

IN THE HIGH COURT OF JHARKHAND AT RANCHI**Cr. Appeal (S.J.) No. 1472 of 2004**

1(a) Sulen Singh, wife of late Ugrah Narayan Singh
 1(b) Prem Prakash Singh, son of late Ugrah Narayan Singh
 Both resident of Lakhibag, Manpur, P.O.-Buwadganj, P.S. Muffasil, District-
 Gaya (Bihar) Appellants
 Versus
 State of Jharkhand, through C.B.I.... .. Respondent

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellants : Mr. Pandey Neeraj Rai, Advocate
 Mr. Akchansh Kishore, Advocate
 Mr. Rohit Ranjan Sinha, Advocate
 For the Opposite Party : Mr. Rohit Sinha, Advocate

C.A.V. On 16/03/2020**Pronounced on 08/07/2020**

1. Heard Mr. Pandey Neeraj Rai, learned counsel appearing on behalf of the appellants along with Mr. Akchansh Kishore and Mr. Rohit Ranjan Sinha, Advocates.
2. Heard Mr. Rohit Sinha, learned counsel appearing on behalf of the CBI.
3. At the outset, learned counsel appearing on behalf of the appellants submits that the original appellant, against whom the order of conviction was passed by the learned court below, namely, Ugrah Narayan Singh, has expired during the pendency of this case and his legal heirs have been substituted vide order dated 27.09.2018 who are the present appellants before this court.
4. This appeal is directed against the judgment and order dated 20.08.2004 passed in R.C. 11(A)/96(R) passed by the learned Special Judge, CBI, Ranchi whereby the original appellant has been held guilty of charge under Section 7 and 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as Act of 1988) and has been convicted for the same and sentenced to undergo Rigorous imprisonment of two years under Section 7 of the aforesaid Act of 1988 and also fine of Rs. 8,000/- in default whereof to undergo Rigorous imprisonment for four months and has been sentenced to undergo 2½ years of rigorous imprisonment under Section 13(2) read with Section 13(1)(d) of the aforesaid Act of 1988 and pay fine of Rs. 12,000/- in the

district court and in default thereof to undergo rigorous imprisonment for six months. It has been directed that both the sentences are to run concurrently with period already undergone to be set off.

Case of the prosecution

5. The case was registered on the basis of written complaint lodged by Sri Kashi Nath Ram Kashyap, stating that he was appointed on the post of Extra Departmental delivery agent (hereinafter referred to as EDDA) at Hundru and was officiating as a postman in leave vacancy in Doranda Head Post Office since 1995. He alleged that on 26.06.1996 Ugrah Narayan Singh (hereinafter referred to as the 'accused') posted as Superintendent of Post Offices, Ranchi met him at Doranda Post Office and told him that he is officiating for a long period in lieu of leave Vacancy and he wants to substitute another person for officiating. The complainant requested the accused that he has performed the marriage of his daughter in the month of April and his economic condition is bad and so, his officiating work may not be terminated. Then, the accused asked the complainant to give @ Rs. 250/- per month, if he wants to continue the officiating work and demanded Rs. 500/- from the complainant as bribe for the month of June and July and asked the complainant to give Rs. 500/- at his office after receiving salary for allowing him to continue in the Leave Vacancy Post. He further alleged that the accused had told him that if he does not pay the demanded bribe, he will discontinue his services in the Leave Vacancy officiating post. It is further the case of the prosecution that as the complainant did not want to give bribe to the accused, so he came to the CBI office Ranchi on 26.06.1996 afternoon and submitted a written complaint. On receipt of this information the Superintendent of Police, CBI, Ranchi directed Sri A.K. Verma, the then Inspector, CBI, Ranchi to verify the allegation levelled in the complaint. In pursuance thereof Sri A.K. Verma interrogated the complainant and submitted a report to the Superintendent of Police, CBI, Ranchi stating therein that the allegation levelled in the complaint appears to be prima facie true and recommended for registration of regular case under Section 7 of the aforesaid Act of 1988, against the accused for investigation. On receipt of the verification report, the Superintendent of Police, CBI, Ranchi directed Sri P.K. Panigrahi, Inspector to register a case under

Section 7 of the aforesaid Act of 1988 against the accused and take up investigation. Under his order, Sri P.K. Panigrahi, Inspector (P.W. - 6) registered a case bearing No. 11(A)/96(R) at 5 p.m. on 28.06.1996 and started investigation.

6. It is further case of the prosecution that Investigating Officer decided to lay a trap and get hold of the accused red handed while demanding and accepting of illegal gratification of Rs. 500/- from the complainant on 01.07.1996. For this purpose, a trap team of Sri D.B. Singh, Deputy Superintendent of CBI, Ranchi, Sri P.K. Panigrahi, Inspector, Sri A.K. Verma, Inspector and Sri B.N. Singh, Sub Inspector was constituted. The presence of two independent witnesses namely P.K. David, Deputy Manager (Vigilance) and Sri A.N. Singh, Senior Security Officer, both of Central Coalfields Limited were arranged and witnesses assembled with other members of the team in the office room of Dy, Superintendent of Police, CBI, Ranchi on 01.07.1996 at 10.15 A.M. Sri D.B. Singh explained the procedure of proposed trap as well as role to be played by every member of the team. Sri P.K. Panigrahi, handed over the complaint to both the witnesses who after going through the same questioned the complainant on certain aspects and the complainant confirmed the allegation in presence of all the members. Sri D.B. Singh, explained use of Phenolphthalein powder during trap, gave practical demonstration and the solution turned pink was transferred in a glass bottle and was marked as Exhibit. Thereafter five G.C. Notes of 100 denomination were taken which were treated with Phenolphthalein powder by Sri B.N. Singh and given to the complainant who kept it in the upper left side pocket of his shirt and the complainant was instructed to handover the money to the accused only on demand. He was also instructed to negotiate bribe money in such a manner so that it was audible to the members of the trap team including independent witnesses and to give signal by raising his hand over his head as soon as the bribe amount was accepted by the accused. Both the witnesses and the trap party were instructed by Sri D.B. Singh to remain closely present to overhear the conversation between the complainant and the accused and also to watch the transaction of passing of the bribe amount between the two. The required procedure of personal search before trap were under taken to ensure that nobody carry anything

on his person except the Identity Card. After completing the necessary formalities, the pre trap memorandum was prepared at about 12 hrs. on 01.07.1996.

