

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (SJ) No. 210 of 2020**

[Against the Judgment of conviction and Order of sentence dated 17.02.2020, passed by the District & Additional Sessions Judge-II-cum-Special Judge, Anti-Corruption Bureau, Cyber Cases & Electricity Act, Dhanbad, in Special (Vigilance) Case No. 11 of 2011]

Neeraj Kumar Singh, aged about 48 years, son of Sri Sarvesh Prasad Singh, resident of Village -Karia, P.O. -Kahalgaon, P.S. -Kahalgaon, District -Bhagalpur (Bihar)

..... Appellant

Versus

The State of Jharkhand through Vigilance Respondent

.....

For the Appellant	: Mr. Indrajit Sinha, Advocate
	: Mr. Bibhash Sinha, Advocate
	: Mr. Ankit Vishal, Advocate
For the Vigilance	: Mr. T.N. Verma, Advocate.

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P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court: - Heard the parties through video conferencing.

2. The appellant has preferred this appeal against the Judgment of conviction and Order of sentence dated 17.02.2020, passed by the Additional Sessions Judge-II-cum-Special Judge, Anti-Corruption Bureau, Cyber Cases & Electricity Act, Dhanbad, in Special (Vigilance) Case No. 11 of 2011 by which the appellant has been held guilty for the offences punishable under Section 7 and Section 13(2) read with 13 (1)(d) of the Prevention of Corruption Act, 1988 and

has been sentenced to undergo rigorous imprisonment for a period of 4 years and fine of Rs.1,00,000/- for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and has also been sentenced to undergo rigorous imprisonment for five years and fine of Rs.1,50,000/- for the offence punishable under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and it was ordered that both the sentences shall run concurrently. Fines were with default clauses.

3. The facts of the case in brief is that the complainant -Raju Khan is owner of several buses including the bus bearing registration no. WB-25D-7378 which plies from Giridih to Kolkata and it is alleged that on 27.03.2011 at G.T. Road near Tundi, the appellant-accused demanded Rs.50,000/- as bribe from the complainant. The complainant paid Rs.15,000/- but the appellant-accused did not agree to release the bus on payment of the said Rs.15,000/- and seized the said bus and prepared a seizure list, despite the fact that the complainant was having all relevant valid documents in respect of the said bus. It is also alleged that the appellant-accused kept all the papers of the bus in his possession and though he seized the bus, still he allowed the complainant to ply the said bus from 27.03.2011 to 06.04.2011. It is further alleged that when the complainant did not pay remaining demanded bribe money, on 07.04.2011, the said bus was seized

and kept at Taratand Police Station and the accused- appellant demanded additional amount of Rs.10,000/- as bribe money. It is also alleged that the accused- appellant used to take money through a middle man namely Dhullu who used to reside in the house of the appellant-accused. The complaint of the complainant was verified by Keshav Kumar Choudhary (P.W.7) and on the basis of his verification report dated 13.04.2011, FIR of this case has been registered. The P.W.9 being the I.O. of the case took charge of the investigation, obtained the sanction for prosecution of the accused- appellant and after completion of investigation submitted charge-sheet for the offences punishable under Sections 7 & Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The charge for the said offences were framed against the appellant-accused and upon his pleading not guilty to the charges, he was put to trial.

4. In support of its case, the prosecution altogether examined 9 witnesses. The accused- appellant did not examine any witness in his defence.

5. P.W.1 -Amit Kumar is the Special Magistrate and he was a member of the trap team. He has stated that on 13.04.2011 at about 12:30 P.M. he was summoned by the P.W.9. A trap team was being constituted. P.W.7 introduced the complainant to the P.W.1 and briefly stated about the allegations made by the complainant against the appellant-

accused as stated in the complaint of the complainant. P.W.7 was sent for verification of the said complaint along with the complainant. On 11.04.2011, the complainant and the P.W.7 went to the government quarter of the appellant-accused where the appellant-accused stated that he is having the fifteen thousand rupees paid by the complainant and the complainant has to give Rs.15,000/- more. The complainant told the appellant-accused that he will pay Rs.10,000/- and the remaining five thousand he will pay later on after earning some money. Police Inspector -Baijnath Singh applied phenolphthalein powder to the pieces of papers which were touched by the P.W.3 and the solution of sodium carbonate was prepared in a glass tumbler and after the P.W.3 dipped his right hand, the water turned pink. Thereafter, the complainant (P.W.2) produced 10 currency notes of Rs.1,000/- denominations each and the G.C. Memorandum was prepared. Baijnath Singh applied phenolphthalein powder on the notes and handed over the notes to the complainant-Raju Khan (P.W.2). On 13.04.2011, at about 02:30 P.M., they went to Giridih and reached there at about 07:30 P.M. Upon reaching, the complainant talked to the appellant-accused and the appellant-accused told him to come at 08:00 A.M. of the next day. On 14.04.2011, they reached the government accommodation of the appellant-accused and sent the complainant along with the P.W.7 and Baijnath Singh to the

