

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (S.J.) No. 578 of 2002

Bholu Mandal, son of Late Bhandu Mandal, resident of Basanti
Mata Colliery, P.S. Nirsa, District - Dhanbad

... .. **Appellant**

Versus

The State of Jharkhand

... .. **Respondent**

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Appellant	: Mr. Mahesh Tiwari, Advocate
	: Mr. Ritesh Kr. Mahto, Advocate
	: Ms. Sanskriti Shalini, Advocate
For the C.B.I.	: Mr. Deepak Kumar Bharti,
	(Sr. P.P.-cum-Retainer Counsel)

C.A.V. on 17.09.2025

Pronounced on 21.07 .2026

1. Heard Mr. Mahesh Tiwari, learned counsel appearing for the appellant and Mr. Deepak Kumar Bharti, learned Sr.P.P-cum-Retainer Counsel appearing on behalf of the C.B.I.
2. This appeal is directed against the judgment of conviction dated 12.09.2002 and the order of sentence dated 13.09.2002 passed by the learned Special Judge, C.B.I.-cum-1st Additional Sessions Judge, Dhanbad in R.C. Case No. 23(A)/87(D), whereby and whereunder, the appellant has been convicted for the offence punishable under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 and has been sentenced to undergo R.I for 2 years and to pay fine of Rs. 300/- and in default of non-payment of fine further sentenced for R.I for 2 months.
3. The present case came into existence upon the written information of one Sukhlal Das, S/o Late Budhan Das, resident of Village – Ledaharia, P.O. – Mugma, P.S. – Nirsa, District – Dhanbad. It was stated therein that his wife namely Sanichari Dasi, was working as Bhattha Kamin in Basantimata Colliery and she died five months ago. For last fifteen days, he

was visiting the Provident Fund Office for the withdrawal of the gratuity amount of his deceased wife. In this context, he met one Mandal Babu, who told him that Rs. 500/- had to be given as bribe for getting the gratuity amount released. When the complainant-Sukhlal Das told him about his poor financial condition and that he had no money, Mandal Babu told him that at present he had to give Rs. 200/- and thereafter, when the gratuity amount is released, the remaining amount would be paid.

4. It has further been alleged by the complainant- Sukhlal Das that on 14.12.1987, he went to the Basantimata Colliery office and it was decided that on 16.12.1987 he had to give Rs. 300/- as bribe for releasing of the Provident Fund amount to Khan Babu and Rs. 200/- as bribe to Mandal Babu for getting the gratuity amount released.

The above said information was given to the S.P., C.B.I., Dhanbad on 15.12.1987 by way of written complaint and after verification of the contents of the above-said written information/complaint of Sukhlal Das (complainant), the allegations were found true and thereafter, an F.I.R., being R.C. Case No. 23/87(D) dated 15.12.1987, has been got registered.

5. The record further reveals that, presence of two independent witnesses, namely Mahadeo Minz, Superintendent, Region D- III, Coal Mines Provident Fund Office, Dhanbad and L. N. Diwakar, UDC in the office of the Regional Labour Commissioner (Central), Dhanbad, were requisitioned through their respective controlling authorities. The above-said two independent witnesses and C.B.I. officials assembled at about 07:00 A.M. on 16.12.1987 at C.B.I office. The purpose of the assembly was made known to them and each one of them introduced themselves and the complaint of Sukhlal Das was read over. Thereafter, the purpose and use of

phenolphthalein powder and its chemical reaction with Sodium Carbonate solution was explained and a practical demonstration was also given.

6. Mr. L. N. Diwakar was asked to touch the piece of paper tainted with phenolphthalein and later on he was asked to put his finger in the solution of Sodium Carbonate kept in a glass tumbler, which turned pink from milky white and the pink coloured solution and the above-said tainted paper were preserved.

7. The complainant- Sukhlal Das produced five G.C. notes of hundred denominations and each note was treated with phenolphthalein powder. The number and denomination of the said notes were recorded and thereafter, the said notes were handed over to complainant- Sukhlal Das, who kept Rs. 300/- in upper pocket of his shirt and Rs. 200/- tucked into the knot of his Dhoti. It was instructed to the complainant- Sukhlal Das that Rs. 300/- would be handed over to Khan Babu (W.H. Khan) and Rs. 200/- to the accused Bholu Mandal (Mandal babu). Further instructions were given that the complainant- Sukhlal Das would hand over the said amount only on demand by Bholu Mandal (Mandal babu) and that the conversation with accused Bholu Mandal (Mandal babu) should be made audible, so that it could be heard by other members of the raiding team/party.