7. It is further the case of the prosecution that the trap party left the CBI office at about 12.05 p.m. on 01.07.1996 and office of the accused was located in the 3rd floor of the building and when the complainant went inside the office room of the accused, he was informed that the accused was not available on his seat and it was decided by the trap party to go down the stairs and wait outside. Again at 12:30 p.m. the trap party along with the complainant went upstairs and while climbing the stairs between the 2nd floor and the 3rd floor the accused was seen coming down stairs.
8. It is the case of the prosecution that in the middle of the stairs, the complainant stopped and greeted the accused by saying "Pranam Sir" and they stopped in the mid stairs, the witnesses slowly walked past the accused and all the team members and the witnesses got themselves at visible distance from the stairs. It is alleged that as the complainant stopped and greeted the accused, the accused reciprocated by saying "Pranam, kyaji paise lekar aaye ho". Upon this the complainant replied "Jee sir, Paanch Sau le aaya hun." At this, the accused extended his right hand towards the complainant and told him "De do, Mein tumhara officiating discontinue hone ke baad fir se continue karwane ke liye Doranda post master ko likh dunga." Thereafter the complainant handed over the tainted money of Rs. 500/- on the extended right hand of the accused who accepted the amount in his right hand, opened the upper closed button pocket of his shirt and kept the tainted money in the inner pocket of left upper side of his shirt and then closed the button. Thereafter the accused told the complainant "Tum Jao". The conversation between the complainant and the accused was over heard by both the witnesses as well as team members of the trap team and all the persons saw the passing of the bribe money and the complainant gave the pre-arranged signal and the trap team caught hold of the accused with the bribe money and the accused became nervous and admitted to have demanded and accepted an amount of Rs. 500/- from the complainant. Thereafter the accused was taken inside the office chamber of Senior Superintendent of Post Office in the 2nd Floor and the solution of sodium carbonate in plain water was

prepared and right hand fingers of the accused turned pink upon being dipped in the solution. The pink solution was transferred to a clean glass bottle and was duly sealed inside. The tainted money was also recovered and compared with the pre trap memorandum which tallied and the notes were sealed in an envelope which was signed by all concerned. The shirt of the accused was also dipped in a separate solution which also turned pink. The pink solution was transferred in another clean glass bottle which was also sealed and signed by all concerned. It is also alleged that upon enquiry the personal file of the complainant, which contained the correspondences/office orders etc. relating to officiating post of the complainant was available with the post master of Doranda Head Post Office and the postmaster Sri Shiv Kumar Singh was requested to bring the personal file of the complainant. In C.B.I. office, the seized shirt of the accused seized earlier was kept in an envelope and was duly sealed and signed by the all concerned. A recovery memorandum and seizure memo was prepared at about 5 P.M. It is also alleged that during investigation, the post master of Doranda post office had stated that the complainant was under the administrative control of the accused and the accused was competent to take a decision for continuance of the complainant as officiating postman. Sri S.P. Singh had also stated that the complainant was officiating as postman in Doranda head post office since 29.04.1995 under the orders of the accused and the then post master of Doranda had prepared an order dated 11.06.1996 by which the complainant was directed to report back to his old unit, however, the same was not served on the complainant till 01.07.1996 and the complainant continued in the officiating post till 23.05.1997. Upon receipt of the sanction for prosecution the charge sheet was submitted.

9. The accused was tried and convicted by the learned trial court.

Arguments of the appellants.

10. The Main Grounds as submitted by the learned counsel for the appellants are :

- (i) The presumption under Section 20 of the aforesaid Act of 1988 is rebuttable which has been rebutted by the accused on balance of probabilities.

(ii) Accused has proved the purpose of accepting money by leading defence witnesses, DW-1 to DW-4 and by cross-examination of the prosecution witnesses.

(iii) There are direct evidences of DW-4 and strong evidences of DW-1, DW-2 and DW-3 on the point of advancement of loan by the accused to the Informant which are admissible.

(iv) There is no finding of the trial court disbelieving the defence witnesses and there is also no adverse observation or finding against them.

(v) Statements of complainant (PW-1) are inconsistent with regard to date or time of his daughter's marriage.

(vi) Complainant has admitted that no benefit, monetary or otherwise could be derived by the accused by retaining his posting.

(vii) The accused was not in a position to grant any favour to the complainant.

(viii) Some material witnesses / some members of trap party have not been examined.

11. The learned counsel for the appellants submits that the main issue is whether the demand or acceptance of Rs. 500/- by the accused from the complainant was by way of bribe or by way of part refund of loan.

12. The learned counsel for the appellants submits that the case of prosecution is of demanding and accepting illegal gratification other than legal remuneration as motive or reward for retention of the complainant/P.W. 1 at officiating post in Doranda Post Office instead of his being sent back to his parent post at Hundru Post Office, after expiry of his 6-month's tenure. On the other hand the case of the defence (as per the suggestion given to the informant-PW-1 in para 29 of his cross examination), is that the complainant had earlier taken loan at the time of his daughter's wedding, which he was refunding at the time of trap and since the complainant was to be repatriated from Doranda Post Office, therefore he

has falsely implicated the accused. It is submitted that this defence of the accused was taken since the beginning.

13. It is submitted that in a criminal case the defence case has to be proved on the principles of preponderance of probability even when presumptions are created against the accused under Section 20 of the aforesaid Act of 1988, the rebuttal is on the same principle. It is submitted that the accused in the instant case has rebutted the presumption (if any, of the money being accepted as a motive or reward for showing favours) by leading defence evidence, through four independent witnesses who have not been cross-examined on the statements given by them touching upon the controversy. Three of them seem to have not at all been cross-examined, and no suggestions to the contrary have been given to them on the clinching materials flowing from their depositions. He has also referred to cross examination of the prosecution witness particularly P.W. 1.