house of the appellant-accused. The P.W.2 entered inside the house of the appellant-accused and after some time came to the verandah of the house and signaled by wiping his face and hand. Thereafter, Keshav Kumar Choudhary and Baijnath Singh suddenly entered together. There was sound of commotion from inside. Thereafter, P.W.1 and others also ran and saw that the P.W.7 and Baijnath Singh were catching one hand each of the appellant-accused. On hearing the noise, many people assembled. Out of them, the P.W.1 and others called two persons to be the independent witnesses. One was the P.W.4 -Manzar Khan and the other was the P.W.5 -Md. Akhtar Khan. In presence of P.W.4 and P.W.5, the P.W.3 prepared sodium carbonate solution in two separate glass tumblers and the hand of the appellant-accused was dipped in two glass tumblers separately. The colour of the water in the glass tumblers turned pink. The water from the glass tumbler was seized in a bottle. Thereafter, it was enquired from the appellant-accused, as to where the money is. First he refused but later on he led others to his bedroom. In his bedroom from the cemented rack, from the second rack from the top which was also the third rack from the bottom, ten thousand rupees was found. The same were tallied with the number of notes mentioned in the G.C. Notes Memorandum and the numbers of the notes tallied. From the bottom most rack they also found rupees thirteen thousand, which were also seized. The

appellant-accused was thereafter arrested and the post trap memorandum was prepared. In his cross-examination, the P.W.1 has stated that the money which was recovered was kept in an open rack which was at a distance of 6 feet from the door. P.W.9 picked up the money. On 13.04.2011, upon reaching Giridih, the complainant was called on the next day. The complainant did not stay with the P.W.1 and others. The complainant had gone to his own house. P.W.1 and others stayed in a hotel. The hands of all the members of the trap team were not washed before going to the quarter of the appellant-accused. The P.W.1 has not seen the appellant-accused accepting the money. They went to the dining room of the appellant-accused and there the hand of the appellant-accused was washed. When they entered inside the house of the D.T.O., except the appellant-accused, there was no one else in his house. He denied the suggestion that the complainant brought the two independent witnesses. About 20 to 25 people assembled there. As they thought that thirteen thousand rupees which was found might be the bribe amount, so they seized the same. P.W.1 does not know whether the vehicle of the complainant was released on 11.04.2011.

6. P.W.2 -Raju Khan is the complainant himself. He has stated that on 27.03.2011 the appellant-accused got his bus stopped within the jurisdiction of Taratand Police Station and demanded documents from his staff. His staff showed the

documents. After verifying the documents, the appellant-accused returned the documents of the vehicle to the staff of the complainant and after preparing the seizure memo, handed over the same to the staff of the complainant. When the staff said that his documents are proper, the appellant-accused told the staff to inform the owner to meet the appellant-accused and left the bus. In the night, the complainant met the appellant-accused at his residence in Giridih and requested the appellant-accused not to disturb running of his vehicle. The appellant-accused told the complainant that he has one person namely Dhullu with whom the complainant should talk. The complainant came out and talked with Dhullu and Dhullu informed the P.W.2 that the appellant-accused has ordered that the complainant has to pay Rs.50,000/-. As the P.W.2 expressed his inability to pay such huge amount then Dhullu told the P.W.2 to pay some money so that he will talk to the appellant-accused. Then, the P.W.2-complainant paid Rs.15,000/- to Dhullu. Dhullu came out from the house of the appellant-accused and intimated the P.W.2 to arrange some more money within two to four days and to pay the same. After eight/nine days, the appellant-accused made the said bus of the complainant stand in Taratand Police Station. Then the complainant went to the appellant-accused and requested to leave the vehicle. The appellant-accused told that since the P.W.2 has not paid the

rest amount, hence the vehicle has been made to stand and also told him that unless the money is paid, he will not allow the vehicle to run. The P.W.2 promised to pay the remaining amount within 2 to 4 days. Thereafter, the appellant-accused released the vehicle. The P.W.2 went to the Vigilance Police Station and submitted a written report to the I.G. -N.B. Rao. Thereafter one Inspector came to Giridih and enquired about the occurrence from the P.W.2 and after verification submitted his report to the I.G. Two days thereafter, the Vigilance Police Personnel telephonically informed the P.W.2 to remain present in Giridih, as the team is going. Thereafter, the vigilance personnel demanded the ten thousand rupees bribe money and the P.W.2 handed over ten numbers of one thousand notes each in the Vigilance Office, Ranchi and a paper was prepared which was signed by him. The notes were kept by the vigilance personnel which was handed over to the P.W.2 at Giridih on 14th and was told that when the money was to be given to the appellant-accused, those notes should be given. Thereafter, the P.W.2 telephonically talked with the appellant-accused and the appellant-accused called him to his residence and the P.W.2 went with him. This testimony of the P.W.2 is contradictory to the testimony of the P.W.1 as the P.W.1 has stated that on 13.04.2011, the complainant also went with them to Giridih from Ranchi and he talked to the appellant-accused on 13.04.2011 when he called the appellant-accused on

