspectors of CBI and member of trap raiding party in question No. 8 reveals that he could not hear the conversation between the Appellant and P. W. 2 and in question No. 9 he stated that he found the Appellant making gesture to the complainant which tantamount to demand of money. The complainant then handed over the money to the Appellant and Appellant accepted the money by his right hand and kept in right side pocket of Punjab. P. W. 9, another CBI Inspector stated that after some conversation between Appellant and P. W. 2, the complainant handed over Rs. 5000/- to the Appellant and Appellant kept it inside his "jama" packet. His cross-examination reveals that he could not say whether full or part conversation between the Appellant and complainant was recorded in the cassette. I have already mentioned above considering evidence of P. W. 2 that the conversation was not corroborated as the voice was faint. Appreciation of evidence as transpires from the evidence of P. W. 2, P. W. 3 and P. W. 7 make it clear that demand of bribe of money was not proved. The striking feature of this case is that the Appellant admitted acceptance of money but, his case is that he came to take refund of loan from P.W. 2 which he earlier advanced to P. W. 2 at the time of his purchasing flat. The Prosecution in this case has to prove demand of illegal gratification or bribe money by the Appellant.

52. P. W. 10 stated that after some conversation accused demanded the bribe of Rs. 5000/- by stating that, "I am not dalal. I am not agent. This money is to be given to them. No work could be done unless they are paid. I am not in this office now. Had I been in this office money need not have been paid." P. W. 10 further stated that at that time the complainant (P.W.2) stated that, "According to your talk I am giving you Rs. 5000/-. You will see the matter of my wife so that she passes the audition test." This in my opinion is totally exaggerated which was not even stated by P. W. 2, the complainant himself in his evidence or any other witness and this part of evidence being wholly uncorroborated is not believable.

53. P.W. 11 in his evidence in question No. 11 stated that at the time of acceptance of bribe money the Appellant was caught red handed. This evidence is wholly uncorroborated as the independent witnesses namely P. W. 3 and P. W 4 and other CBI Officers, who were members of the raiding party stated otherwise. P. W. 3 stated that the Appellant was apprehended on "varandah" and P. W. 4 stated that when the Appellant was about to leave drawing room he was apprehended. Other CBI Officers of the raiding party stated that after taking money when the Appellant was about to leave the room they apprehended the Appellant inside the drawing room. It is, therefore, clear that P. W. 11 has exaggerated the matter in evidence and has introduced something new which was not stated by other witnesses. P. W. 11 in his evidence in question no, 40 stated that he does not know whether the Appellant told the complainant that he could not continue the case at CAT for want of money. Of course thereafter, P. W. 11 stated that no such conversation took place. He even stated that accused wanted a glass of water but he does not remember who gave the glass of water to Appellant. It clearly shows that P. W. 11 is not a reliable witness as he has tried to conceal even the admitted fact that wife of

complainant supplied glass of water to Appellant and P. W. 2, the complainant himself stated that the Appellant told the CBI Officers that he came to take refund of loan. Evidence of P. W. 12 in question No. 18 reveals that he admitted that in the petition of complaint it was stated by the complainant that the Appellant was a witness of deed of purchase of his flat. The complainant (P.W.2) in his evidence in question No. 51 denied that Appellant was a witness in his deed at the time of purchase of flat. The evidence thus establishes that the complainant is not a trustworthy witness.

54. I do not lay any importance on the evidence of D.W. I as he did not meet the Appellant personally ever. D. W. 2 Soma Dutta stated in question No. 7 that she went to residence of Mr. Hiten Majumder and told Mr. Majumder that the Appellant was in dire need of money as he had to fight case at CAT and she requested Mr. Majumder to refund the loan and Mr. Majumder admitted that he took loan from the Appellant in 1983 and assured that he would refund the same without delay. It is true that this part of evidence of D.W. 2 was not confronted to the complainant P. W. 2. But the prosecution and the Court was not powerless to recall P.W. 2 for the purpose of confrontation of this part of evidence of D.W.2. No such attempt was made by the CBI to file an application before the learned trial Court to exercise power of Court under 311 of the Code to recall P.W.2 for the purpose of confronting him the part of evidence adduced by defence witnesses particularly D. W. 2 and D.W.3 relating to visit of residence of P.W. 2 for the purpose of requesting him to refund the loan to Appellant.

