A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.556 of 2010

(In the matter of an appeal under Section 374 of the Code of Criminal Procedure).

Pradip Kumar Pattanaik .... ***Appellant***

-versus-

State of Odisha(Vigilance) ... ***Respondent***

For Appellant : ***Mr. J.Patnaik, Advocate***

For Respondent : ***Mr.M.S.Rizvi,ASC(Vigilance)***

CORAM:

JUSTICE G. SATAPATHY

DATE OF JUDGMENT: 05.02.2024

G. Satapathy, J.

1. Feeling aggrieved by the judgment of conviction and order of sentence dated 30.10.2010 passed by the learned Special Judge(Vigilance), Bhubaneswar in T.R. No. 78 of 1998 convicting the appellant for offence punishable U/S. 13(2) read with Section 13(1)(d)/7 of the Prevention of Corruption Act, 1988 (in short the "Act") and sentencing him to undergo Rigorous Imprisonment(RI) for one year and to pay a fine of Rs.1,000/-, in default whereof, to

undergo further RI for one month for each count, the appellant named above has preferred this appeal.

2. The prosecution case in brief is, on 05.09.1997 P.W.5-Satya Sekhar Rath a resident of Plot No. 737/2093 of Jaydev Vihar, Bhubaneswar had submitted two attested photocopy of approved building plan relating to above plot with an application duly filled in and signed by himself and his two brothers to SDO PH rent Subdivision, Bhubaneswar for providing sewerage connection to his house, which was received by the appellant as the Dealing Assistant and according to his instruction, P.W.5 met the J.E. Sri R.N.Sahu who made necessary endorsement on the application for deposit of the required fees and such file was processed, but when P.W.5 contacted the appellant on 29.09.1997 to do his work, the appellant advised him to deposit security amount of Rs.1500/- and accordingly P.W.5 deposited the aforesaid amount vide receipt No. F714015 dated 29.09.1997 and thereafter, P.W.5 met the appellant and requested him to send the file to

concerned division, but the appellant demanded Rs.200/- as the bribe to do the same. Finding no alternative, P.W.5 paid Rs.200/- to the appellant as bribe, but the appellant being dissatisfied again demanded Rs.300/- more as a bribe to expedite the work. However, P.W.5 paid only Rs.100/- more, but the appellant asked him to pay the balance amount of Rs.200/- on 30.09.1997.

Being aggrieved, P.W.5 approached the S.P. Vigilance, Bhubaneswar Division by way of an FIR under Ext.16 and accordingly, the OIC, Khurda Vigilance P.S. registered P.S. Case No. 40 of 1997 and accordingly, the Inspector of Vigilance P.W.7-V.Rama Rao was entrusted with the investigation. In the course of investigation, a trap laying party was formed consisting Vigilance officials, two other Government officials and the informant. The trap laying party after completing the preparatory meeting proceeded to the spot and P.W.5 being accompanied by P.W.2-Damodar Das went to the appellant who demanded and accepted Rs.200/- as a bribe from

P.W.5 and was accordingly caught by the raiding party. The numbers of the GC notes earlier noted down matched with the numbers of the GC notes recovered from the appellant. Further, the hand wash and pocket wash of the appellant were taken and the solutions were kept in separate bottles after duly labeling and sealing the same. Accordingly, a detection report was prepared after successful trap and thereafter, P.W.7 proceeded with the investigation, in the course of which, he seized the exhibits, such as bottles containing hand wash, pocket wash and sample solution which were sent to SFSL for chemical examination and sanction was obtained from Executive Engineer-P.W.1, to launch prosecution against the appellant. On completion of investigation, P.W.7 submitted charge sheet against the appellant and accordingly, cognizance of offence U/Ss. U/S. 13(2) read with Section 13(1)(d)/7 of the Act was taken resulting in trial in the present case for the aforesaid offences, when the appellant pleaded not guilty to the charge for aforesaid offences.

3. In support of the charge, the prosecution examined altogether seven witnesses as P.Ws. 1 to 7 and proved certain documents under Exts. 1 to 17 as well as identified material objects MOI to VII as against no evidence whatsoever by the defence.