14.04.2011. P.W.2 further stated that three persons of Vigilance followed the P.W.2 to the house of the appellant-accused. P.W.2 reached the house of the appellant-accused and rang the bell. A servant came and the P.W.2 entered inside the house. The servant closed the door. Vigilance Officers were standing outside the door. Inside, the appellant-accused was sitting on a chair. P.W.2 brought out Rs.10,000/- and gave the same in the hand of the appellant-accused which was kept by the appellant-accused in his pocket. Thereafter, the appellant-accused went to the inside room and by opening the door, P.W.2 came out and called the people of Vigilance Department at which the people of Vigilance Department entered inside. In the meanwhile, the appellant-accused again came and sat on the chair. The P.W.2 informed the P.W.9 that he gave his money to the appellant-accused and the appellant-accused kept the same in his right pocket. The Vigilance Personnel enquired from the appellant-accused as to where the money was and caught hold of both the hands of the appellant-accused near the wrist. The appellant-accused told that he has kept the money inside and he went inside with the members of the Vigilance Bureau and informed that the money was kept on the top of the almirah which was picked up by the Vigilance Personnel. Thereafter the numbers of the notes were tallied and plain water was brought in two glass tumblers and the hand of the appellant was immersed in the water. The

colour of the water turned to light pink. In his cross-examination, the P.W.2 stated that he does not remember the name of the driver of his bus. In paragraph -6, he has stated that P.W.4 and P.W.5 was not his staff. In para-7, he has stated that he cannot say the exact date when his bus was caught. After seizure of the bus, the seizure list was given to the P.W.2 but he got the signature of his staff on the seizure list but he does not remember which of his staff signed the said seizure list. In para-11, he has stated that the fine mentioned in the seizure list was not deposited in the transport office but he handed over to the appellant-accused. In para-12 he has stated that he deposited the fine amount but he does not remember whether he signed upon the receipt or not. In paragraph -14 he has stated that he cannot say whether the release order of the said vehicle was obtained by him on 11.04.2011. Whenever he went to the house of the appellant-accused, Dhullu and his servant used to be there. There is contradiction in the statement of P.W.2 and P.W.1. As the P.W.1 has stated that there was no one else except the appellant-accused in the house of the appellant-accused on the date of alleged trap yet the P.W.2 deposed that the servant of the appellant-accused closed the door after the P.W.2 entered inside the room meaning thereby the servant of the appellant-accused was also in the house. In para-32, the P.W. 2 stated on being confronted with the release order of bus marked Y/2, that the same is the

photo copy of the release order which bears his signature with date written by him to be 11.04.2011. In para-43, he has stated that he knows P.W.4 & P.W.5. Both were drivers who also drove his vehicle.

7. P.W.3—Aleksis Lakra is the inspector of A.C.B. He has stated about the complaint submitted by the P.W.2 and a trap team having been constituted of which P.W.3 was also the member. The meeting of the trap team was convened on 13.04.2011. The complainant was also present in the said meeting which of course is not supported by the complainant-P.W.2 in his deposition. He was made aware about the complaint of the P.W.2 submitted to the A.C.B. He has stated about the pre trap preparation and the complainant producing of ten notes of Rs.1000/- denomination each in total Rs.10,000/-, the numbers of which were entered in the G.C. note memorandum. Unlike P.W.1, he has stated that they reached Giridih on 04:30 pm and thereafter P.W.2 made a telephonic call to the appellant-accused and the appellant-accused called P.W.2 for seeing him on the next day. On 14.04.2011, the complainant went to the house of the appellant-accused and after sometime came out and signaled by wiping his face. Thereafter the trap team members reached there. First, P.W.7 thereafter the P.W.3 reached there. P.W.7 caught hold of the right hand and P.W.3 caught hold of his left hand. Here also P.W.3 contradicted the testimony of P.W.1, as P.W.1

has stated that Bajinath Singh caught hold of one of the hand of the appellant-accused. Thereafter, there was a crowd of several persons and out of them, two persons were requested to be the witness and two of them came forward being the P.W.4 and P.W.5 and thereafter the search of the appellant-accused was made. Nothing was found from his clothes. Thereafter, fingers of both his hands were immersed in separate glass tumblers containing the solution of sodium carbonate and water of the glass tumbler in which fingers of his right hand was immersed turned pink. Thereafter P.W.9 asked about the bribe money and later on the appellant-accused disclosed that he has kept the said money in the rack and from the rack the bribe money of Rs.10,000/- was recovered. In his cross-examination, P.W.3 has stated that the seized articles are not in court and the complainant did not pay the money to the appellant-accused in his presence. P.W.3 has also stated that after going to the house of the appellant-accused, he did not wash his hands.

8. P.W.4-Manzar Khan has stated that on seeing the crowd of several persons at the house of the appellant-accused, he reached there along with P.W.5 and saw that Vigilance Officers have caught hold of the hands of the appellant-accused and ten notes of Rs.1000/- denomination each were in the hand of the appellant-accused. He has further stated that when the hand on being washed in clean water

kept in two glass tumblers, the colour turned pink on the right hand being washed in the glass tumbler and when the left hand was washed, there was no change in colour. He has identified the currency notes which were seized in his presence. In his cross-examination, he has stated in paragraph no.9, that he knows P.W.2 and was his driver earlier. In paragraph no.18, he has stated that police did not record his statement. He did not see P.W.2 giving money to the appellant-accused and saw the money in the right hand of the appellant-accused. In paragraph no.27, he has stated that appellant-accused was wearing *pajama* and vest. In paragraph no.29, he has stated that at the time he entered inside the house of the appellant-accused, the trap team has already caught hold of him.

9. P.W.5-Md. Akhtar Khan has stated the same as stated by P.W.4 that on seeing the crowd, he went to the house of the appellant-accused and saw that ten notes of Rs.1000/- denomination each on the hand of the appellant-accused and upon the right hand of the appellant-accused being washed in clean water, the colour changed pink. The finger of the left hand after being washed, there was no change in colour. In his cross-examination, he has stated that he knows the P.W.2 and earlier he used to be the driver of the bus of P.W.2 and on the day of his examination in court also, he was the driver of P.W.2. In paragraph no.10, he has stated that on 14.04.2011 the

bus of P.W.2 was caught by the appellant-accused but on that day, P.W.5 was not the driver. 8-10 days thereafter, the bus was released from the police station on the order of the Court. He differed from his testimony in his examination-in-chief by stating in paragraph no.11 of his cross-examination that he and P.W.4 went to the house of the appellant-accused and Rs.10,000/- was given to the appellant-accused. Thereafter the trap team caught the appellant-accused.