55. D. W. 3 also stated that he came to residence of P. W. 2 to request him to refund loan and further stated that he was present when Appellant paid Rs. 8000/- to the complainant. He also stated about visiting house of P.W. 2 to remind him refund of loan to Appellant. He even further stated that the complainant at that time threw out one post card (ext. G) sent by the Appellant to complainant by post and angrily told D. W. 3 that he would refund the loan when he will desire and asked D.W. 3 not to visit his house again. The evidence led by D.W 3 was not confronted to P. W. 2 but, I have already stated that the prosecution as well as the trial Court did not exercise their power to recall P.W. 2 for the purpose of confronting the evidence of the defence witnesses. The letter marked as ext. G bears postal seal of July 10, 1989. Therefore, it cannot be presumed that in 1989 the Appellant prepared such a postcard expecting or anticipating that in 1995 he would be apprehended by CBI Officers for accepting bribe. The argument of Mr. Ranjan Roy, learned advocate for the CBI that the post card is created document is not al all acceptable. This post card rather supports defence case along with ext. E/1 and the evidence of defence witnesses.

56. It is well-known that power u/s 311 of the Code can be exercised by Court either to examine any new witness or to recall any witness already examined at any time before delivery of judgment for the just decision of the case. It is not clear to me why the CBI Authorities and the learned trial Court did not exercise power and jurisdiction under 311 of the code to recall P. W. 2 for the purpose of confronting him the evidence led by defence witnesses and the defence witnesses for further cross examination according to

instruction of P. W. 2 after confronting him defence evidence. Merely that the accused himself appeared in the witness box as D.W. 5 and examined some other witnesses their evidence cannot be discarded. Evidence Act does not make any discrimination between prosecution witness and defence witness. Court has to weigh and appreciate the evidence of all the witnesses in equal footing, but in the instant case I find that the learned trial Court at all did not place reliance on defence witnesses though there was ho cogent ground to disbelieve the evidence of defence witness.

57. D. W. 4 Shyamal Banerjee is a staff of AIR, Calcutta and he proved the signature of T.K. Das, the Deputy Director, Air, Calcutta appearing on the typed note marked as ID/E and the signature of T.K. Das was marked ext. E/1. He also proved signature of T. K. Das which was marked ext. 14/1 and he stated that both the signature marked as ext. E/1 and ext. 14/1 are of T. K. Das and there is not difference and this evidence was stated in the cross-examination by D.W. 4. I do not think need of detailed discussion of evidence of D.W. 5, the accused himself as the defence case has been transpired from question No. 32 of his examination u/s 313 of the Code. His evidence indicates that the complainant demanded Rs. 10000/- from him at the time of purchasing flat and as he had no such amount he could advance Rs. 8000/- to complainant for the purpose of purchasing flat and that amount too he collected from his mother. His evidence reveals that he made demand off and on for the refund of loan particularly when his mother was seriously ill and also when he was fighting litigation in CAT against his transfer but the complainant did not refund loan. He also stated that he wrote a letter by post card in 1989 requesting Mr. Hiten Majumder to refund loan and the said letter was marked ext. G.

58. Even if it is admitted that evidence of D.W. 1, D.W. 2 and D.W. 3 were not confronted to P. W. 2 and for the said reason no reliance can be placed on the evidence of the above stated three defence witnesses relating to defence case of demand of refund of loan and acceptance of part payment of refund of loan, still in view of appreciation of evidence, circumstances and materials oh record it is clear that prosecution failed to prove beyond all reasonable doubts that the Appellant accepted the alleged money as illegal gratification or bribe.