14. The learned counsel for the appellants has relied upon following judgements: -

- i. **AIR 1977 SC 666, Trilok Chand Jain v. State of Delhi**, para 8 at page 669 to submit that such rebuttable presumptions in anti-corruption criminal laws can be rebutted by proof which may be in the shape of defence evidence or in the circumstances appearing in the prosecution evidence itself.
- ii. **AIR 1979 SC 1455, Man Singh v. Delhi Administration** at page 1456 to submit that the standard of proof required for the defence to rebut such presumption would be satisfied if he offers a defence or explanation, which is probable.
- iii. **Sk. Hasib v. State of Bihar, (1972) 4 SCC 773**, para 4, for consideration of the evidentiary tatus of the FIR as in the present case it has been stated in the FIR that the daughter of the informant was married in the month of April 2006.
- iv. **V. Sejappa v. State, (2016) 12 SCC 150**, para 18-21 to submit that in trap cases proof of demand of money for the purposes mentioned in S. 7 of the aforesaid Act of 1988 is necessary, and mere, 'recovery' of money would not be enough to convict a person.

15. The learned counsel for the appellants submits that in the present case, the accused has been able to rebut the presumption on the principles of preponderance of probability by taking the plea of loan and proving it through his defence evidence, direct as well as circumstantial and also through the circumstances appearing in the prosecution evidence. The learned counsel has extensively referred to the evidences on record to submit that the accused had discharged his onus on the principles of preponderance of probability to rebut the presumption and the prosecution did not succeed in discharging the reverse burden.

Arguments of opposite party -CBI- State

16. On the other hand, the learned counsel appearing on behalf of the CBI has submitted that the conversation, which had taken place between the accused and the complainant, in presence of the shadow witness, has been supported by the complainant as well as the shadow witnesses in their deposition and accordingly, there can be no doubt that there was demand of illegal gratification of money. The learned counsel submitted that so far as the recovery of tainted money from the possession of the accused is concerned, there cannot be any doubt.

17. It has been submitted that admittedly there is a provision to inform the Post Office if any employee takes loan from anybody or he gives loan to anybody but no such information was given and accordingly the story of giving loan is an after thought to save the accused from charges of bribery. The DW 4 has stated that on the occasion of Holi of year 1996 he had gone to the house of the accused and met the complainant at that time who came for some help for the marriage of his daughter and in his presence accused gave loan to the complainant of the present case. It is submitted that it is unbelievable that such loan was given without any execution of any document or instrument and admittedly the accused and the complainant are not relatives and accordingly the defence case does not appear to be true. He submits that the presumption in law under section 20 of the aforesaid Act of 1988 is mandatory and not discretionary once the condition precedent is satisfied as in the present case. In the instant case the amount of Rs. 500/- is admitted to have been recovered from the pocket of the accused, therefore, it would be presumed that the said amount was accepted as reward for public duty especially in

view of the evidence adduced by P.W. 1,3 and 6. It is submitted that the argument of the appellants is not tenable.

18. The learned counsel submitted that in view of the aforesaid facts and circumstances, the demand of the illegal gratification as well as the recovery of tainted money was duly established by the prosecution beyond all reasonable doubt and therefore, the presumption under Section 20 of the aforesaid Act of 1988 has come into play and it was for the accused to lead cogent evidence for rebuttal of such presumption and the accused failed to discharge his onus. He submitted that the learned trial court has rightly convicted the accused and there is no illegality or perversity in the impugned judgment. He submitted that when the entire evidences on record are taken in totality, there can be no doubt that the prosecution has proved the case against the accused beyond all reasonable doubt and the accused has been rightly convicted.

Findings of this court

19. The prosecution case as well as the respective case of the parties have been discussed above and it is not necessary to repeat the same.

20. During the trial altogether 6 prosecution witnesses were examined.

- a. P.W.-1 Sri Kashi Nath Ram Kashyap who was the informant of the case;
- b. P.W.-2 Sri Bahadur Singh, the Director, Postal Services, South Bihar Region;
- c. P.W. 3, Prakash Kumar David-Independent witness and member of trap team;
- d. P.W. 4, Vijay Kishore Singh, CBI Constable and a formal witness;
- e. P.W. 5, Satrugan Prasad Singh, post master Doranda Post Office , and
- f. P.W. 6, P.K. Panigrahi, Investigating Officer and one of the members of the trap team.

21. From the records of the case it appears that out of the two independent witnesses who accompanied the trap team, only one has been examined as P.W-3 and the other independent witness namely, Awadh Narayan Singh had died. It further appears that the officer who verified the complaint by

interrogating the complainant and was also a member of the trap team, namely, A.K Verma, Inspector of CBI was not examined as a witness. Two other members of the trap team namely, D.B. Singh, Deputy S.P. of CBI and B.N. Singh, sub-inspector of CBI have also not been examined as witnesses before the learned trial court. Out of the members and persons accompanying the trap team, only three have been examined i.e the complainant, the Investigating officer and one independent witness as P.W- 1,6 and 3 respectively.

22.The defence has examined altogether four witnesses: -

- i. DW-1 Kashi Nath Gupta
- ii. DW-2 Ram Deo Ram
- iii. DW-3 Kamakhya Nand Tiwari
- iv. DW-4 Jagdish Vishwakarma

23.P.W. 1 is the complainant himself. He has stated that in the year 1996 he was working as officiating post man at Doranda Post Office and his original post was Extra Department Male Carrier cum Extra Department Delivery. He has also stated that he was working in the officiating post under the orders of Assistant Superintendent of Post Office. He has also exhibited the letter dated 27.04.1995 which was issued by the accused and marked as Exhibit-1 and thereafter he joined on 29.04.1995 and the letter of joining was marked as Exhibit-2. He has stated that on 26.06.1996 the accused came to him and informed him that in his place he would appoint somebody else. Upon this, the P.W. 1 said that there is a marriage of his daughter and his economic condition is not sound and he may be permitted to continue. To this, the accused told that the complainant will have to pay an amount of Rs. 250/- per month by way of bribe and the accused could make payment of bribe amount for the month of June and July together on 01.07.1996. The complainant deposed that he did not want to pay the bribe money and therefore he filed a written complaint before the C.B.I. office on 28.06.1996. The written complaint has been marked as Exhibit-3. He has also stated that upon filing of the written complaint, the enquiry was made by Mr. A.K. Verma and the complainant was asked to come to the C.B.I. office at 10 O' clock on 01.07.1996. Consequently, he came there and he was introduced to Deputy Superintendent of Police, D.B. Singh and at that point of time two officers