10. P.W.6- Dhanesh Kumar is a formal witness. He has proved the sanction for prosecution of the appellant-accused issued by the Legal Remembrancer of the Government of Jharkhand which has been marked Ext.8. In his cross-examination, in paragraph no.5 he has stated that after according the sanction for prosecution he cannot say which other document was prepared by the Legal Remembrancer. He only identifies the signature of the Legal Remembrancer.

11. P.W.7-Keshav Kumar Chaudhary has stated about the complaint made by P.W.2. P.W.7 prepared the verification report. P.W.7 was also the member of the trap team. He has stated about the pre trap formalities and the currency notes being produced by P.W.2. They left from Ranchi for Giridih on 13.04.2011 at 14:30 hours and the complainant went to the residence of the appellant-accused at 08:00 am on 14.04.2011. Thereafter, P.W.2 entered inside the Bungalow of the appellant-accused. After ten minutes he came out from the

Bungalow and signaled. After receiving the signal, P.W.7 and others entered inside the room. P.W.7 caught hold of the right hand and Dinesh Kumar caught hold of the left hand of the appellant-accused. P.W.7 further stated that notes of Rs.10,000/- was in the hand of appellant-accused. The G.C. numbers of all the notes were tallied. Thereafter, the hand of the appellant-accused was washed by sodium carbonate solution while the solution of the right hand turned pink and the solution of the left hand was not changed. P.W.7 has stated that the money was in the right hand of the appellant-accused. In his cross-examination, he has stated in paragraph no.26, that he has not seen giving and taking of the money as he was outside at that time. He was present at the time of post trap memorandum. In paragraph no.30, he stated that he signed the pre trap and post trap memorandums but in paragraph 31 he contradicted the statement in paragraph no.26 and 30 by stating that he was not present at the time of post trap memorandum and he did not sign the same. In paragraph no.33 he has stated that the distance between Ranchi and Giridih is about 150 kilometers and they reached Giridih at 07:00 pm.

12. P.W.8-Narendra Singh was the D.S.P. of A.C.B. at Ranchi on the date of occurrence. He has stated about the constitution of trap team and preparation of G.C. notes memorandum and also pre trap formalities. He has stated that

on the next day of preparing the G.C. notes memorandum that is on 14.04.2011; in the presence of members of the trap team, the Magistrate as well as P.W.2, went to Giridih and reached the house of the appellant-accused at about two o'clock. Thereafter, the complainant went into the room of the appellant-accused and signaled them. P.W.8 and others went inside. When P.W.8 entered inside the house, he saw that both the inspectors of police were catching hold of the hand of the appellant-accused. From the rack of the room of the appellant-accused ten notes of Rs. 1000/- denomination each, in total Rs.10,000/- were taken. On being compared the number of notes tallied with the numbers mentioned in the G.C. note memorandum. Upon the hand of the appellant-accused being immersed in the Sodium carbonate solution, the solution in which the right hand was immersed turned pink but the colour of the solution in which left hand was dipped remained unchanged. In his cross-examination, P.W.8 has stated in paragraph no.11 that they left Ranchi Vigilance Office at 07:30 hours and reached the place of occurrence at 8.00 hours. He went to the Vigilance Office by foot.

13. P.W.9- Dhaneshwar Ram is the Investigating Officer of the case as well as the member of the trap team. He has stated about the investigation done by him in this case and the complaint made by P.W.2 and the verification of the same made by P.W.7 as well as the pre trap formalities done. He

further stated about the currency notes being produced by P.W.2. On 13.04.2011, they left for Giridih. It became night so they stayed in a hotel. On 14.04.2011 they went to the house of the appellant-accused. P.W.2 entered inside the house of the appellant-accused. Baijnath Singh also went with P.W.7. After sometime P.W.2 came out and signaled by raising both his hands. P.W.7 caught hold of right hand and Baijnath Singh caught hold of the left hand of the appellant-accused. P.Ws.4 and 5 were the independent witnesses. The appellant-accused disclosed that he kept the bribe money in the upper most rack of the bedroom and from near rack Rs.10,000/- consisting of 10 currency notes of Rs.1000/- each was recovered and the numbers of the said notes were tallied with the G.C. notes memorandum. Thereafter, the finger of both hands of the appellant-accused was washed. The right hand solution turned light pink but the left hand solution remained white. Thereafter, he searched the house and from the middle of rack of the bedroom of the appellant-accused, they recovered Rs.13,000/- which was kept hiding in clothes which was seized and the document of some other vehicle were also seized.

14. After completion of the evidence of the prosecution, the statement under Section 313 Cr.P.C. of the appellant-accused was recorded regarding the circumstances appearing in evidence against the appellant-accused. The

appellant-accused denied the allegation made against him and though several questions were put to him but no question was put to him regarding the money given by P.W.2 to Dhullu as stated by him in his deposition. In response to question no.7, the appellant-accused has stated that he was in the office of A.C.B. at Ranchi and there his hands were washed and in response to question no.8 he stated that Rs.13,000/- was taken from his pocket and he pleaded innocence.