4. The plea of the appellant in the course of trial was one of complete denial and false implication as well as innocent of the offences.

5. After appreciating the evidence on record upon hearing the parties, the learned trial Court convicted and sentenced the appellant for the offences indicated supra by mainly relying upon the evidence of overhearing witness P.W.2, Magisterial witness P.W.3 and trap laying officer P.W.7 by discarding the evidence of the informant P.W.5 who became hostile to the prosecution case.

6. In assailing the impugned judgment of conviction, Mr.J.Patnaik, learned counsel appearing for the appellant has submitted that the informant having not supported the prosecution case was declared by prosecution to be a hostile witness and

his evidence was not at all reliable for prosecution to establish the demand and acceptance of bribe by the appellant, rather it was admitted by the decoy-P.W.5 that he acted as decoy in two to three other vigilance cases and his family members were also decoys in some other vigilance cases. It is also submitted for the appellant that the staff of the appellant's office were collecting donation from different contractors and P.W.5 had paid such amount as a donation at the request of J.E.-R.N.Sahu who was also not at all examined by the prosecution. It is also strongly emphasized for the appellant that P.W.2 being the overhearing witness has stated nothing about the conversation between the appellant and the decoy and thereby, neither the demand nor acceptance of bribe was established by the prosecution against the appellant beyond all reasonable doubt. It is also submitted for the appellant that the sanction as accorded for launching of prosecution against the appellant was a defective one, since it is admitted by P.W.1 that the appellant was not an employee, but a

daily labourer and he was engaged by the Assistant Engineer who was competent to remove him and therefore, the sanction order issued by P.W.1 has no sanctity in this case. In summing up his argument, Mr.Patnaik has very emphatically emphasized that not only the decoy-PW.5 is a stock decoy of the Vigilance Department, but also his evidence does not incriminate the appellant for demanding and accepting any bribe from him and similarly, the sanction order being defective one, the prosecution against the appellant is not maintainable under the Act and therefore, the conviction of the appellant is being wholly unsustainable is liable to be set aside. Mr.Patnaik has accordingly prayed to allow the appeal to acquit the appellant of the charges by setting aside the judgment of conviction and order of sentence passed by the learned trial Court.

7. In reply, Mr.M.S.Rizvi, learned ASC Vigilance has submitted that although the decoy-P.W.5 has not supported the prosecution case wholly, but when his evidence is read together with other evidence

available on record, the demand and acceptance of bribe by the appellant from the informant is clearly established beyond all reasonable doubt and the appellant having found to have accepted the bribe was required to rebut the presumption as available U/S. 20 of the Act, but he has failed to rebut such presumption and thereby, the appellant having failed to offer any reasonable explanation for accepting the bribe can squarely be considered that he has not only demanded the bribe, but also accepted the same as a illegal gratification to do the work of P.W.5 for getting the sewerage connection to the house of P.W.5 and therefore, the conviction of the appellant can be considered to have been found on sound principle of law and evidence. On the aforesaid submissions, Mr.Rizvi has prayed to dismiss the appeal.

8. After having bestowed an anxious and careful consideration to the impugned judgment of conviction keeping in view the rival submissions on the face of re-appreciation of evidence on record to find out the sustainability of conviction of the appellant, it appears

that since the appellant was charged for demanding and accepting bribe from the informant, this Court now proceeds to re-examine the evidence on record to find out whether the accused had ever demanded any bribe from the informant-decoy and consequent there upon, the decoy had paid the bribe which was accepted by the appellant. In other words, whether the appellant had demanded the bribe of Rs.500/- and if yes, whether the decoy had paid the bribe of Rs.200/- on 29.09.1997 and again Rs.100/- on the same day and thereafter, Rs.200/- on 30.09.1997 while he was caught and whether the appellant had received aforesaid Rs.500/- as illegal gratification, otherwise than legal remuneration as a motive to expedite the sewerage connection to the house of P.W.5.