8. The above said proceedings were put into black and white and all the persons present in the raiding team/party put their respective signatures in the preliminary memorandum. Thereafter, they proceeded to Basantimata Colliery, Dhanbad, and reached there at about 10:45 A.M. and on demand, complainant- Sukhlal Das gave Rs. 200/- to Bholu Mandal (Mandal babu) and Rs. 300/- to W.H. Khan (Khan Babu). Thereafter, both of them were challenged by the C.B.I. officials

and caught red-handed. The said G. C. notes were recovered by the raiding team/party from the possession of Bholu Mandal (Mandal babu) and from one Jai Prakash Singh to whom the amount (the said G.C. notes) had been passed on by W.H. Khan (Khan Babu).

9. The numbers of the above-said G.C. notes tallied with the preliminary memorandum wherein the numbers and denomination of G. C. notes were already mentioned. The accused Bholu Mandal (Mandal babu) was made to dip his left finger in Sodium Carbonate solution which turned the colour of the solution Pink. The house of the accused Bholu Mandal was also searched. The coat pocket of Bholu Mandal was also dipped/washed in Sodium Carbonate solution which turned into pink colour, and the solutions were preserved in a phial on which the witnesses put their signatures. The G.C. notes were also sealed in envelope and signatures were put by all the members of the raiding team/party present there. Thereafter, arrest memo, recovery memo and personal search memo were prepared.

10. After due investigation, charge-sheet was submitted. It is required to be noted here that for the above incident arising from the same acts, two FIRs were registered, one against the present appellant Bholu Mandal (Mandal babu) being R.C. Case No. 23 (A)/87(D) and another against accused W.H. Khan being R.C. Case No. 22/87(D).

11. The records further reveals that initially charge was framed against the accused on 21.08.1991, but it was discovered that inadvertently without taking cognizance of the offence, charge has been framed and read over to the accused/appellant. Therefore on 10.02.1992 a fresh cognizance of the offences has been taken by the court concern under section 161 of I.P.C and Section 5(1)(d) read with Section 5(2) of the Prevention of

Corruption Act, 1947 against the accused/appellant. Thereafter, on 16.10.1993 Charges under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 were framed and read over to the accused/appellant, who pleaded not guilty and claimed to be tried.

12. To prove its case, prosecution examined nine witnesses in the present case, however, no witnesses were examined on behalf of defence. The statement of the accused/appellant under Section 313 Cr.P.C. was recorded twice, first on 20.05.1999 and thereafter on 22.07.2002 after examination of nine prosecution witnesses. In the above-said statement, the accused/appellant denied the allegation regarding demand of Rs. 200/- as bribe from the complainant- Sukhlal Das for processing the application for the release of gratuity amount of the complainant's deceased wife, who was working as Bhattha Kamin in Basantimata Colliery.

13. The trial Court after considering all the evidences, held that the evidences put forth by the prosecution is sufficient to establish the factum of demand and acceptance of bribe by the appellant/accused, as the bribe money got recovered from him. Thus, the trial court found the appellant/accused guilty under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 and sentenced him to undergo R.I. for 2 years and to pay fine of Rs. 300/- and in default of non-payment of fine further sentenced for R.I for 2 months. Being aggrieved, the appellant/accused has preferred the present appeal.

14. Learned counsel for the appellant/accused has vehemently argued that, in the present case complainant- Sukhlal Das has not been examined, as it has been brought on record on behalf of the prosecution that he died during the pendency of the case. Even the independent witness, especially the shadow

witness (P.W. – 3 Mahadeo Minz), has resiled from his earlier statement and was declared hostile. Despite lengthy cross-examination by the prosecution, nothing could be extracted from his mouth to support the case of prosecution.