15. Learned court below after taking into consideration the evidence in record convicted and sentenced the appellant-accused as already indicated above.

16. Mr. Bibhash Sinha, the learned counsel for the appellant-accused submitted that the learned court below has failed to appreciate the evidence in record in its proper perspective and has overlooked the major contradictions in the testimonies of the prosecution witnesses. It is further submitted by Mr. Bibhash Sinha, the learned counsel for the appellant-accused that the learned court below has failed to take into consideration that the two major document of trap that is the pre trap memorandum and the post trap memorandum were neither proved nor marked as Exhibits, as this being a fabricated case, the same could have exposed the falsehood of the prosecution. It is further submitted by Mr. Bibhash Sinha, learned counsel for the appellant-accused that it is a normal practice, that only in the pre trap memorandum

the number of the general currency notes are mentioned but in this case for covering up the lacunae, which occurred because of building up this false case against the appellant-accused; a separate memorandum, being G.C. Notes memorandum was prepared. It is next submitted that unlike the pre-trap memorandum, in which the signature of all the members of the trap team are obtained in all the sheets of such memorandum but in this case only on the last page of the G.C. Notes memorandum the signatures of the members of the trap team were obtained and most importantly in the last sheet of the G.C. Notes memorandum upon which the signatures were obtained does not bear the numbers of the currency notes allegedly recovered and the sheet in which the numbers of the currency notes allegedly recovered was mentioned no one's signature appears, which goes to show that the G.C. Notes memorandum was prepared as an after thought as a cover up exercise only to make out false case against the appellant-accused, full proof and this is the reason for which even the vigilance officers gave prevaricating statements in their deposition as to whether they were present or signed the pre trap memorandum. It is next submitted by Mr. Bibhash Sinha, that the G.C. Notes memorandum is of 13.04.2011 and prepared at Ranchi but the testimony of the P.W.2, that he was telephonically intimated to remain present in Giridih goes to show that he was not present at Ranchi on 13.04.2011. Thus the

signature of P.W.2-complainant on the G.C. Notes memorandum bearing the date 13.04.2011 shows that the G.C. Notes memorandum is a fabricated document. It is next submitted by Mr. Bibhash Sinha, that though it is the case of the prosecution that P.Ws.4 and 5 suddenly assembled as onlookers after seeing the crowd of so many people at the place of occurrence but in fact, this contention of the prosecution stand exposed from the fact that the evidence in record which was elicited in the cross-examination of the prosecution witnesses including the cross-examination of P.Ws.4 and 5; goes to show that the P.Ws.4 and 5 were no one else than the driver of the P.W.2 though the P.W..2 tried to suppress this fact to his level best but he could not succeed and ultimately truth has been brought out from his mouth in his cross-examination which is corroborated by the testimonies of P.Ws.4 and 5. It is next submitted by Mr. Bibhash Sinha, the learned counsel for the appellant-accused that there is major contradictions in the testimonies of witnesses as to who caught hold of the hand of the appellant-accused and wherefrom Rs.10,000/- was picked up and recovered and also there is contradictions as to whether his hands were washed first or money was recovered before washing of his hands. It is next submitted that there is contradiction in the testimonies of P.W.7 and P.W.2 as the P.W.2 who has not supported the contention of the P.W.7 that

the P.W.2 were ever accompanied the P.W.7 during course of verification of the complaint of the P.W.2. Mr. Bibhash Sinha, learned counsel for the appellant-accused relied upon the judgment of Hon'ble Supreme Court of India in the case of **P. Satyanarayana Murthy v. District Inspector of Police, State of A.P. and another** reported in (2015) 10 SCC 152, paragraph no.22 and 23 of which reads as under :-

"22. In a recent enunciation by this Court to discern the imperative prerequisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Sections 13(1)(d)(i) and (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasised, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove

the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder." (Emphasis Supplied)

and submitted that presumption of Section 20 of the Prevention of Corruption Act, 1988 will set in only after the three essential ingredients being demand of bribe, acceptance of bribe and recovery of bribe is proved. It is then submitted that as there is absolutely no evidence regarding the demand of the bribe and even the P.W. 2 has not stated that on the day of the trap the appellant-accused ever demanded the money and the other witnesses are admittedly being the post occurrence witnesses have obviously stated that they have neither heard the conversation between the appellant-accused nor they have seen the P.W.2 handing over the money. So it is submitted by Mr. Sinha that presumption under Section 20 of the Prevention of Corruption Act,1988 has not set in, in this case. It is next submitted by the learned counsel for the appellant-accused that there is ample evidence in record regarding the animosity between the P.W.2 and the appellant-accused as admittedly the appellant-accused has seized his bus and though the P.W.2 tried to suppress the truth about his bus being released by the orders of the concerned Court on 11.04.2011. Again on this score, the P.W.2 stood exposed in the cross-examination on production of the copy of the order marked Y/2. It is next submitted by the learned counsel for

the appellant-accused relying upon the judgment of Hon'ble Supreme Court of India in the case of **Mukhtiar Singh v. State of Punjab** reported in (2017) 8 SCC 136 paragraph no.14 of which reads as under :-