9. In order to bring home the charge for offences U/Ss. 13(2) read with Section 13(1)(d)/7 of the Act, the demand and acceptance are the sine qua non or indispensible essentiality of the offences, but demand in a trap case include prior demand of bribe

and demand of bribe at the time of transaction. Thus, in order to establish the demand, the prosecution has to objectively prove prior demand and demand at the time of transaction. Prosecution can establish prior demand by the evidence of decoy and witnesses attending the trap preparatory meeting which of course hearsay in nature, but one of the objectives of the preparatory meeting is to facilitate the decoy to narrate his/her grievance which includes the prior demand of the accused before the witnesses attending the preparatory meeting. However, only prior demand would not be sufficient to establish the demand of bribe as contemplated U/Ss. 13(2) read with Section 13(1)(d)/7 of the Act. Hence, the best evidence to prove the demand is the evidence of decoy and that of the accompanying witness whose role is to overhear the conversation between the decoy and the accused, and to see the transaction of bribe.

10. Analyzing the evidence on record on the issue of demand of bribe by the appellant, P.W.5

being the decoy in this case is the best witness to reveal such demand, but P.W.5 being the decoy in this case has not at all supported the prosecution case. Let us examine the evidence on record as to how the demand by the appellant was in fact originated. Since the decoy set the law in motion, his evidence may throw some light on the issue of demand of bribe by the appellant. The evidence of P.W.5 transpires that he had deposited Rs.1500/- towards Government fees by obtaining money receipt for supply of sewerage connection to his house, but after depositing the amount, he met the J.E. who instructed him to meet the accused and accordingly, on 29.09.1997 he met the accused who demanded Rs.500/- from him and he paid Rs.200/- to the accused on the same day as per his demand, but the accused asked for the rest of Rs.300/- and he assured to give balance of Rs.200/- on 30.09.1997 by giving Rs.100/- on the same day i.e. 29.09.1997. On this incident, he approached the SP Vigilance by filing an FIR under Ext.16. It is the further evidence of

P.W.5 that he narrated his case before the members of the raiding party and they proceeded to the office of the accused and he entered inside the room of the accused, whereas the overhearing witness (PW2) stood near the door of the room and he saw the accused standing by the side of almirah(store well) and seeing him, the accused asked him if he had brought the money, to which he told yes and gave the money to the accused who accepted the same and kept the same in his left side pant pocket and he thereafter, gave signal to the Vigilance staff who came to the spot and caught hold of both the hands of the accused. The aforesaid evidence of the decoy would go to show that he has stated about the demand and acceptance of the bribe by the accused-appellant in his evidence, but he was totally silent as to who accompanied him and who took up his hand wash and pocket wash with sodium carbonate solution. In view of the above evidence, one can well perceive that the decoy is a truthful witness in this case, but his cross-examination renders him to be

wholly unreliable witness inasmuch as he has admitted in cross-examination that he was decoy in two to three other vigilance cases and his family members were also decoys in some other vigilance cases and in the year 1997, the J.E. had requested him to give donation amount of Rs.500/- for Biswakarma Puja as per the previous year practice and he had given the same amount, but on that day, he refused to give Rs.500/- as donation, and the JE insisted him to pay the same and on 29.09.1997 he had gone to the accused office to ascertain the progress of his file and he had interaction with the JE on the office verandah and the JE told him that he had not paid the donation for Biswakarma Puja and the JE called the accused to collect donation money from him as it was lunch time and he gave Rs.200/- to the accused towards donation, but the accused did not accept the same saying that he can not deviate the instruction of the JE for collecting Rs.500/- so he gave another Rs.100/- to the accused, who refused to accept the same on the same plea and on his request

and assurance to give the balance Rs.200/- on the next day, the accused accepted Rs.300/- from him. The decoy-P.W.5 has further admitted in cross-examination that he has written in the FIR, Rs.300/- was given to the accused as a bribe under the impression that the demand for donation of official staff also amounts to bribe and his first FIR to Vigilance police was against demand for donation by JE-R.N.Sahoo and not against the accused and the tainted money was supplied by the vigilance police. On a cumulative reading of evidence of P.W.5, no Court will consider him as reliable witness and the learned trial Court has rightly considered him to be a unreliable witness. In this circumstance, the best evidence of demand through decoy cannot be considered to be forthcoming in this case as it appears that the very foundation of demand of bribe by the appellant from the informant appears to be shaky because the admission of the decoy-P.W.5 to be a stock witness of vigilance *perse* shake the foundation of the prosecution case for demand and

acceptance of bribe by the appellant from the informant. This is why the decoy cannot be placed on any better footing then that of an accomplish and corroboration in material particulars connecting the accused with the crime has to be insisted upon.