15. Learned counsel for the appellant further pointed out that to prove the charge against the appellant/accused; it was the duty of the prosecution to prove demand, acceptance and recovery of the bribe amount. In the present case, the prosecution has miserably failed to bring on record any material to show that there was demand from the side of the appellant/accused. He further pointed out that as per the version of P.W. – 4, Laxmi Narayan Diwakar, the amount of Rs. 200/- was given by the complainant- Sukhlal Das in the office at the time of giving of Rs. 300/- to W. H. Khan, but the said version of P.W. – 4 Laxmi Narayan Diwakar, does not find corroboration from the testimony of P.W. – 9, Lal Mohan Manjhi, Inspector of C.B.I. and I.O. of the case, and P.W. -8, Ajay Kant Sahay, Inspector of C.B.I., as they have stated in their respective testimony that Rs. 200/- was given to Bholu Mandal outside the canteen within the premises of Basantimata Colliery.

16. Learned counsel further pointed out contradictions in the testimony of independent witnesses and official witnesses who were part of the raiding team/party and tried to convince this Court that the prosecution has not been able to prove its case beyond all reasonable doubt and, therefore, the appellant deserves to be acquitted in the present case.

17. To buttress the above arguments, learned counsel for the appellant/accused has relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***P. Satyanarayana Murthy v. State of A.P.*** reported in ***(2015) 10 SCC 152*** whereby the Apex court has discerned the prerequisites as

underlined in the case of ***B. Jayaraj v. State of A.P.*** reported in **(2014) 13 SCC 55** wherein it has been held that the proof of demand of illegal gratification 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 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.

18. Before concluding his argument, learned counsel for the appellant/accused has further pointed out the judgment rendered by the Constitution bench of the Hon'ble Supreme Court in the case of ***Neeraj Dutta v. State (NCT of Delhi)***, reported in **(2023) 4 SCC 731** wherein it has been held that in the absence of proof of demand, even if prosecution has able to prove the acceptance and recovery of the bribe amount, the accused is entitled to acquittal, because proof of demand is *sine qua non* in order to establish the guilt of the accused.

19. *Per contra*, learned counsel for the C.B.I. argued that even in absence of testimony of complainant- Sukhlal Das, there is sufficient material available on record to establish the culpability of the appellant in the present case beyond reasonable doubt. Learned counsel for the C.B.I. read over the testimony of P.W. – 3, Mahadeo Minz and P.W. – 4 L. N. Diwakar and submitted that the pre-trap formalities and post-trap formalities have been well spoken by P.W. – 3 Mahadeo Minz who got hostile *qua* the other aspect of the matter.

20. As far as P.W. – 4, Laxmi Narayan Diwakar is concerned, submission has been made on behalf of C.B.I. that despite lengthy cross-examination, the testimony of P.W. – 4, Laxmi Narayan Diwakar could not be shaken and is well corroborated by the testimony of P.W. – 8, Ajay Kant Sahay and P.W. – 9, Lal

Mohan Manjhi, who were inspectors of C.B.I. and part of the raiding team/party.

21. Learned counsel further pointed out that as far as recovery of Rs. 200/- from the coat pocket of the appellant Bholu Mandal is concerned, it is well established by the respective testimony of P.W. – 2 Shekhar Sood, P.W. -3 Mahadev Minz, P.W. - 4 Laxmi Narayan Diwakar, P.W. - 8 Ajay Kant Sahay and P.W - 9 Lal Mohan Manjhi, therefore, the prosecution has able to prove the recovery of Rs. 200/- from the possession of appellant/accused.

22. As far as demand is concerned, learned counsel for the C.B.I. submitted that witnesses of raiding team/party i.e. P.W. 4, Laxmi Narayan Diwakar, P.W. -8, Ajay Kant Sahay and P.W. -9, Lal Mohan Manjhi have stated in their respective testimony regarding demand by the appellant/accused. It is further submitted that P.W. – 6 Gopal Chandra Roy in his testimony has stated that the complainant-Sukhlal Das has died, therefore, his testimony could not be recorded in the present case. In the same breath, learned counsel submitted that issue of conviction of accused in absence of evidence of complainant/informant if other evidences are trustworthy is not res-integra in view of the judgment rendered by the Constitution bench of the Hon'ble Supreme Court in the case of ***Neeraj Dutta (Supra)***.