“14. In P. Satyanarayana Murthy [P. Satyanarayana Murthy v. State of A.P., (2015) 10 SCC 152 : (2016) 1 SCC (Cri) 11] , this Court took note of its verdict in B. Jayaraj v. State of A.P. [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] underlining that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It was recounted as well that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. Not only the proof of demand thus was held to be an indispensable essentiality and an inflexible statutory mandate for an offence under Sections 7 and 13 of the Act, it was held as well qua Section 20 of the Act, that any presumption thereunder would arise only on such proof of demand.(Emphasis Supplied)

and submitted that in this case at best there is contradictory evidence in record regarding only one of the three essential ingredients to constitute an offence punishable under Section 7 and under Section 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988 being the recovery of money but in the absence of other two essential ingredients being demand of bribe and acceptance of bribe, the evidence in record is insufficient to establish either of the said two charges against the appellant-accused. Learned counsel for the

appellant-accused next relied upon the judgment of Hon'ble Supreme Court in the case of **Satvir Singh v. State of Delhi, through CBI** reported in **(2014) 13 SCC 143**, paragraph no.32 of which reads as under :-

"32. It is also an undisputed fact that neither Inspector P.S. Saini was arrayed as a witness nor accused by the investigating officer. Ram Malhotra, the brother-in-law of the complainant PW 2 who was stated to be present at the time of the telephonic conversation with him was also not examined during the investigation to prove the fact that the appellant had telephonic conversation with him."

and submitted that as the allegation made in the complaint as well as in the deposition of P.W.2 that the P.W.2 gave Rs. 15,000/- to Dhullu, the investigation in this case is perfunctory as the said Dhullu has neither been examined as a witness nor arraigned as an accused only with the purpose of making a false case at the behest of P.W.2 against the appellant-accused because the P.W.2 had an axe to grind against the appellant-accused as admittedly the appellant-accused seized his bus in capacity of District Transport Officer, which was released only by the orders of the concerned court, three days prior to the alleged trap. Learned counsel for the appellant-accused also relied upon the judgment of **Suraj Mal v. State (Delhi Admn.)** reported in **(1979) 4 SCC 725** paragraph no.2 of which reads as under :-

"2.Xxxxx It is well-settled that where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the

testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses. For these reasons, therefore, when the Special Judge disbelieved the evidence of PWs 6, 8 and 9 in regard to the complicity of Ram Narain, it was not open to him to have convicted the appellant on the same evidence with respect to the appellant, which suffered from same infirmities for which the said evidence was disbelieved regarding the complicity of Ram Narain. If the witnesses draw no distinction in the examination-in-chief regarding acceptance of bribe by Ram Narain and by the appellant and the witnesses were to be disbelieved with respect to one, they could not be believed with respect to the other. In other words, the evidence of witnesses against Ram Narain and the appellant was inseparable and indivisible. Moreover, there is an additional circumstance which throws a serious doubt on the complicity of the appellant Suraj Mal. Although, in his statement at p. 71 of the paper-book, the complainant has clearly stated that all the three accused including the appellant had met him and demanded bribe of Rs 2000, the appellant having demanded Rs 100, yet in the report which he lodged before Mr Katoch, there is no mention of the fact that the appellant at any time demanded any bribe at all. Even the presence of the appellant at the time when the demand was made by Davender Singh has not been mentioned, in this document. This report, undoubtedly contains reference to a demand having been made by the SHO Davender Singh on behalf of the appellant, but there is no statement in this report that any demand was made by Suraj Mal directly from the complainant. If, in fact, the appellant would have demanded bribe from the complainant just on the previous evening, it is not understandable why this fact was not mentioned in the report which the complainant submitted to the D.S.P. Katoch and which is the FIR constituting the evidence. We have perused the statements of PWs 6,8 and 9 and we find that while in the examination-in-chief they have tried to implicate all the three accused persons equally without any distinction, in their cross-examination, they have tried to save Ram Narain and made out a different story so far as Ram Narain is concerned and have even gone to the extent of stating that

he did not demand any money and that he refused to accept the money which was offered to him. In this state of the evidence, we feel that the High Court was not right in convicting the appellant. Mr Lalit appearing for the State vehemently submitted that whatever be the nature of the evidence in the case, it is an established fact that money had been recovered from the bushshirt of the appellant and that by itself is sufficient for the conviction of the accused. In our opinion, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. Moreover, the appellant in his statement under Section 342 has denied the recovery of the money and has stated that he had been falsely implicated. The High Court was wrong in holding that the appellant had admitted either the payment of money or recovery of the same as this fact is specifically denied by the appellant in his statement under Section 342 of the CrPC. Thus mere recovery by itself cannot prove the charge of the prosecution against the appellant, in the absence of any evidence to prove payment of bribe or to show that the appellant voluntarily accepted the money.Xxxxx." (Emphasis Supplied)

and submitted that as the P.W.2 and P.W.8 have made more than two inconsistent statements in their evidence on vital aspects of the prosecution case; the testimonies of these two witnesses become unreliable and unworthy of credence and no conviction of the appellant-accused can be based on the evidence of such witnesses. It is next submitted that as most of the witness have stated that money was recovered either from the rack or from top of the *Almirah* or from the bedroom of the appellant-accused, such recovery cannot be termed to be from the conscious possession of the appellant-accused. It is lastly submitted that as the witnesses, as already

indicated above, have deposed in inconsistent manner, their evidence is not trustworthy and reliable and therefore, the same are not sufficient for establishing either of the charges faced by the appellant-accused. Hence, it is submitted that the appellant-accused-Neeraj Kumar Singh be acquitted by at least giving him the benefit of doubt.