11. In the background of above premises of the quality of evidence of decoy, which not at all inspire confidence of the Court, this Court now straight away proceed to see the quality of evidence of accompanying witness-cum-P.W.2-Damodar Das whose testimony indicates that the decoy-P.W.5 had stated in the preparatory meeting that he had applied for PHD connection for supply of water and one Patnaik of PHD office was demanding Rs.200/- as bribe for supply of sewerage connection. This evidence of PW2 with regard to prior demand appears to be not in consistent with the prosecution case, since the case as introduced by the decoy is regarding demand of bribe of Rs.200/- after paying the demanded amount of Rs.300/-, but the evidence with regard to prior demand as spoken to by P.W.2

reveals about demand of illegal gratification for supply of water connection which is not the prosecution case of getting sewerage connection and thereby, this part of prior demand as spoken to by PW2 which is hearsay in nature is also not clinching or acceptable. Be that as it may, the role of overhearing or accompanying witness is to overhear the conversation between the decoy and the accused at the relevant time of transaction of bribe, but in this context P.W.2 has testified in the Court that he accompanied the informant PW5-Satya Sekhar Rath to the office of the accused and the accused enquired about something which he could not hear out and the informant handed over the tainted GC notes and the accused accepted it and kept it in his pocket. The above part of evidence of overhearing witness does not disclose about the demand of bribe by the appellant at the time of transaction. In this situation, it clearly appears that the prosecution has not been able to establish the demand of bribe by the appellant at the time of transaction, no matter the evidence of

other witness like P.W.3 and the vigilance officials examined in this case reveals about prior demand spoken to by the decoy in the preparatory meeting before them which is only hearsay in nature and in absence of any direct evidence with regard to the demand of bribe by the appellant, the aforesaid prior demand in the nature of hearsay evidence cannot substitute for the direct evidence of demand and cannot be considered that the prosecution has established the demand made by the appellant for illegal gratification/bribe for processing the file of the informant to expedite the sewerage connection to the house of PW5, since the quality of evidence of P.W.2 is not at all able to satisfy the actual demand as alleged against the appellant, but the learned trial Court has relied upon the evidence of P.Ws.2,3, 5 and 7 and the circumstantial evidence in the form of subsequent events, such as complainant decoy visit to vigilance office, his producing currency notes, a superior vigilance officer making all arrangements for trap and the prior demand of bribe was made by the

accused Patnaik from the complainant who narrated the same in the preparatory meeting, but by no stretch of imagination, the evidence of P.W.5 can be considered to be reliable to infer any demand made by the appellant since P.W.5 has not only changed his version in cross-examination about bringing another story of JE asking him to pay Biswakarma Puja subscription and also his admission in cross-examination about him to be "decoy in two to three other vigilance cases" and "his family members were also decoys in other vigilance cases" which clearly go to show that he was a stock witness of Vigilance Department. Similarly, the evidence of overhearing witness also reveals nothing about demand made by the appellant at the time of transaction of bribe and therefore, the finding of learned trial Court about considering the prosecution to have established the demand made by the appellant is misplaced and in fact unsustainable and the demand for bribe by the appellant was considered to have not been proved by the prosecution beyond all reasonable doubt.

12. The next point comes for discussion is whether the appellant had accepted bribe from the complainant at the spot soon before the trap, but it is to be remembered that mere recovery of tainted currency notes from the possession of the accused divorced from the circumstance under which it was paid would not be sufficient to constitute acceptance of bribe. "Accept" means receiving something tacitly or with consent as offered and in the context, when the evidence of overhearing witness whose role was to overhear the conversation and see the transaction, is considered, it indicates only that the accused enquired about something which he could not hear out and the informant handed over the tainted GC notes, but the learned trial Court while discussing the evidence in judgment has mentioned something which the overhearing witness has not stated in his evidence. For clarification, it needs to be underlined that the learned trial Court in the judgment has mentioned the overhearing witness stood near the door and seeing him(complainant), the accused asked