23. Heard the counsel for the parties and perused the material on record.

24. Before advertng to the factum of the instant case, it is apposite to discuss herein the judgment rendered by the Constitution bench of the Hon'ble Supreme Court in the case of ***Neeraj Dutta (Supra)***, wherein plethora judgments of the Apex Court have been reiterated and now it is settled that Proof of demand and acceptance of illegal gratification by a public

servant by the prosecution is a *sine qua non* in order to establish the guilt of the accused public servant and in order to establish the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. The fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence. It has also been held that in the absence of evidence of the complainant, based on other evidences adduced by the prosecution, it is permissible to draw an inferential deduction of culpability/guilt of a public servant.

25. It is pertinent to mention herein that, in the present case the appellant has been charged and convicted under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947, however, in the judgment of ***Neeraj Dutta (Supra)***, the legal precedent has been settled in light of Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, which is almost *pari materia* to the Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947.

26. Now, coming to the case in hand, it would be appropriate for this Court to discuss and analyze the evidence of witnesses and other documentary evidences brought on record by the prosecution during trial. The prosecution has examined overall nine witnesses **P.W. – 1 Sushant Dey Sarkar, P.W. – 2 Shekhar Sood, P.W. – 3 Mahadev Minz, P.W.-4 Laxmi Narayan Diwakar, P.W. – 5 Anil Kumar Srivastava, P.W. – 6 Gopal Chandra Roy, P.W.-7 Habu Roy, P.W. – 8 Ajay Kant Sahay and P.W. – 9 Lal Mohan Manjhi.** However, the complainant- Sukhlal Das was not examined in the present case as he died during the pendency of the case before the trial Court.

27. The prosecution witness, **P.W. – 1 Sushant Dey Sarkar,** was the General Manager, BCCL at the relevant time, in C.B.

Area BCCL and has given the sanction for prosecution against the appellant/accused after looking into the police papers and the sanction order has been marked as Exhibit – 1. **P.W. – 2 Shekhar Sood**, was the Welfare Officer at that point of time. He was called after the apprehension of Bholu Mandal and recovery was affected in his presence. P.W.-2 has also spoken about the formalities and documents required for the release of amount of provident fund and gratuity amount of the deceased employee. He has also stated that it took some time for the release of provident fund and gratuity amount because office used to verify the person meticulously, as it is a matter of handing over the money of the deceased employee. During cross examination, P.W.-2 has admitted that there was no demand and giving of bribe before him.

28. The record further reveals that two independent witnesses, **P.W.-4 Laxmi Narayan Diwakar** and **P.W. – 3 Mahadev Minz** was examined but **P.W.-3 Mahadev Minz** turned hostile, **P.W. – 8 Ajay Kant Sahay**, Inspector C.B.I. and **P.W. – 9 Lal Mohan Manjhi**, Inspector C.B.I. as well as I.O. of the case were also examined in the present case who were the part of the raiding team/party.

29. P.W.-3 Mahadev Minz was made shadow witness by the Investigating Agency who has spoken about the pre-trap formalities by stating that there was a practical demonstration of the reaction of phenolphthalein powder with sodium carbonate solution, which was done by the independent witness, Laxmi Narayan Diwakar. He has also spoken about the bringing of Rs. 500/- by the complainant-Sukhlal Das and the treatment of those notes by phenolphthalein powder. Thereafter, the said notes were handed over to the complainant-Sukhlal Das, and he has also identified his signature in the preliminary memorandum.

30. He further stated that they started for Basantimata Colliery and, after giving instructions to stand near the office, the C.B.I. Inspector went for his breakfast. Complainant-Sukhlal Das called the Inspector C.B.I., and the Inspector was taken to the place where the payment was made to the officials. He has categorically stated that he did not accompany the team rather, it was Laxmi Narayan Diwakar who was with the team.

He only spoke about apprehension of W.H. Khan and Bholu Mandal and the search of their respective houses, but he showed his ignorance about the amount taken by them. As far as the dipping/washing of hands of Bholu Mandal in the solution is concerned, it is admitted by this witness, and he also identified his signature on the phial in which solution of sodium carbonate was kept. He has also identified his signature on the seized cloths of Bholu Mandal.