59. Considering the entire evidence, materials on record and circumstances I find that there was bad relation between T. K. Das and the Appellant and, it would be evident from some documents which were marked as exts. P, P/1, F, J and the complaints made by the Appellant on behalf of Akashbani Staff Musicians Union to the Station Director, AIR, Calcutta and to the Deputy Commissioner of Police (SB) dated May 20, 1995 and May 21, 1995 respectively. These two complaints made by the Appellant being Xerox copies were not marked as exhibits and were given mark as ext. ID/M2 and ID/M3 respectively. Ext. ID/L dated May 22, 1995, has also some significance in this matter as in the said order the Appellant was transferred to Agartala. Before that by order dated April 25, 1995, which was marked as ID/K the Appellant was transferred to AIR, Agartala and challenging the said order the Appellant moved CAT and got an order on May 2, 1995. Which is ext. J. The CAT directed the Director General, AIR to consider the representation of the

applicant, that is the Appellant and again thereafter by order dated May 22, 1995 the Appellant was transferred to Agartala. The above stated documents clearly reveal that the Appellant made severe allegations against the then Deputy Director of AIR, Calcutta namely T. K. Das concerning his irregularities as well as his conduct and ill-reputation. The typed note which was marked as ext. ID/E and which bears signature of T. K. Das Marked as ext. E/1 supports the defence case that in order to get rid of the Appellant a conspiracy was hatched between T.K. Das and the de facto complainant and, if their conspiracy yielded result, the Appellant would be transferred to Agartala and he would not be able to make any further complaint against T, K. Das and the de facto complainant would be saved from refunding loan to the Appellant.

60. There was no proper cross-examination on ext. F which is a news item containing irregularities in AIR, Calcutta and making Arya Chowdhury scapegoat. Ext. P reveals that the Appellant made complaint to the Hon"ble Minister, Government of India and ext. P/1 is the reply from the Ministry of Personnel and Public Grievances stating that the matter would be enquired into by a Joint Secretary of the Ministry of Home Affairs. Ext. E/1, the typed note dated June 2, 1995 reveals that it was addressed to the de facto complainant and in it the preparation of plan between T. K. Das and the de facto complainant was indicated and it was further indicated that 14 June, 1995 would be the most convenient date and the complainant would not have a refund the amount nor the Appellant would be able to join at AIR, Calcutta and the matter will be covered in the newspaper "Aajkal. The contents of this ext. E/1 cannot be ignored as the news of taking bribe by the Appellant was published only in the newspaper "Aajkal" and in no other daily newspaper of Calcutta. Ext. G, the post card which bears the postal seal of Lake Gardens Post Office dated July 10, 1989 supports the defence case that through that letter he demanded refund of the money advanced by him earlier to the complainant.

61. If all the above stated documents mentioned above are linked together it would reveal that, yes there was a trap definitely, but the trap was not for catching hold of the Appellant at the time of taking bribe but, file trap was pre-planned to humiliate the Appellant and to tarnish his fame and reputation in the mind of the people who are known to him. The pre-planned trap was made so that the Appellant is compelled to leave Calcutta for Agartala and de facto complainant is saved from making refund of the amount which he earlier took from the Appellant when purchasing flat.

62. P. W. 7 stated that Appellant made gesture to the complainant which tantamount to demand of money. P. W. 9 stated in his evidence that the complainant by sign indicated about completion of the transaction and then the CBI Officers understood that Appellant has accepted the bribe and they apprehended him. P. W. 10 in question No. 16 stated that the accused demanded bribe of Rs. 5000/- and also stated that the complainant told the Appellant that according to his instruction he is giving Rs. 5000/- and the Appellant should see that his wife passes through the audition test. P. W. 11 also stated that there was some discussion between complainant and Appellant regarding demand and acceptance of bribe money and at the time of acceptance of bribe money the Appellant

was caught red handed.