him, if he had brought the money, to which he(PW5) has replied "in affirmative and gave the money to the accused who accepted the same and kept the same in his left side pant pocket". The aforesaid evidence was never spoken to or stated by P.W.2 in his evidence and it, therefore, appears that the trial Court's reasoning to find out the prosecution to have successfully established the acceptance appears to be unreasonable and unacceptable. It is strange, but true that the learned trial Court by observing the aforesaid fact as the evidence of P.W.2 which was not a reality has proceeded to hold the accused to have accepted the money. Further, the learned trial Court has relied upon the evidence of P.W.5 for demand and acceptance of bribe of Rs.200/- by the accused, but this Court is quite reluctant to accept the evidence of P.W.5 as genuine because P.W.5 has not only introduced a new story in his cross-examination, but also is considered to be a stock witness of vigilance department to have participated in two to three vigilance cases as decoy and his family

members were also decoys. Further, the superstructure of the prosecution case appears to be built up on a weak foundation. Since the decoy on the very inception admittedly found to be a stock witness of the vigilance department and his admission in cross-examination makes his evidence more vulnerable because he has introduced a new story that the accused had not demanded any bribe from him, rather the JE had asked him to pay Biswakarma Puja subscription which he has paid to the appellant and therefore, such evidence cannot prove the acceptance of money by the appellant as bribe or illegal gratification for doing anything in favour of the decoy and it does not establish the charge against the accused for demanding and accepting bribe to expedite the sewerage connection to the house of the decoy.

13. Besides the evidence of decoy, the only evidence remaining with regard to the acceptance of bribe by the accused is the evidence of P.W.2 who has failed to narrate or reveal the demand made by

the accused-appellant for bribe. Time and again, it has been held by different Constitutional Courts that the proof of demand and acceptance is the *sine qua non* to draw statutory presumption U/S. 20 of the Act which is apparent from the observation of the decision of Constitutional Bench of five Judges of Apex Court in ***Neeraj Dutta v. State (Government of NCT of Delhi); (2023) 4 SCC 731*** which reads as under:-

> ***88.*** *What emerges from the aforesaid discussion is summarized as under:*
>
> ***88.1.*** *(a)* ***Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.***
>
> ***88.2.*** *(b)* ***In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.***
>
> ***88.3.****(c)* ***Further, the fact in issue, namely the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.***

88.4.*(d) In order to prove the fact in issue, namely,* ***the demand and acceptance*** *of illegal gratification by the public servant, the following aspects have to be borne in mind:*

(i) if there is ***an offer to pay by the bribe-giver without there being any demand from the public servant*** *and the latter simply accepts the offer and receives the illegal gratification,* ***it is a case of acceptance as per Section 7 of the Act****. In such a case,* ***there need not be a prior demand by the public servant****.*

(ii) On the other hand, if the public servant makes a demand and the bribe-giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. ***In the case of obtainment, the prior demand for illegal gratification emanates from the public servant****. This is an offence under Sections 13(1)(d)(i) and (ii) of the Act.*

(iii) ***In both cases of (i) and (ii) above, the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Sections 13(1)(d),(i) and (ii), respectively of the Act****. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence.* ***Similarly, a prior demand by the public servant when accepted by the bribe-giver and in***

turn there is a payment made which is received by the public servant, would be an offence of obtainment under Sections 13(1)(d) and (i) and (ii) of the Act.

88.5. *(e) The presumption of fact with regard to* ***the demand and acceptance or obtainment*** *of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.*

88.6. *(f) In the event the complainant turns "hostile", or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.*

88.7. *(g) Insofar as* ***Section 7 of the Act*** *is concerned****, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section.*** *The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d)(i) and (ii) of the Act.*