31. Thereafter, this witness was declared hostile, and the prosecution has confronted him with his earlier statement, but he denied the same. At para 14 of the cross examination, he has stated that he had not seen the seizure of coat of Bholu Mandal and has put his signature on the basis of faith that whatever written on that paper was correct. In this paragraph, he has also categorically stated that he was roaming outside and was watching the scenery. At paragraph 15 of the cross-examination, **he has categorically stated that he had not seen Bholu Mandal asking for money and that he had no information regarding the person who was to be apprehended because he was outside.** He has further stated that he was kept for entire night at the C.B.I. office and that his signature was taken in the morning.

32. P.W.-4 Laxmi Narayan Diwakar, who is also an independent witness, has stated that on 16.12.1987 at 7:00 A.M., he went to the C.B.I. office where 5/7 persons were

present and they got themselves introduced. **P.W. – 3 Mahadev Minz** was also there. He has stated regarding touching the paper treated with phenolphthalein powder and thereafter, when he put his finger in the sodium carbonate solution, it turned pink from milky white. Thereafter, that solution was preserved in a phial and sealed and the tainted piece of paper was also preserved.

Thereafter, he has also stated that complainant- Sukhlal Das, has brought Rs. 500/-. The notes were treated with phenolphthalein powder and the numbers and denomination of notes were recorded and thereafter the same were returned to complainant- Sukhlal Das, who kept Rs. 300/- in upper pocket of his shirt and Rs. 200/- tucked into the knot of his dhoti. He further stated that complainant- Sukhlal Das was instructed to give money on demand. He has spoken about the preliminary memorandum prepared at C.B.I. office, on which he has also put his signature. **He also stated that they were told where they had to remain in the colliery.**

33. At para 5 (page 6) of his evidence, he has stated that Mahadev Minz and complainant-Sukhlal Das were near him at Basantimata Colliery and that the complainant-Sukhlal was having interaction with clerks(Bholu Mandal and W.H. Khan), who asked him, **“Kya ap taiyar ho kar aa gaye hai”**. The complainant-Sukhlal, brought out provident fund papers and the treated notes of Rs. 300/- and Rs. 200/- separately, and the same were given to the clerks. At that time, complainant-Sukhlal Das by rubbing hand on his forehead, gave signal and Mahadev Minz also gave the signal. Then, the C.B.I. Inspector came and caught hold of those two clerks. The money was not recovered from W.H. Khan as he passed the money to clerk Jai Prakash Singh, however, Rs. 200/- was found in the pocket of coat of Bholu Mandal and Rs. 300/- was found in the pocket of

Jai Prakash Singh. He has also spoken about putting/dipping the fingers in the Sodium carbonate solution and washing of clothes where the money was kept. Thereafter, he has also spoken about putting his signature on those material exhibits.

34. P.W.-8 Ajay Kant Sahay was Inspector in C.B.I. at that point of time, and he was given instructions by the S.P., C.B.I. that one trap had to be laid and he had to extend help to Lal Mohan Manjhi, Inspector who was the I.O. of the present case. He has stated that in the morning at about 7:30 A.M. on 16.12.1987, he was present in C.B.I. office and apart from him, other persons were also present and introduction of each and every person was made and demonstration of reaction of phenolphthalein powder with sodium carbonate was explained. The contents of the complaint of Sukhlal Das were read over and it was apprised that the appellant was asking for bribe of Rs. 200/-, which was supposed to be given on 16.12.1987 for processing of release of gratuity amount of deceased wife of the complainant-Sukhlal Das.

35. He has further stated that Mahadev Minz was asked to follow the complainant-Sukhlal Das so that he could see the transaction and one preliminary memorandum was prepared on which he, as well as other persons present in the C.B.I. office, put their respective signatures. He further stated that C.B.I. team, two witnesses and complainant-Sukhlal Das visited to Basantimata Colliery. He has also spoken about demand of Rs. 300/- by one W.H. Khan, PF Clerk, as bribe for processing of provident fund of the deceased wife of the complainant-Sukhlal Das and Rs. 500/- each of hundred-rupee denominations were treated with phenolphthalein powder. Rs. 300/- was kept by complainant-Sukhlal Das in the upper pocket of his shirt, whereas Rs. 200/- was tucked into knot of his dhoti, which was to be given to Bholu Mandal.