63. Let me discuss the nature of such evidence and the effect or value of such evidence on proper appreciation of evidence that came before the Court to prove acceptance of bribe by the Appellant. Gesture cannot prove demand of bribe money and gesture may also prove the defence case that the Appellant demanded from complainant refund of portion of loan amount. What P. W. 9, P. W. 10 and P. W. 11 stated was not corroborated by other witnesses and the complainant himself. The complainant in his evidence did not state that he gave the money to the Appellant stating that he is giving it according to his demand and the Appellant should see that his wife passes through the audition test. No other witness stated that the moment Appellant accepted the money he was caught red handed as stated by P. W. 11, P. W. 11 in question No. 23 denied the defence suggestion that on the date of occurrence they took reporters and photographer with them at the time of leading the trap party. But evidence of P. W. 2, the complainant himself (P.W.2) makes the fact clear as in question No. 47 he stated that it is a fact that the news photographers took photograph of accused after the arrest of the Appellant at his residence and it was published in the ''Aajkal'' Bengali newspaper dated June15, 1995 and it was marked as ext. A. It proves the P.W. 11 has made a statement in Court which was not true at all and evidence of P. W. 2 establishes presence of reporters and photographer of ''Aajkal'' newspaper and it tallies with contents of typed note marked as ext. E/1. The entire evidence if construed properly would go against prosecution and would establish that the trap was for humiliating the Appellant and the prosecution story of trap for acceptance of bribe money by Appellant is not believable and has not been proved convincingly and beyond all reasonable doubts.

64. The decisions cited by the learned advocates of both parties mentioned above need not require elaborate discussion as these are settled principle of law. However, I like to refer some decisions which would make the position clear in this case. I have already stated that minor discrepancies are ignorable and in this connection the decision in State of West Bengal v. Kailash Chandra Pandey (Supra) and other decisions are relevant. It is also well''11 settled that the condition for drawing a legal presumption u/s 20 of the Act is that during trial it should be proved that the accused had accepted or agreed to accept any gratification. This section does not say that the said condition should be satisfied through direct evidence. Such a view was expressed by the Supreme Court in M. Narsinga Rao v. State of A.P. (Supra). It is also true in view of the decisions of the Hon''ble Supreme Court that when a public servant is charged u/s 161 of the Indian Penal Code and it is alleged that the illegal gratification was taken by him for doing or procuring an official act, it is not necessary for the court to consider whether or not the accused public servant was capable of doing or intended to do such an act. In Trilok Chand Jain v. State of Delhi (Supra) the Hon''ble Supreme Court observed that, the degree and the character of burden of proof which Section 4(1) casts on an accused person to rebut the presumption raised thereunder cannot be equated with the degree and character of proof which u/s 101 of the Evidence Act rests on the prosecution. In this decision it was also

held by the Supreme Court that, it is true that in law the incapacity of the government servant to show any favour or render any service in connection with his official duties does not necessarily take the case out of the mischief of these penal provisions. The Supreme Court in this decision also observed that, "In other words, the accused may rebut the presumption by showing a mere preponderance of probability in his favour. It is not necessary for him to establish his case beyond all reasonable doubt -See Mahesh Prasad Gupta v. State of Rajasthan AIR 1974 SC 773."

65. Mr. Ranjan Roy referred to the decisions relating to admissibility of tape recorded conversation and in this connection he cited the decisions in R.M. Malkani v. State of Maharashtra (Supra) and Shri N. Sri Rama Reddy v. Shri V.V. Giri (Supra). In the previous paragraphs where I quoted observation of the learned trial Judge in this respect I have clearly observed that tape recorded version is admissible in evidence. But by discussing nature of evidence as adduced by the witnesses, I have clearly stated that finding of the learned trial Court that there was corroboration by the witnesses relating to conversation in tape was wrong. By relying on the evidence of P.W.2 and P. W. 3, I have clearly observed that the CBI Authorities failed to prove the alleged conversation between complainant and Appellant recorded in tape recorder as a music was singing and the conversation was faint and it was not clear as to what was the conversation. Learned trial Judge himself subsequently did not place any reliance on the alleged conversation of tape recorder.