of the C.C.L. Sri A.N. Singh and Sri P.K. David were also there. The persons read the complaint and also made enquiry from the complainant. He has stated that on a plain paper Phenolphthalein powder was taken which when dipped in the solution of sodium carbonate solution, it turned pink. The solution was kept in a bottle which was sealed in which everybody signed and he has exhibited his signature on the same as Exhibit-4 and the bottle was marked as material Exhibit-1. He also submits that upon asking as to whether he has brought the currency notes for which he took out five 100 rupee Notes whose numbers were noted and Phenolphthalein powder was put on the currency notes which he kept in his pocket of the shirt and was instructed that he should give this only when a demand is made and then he was given the necessary instructions. The piece of paper was kept in an envelope on which everybody has put their signature and his signature was marked as Exhibit 4/1. The envelope was marked as material Exhibit-II. The remaining powder of Phenolphthalein was kept in an envelope and the said envelope was marked as material Exhibit-III and his signature on the same was marked as Exhibit 4/2. A pre-trap memorandum was prepared and the complainant put his signature on all the pages which were marked as Exhibit 4/3 to 4/7. The complainant has stated that thereafter everybody proceeded and he met the accused in the stairs and greeted him by the word '*Pranam*'. In response, the accused also greeted him by the word '*Pranam*' and asked him as to whether the complainant has brought the money or not. Thereafter the complainant extended his hand and handed over Rs. 5,00/- by taking it out from his pocket of the shirt and immediately thereafter the accused kept it in his pocket and the accused asked him to leave. Thereafter the complainant made the signal as already instructed to him and consequently the accused was caught red handed with the bribe money. The accused was taken to the chamber of S.S.P. and in the chamber of S.S.P, the solution of sodium carbonate was made and the right hand of the accused was dipped, the solution turned pink and the solution was kept in a bottle and sealed in which the complainant had put his signature which was marked as Exhibit 4/8 and the bottle was marked as material exhibit-IV. Thereafter the accused was asked to take out the money from his pocket which tallied with the number mentioned in the pre-trap memorandum. The money was kept in an envelope which

was sealed and marked as material Exhibit-V in which the complainant had also put his signature and his signature was marked as Exhibit 4/9. The envelope was opened in the court and shown. Thereafter the other goods recovered from the possession of the accused and were marked as material Exhibit VI to Exhibit VI/4. Thereafter the shirt of the accused was dipped in the solution of Sodium carbonate which was also turned pink and it was put in an envelope on which he had put his signature marked as exhibit-4/10 and the bottle was marked as material exhibit-VII. The envelope in which the shirt was kept was marked as material exhibit-VIII and his signature on the envelope was marked as exhibit-4/11. He has also stated that ultimately the recovery memorandum was prepared in the CBI office in which everybody put their signature. He had also put his signature which were marked as Exhibit 4/12 to Exhibit 4/21, a copy of which was given to the accused in which the accused had also put his signature. The post trap memorandum was marked as exhibit-5.

During his cross examination the informant (P.W-1) has stated that the accused had power to appoint anybody else on the post he was working and the complainant had told the accused that his daughter is to be married and his financial status was not good, therefore he had requested the accused to allow him to continue. He has stated that he had five daughters and the marriage was in connection with his eldest daughter. He has stated that he did not remember the date of marriage. In further cross examination he has stated that his elder daughter got married in the month of April, 1996 and he has also stated that he had enough money for the marriage of his daughter.

The complainant (P.W. 1) has fully supported the prosecution case.

This court finds that the complainant was thoroughly cross examined on various aspects of the matter in connection with trap, but no material contradiction was found except in connection with certain facts regarding the marriage of his daughter and he has revealed in his cross examination that his elder daughter was married in the month of April, 1996.

24. **P.W-3 Prakash Kumar David** is one of the independent witness who had accompanied in the trap team. He has deposed that in June-July 1996, he was working on the post of Deputy Manager, Vigilance in C.C.L.,

Darbhanga House, Ranchi. On 30.06.96 his officer Sri I.N. Jha told him that he will have to go to C.B.I. Office on 01.07.96 at 10 O'clock for becoming witness. Then he went to C.B.I. Office and met D.B. Singh, Deputy S.P., C.B.I. in his Chamber and was introduced to Sri P.K. Panigrahi, Sri A.K. Verma, Inspector, C.B.I., B.N. Singh, Sub-inspector, C.B.I., Sri A.N. Singh, Senior Security Officer, C.C.L. and Kashi Nath Kashyap, the complainant and they were also told about the purpose of gathering. The complaint of P.W-1 was shown. P.W-1 had stated that he made complaint that the accused, Assistant Superintendent of Post Office had been demanding bribe from p.w-1 as he had been working on adhoc basis and therefore was demanding money for continuation of his job. He has deposed that they had inquired from the P.W-1 in this respect and were satisfied with his complaint.

This witness has explained the entire pre trap demonstration as well as preparation of pre-trap memorandum and has exhibited his signatures on material exhibit-I, II, III as well as his signature on all pages of pre trap Memorandum. He has also deposed about the presence of all the members of the trap team, the complainant and two independent witnesses.

This witness has deposed that thereafter, they proceeded towards multi-storied building of the Post Office at around quarter past 12:00 O'clock. After reaching there, it was found that the office of the accused was at third floor of the building. The complainant went to the Office of the accused to meet him and they were following him but the accused was not present in his office. At about 12:30 the complainant proceeded again and was followed and while going upstairs from second floor to third floor, complainant came across the accused when the accused was coming downstairs. On seeing the accused the complainant wished him, then the accused asked him whether he has brought money. Upon which the accused replied that he has brought it. Then the accused demanded and stretched out his right hand, and told that he will write the letter for start of his officiating, which has been closed. Thereafter, the complainant took out money from pocket of his shirt and gave in the stretched out right hand of the accused who kept the money in upper

inside pocket of his shirt. Thereafter, the complainant made indication by raising his hand and all reached him.