36. The day on which they visited Basantimata Colliery, it was payment day, and Bholu Mandal and W.H. Khan were sitting across the table. When the complainant-Sukhlal Das went inside the office, W.H. Khan demanded money and Bholu Mandal (appellant/accused) went towards canteen. Mr. W.H. Khan also stood up and went towards the door and demanded money. Then, the complainant-Sukhlal Das showed his papers to Mr. W.H. Khan, and after looking at those papers, the same were returned to the complainant-Sukhlal Das. He told the complainant-Sukhlal Das that there were so many cut marks in the said paper and that the same should be corrected. On demand, complainant-Sukhlal Das gave Rs. 300/- to Mr. Khan, who took it in his right hand and put it in the upper pocket of his shirt.

37. Constable Chandra Shekhar Prasad was asked to keep an eye on Mr. Khan and the remaining C.B.I. team, along with the complainant-Sukhlal Das and witness, went towards canteen where Bholu Mandal was seen going. After seeing the complainant-Sukhlal Das, Bholu Mandal came out of the canteen and told the complainant-Sukhlal Das, "*Khali chakkar hi kaat rahe ho ya rupiya vi laye ho*". The complainant-Sukhlal Das replied in affirmative, and thereafter Bholu Mandal demanded Rs. 200/- in a rude manner. The complainant-Sukhlal Das tried to show his papers to Bholu Mandal, but he did not see the papers and again demanded Rs. 200/-. Then complainant-Sukhlal Das gave Rs. 200/- to Bholu Mandal, who took the money in his right hand, counted it with both hands and put the notes inside the pocket of his coat.

38. Thereafter, the C.B.I. team challenged Bholu Mandal and he was brought to office where Mr. Khan was sitting. Mr. Khan was also challenged, but Constable Chandra Shekhar said that the bribe amount had been passed over to another clerk,

namely Jai Prakash Singh. Thereafter, witness Mahadev Minz was asked to take out money from Bholu Mandal and Jai Prakash Singh, and Rs. 200/- was recovered from Bholu Mandal and Rs. 300/- from Jai Prakash Singh. On tallying with the preliminary memorandum, it was found the same numbers of G.C. notes were recovered and the seized notes were sealed in a separate envelope, on which the witnesses put their respective signatures. Thereafter, the fingers of both the hands, as well as the coat pockets, were put into the solution of sodium carbonate, which turned pink from milky white, and the same was put in a phial on which the witnesses put their respective signatures.

39. During cross-examination at para 18, this witness has stated that the money was given in his presence and **he has heard the conversation regarding taking of money, but he was not able to state the exact conversation. He has stated that he was standing in verandah along with other C.B.I. personnel.** In cross-examination, this witness was not able to tell the exact distance of canteen from the office of Basantimata Colliery and has also stated that P. K. Malakar, Colliery Agent and Welfare Officer Mr. S. Sood were called.

40. P.W.-9 Inspector **Lal Mohan Manjhi** is the Investigating Officer (I.O) of the present case, who has proved the F.I.R., and the same has been marked as Exhibit- 6. He has stated that as there was allegation in the F.I.R. related to the demand of bribe by the accused persons and it was decided to lay a trap on the accused persons while demanding and accepting the bribe.

He has also stated that on 16.12.1987 two independent witnesses, namely, L. N. Diwakar, UDC of R.L.C. Office, and Mahadev Minz, Superintendent of C.M.P.F. Office, reported to the C.B.I. office at about 7:30 A.M. The complainant-Sukhlal Das also joined them, and the purpose of the assembly was

explained to witnesses and introduction was given to each other, thereafter the complaint was read over. The purpose and use of phenolphthalein powder and solution of sodium carbonate were explained to the witnesses and other members present there. On being asked, the complainant-Sukhlal Das produced five G.C. notes of one hundred rupees denomination each (total Rs. 500/-), which had been brought for giving to the accused persons, namely, W.H. Khan and Bholu Mandal as per their demand of bribe. Rs. 300/- was to be given to W.H. Khan for processing the provident fund, whereas Rs. 200/- was to be given to Bholu Mandal for processing the gratuity amount of the deceased wife of the complainant-Sukhlal Das.

41. He has also spoken about the treatment of G.C. notes with phenolphthalein powder and same was returned back to the complainant-Sukhlal Das, who put three G.C. notes of one hundred rupees denomination each in the upper pocket of his shirt, whereas two G.C. notes of one hundred rupees denomination each were tucked into the knot of his dhoti. He has also spoken about the preparation of preliminary memorandum and noting down the numbers of the notes.