> ***88.8.*** *(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature.*

14. Yet, another strong point available in favour of the appellant is the sanction to launch prosecution against him as prescribed U/S. 19 of the Act which is mandatory in nature and unless sanction is obtained from the competent authority, the prosecution of accused is illegal, but it is no more *res integra* that the authority competent to remove the accused from his office is no doubt the competent authority to accord sanction for launching of prosecution against the accused for commission of the offence under the Act, as it stood prior to the amendment of the Act, 2018. In this case, the prosecution has examined P.W.1 to prove the sanction, but P.W.1-Executive Engineer has admitted in paragraph-2 in his cross-examination that the accused was not an employee, but was a daily labourer who can be engaged by Junior Engineer, Assistant Engineer and Executive

Engineer and the accused herein was engaged by Assistant Engineer and the Assistant Engineer is competent to remove him. It is, therefore, undoubtedly the Assistant Engineer is the competent authority to accord sanction against the appellant, but P.W.1 being the Executive Engineer had accorded sanction against the appellant and therefore, the sanction itself is defective/invalid inasmuch as when a statute while conferring power, prescribed the mode of exercise of that power, the power has to be exercised in that manner and in this case, Section 19 of the Act as it stood prior to amendment of 2018 Act prescribes that authority competent to remove is the competent authority to accord sanction to launch prosecution. What would be the consequence if the sanction is either defective or invalid has been laid down by Apex Court in ***Nanjappa v. State of Karnataka; (2015) 14 SCC 186*** wherein it has been held that in case the sanction is found to be invalid, the Court can discharge the accused relegating the parties to a stage where the competent

authority may grant a fresh sanction for the prosecution in accordance with law and if the trial Court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be nonest in the eye of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution. In the present case, the learned trial Court has of course has dealt upon the issue of sanction, but it has not directed itself to the facts noted hereinabove with regard to incompetency of PW1 to accord sanction. However, since the exposition of facts and analysis of evidence would go to reveal about inability of prosecution to establish the basic ingredients of demand and acceptance of bribe by the accused, it is considered not proper to remand the matter to the trial Court afresh for adjudication on the issue of sanction. The above aspects of invalid sanction only increase the woes of the prosecution on material and mandatory aspect.

15. It is, of course, argued by the learned ASC, Vigilance that the statutory presumption can still be raised even after the decoy turns hostile on the basis of circumstantial evidence, but here in this case, no cogent and firm circumstance has been brought in evidence to raise the presumption U/S. 20 of the Act against the appellant. The prosecution, however, wants to rely upon certain part of the evidence of decoy, but he being already found to be wholly unreliable, such part of his evidence cannot be taken into consideration in isolation with his entire evidence and the same has to be read with his entire evidence as a whole. Besides, the ASC intends to rely upon the testimony of overhearing witness PW2, but such evidence of PW2 not being able to disclose on material aspect of demand, the same cannot be considered to infer demand made by the appellant. In view of the discussions made hereinabove and taking into consideration the evidence on record, this Court finds the learned trial Court to have relied upon the evidence of wholly unreliable witness of the decoy as

well as to have taken into account extraneous evidence which was in fact not deposed to by P.W.2 with regard to demand and acceptance of bribe by the appellant and thereby, the same cannot be considered to hold that the accused had demanded and accepted bribe. In such situation the foundational ingredients of the offence U/S. 7 of the Act having not been established, the statutory presumption as laid down in Section 20 cannot be invoked against the appellant.

16. In the aforesaid premises, especially when there is no evidence forthcoming for demand of bribe by the accused-appellant from the independent witness and the evidence of P.W.5 being not wholly reliable and is also found to have not been corroborated by the evidence of independent witnesses, it cannot be said that the guilt of the appellant for the charge for the offences U/Ss. 13(2) read with Section 13(1)(d)/7 of the Act has been established beyond all reasonable doubt and therefore, the conviction and sentence of the

appellant are found to be unsustainable in the eye of law and the same are required to be set aside.

17. Resultantly, the appeal is allowed on contest, but no order as to costs. The judgment of conviction and order of sentence passed on 30.10.2010 by the learned Special Judge(Vigilance), Bhubaneswar in T.R. No. 78 of 1998 are hereby set aside and consequently, the appellant is acquitted of the charge.

18. Since the appellant is on bail upon appeal, he is discharged of his bail bonds.

(G. Satapathy)
Judge

Orissa High Court, Cuttack,
Dated the 5th day of February, 2024/Kishore