P.W-6 P.K. Panigrahi, challenged the accused that he had been given money. B.N. Singh caught hold of the wrist of the accused and took him to the office of Senior Superintendent of Post Office, which is situated in the second floor. After reaching there, solution of sodium carbonate was prepared, the finger of right hand of the accused was dipped in the solution and its colour changed into pink. It was kept in the bottle and the bottle was sealed. A label was pasted on it. Everyone including this witness had put their signature on it and the bottle was already marked as Material Exhibit-IV and his signature was marked as Exhibit-4/31. Thereafter, the accused was asked to take out money from his shirt and he took out and gave the money from the inside pocket of his shirt. This witness was asked to match the numbers of the money with pre-trap memo and upon comparison found them to be the same. That money was kept in an envelope and the same was sealed. Everyone including this witness put their signature on it already marked as Material Exhibit-V and his signature marked as Exhibit-4/32. He has exhibited the five notes from the envelope which have been marked as Material Exhibit-VI to VI/4. He has stated that in place of 3DV331930, the number of one note has been typed as 3DV336930, which is typing error. Thereafter, the shirt of the accused was washed in another solution of sodium carbonate, the colour of solution turned pink, solution was put into a bottle and the bottle was sealed, a label was pasted on it, everyone including this witness put their signature on it marked as Exhibit-4/33 and the bottle was already marked as Material Exhibit-VII. The shirt was kept in an envelope and the envelope was sealed, everyone including this witness put their signature on it marked as Exhibit-4/34 and the envelope was already marked as Material Exhibit-VIII. The shirt was exhibited and marked as Material Exhibit-IX.

Thereafter, they went to Doranda Head Post Office along with the accused and the file related to the complainant was taken out and personnel of the C.B.I. seized it and thereafter, they returned to the C.B.I.'s Office, Ranchi. In C.B.I. Office, memorandum of recovery and

seizure of all these actions were prepared and was read over and after finding the same to be correct, he signed on its every page marked as Exhibit-4/35 to 4/44. A copy of this was served to the accused and after receiving it he endorsed it and put his signature, which is earlier marked as Exhibit-5. He identified the accused in the court.

This witness has been cross-examined at length but there has been no material contradiction in his evidence. This witness has fully supported the prosecution case on the point of verification of the complaint, pre-trap procedures, trap of the accused as well as on post trap procedures.

25.P.W-6 **Prasanna Kumar Panigrahi** is the investigating officer of the case and was also along with the trap team. He has deposed that he was posted as a Police Inspector in C.B.I., Ranchi on 28.06.96. On that day, S.P., C.B.I., Ranchi issued him a written order to register F.I.R. under section 7 of the aforesaid Act of 1988 against the accused, and to further investigate it. The Complaint Petition dated 28.06.96 of the complainant was already marked as Exhibit-3. Superintendent of police had endorsed Sri S.K. Verma, Inspector to enquire its veracity and submit report and this witness identified the writing and signature marked as Exhibit-5/1. In compliance of this endorsement order, Sri S.K. Verma submitted his verification report Marked as Exhibit-7 and the case was registered and given for investigation to this witness and he identified his writing and signature marked as Exhibit-5/2. He has stated that Complainant had written in his complaint that accused had called him in his office with money on 01.07.96 and on this basis, a plan was prepared to catch the accused red handed and a special team was constituted for this. Sri D.B. Singh, Dy. S.P. was leading this team and Sri A.K. Verma, Police Inspector and this witness were in this team. Sri P.K. David, Manager, Vigilance, C.C.L. and Sri Awdhesh Narayan Singh, Senior Security Officer, C.C.L. were included in this team as independent witnesses. All the members of the team, both independent witnesses and complainant were asked to appear in C.B.I. Office, Ranchi at 10:00 O'clock on 01.07.96. As per this order, all assembled in the Chamber of Sri D.B. Singh, Dy. S.P. at around quarter past 10:00 O'clock on 01.07.96. Sri D.B. Singh, explained the purpose of the assembly. This witness has also explained the entire pre-trap demonstration as well as preparation of pre-

trap memorandum and has exhibited signature on the material exhibits I,II, III as well as his signature on all pages of pre-trap memorandum. He has also deposed about the presence of all the members of the trap team, the complainant and two independent witnesses of the trap team.

Thereafter, he along with team members, two independent witnesses and complainant left for the Office of Senior Superintendent of Post Office, Ranchi by two vehicles at 12:05 in the day. After reaching there, they inspected the place secretly and found that the office of the accused is on the third floor of that building. Thereafter, all came down and discussed and witness Sri Awdhesh Narayan Singh was directed that he would go to the room of the accused along with the complainant and he will himself watch the transaction. The complainant along with witness Sri A.N. Singh went to the room of the accused at around 12:20 in the afternoon and all remained in his vicinity. It was found that the complainant was not in his Chamber. All came down and again left for third floor at 12:30. When the complainant was going to third floor from second floor through stairs he saw accused coming down through same stairs. Looking at the accused the complainant paid respect to him. In the meanwhile, Inspector Sri A.K. Verma and witness Sri A.N. Singh reached near both of them. Accused asked the complainant as to whether he has come with money to which complainant replied that he has come with five hundred rupees. Upon this the accused moving his right hand towards the complainant asked him to pay the money and complainant took out the tainted money of Rs. 500/- from his pocket of his shirt and gave to the accused who received that money with his right hand and opened the upper buttons of his shirt with his left hand and kept that money in the inner pocket of his shirt and closed the upper buttons of his shirt. After receiving money, accused told the complainant that after your termination you would be re-instated on the duty upon asking the Post Master of Doranda. The complainant indicated by lifting his right hand. Looking this, all the team members reached near the accused and this witness introduced himself as well as all to the accused and challenged him on allegation of receiving bribe. Hearing this, accused was scared and accepted taking bribe in presence of all. Then, he was arrested.