42. After completion of the above said proceeding, all the aforesaid members including the independent witnesses and the complainant-Sukhlal Das, left the C.B.I. office for Basantimata Colliery office, and at about 10:45 A.M. the team reached there and take their respective positions. At about 11:00 hours, the complainant-Sukhlal Das, followed by independent witness Mahadev Minz, entered the office room and approached the W.H. Khan the P.F. Clerk, regarding the provident fund matter of his wife Sanichari Dasi. Then W. H. Khan asked the complainant-Sukhlal Das whether he had brought the bribe money of Rs. 300/-. The complainant-Sukhlal Das handed over the papers to Mr. Khan who after

seeing at those papers found that the same were not in order and asked the complainant-Sukhlal Das to bring fresh document. However, he insisted for bribe amount and on his demand, the complainant-Sukhlal Das took out G.C. notes total amounting to Rs. 300/- and handed over to W.H. Khan who accepted the same using both hands and kept the same in the pocket of his trousers, and this transaction took place near the door of his office room.

43. The transaction was signaled by the shadow witness and was decided not to challenge W. H. Khan at that stage before the other transaction was completed. Constable C.S. Prasad was directed to keep a close watch on accused Mr. Khan. In the meantime, accused Bholu Mandal went to Colliery canteen situated within the office compound. The complainant-Sukhlal Das, duly followed by the shadow witness who also went to canteen and on seeing the complainant- Sukhlal Das, accused Bholu Mandal came out of canteen. Then accused Bholu Mandal asked the complainant-Sukhlal Das, **“200/- rupay laye ho ya aur kuch bahana bataoge”**. On this, the complainant-Sukhlal Das said **“pura paisa aur kagaz leke aya hai, mera kaam kar dijiyega”**. Then the complainant-Sukhlal Das took out some papers and the treated G.C. notes and handed over the same to accused Bholu Mandal who received the treated G.C. notes total amounting to Rs. 200/- but he did not accept the papers. After counting the said G.C. notes, accused Bholu Mandal kept the G.C. notes in left side pocket of his coat.

Immediately thereafter, Bholu Mandal was challenged by the C.B.I. team and was brought to the office room where other accused W.H. Khan was sitting. Thereafter, Rs. 200/- was recovered from Bholu Mandal and Rs. 300/- from Jai Prakash Singh and the fingers of both hands of Bholu Mandal were

put into solution of sodium carbonate which turned pink from milky white and same was preserved in a phial on which witnesses put their signatures. He also stated that before recovery, Mr. Sood and P. K. Malakar were called. He also spoke about other things done during course of investigation. He has also spoken about the search of house of Bholu Mandal. However, nothing incriminating was found from the house.

44. As the evidence of other witnesses being not essentially related to the aspect of demand, receipt and recovery of the amount of illegal gratification with which the appellant/accused had been charged, does not call for a detailed reference.

45. The sheet anchor of the case of the prosecution in the facts and circumstances of the instant case is the evidence of two independent witnesses, **P.W.-4 Laxmi Narayan Diwakar** and **P.W. - 3 Mahadev Minz** who is also shadow witness but has turned hostile. The substance of testimony of these witnesses, as has been alluded hereinabove, would disclose *qua* the aspect of demand, that **P.W.-3 Mahadev Minz** has categorically stated that he did not accompany the team rather, it was **P.W.-4 Laxmi Narayan Diwakar** who was with the team and during his cross examination he has stated that he was roaming outside and was watching the scenery. This witness has categorically stated that he had not seen Bholu Mandal asking for money or there was any demand. However, **P.W.-4 Laxmi Narayan Diwakar** in his evidence has stated that **they were told where to remain in the colliery** and has categorically stated that **P.W.-3 Mahadev Minz** and **complainant-Sukhlal Das** were near this witness at Basantimata Colliery. Further, he stated that both the clerks asked the **complainant-Sukhlal Das** that **“Kya ap taiyar ho**

kar aa gaye hai” and except this nothing has been uttered by this witness in his evidence which does not disclose the factum of demand by the appellant/accused. Thus, there is major contradiction in the evidences of both the witnesses i.e. P.W.-3 and P.W.-4.