17. Mr. T.N. Verma, learned counsel for the A.C.B. drew the attention of this Court to Ext.6 which is signature of P.W.2 over the complaint petition, Ext.10 which is the verification report, Ext.13 which is the raiding team constitution approval petition, Ext.13/1 which is the Approval of S.P., A.C.B. on raiding team constitution approval petition, Ext.14 which is the G.C. notes memorandum, Ext.15 which is the property search and acquisition format, Ext.16 which is the search and seizure list and Ext.18 which is the S.F.S.L. Report regarding the chemical examination of the solution of sodium carbonate with phenolphthalein and submitted that the aforesaid document as well as the testimonies of the prosecution witnesses put forth has amply proved the recovery of money and the hand of the appellant-accused after being washed with the sodium carbonate solution, the colour of the solution turned pink. It is then submitted that though Exhibit-14 is named as G.C. notes memorandum but actually the same is the pre-trap memorandum. Thus there is no force in the submission of the learned counsel for the

appellant-accused that pre-trap memorandum has not been proved. Hence, it is submitted by Mr. T.N. Verma that the same is sufficient enough to establish the charge for the offence punishable under Section 7 and under Section 13 read with 13 (1) (d) of the Prevention of Corruption Act, 1988 . Relying upon the judgment of Hon'ble Supreme Court in the case of **State of A.P. vs. M. Radha Krishna Murthy** reported in [2009 (3) East Cr. C 86 (SC)] wherein in the facts and circumstances of that case where the High Court has held that even if a trap is proved beyond all reasonable doubt, the prosecution version cannot be upheld in view of the judgment of Hon'ble Supreme Court of India in the case of **Hari Dev Sharma v. State (Delhi Admn.)** reported in 1977 (3) SCC 352, the Hon'ble Supreme Court held that no rule of universal application was laid down in **Hari Dev Sharma v. State (Delhi Admn.)** that whenever a part of the case relating to demand and acceptance is not acceptable, the whole case would fail even if the case relating to trap, recovery of money and chemical test by the prosecution is established. Hence, it is submitted by Mr. T.V. Verma, learned counsel for the A.C.B. that the evidence in record is sufficient to establish the charges for the offence under Section 7 and under Section 13 read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 beyond reasonable doubt. It is therefore submitted that the

conviction and sentence of the appellant-accused be upheld and this appeal being without any merit be dismissed.

18. Having heard the submissions made at the Bar and after going through the evidence in record as already discussed above, it is crystal clear that there is absolutely no substantive evidence in the record regarding the demand of money by the appellant-accused as none of the witness of the prosecution has stated about the demand of money by the appellant-accused. P.W.2 is the only witness of the prosecution who could have adduced evidence regarding the demand of bribe money by the appellant-accused on the date of trap, since as per the prosecution case he was the only person who entered into the room of the appellant-accused and the door was closed by the servant of the appellant-accused after P.W.2 entered the room of the appellant-accused while others remained outside, till allegedly handing over the bribe amount to the appellant-accused, thus the P.W.2 was alone with the appellant-accused in his closed room hence, there was no one else except the P.W.2 who is a witness to the demand of bribe money on the date of occurrence by the appellant-accused but in his deposition before this Court, P.W.2 has not stated about the demand of money by the appellant-accused rather the P.W. 2 stated that after entering inside the room he brought out Rs. 10,000/- from his pocket and gave it in the hand of the appellant-accused, who kept the same in his pocket. On the

other hand his testimony in paragraph-11 of his deposition that the fine amount mentioned in the seizure list was handed over by him to the appellant-accused disproves the claim of the prosecution that the alleged recovered amount was bribe amount.

19. From perusal of the evidence of the P.W.2, it is apparent that he is not a trustworthy witness as there are several contradictions in his testimony; as though on one hand he has stated that his vehicle was seized by the appellant-accused from his staff there by denying his presence at the place of occurrence at the time of alleged seizure of the bus and created a fiction by deposing that the appellant-accused told the staff of the P.W.2 that the P.W.2 must meet the appellant-accused and accordingly on that night the P.W.2 met the appellant-accused but in later part of his testimony the P.W.2 deposed that in his presence the bus was seized by the appellant-accused. It is pertinent to mention here that the P.W.2 has stated about a different place where the bribe money was allegedly kept by the appellant-accused than the place of such bribe money being kept the appellant-accused, as stated by the P.W.1 as well as the other prosecution witnesses as already indicated above. Similarly, though P.W.2 stated in his complaint, which was also corroborated by the P.W.1, that on the earlier occasion the P.W.2 paid Rs.15,000/- to the appellant-accused but in his deposition P.W.2 stated that he

paid the said amount to Dhullu. His testimony of first denying any knowledge about the P.W.4 and P.W.5 and referring them to be independent witnesses who incidentally reached the place of occurrence on seeing a crowd and to the same effect was also the testimonies of the vigilance officers who have been examined in this case by the prosecution as witnesses but in later part of his deposition P.W.2 admitted that the P.W.4 and P.W.5 were drivers who drove his vehicles. This has also shaken his credibility. From the evidence thus put forth by the prosecution, it is not difficult to fathom that the P.W.4 and P.W.5 were the persons who were set up by the P.W.2 to pose as independent witnesses. It is highly improbable that a person being an owner of a bus cannot tell the name of the driver of his bus on the date of occurrence as stated by P.W.2 in para-5 and obviously such statement was given by the P.W.2 with an intention to suppress the truth.