66. The other decision cited by Mr. Ranjan Roy for the CBI do not require elaborate discussion as it is settled law that, if a public servant accepts money as illegal gratification or bribe for doing something or even for promising to do something it would amount to offence.

67. Let me consider some of the decisions over which reliance was placed by Mr. Moitra, the learned advocate for the Appellant. In Bal Krishan Sayal v. State of Punjab {Supra) the prosecution witnesses failed to state what transpired in conversation between bribe giver and the accused preceding the passing of currency notes. In view of unsatisfactory nature of prosecution evidence the Supreme Court held that the accused was entitled to benefit of doubt. In Man Singh v. Delhi Administration (Supra) it was held by the Supreme Court that it is sufficient if accused offers probable explanation or deface and strict standard of proof is not necessary. In the said case the Appellant was convicted for accepting Rs. 5/- as bribe and after analyzing the evidence the appeal was allowed and the Supreme Court held the Appellant not guilty.

68. In Suraj Mal v. The State (Delhi Administration) (Supra) it was held by the Supreme Court that, mere recovery of money from the accused is not sufficient. It was also observed by the Supreme Court that where witnesses make two inconsistent statement in their evidence either at one stage or at two stages, the testimony of such witnesses become unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses.

69. In State of Andhra Pradesh v. T. Venkateswara Rao (Supra) the Supreme Court held that, acceptance as bribe in the said case was improbable and the explanation that money was kept as advance not unbelievable. The allegation against the Appellant was that bribe was paid to him in presence of witnesses in trap case and the Appellant demanded bribe for awarding work contract. The Supreme Court after considering the evidence came to the decision that charge was not proved beyond doubt and acquitted the Appellant. In Duraisami v. State of T./V. (Supra) also the Supreme Court upheld the judgment of the trial Court acquitting the Appellant. The allegation against the Appellant was that he accepted Rs. 500/- as bribe. The defence conversation was that he accepted the money from complainant but the said amount was received by him as balance payment for two Indira Bikas Patras sold by him to the complainant. The High Court reversed the order of acquittal and convicted the Appellant but in appeal the Supreme Court set aside the order of the High Court and restored order of acquittal passed by the learned trial Court.

70. This Court in Pradip Kumar Banerjee v. The State through CBI (Supra) and in the The State (CBI) v. Karan Lai (Supra) did not believe the prosecution story and acquitted the accused. The Delhi High Court. in State v. Satish Chand Sharma (Supra) held that testimony of P. W. 3 and P.W. 4 was unbelievable and evidence of P. powder on accused hand made the whole case suspicious and benefit of doubt must go to the accused.

71. Mr. Moitra relating to reliability of evidence of witnesses whose statement was not recorded by the Investigating Officer placed two decisions namely Tarun @ Gautam Mukherjee v. State of West Bengal (Supra) and Vimal Suresh Kamble v. Chaluverapinake Apal. S.P. (Supra) In these two decisions the Hon"ble Supreme Court held that if a witness in her statement to the police recorded u/s 161 of the Code did not state any particular fact to the Investigating Officer during course of investigation evidence of such witness over that fact at the time of trial is of no significance.