46. P.W.-8 Ajay Kant sahay, Inspector in C.B.I, in his evidence has stated that the Constable Chandra Shekhar Prasad was asked to keep an eye on W.H. Khan and the remaining C.B.I. team, along with the complainant-Sukhlal Das and witnesses, went towards canteen where Bhola Mandal was seen going and upon seeing the complainant-Sukhlal Das, Bhola Mandal came out of the canteen and asked the complainant- Sukhlal Das, “*Khali chakkar hi kaat rahe ho ya rupiya vi laye ho*” against which the complainant-Sukhlal Das replied in affirmative, and thereafter Bholu Mandal demanded Rs. 200/- in a rude manner, however, this witness during his cross has stated that the money was given in his presence and he has heard the conversation regarding taking of money, but he was not able to state the exact conversation as he was standing in verandah. It is difficult for this court to believe the version of this witness *qua* the demand as on one hand he (witness) stated that appellant/accused demanded Rs 200/- and on other hand he could not able to state the exact conversation as he was standing in verandah. However, **P.W.-9** Inspector **Lal Mohan Manjhi** is the Investigating Officer (I.O) of the present case has stated that accused Bholu Mandal went to Colliery canteen situated within the office compound. The complainant-Sukhlal Das, duly followed by the shadow witness who also went to canteen and on seeing the complainant-Sukhlal Das, accused Bholu Mandal came out of canteen. Bholu Mandal asked the complainant- Sukhlal Das, “**200/- rupay laye ho ya aur kuch bahana bataoge**”, upon this, the

complainant-Sukhlal Das said “**pura paisa aur kagaz Leke aya hai, mera kaam kar dijiyega**”. But, in his evidence **at para 19, this witness categorically stated that he had not gone to the canteen.** Moreover, the evidence/version of independent witness **P.W.-4 Laxmi Narayan Diwakar** differs from that of **P.W.-8** and **P.W.-9**.

47. It transpires from the evidence of above witnesses that in the absence of evidence of the complainant-Sukhlal Das who died during the pendency of trial, there is *inter se* contradiction in the evidence, of the independent witnesses/shadow witness i.e. **P.W.-3** and **P.W.-4** who been part of the raiding/trap party/team vis-a-vis the C.B.I officials i.e. **P.W.-8** and **P.W.-9**, *qua* the demand.

48. It is trite that not every discrepancy or contradiction matters for assessing the reliability and credibility of a witness, unless the discrepancies and contradictions are so material that it destroys the substratum of the prosecution case. Contradictions in evidence *inter se* among prosecution witnesses are vital for the prosecution case, as they can severely shake the credibility of the evidence, potentially leading to the acquittal of the accused. While minor, trivial inconsistencies in testimony are generally ignored and material contradictions that strike at the root of the prosecution’s story are fatal to the case.

49. Considering the above settled legal proposition and discussion made in the preceding paragraph, this court is of considered view that the evidence of independent/shadow witness **P.W.-3** and **P.W.-4** negates the factum *qua* the demand by the appellant/accused and there is major contradiction *inter se* in the evidence of prosecution witnesses, especially among the raid/trap party **P.W.-8** and **P.W.-9** including **P.W.-3** and **P.W.-4**. Even, if the evidence of **P.W.-8** and **P.W.-9** is accepted on the

face value, it falls short of the quality and decisiveness of the proof of demand *qua* illegal gratification as enjoined by law. No clinching material has been brought on record by the prosecution which could convince this Court to believe the evidence available on record as the testimony of prosecution witnesses does not inspire confidence to this Court, as they suffer from infirmity.

50. Consequently, this Court is having no hesitation in holding that prosecution has not been able to prove demand of bribe amount by the appellant, as such, the impugned judgment of conviction dated 12.09.2002 and the order of sentence dated 13.09.2002 passed by the learned Special Judge, C.B.I.-cum-1st Additional Sessions Judge, Dhanbad in R.C. Case No. 23(A)/87(D), is hereby set aside.

51. Resultantly, the instant appeal being Criminal Appeal (S.J.) No. 578 of 2002 is hereby allowed.

52. Since, the appellant/accused is on bail, he is discharged from the liability of his bail bond.

53. Let trial court record be sent back to the court concerned.

(Arun Kumar Rai, J.)