20. P.W.3 contradicted the statement of P.W.1 and P.W.2 as he has stated that first, the hand of the appellant-accused was immersed in the sodium carbonate solution and thereafter he was asked about the bribe money unlike the P.Ws.1 and 2, who stated same in the reverse order. There are discrepancies in the testimonies of the other prosecution witnesses also in this respect. Further P.W.3 introduced a new fact that before the hand of the appellant-accused was immersed in the sodium carbonate, search of his wearing apparels was made,

which has not been stated by the other prosecution witnesses. P.W.3 has also not stated about recovery of Rs.13,000/- as stated by P.W.1 and P.W.2 was also silent about the recovery of the said amount. Similarly there are no consistent testimonies of the prosecution witnesses in this respect as well. In paragraph no.21, P.W.1 has stated that except the appellant-accused, there was no one in his house thereby contradicting the statement of P.W.2 about the presence of servant when he came inside the house of the appellant-accused. Moreover there are inconsistent testimonies of the prosecution witnesses on the aspect of the place where the sodium carbonate test was carried out. As some of them have stated that the same took place on the dining table yet others stated that the same took place in the first room from the entrance.

21. P.W.1 contradicted the testimony of other witnesses regarding change of colour of solution of the glasses as the P.W. 1 stated about change in colour of water of both the glass tumblers. P.W.7 has contradicted both the P.W.1 who stated that the left hand of the appellant-accused was caught hold by Baijnath Singh and P.W.3 who stated that he himself caught hold the left hand of the appellant-accused. The testimony of P.W.8 also contradicts the testimonies of the other witnesses regarding the time of occurrence and also the time at which they left Ranchi and reached Giridih and as to whether P.W.2 was with them.

22. So far as the recovery of money is concerned, there are also several contradictions in the testimonies of the prosecution witnesses as already indicated above. There is discrepancy as to who caught hold of the left hand of the appellant-accused and get the same washed and there are many contradictions in the testimonies of the witnesses in this respect as already indicated above in this Judgment. There is discrepancy as to whether the money was recovered from the rack or from the *almirah* or from the hand of the appellant-accused and if it was recovered from the rack then from which rack that is from the top, bottom or middle rack. So far as the Judgment of Hon'ble Supreme Court in the case of **State of A.P. vs. M. Radha Krishna Murthy (supra)** is concerned, as mentioned in paragraph no.5 of that judgment, unlike this case where even the evidence regarding recovery cannot be termed cogent, though in that case, there was cogent evidence regarding recovery of money from the accused of that case, but still in the absence of other two ingredients being demand of bribe and acceptance of bribe, the Hon'ble Supreme Court of India acquitted the appellant. It is pertinent to mention here that certainly in the case of **Hari Dev Sharma v. State (Delhi Admn.) (supra)** no rule of universal application was laid down. But there is no doubt that in the case of **B. Jayaraj v. State of A.P.,(supra)** which was followed in the case of **P. Satyanarayana Murthy v. State of A.P. (supra)** the law

settled to the effect that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 and in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved, hence proof of demand is indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Prevention of Corruption Act, 1988, is a rule of universal application. As already indicated above, the falsehood of the prosecution witnesses is crystal clear from their testimonies, as apart from making contradictory statement in their respective cross-examination, there is also *inter se* contradiction in the statement of witnesses as already indicated above. Further though P.W.2 has categorically stated that he paid Rs.15,000/- to one Dhullu on behalf of the appellant-accused, it remains unexplained as what made the Investigating Officer not to either make the Dhullu an accused or at least a witness of this case and the motive for false implication of the appellant-accused by the complainant is also apparent from the fact that the appellant-accused seized the bus of P.W.2 which he got released by the order of the court on 11.04.2011; the fact, though P.W.2 all along tried to

suppress, but in spite of his best efforts, the same has been extracted by way of cross-examination from him to the effect that the said bus was released by the Court and not by the appellant-accused as deposed by the P.W.2. Further there is no plausible explanation as to why the post trap memorandum was not brought on record nor there is any oral testimony of any of the witnesses regarding preparation of post trap memorandum, which is ordinarily a routine procedure adopted in all the trap cases. So keeping in view the aforesaid facts of the case, this Court is of the considered view that this is a fit case where the above named appellant-accused- Neeraj Kumar Singh be acquitted by giving him the benefit of doubt, as the prosecution has failed to prove the charge beyond reasonable doubt.

23. Accordingly, the impugned Judgment of conviction and Order of sentence dated 17.02.2020, passed by the Additional Sessions Judge-II-cum-Special Judge, Anti-Corruption Bureau, Cyber Cases & Electricity Act, Dhanbad, in Special (Vigilance) Case No. 11 of 2011 being not sustainable in law is set aside and the appellant accused- Neeraj Kumar Singh is acquitted of all the charges by giving him the benefit of doubt.

24. The appellant-accused- Neeraj Kumar Singh is in custody. In view of his acquittal, the appellant-accused- Neeraj Kumar Singh is directed to be released from the custody

unless his detention is required in connection with any other case.

25. In the result, this appeal is allowed.

26. Let a copy of this judgment be sent to the learned court below forthwith.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 8th of July, 2020
AFR/ Sonu-Gunjan/-