72. Appreciating the principle of law on the basis of above stated decisions I find that P. W. 7, P. W. 8, P. W. 9 and P. W. 10 were not examined by the Investigation Officer and the Investigation Officer (P.W. 12) did not record their statements u/s 161 of the Code. Relying on the decision of the Supreme Court I am of opinion that in the present case no reliance can be placed on their evidence when on consideration of evidence, I find that the CBI has failed to prove beyond all reasonable doubts that the Appellant demanded illegal gratification or bribe from the Appellant and that the complainant Paid Section 5000/ - to the Appellant as bribe money. The appreciation of evidence which I have elaborately discussed above makes it clear that preponderance of probability is in favour of the defence case i.e. the case of the Appellant. The Appellant has been able to establish that as he made some complaints against T.K. Das, the then Deputy Director and about irregularities in AIR, Calcutta he was transferred to Agartala by order dated April 25, 1995. By approaching CAT the Appellant was able to prevent the said transfer order and by order dated May 8, 1995. the transfer order was cancelled, but thereafter, he was again transferred to Agartala by order dated May 22, 1995. The document

marked as ext. E/1 rather establishes the defence case and it establishes that the trap was laid in a pre-planned manner so that Appellant is humiliated and transferred to Agartala and T. K. Das is saved from further complaints against him and the complainant is saved from making refund of loan to the Appellant. Ext. G is a post card of July, 1989 which establishes demand made by the Appellant to complainant for refund of money which he earlier advanced to complainant. The written complaint (ext. 2) and the evidence of P. W. 12 proves that the Appellant was a witness in the deed by which complainant purchased his flat.

73.]n this connection I like to refer a few recent decisions to make the position clear both on factual aspects and legal principles. In Om Prakash v. State of Haryana AIR 2006 SCW 368 there was allegation that the accused, suspect in a murder case, alleged to have offered bribe to complainant, the police inspector. The incident taking place early morning at residence of complainant in presence of two constables. Those two constables were-not examined in the trial and their non-examination was not explained. There were discrepancies in prosecution case and the Supreme Court held that the defence story set up by the Appellant cannot be said to be wholly improbable and the accused was entitled to benefit of doubt. The Supreme Court allowed the appeal and acquitted the Appellant.

74. In D.S.P. Chennai v. K. Inbasagaran AIR 2005 SCW 6208 reported in AIR 2005 SCW 6208 unaccounted money was recovered from the house of the accused who was a public servant in the raid made by the Income Tax Authority. The house was in joint possession of accused and his wife. When the raid was made the accused gave the explanation that all the money belonged to his wife and the wife of the accused admitted ownership of the money recovered. All unaccounted money assessed by the Income Tax Department was in the hands of the wife of accused. The Supreme Court held that the explanation given by accused is plausible and justifiable and the accused cannot be held guilty of corruption charge.

75. In State v. K. Narasimhachary AIR 2005 SC 6275 the allegation against the accused was demand of bribe and the accused was merely a recommending authority and not the valuation or the final authority. The accused was neither the issuing authority nor was the outward clerk and he was not the person for issuance of property valuation certificate and said certificate was already forwarded and signed by the final authority before alleged demand of bribe by accused. The Supreme Court held that the aforesaid circumstances create suspicion about demand of bribe and acquittal of accused was proper.

76. In Subramanian v. State of Tamil Nadu AIR 2006 SCW 184 it was the allegation that the accused have received bribe amount of Rs. 200/- for securing patta in favour of complainant. There was recovery of marked currency notes from the possession of the accused/The defence plea was that the money was given by the complainant on behalf of witness towards lease rent due appears plausible. It was also established that the complainant was inimical towards the accused. The explanation given by the accused

immediately after incident raised serious doubt about the amount having been received by him as illegal gratification. Mere denial by the said witness that he had sent money through the complainant cannot be a ground to held the accused guilty. The Supreme held that the guilt of accused was not proved beyond all reasonable doubts and the accused is entitled to acquittal.