Accused was taken to the room of Senior Superintendent of Post Office. Sri B.N. Singh, S.I. prepared a solution of sodium carbonate in a glass of water. Accused was asked to wash his right hand in that solution which turned pink. This solution was kept and sealed in a bottle already marked as Material Exhibit-IV in which all signed and his signature was marked as Exhibit-4/48. Thereafter, direction was given to the accused to take out the bribe money from his pocket. On this, he took out the bribe money from the inner pocket of his shirt. On counting, it was found Rs. 500/- and it was matched with number of notes as written on pre-trap memo and it matched. The recovered money was sealed in an envelope and all had put their signature. The envelope was already marked as Material Exhibit-V and his signature marked as Exhibit-4/49. The currency notes were identified which were already marked as Material Exhibit-VI to VI/4. In the meanwhile, the inner pocket of the shirt was put in the solution of sodium carbonate which turned pink. This pink solution was kept and sealed in a bottle and a paper was passed and signed by all. The bottle was already marked as Material Exhibit-VII and his signature marked as Exhibit-4/50.

On enquiry, it was found that service book and other documents of complainant are with Head Post Master of Doranda Post Office which were seized. Then all returned to C.B.I. Office along with complainant and accused. The shirt of the accused was sealed in an envelope after coming back to the C.B.I. Office. The envelope was already marked as Material Exhibit-VIII and his signature on the envelope was marked as Exhibit-4/51. He has identified the shirt already marked as Material Exhibit-IX. Thereafter, post trap memorandum cum seizure was prepared. It was read over to all and explained also in Hindi and finding it correct all had put their signature on it which was under his handwriting marked as Exhibit-10, a copy of which was served upon the accused who put his endorsement and signature after receiving it, already marked as Exhibit-5. He has stated that he knows the accused who was absent on that day. This witness has stated that he had seized different documents in course of investigation of the case and recorded the statement of witnesses and submitted application for sanction order

for prosecution with documents of case. Sri Bahadur Singh, Director of Postal Service, Ranchi accorded sanction order for prosecution against accused and upon receipt of sanction charge-sheet was submitted.

During cross examination he has stated that he had received Enquiry Report of veracity by Sri A.K. Verma dated 28.06.96 and himself studied the veracity report based on the enquiry with complainant. He had not recorded the statement of Sri A.K. Verma in course of investigation and reference of report is not mentioned in any Para of case diary rather it is mentioned in F.I.R. and reference of that report is not mentioned in the document, which is submitted with charge-sheet. He had only organized the team for trapping but it was led by D.B. Singh, Dy. S.P. and no proof was collected about the allegation made by complainant before organizing the raid and no verification was made by him. He had not written the distance at which he, D. B. Singh, Awdhesh Narayan Singh and Prakash Kumar David were standing at the time of trap. He did not get the information as to when the marriage of daughter of the complainant was solemnized. It is wrong to say that accused told him that he had given money to the complainant at the time of marriage and when he was pressurized for return of money then the complainant framed a concocted story of giving bribe of Rs. 500/- and implicated him.

26.P.W-4 **Vijay Kishore Singh** is a formal witness who was posted as Police at C.B.I., Ranchi Branch on 07.10.03 and was entrusted to serve summon on witness Awdhesh Narayan Singh and when he went to serve summons, on enquiry came to know that he had died. He received photocopy of his Death Certificate from his office and prepared a report at the back side of summon which is under his pen and signature marked as Exhibit-6. This witness has proved that one of the independent witness of the trap team had expired.

27.P.W-5 **Shatrudhan Prasad Singh** was working in Doranda Head Post Office. He has stated that when there is lack of postman in his post office, then delivery of post was got done by Routine E.D.D.A. (Extra Dept. Delivery Agent). Through Exhibit-1 complainant was E.D.D.A. in Hundru and it was issued by the accused for officiating in Doranda Head

Post Office. The complainant had taken over charge in Doranda Head Post Office on 29.04.95 and relinquished charge on 24.05.97 and he used to work under the accused who was the Competent Authority for giving officiating duty. He identified the accused in the court. In Cross-examination he has deposed that he has no knowledge about rule regulations related to E.D.D.A. This witness has proved that the complainant was working as EDDA and the accused was competent to issue appropriate order for that purpose and the complainant worked under the accused. The complainant worked as EDDA from 29.04.95 to 24.05.1997.

28. **P.W-2- Bahadur Singh** on his date of deposition was working on the post of Director, Postal Services, Gorakhpur Region and in November 1997 he was working on the post of Director, Postal Services, South Bihar Region and at that time, accused was on the post of Assistant Superintendent, Post Office but he was suspended and he was competent authority to remove him from the post. He has exhibited the sanction order for prosecution of the accused, which is in total five pages and it bears his signature. He has deposed that he had read and fully understood its content and then he put his signature but does not remember who had typed it and he had read the relevant records sent by CBI and then granted sanction for prosecution. This witness has also been cross examined.

This court finds that this witness has proved the sanction for prosecution of the accused and has also clearly stated that he was the competent authority at the relevant point of time to remove the accused and had gone through the relevant records at the time of grant of sanction. The learned counsel for the appellant has not advanced any arguments challenging the evidence of this witness. This court finds that the sanction for prosecution of the accused has been duly proved to be in accordance with law.

29. On 11-06-2004, statement of the accused was recorded under Section 313 of Cr.P.C. wherein he denied the incriminating evidences put to him and claimed to be innocent and to produce witnesses in defence.

30. D.W- 1 **Kashi Nath Gupta** has stated that on 01.07.96 he was in service on the post of P.R.I. in Doranda post office , Ranchi and was acquainted

with the accused. On 01.07.96, he heard that the C.B.I. personnel had caught and were taking away the accused and he saw that 3-4 personnel of C.B.I. had caught hold of the accused and were telling him that he had taken bribe but the accused told them that he had not taken bribe. This witness deposed that the complainant had taken money for marriage of his daughter and he has been asking for return of the money and was implicated on pretext of the same. The accused was also present there he did not speak anything. Thereafter, the C.B.I. personnel took the accused to the Chamber of S.S.P. and there was gathering outside the Chamber. He asked the accused about the matter and was told that accused had given money to the complainant for his daughter's marriage 5-6 months ago and he was demanding the same money which he had given.

