



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLLP No. 21 of 2009

State of Odisha

..... *Petitioner(s)*

*Mr. Sangram Das, Standing Counsel
for Vigilance Department*

-Versus-

Adikanda Sahu

..... *Opposite Party (s)*

Mr. Manas Chand, Adv.

CORAM:

DR. JUSTICE SANJEEB K PANIGRAHI

ORDER

24.02.2026

Order No.

05.

1. This matter is taken up through hybrid arrangement.
2. Heard learned counsel for the parties.
3. This an application under Section 378(1) and (3) of the Cr.P.C. for granting leave to file an appeal against the judgment of acquittal dated 16.09.2008 delivered in T.R. No.15 of 200 by the learned Special Judge, Vigilance, Berhampur.
4. Learned counsel for the State refers the grounds no. iii of the Petition. The same is extracted hereunder:

“iii) For that, the learned Trial Court has lost his sight to the fact that, though the decoy turned hostile and the over hearing witness failed to say that he has heard the demand by the accused, but the said over hearing witness has categorically stated in his deposition



that, the accused accepted the tainted bribe amount from the decoy, coupled with other circumstantial evidence which proves that, the accused has demanded and accepted the bribe money from the decoy. Hence, the order of acquittal is liable to be set aside.”

5. Having heard the learned counsel for the parties and upon a careful scrutiny of the materials available on record, this Court is not persuaded to grant leave to prefer an appeal against the impugned judgment. It is now well settled in criminal jurisprudence, particularly in prosecutions under the Prevention of Corruption Act, 1988, that the prosecution must establish the twin foundational facts of **demand** and **acceptance of illegal gratification** through cogent, reliable and unimpeachable evidence. These two elements constitute the sine qua non of an offence under the Act and cannot be presumed merely from recovery of tainted currency or from conjectural inferences. The evidentiary burden cast upon the prosecution in such cases is therefore exacting, especially where the judgment under challenge is one of acquittal, for the presumption of innocence which initially operates in favour of the accused stands further reinforced by the acquittal recorded by the trial court.
6. The testimony of an overhearing witness, though admissible, is ordinarily regarded by courts as a species of evidence that must be approached with circumspection. Such evidence is inherently fragile unless it is supported by independent corroboration



demonstrating that the alleged demand and acceptance of illegal gratification did occur. Judicial experience has consistently shown that the prosecution case in trap matters ordinarily rests upon the combined testimony of the decoy witness, the overhearing witness, and other independent witnesses, together with the recovery of tainted currency and the accompanying scientific evidence such as results of phenolphthalein test. When these evidentiary strands converge and lend assurance to one another, the prosecution case acquires the degree of certainty required to sustain a conviction.

7. In the present case, however, the evidentiary structure of the prosecution suffers from a fundamental infirmity that is the decoy witness who is a central and indispensable witness in a trap proceeding has turned hostile and has not supported the prosecution version with regard to the alleged demand and acceptance of illegal gratification. Once the testimony of the decoy witness is rendered unavailable to the prosecution, the evidentiary foundation of the trap becomes significantly weakened. In such a situation, resting the entire prosecution case solely upon the testimony of an overhearing witness, without any dependable corroboration, would be both unsafe and contrary to the settled principles governing criminal proof.



8. Viewed from the standpoint of appellate jurisprudence, it must also be borne in mind that the power to grant leave to appeal against an order of acquittal is to be exercised with due circumspection. Unless the judgment of the trial court is shown to be manifestly perverse, grossly unreasonable, or demonstrably contrary to the evidence on record, appellate interference is not ordinarily warranted. The mere possibility of another view cannot justify the grant of leave to appeal against an acquittal which is otherwise founded upon a plausible appreciation of the evidence.
9. Tested on the anvil of these well-settled principles, this Court finds no compelling reason to reopen the findings recorded by the learned trial court. The evidentiary deficiencies noticed above render the prosecution case doubtful and insufficient to warrant appellate scrutiny. Accordingly, this Court is not inclined to grant leave to prefer an appeal against the aforesaid judgment of acquittal. Accordingly, the CRLLP is dismissed.

(Dr. Sanjeeb K Panigrahi)
Judge