77. In Union of India through Inspector, CBI v. Purnandu Biswas 2006 IC CR LR (Sc) 23 the Respondent accused was working as a Surveyor in the Mercantile marine Department of Government of India at Tuticorin Port. It was alleged that the accused demanded a sum of Rs. 50000/- by way of illegal gratification from one D.G. Rajan of M/s. Raja Agencies for giving clearance certificate in respect of vessel M.V. Lilly. A complaint was made and a sum of Rs. 50000/- was paid to the accused and CB1 Officers intercepted him and the money was recovered. During trial in evidence there were serious contradictions and improbabilities. The Supreme Court held that prosecution evidence does not conclusively prove the allegation against the accused. There was no demand for money when it was handed over to the accused and it was established that some of the witnesses had grudge against the accused. The Supreme Court held that the accused is entitled to acquittal as rightly recorded by the High Court.

78. Mr. Ranjan Roy, the learned advocate for the CBI submitted that failure of the Appellant to produce any receipt or document regarding advancement of money to the complainant totally goes against defence case. I am not at all impressed with this submission. It is nobody''s case that Appellant was a money lender and used to advance money to different persons accepting receipt or keeping documents showing advancement of money. From evidence it transpires that Appellant and complainant were known to each other for a long time and possibility of friendship between them cannot ruled out. For this reason in the very first paragraph of written complaint, the complainant mentioned that Appellant was a witness in the deed by which he purchased his flat and this fact has been corroborated by RW. 12. When a friend demands money from other friend and, the amount being small, it is unexpected that the friend who advances money to help his friend in need would keep any receipt or document showing advancement of money. On the other hand, ext. G the postcard dated July 10, 1989 written by the Appellant to the complainant requesting him to refund money is sufficient to establish the defence case.

79. Considering the evidence, materials on records, circumstances and the factual aspects that came to light before this Court and considering the above stated principles of law I find that in the present case the most vital witness Smt. Maitreyee Majumder, the wife of complainant for whose audition test the entire episode originated was not examined for which I have already indicated above drawing of adverse presumption u/s 114 (g) of the Evidence Act against prosecution. The moment the Appellant was apprehended he gave the explanation that he came to the house of complainant to take refund of portion of advance money paid by him earlier to the complainant. From oral and documentary evidence adduced by both parties, it has been established that, the

Appellant was made a victim of circumstances and the explanation given by the Appellant in this case is plausible and justifiable. It was also established that the Appellant made complaints against T. K. Das, the then Deputy Director of AIR, Calcutta against his irregularities, the typed note marked as ext. E/1 and the Presence of the reporter and photographer of "Aajkal" Bengali Patrika admitted by P. W.2 and denial of the said fact by CBI Officers clearly establishes that the trap was pre-planned to humiliate and harass the Appellant in order to tarnish his fame and reputation. The Appellant was able to create suspicion-or doubt on the prosecution case relating to acceptance of bribe money by him. Considering the oral and documentary evidence adduced by both parties I am of opinion that the prosecution failed to prove that there was demand by the Appellant for bribe or illegal gratification.

80. In the fight of the aforesaid observations considering the evidence, materials on record, circumstances and principles of law, I am constrained to hold that the prosecution in the instant case has not been able to bring home the charges against the accused Appellant u/s 7 and 13(2) read with Section 13(1) (d) of the P. C. Act beyond all reasonable doubts, the explanation given by the Appellant is reasonable, plausible and acceptable and he has been able to create doubt about the genuineness of the prosecution case. The learned trial Judge erred in law as well as in fact in awarding conviction and sentence on the Appellant. The order of the learned trial Judge holding the accused Appellant guilty u/s 7 and 13(2) read with Section 13(1)(d) of the P. C. Act is not sustainable.

81. In the result, the appeal succeeds and is allowed and the judgment and order of conviction and sentence passed by the learned trial Judge are hereby set aside. The accused Appellant is acquitted from this case, the Appellant who is on bail is discharged from his bail bond, and is set at liberty, if not wanted in connection with any other case.

82. Send down the lower Court record along with copy of judgment to the learned Judge, 1st Special Court, South 24 Parganas, Alipore for information and necessary action.

Latter:

Criminal Section to supply Xerox certified copy to both the parties, if applied for, expeditiously in accordance with rules on payment of proper fees.