31.D.W-2 Ramdeo Ram in his deposition has stated that on 01.07.96 he was working on the post of Senior Superintendent of Post Office, Ranchi Division, Ranchi and was acquainted with the accused. At that time, he was working on the post of Assistant Superintendent of Post Office, West Subdivision, Ranchi. The money related incident involving the accused had taken place at 11 O'clock and he was in his office Chamber. At that time, Sri P.N. Singh, C.B.I. Inspector brought the accused in his Chamber. This witness asked about the matter. B.N. Singh said that the accused had taken bribe upon which this witness immediately asked the accused about the matter and the accused said that he had given money to the complainant for his daughter's marriage and the complainant had returned the same money, but these people were stating that it was bribe money. Then upon disclosure of the name of complainant he asked the complainant as to whether accused had given him money for his daughter's marriage, to which he replied in affirmative but after that he stopped. Thereafter, the officers of the C.B.I. told that they would deal with it later in their office and took the accused along with them. He has also deposed that some people were noting down what the accused said about the money.

He has also deposed that the appointment of any person as Extra Departmental Mail Carrier is called an adhoc appointment. The maximum period for such appointment is six months. For re-appointment, such person is again required to give application.

In his cross examination, this witness has stated that there is rule for the employees of the post office that they shall give intimation to the post office for loan and there is provision to give intimation even on taking loan as per Conduct Rule and there is provision for punishment also. He was the controlling officer of the accused. He has deposed that the accused had not given him written or verbal information that he had given loan to the complainant for his daughter's marriage.

32.D.W-3 **Kamakhaya Nand Tiwary** has deposed that on 01.07.96, he was posted in Ranchi as Sub-Divisional Superintendent of Post Office, Central Sub-Division. He was acquainted with the accused, who was posted there as Assistant Superintendent of Post Office. On that day at noon, he was in the Chamber of Senior Superintendent of Post Office, Ranchi. he saw that the accused, B.N. Singh, Sub-inspector of C.B.I. and some unknown persons came inside. B.N. Singh said that the accused was caught taking bribe. Then the Senior Superintendent of Post Office asked the accused about the matter, upon which the accused said that he had taken money from the complainant as he had given him some money for his daughter's marriage and the accused returned Rs. 500/-. The Senior Superintendent of Post Office called and asked the complainant who told that the accused had given, but thereafter he did not speak anything. Then the other persons said that they will see it later on, and they were to prepare paper and went away.

33.D.W-4- **Jagdish Vishwakarma** has stated that he was acquainted with the accused who was standing in the dock and he also knew the complainant who was working in Hinoo Post Office. In the year 1996, after Holi, he had gone to the residence of the accused to meet him. At the same time, complainant also came and stood there and the accused asked him the purpose of his visit. Complainant stated that he was going to marry his daughter, so he needed some help from him. Then the accused asked him to sit and went inside and brought five thousand rupees and gave the same to the complainant after counting. Thereafter, the accused told the complainant that he was also in need of money and asked him to return the money early and then the complainant went away. After one or half a month, when this witness came across the accused in the post office, he told him that the complainant had not returned money till then

and made him April fool and this witness asked the accused to demand money from the complainant and then he would give. This witness came to know later from his son that the complainant implicated the accused while returning his money.

During cross-examination this witness has stated that the complainant is not his relative and he knew both the complainant as well as the accused. He had gone to meet the accused after Holi and the accused also used to come to his house. He has also stated that the complainant counted the money before him and after handing over the money, the accused told that he gave five thousand rupees.

34. Upon perusal of the evidences on record, this court finds that the evidence of P.W-1, 2 and 6 are consistent in their evidence and there is no material contradiction in their evidence so far as demand and acceptance of money is concerned. The prosecution has successfully proved -

- i. filing of complaint by the complainant;
- ii. the verification of the complaint by examining the complainant regarding demand of Rs. 500/- by the accused from the complainant,
- iii. institution of FIR and direction upon P.W-6 to investigate the case;
- iv. formation of the trap team and inclusion of two independent witnesses in the trap team, including P.W-2 as well as the investigating officer P.W-6;
- v. the pre-trap procedures including preparation of pre-trap memorandum,
- vi. Time, place and demand of money by the accused during trap;
- vii. handing over of Rs. 500/- by the complainant to the accused during trap upon demand;
- viii. Immediate recovery of Rs.500/- from the possession of the accused;
- ix. Immediate arrest of the accused with the money;
- x. preparation of post -trap memorandum, seizure etc.

35. This court finds that the mismatch with regards to one of the five notes has also been explained by P.W-2. The independent witness in the trap

team i.e P.W-2 has also fully supported the prosecution case. The prosecution witnesses have been cross examined at length but there is no material inconsistencies or contradictions to create any doubt in the prosecution case on the aforesaid points. This court finds that although some of the members of the trap team including one independent witness ,who had expired, were not examined before the learned court below but considering the consistencies in the evidence of the aforesaid witnesses, this court is of the considered view that demand and acceptance of money by the accused from the complainant has been proved by the prosecution beyond any reasonable doubts. The learned trial court has also rightly found that the evidence of the aforesaid prosecution witnesses revealed that they have consistently stood the test of cross examination, their evidence is supported by documentary and material evidences and there is no iota of doubt about the trap laid by the CBI. The learned trial court has given its detail reasoning to come to the said conclusion to which this court fully agrees considering the aforesaid evidences on record.

36.The specific case of the appellants before this court is that the accused had rebutted the presumption under section 20 of the aforesaid Act of 1988 on the touch stone of preponderance of probability and the prosecution could not discharge its burden thereafter.

37.It is to be examined now as to -

whether the accused had rebutted the presumption under section 20 of the aforesaid Act of 1988 on the touch stone of preponderance of probability?

38.This court is of the considered view that the statutory presumption under Section 20 of the Prevention of Corruption Act, 1988 can be rebutted by bringing on record some evidence either direct or circumstantial that the money was accepted other than for the motive or the reward under Section 7 of the aforesaid Act of 1988 and the standard required for rebutting the presumption is to be tested on the touch stone of preponderance of probabilities.

39.From the perusal of the judgement passed by the Hon'ble Supreme court in the case of *State of Gujarat v. Navinbhai Chandrakant Joshi, reported in (2018) 9 SCC 242* it is clear that:

- a. *It is well settled that to establish the offence under Sections 7 and 13(1)(d) of the Act, particularly those relating to the trap cases, the prosecution has to establish the existence of demand as well as acceptance by the public servant.*
- b. *Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. .*
- c. *So far as the presumption raised under Section 20 of the Act for the offence under Section 7 of the Act is concerned, it is settled law that the presumption raised under Section 20 of the Act is a rebuttable presumption, and that the burden placed on the accused for rebutting the presumption is one of preponderance of probabilities.*
- d. *It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence.*
- e. *It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt.*

40. It is well settled that the presumption to be drawn under Section 20 is a rebuttable presumption. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption then it can be held that the prosecution has proved that the accused received the amount towards gratification.

41. In the present case since it is established that there is demand of money from the side of the accused and the accused was caught red handed with the money, it was for the defence to offer any satisfactory explanation in the light of the principle of preponderance of probabilities, failing which it will be presumed that he has accepted the money as illegal gratification.

42. The date of alleged demand and trap are 26.6.1996 and 1.7.1996 respectively. In the FIR filed in the month of June 1996, the complainant (P.W-1) has admitted that his daughter's marriage had taken place in 'April 1996'. In the deposition PW 1 has tried to improve the story by projecting as if the daughter's marriage was yet to happen when the demand was made, by saying that on 26.06.1996 when the accused told him that he would post someone else in place of the informant in the Doranda Post Office, the informant pleaded that his daughter's wedding is

going to take place and therefore he may be allowed to retain the post. This improved version, left alone, would have taken away the defence of the accused that the occasion for giving loan had taken place in the past. However in the cross examination while saying that his daughter's wedding was going to happen, he deposed that he had five daughters and also admitted that the wedding which he was referring to was that of his eldest daughter and that marriage of the eldest had taken place in the month of April, 1996. Thus, the evidence of P.W-1 itself is enough to prove that one of his daughter's marriage did take place in April 1996 and there could be an occasion for taking loan from the accused immediately after holi for the purposes of the wedding in April 1996. The specific defence of the accused is that the complainant had taken loan from the accused which he returned during trap and the accused had led oral evidence of independent witness, discussed later in this judgement on the point of loan to the complainant.

43. There is no doubt that in the present case the complainant is an interested witness and the evidence of the complainant was required to be scrutinised with greater care which the learned court below has failed to do and the aforesaid aspects of the matter has not been properly considered while convicting the accused.
44. Another circumstance is that the defence witnesses have given evidence on what was being said by the accused when he was trapped who were the employees in the post office and were independent witness and the accused was brought in the office of Senior Superintendent of Post immediately after being caught and they had deposed that the CBI people had written what was being stated by the accused.
45. The circumstances directly appearing in the testimony of the DW-1, Kashi Nath Gupta, who was an employee in the Postal Department and was a witness to what was being said amongst CBI persons has clearly deposed that the money taken by the accused was not bribe rather it was refund of money taken by the informant in his daughter's marriage. The next in series is the Senior Superintendent of Post Office –DW 2 who has also supported the accused on this point. Depositions of these witnesses are clinching and they have fully supported the case of the accused that the money was nothing was return of the loan amount which the complainant

had taken from the accused for the marriage of one of his daughters in the month of April 1996. The other trap member Mr. B.N. Singh of CBI has not been examined and he was the person who held the hand of the accused and was in a position to give the first reaction of the accused in court and could have been cross examined.

46. The other circumstance is that the complainant, when he makes the relevant allegation as PW-1 of what happened on the stair case, he only says that the accused asked about the money, took it and said that “now, you can go”. The P.W. 6, the I.O. as well as a member of the trap team have given a different version.
47. Further, direct evidence has come from the independent DW-4, whose independence has not been shaken in cross-examination. His presence is natural, at the time when the loan was actually given and he is an eye witness to the loan transaction. He has deposed vividly about the conversation between the accused and the complainant as to the help sought due to daughter’s marriage, the amount having been given, etc. The occasion was of post-Holi visit, which is proximate to the marriage in April 1996 of the daughter of the P.W-1 (complainant), the eldest one out of his five daughters. The learned court below has rejected the evidence of the D.W-4 on the ground that no intimation about taking or giving of loan was given to the department, no documentation was prepared and the amount was immediately made available upon asking. This court is of the considered view that the learned court below was not justified in discarding the evidence of the D.W-4 on the aforesaid grounds as the evidence of D.W-4 is natural and reliable and it is not in dispute that he is an independent witness who knew both the accused as well as the complainant. The evidence produced by the accused in the present case regarding marriage of the daughter of the complainant in the month of April, 1996 flows not only from the cross examination of the P.W. 1 but also from, the evidence of DW 4. The learned court below has failed to appreciate the defence version by correctly applying the principles of preponderance of probability and has wrongly convicted the accused under the facts and circumstances of this case.
48. It is further not in dispute that DW 4 the complainant and the accused were known to each other and in such circumstances extended the helping

hand by the accused to the complainant for the purposes of marriage of eldest daughter of the complainant was enough to discharge the burden of proof on the part of the accused and rebut the presumption under Section 20 of the aforesaid Act of 1988 on the touchstone of purposes of preponderance of probabilities and for that purpose not only the cross examination of the witness was required to be seen but also the evidence produced by the accused was required to be seen.

49. This court finds that the accused had succeeded in discharging his burden in proving the preponderance of probabilities in his favour and rebut the presumption under Section 20 of the Prevention of Corruption Act, 1988 and upon discharge of said burden it shifted to the prosecution which still had to discharge its original onus that never shifts i.e. establishment of the whole case of guilt of the accused beyond all reasonable doubt. The burden which shifted to the prosecution after discharge of burden by the accused was not discharged by the prosecution and accordingly the prosecution has failed to prove the case against the petitioner beyond the shadow of all reasonable doubt.
50. This court is satisfied that the accused proved the case by the test of preponderance of probabilities and accordingly this court is of the considered view that the amount was not taken by the accused as gratification and consequently the prosecution has failed in establishing the guilt of the accused beyond all reasonable doubt that the accused received any gratification.
51. As a cumulative effect of the aforesaid findings, the present appeal is allowed and the judgement of conviction of the original appellant (since deceased) is hereby set-aside.
52. Office is directed to send the lower court records to the court concerned.
53. Let this order be communicated to the court concerned through e-mail/FAX.

(Anubha Rawat Choudhary, J.)