

Rasananda Patra Vs. State

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Court : Orissa

Decided On : Oct-01-1981

Reported in : 54(1982)CLT171; 1982CriLJ272

Judge : J.K. Mohanty, J.

Appellant : Rasananda Patra

Respondent : State

Advocate for Pet/Ap. : Mr. Mohanty

Judgement :

J.K. Mohanty, J.

1. Appellant has been convicted by the Special Judge (Vigilance), Sambalpur Under Section 161, IPC and Under Sections 5(1)(a) and 5 (1)(d) read with Section 5 (2) of the Prevention of Corruption Act (hereinafter called the 'Act') and has been sentenced to R. I. for one year on each count, the sentences to run concurrently.

2. The case of the prosecution is as follows :- The accused-appellant being a public servant employed as Upper Division Clerk and posted as Bench Clerk to the Additional Tahsildar in Cuttack Sadar Tahasil obtained Rupees 100/- from Krushna alias Kusei Barik of Sankarpur (PW 11) on 26-6-1969 as gratification other than legal remuneration as a motive for showing favour to him by getting an

order passed in his favour by the Tahsildar on his petition for review of the order passed in Misc. Case No. 6/66 in favour of Raghunath Rout in exercise of his official function and thereby committed an offence Under Section 161, IPC It was further alleged that during the period from December 1968 to September 1969 the accused-appellant being a public servant and in the same capacity as Bench Clerk to the Addl. Tahasildar in Cuttack Sadar Tahasil habitually accepted/obtained gratification other than legal remuneration as a motive or reward from Indramani Sahu of Choudwar (PW 6) an amount of Rs. 70/- on 31-12-1968 for issuing a vesting patta; from Golak Chandra Lenka of Mukundapur (PW 9) an amount of Rs. 43/-and Kangali Maharana of Kathasara Sahi, Cuttack (PW 7) an amount of Rupees 35/- on 20-2-1969 to show official favour to them on their petition made Under Section 8 (1) of O. E. A. Act; from Duryodhan Maharana of Choudwar an amount of Rs, 3/- in June, 1969 for issuing copy of rent roll; and from Krushna alias Kusei Barik an amount of Rs. 100/-on 26-9-1969 by abusing his position as a public servant and thereby committed offences Under Section 5 (1) (a) and 5 (1) (d) read with Section 5 (2) of the Act.

3. To prove the case prosecution examined 16 PWs and produced a large number of documents. Defence examined two witnesses and also produced several documents. The learned Special Judge after considering the evidence convicted and sentenced the appellant as stated above, Mr. Mohanty learned Counsel appearing for the appellant, submitted that the sanction accorded in this case is not a proper sanction and the conviction on that ground is bound to be set aside; that the acceptance of gratification other than legal remuneration from Krushna @ Kusei Barik of Sankarpur has not been proved by reliable evidence and by that date i. e., 26-9-1969 (on which date the alleged bribe was taken) the review application in Misc. Case No. 6/66 had already been disposed of and there was no question of showing favour to anybody; that the appellant had no knowledge in the matter and was not dealing with the file (Misc. Case No. 6/66); that the allegation that the appellant was habitually accepting or obtaining gratification other than legal remuneration from different persons has not been proved by clear and cogent evidence; and that in any view of the matter the appellant is entitled to acquittal.

4. Regarding the first contention Mr. Mohanty submitted that the sanction (Ext. 38) is not a valid sanction. There is no evidence to show what materials were produced before the Collector & District Magistrate who is the competent authority to accord sanction. There is clear absence of reference as to what materials were placed before the sanctioning authority on the basis of which the sanction has been accorded, He further submitted that P.W. 16, the Sub-Inspector of Police, Vigilance, who is the Investigating Officer has stated that he sent the written report to the S. P. which the S. P. forwarded to A. D. M. for according sanction. He had not personally met the A. D. M. and till the submission of chargesheet all the records of investigation were with him. From the above Mr. Mohanty argued that no records were produced before the sanctioning Authority. Neither the order of sanction nor the evidence of the relevant witnesses refers to any such materials. The sanctioning authority has not seen such materials. The sanctioning authority has not been examined in this case. He relied on a decision reported in (1972) 1 Cut LR (Cri) 48 (Govinda Chandra Sahu v. State) where in it has been held:-

Facts in respect of which sanction is given is either to be referred to in the sanction order or it is to be proved that they were placed before the sanctioning authority. Sanction appertains to jurisdiction and in the case of want of or invalid sanction the prosecution itself becomes unauthorised.

He also referred to another Division Bench decision of the Supreme Court reported in AIR 1979 SC 677: 1979 Cri LJ 633 (Mohd. Iqbal Ahmed v. State of Andhra Pradesh) wherein it has been held (at p. 635 of Cri. L. J.) :-

A perusal of the Resolution of the Sanctioning Authority clearly shows that no facts on the basis of which the prosecution was to be sanctioned against the appellant are mentioned in the sanction nor does this document contain any ground on which the satisfaction of the Sanctioning Authority was based and its mind applied. This document merely mentions that the sanction has been given on the basis of a note of the Commissioner, Municipal Corporation which appears to have been placed before the Committee.

XX XX XX XXIt is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for

sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show that facts placed before the Sanctioning Authority and the satisfaction arrived at by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest defect (sic-defect) in the prosecution, the entire proceedings are rendered void ab initio.

Basing on these decisions Mr, Mohanty contended that the law laid down in the above decisions is fully applicable to the present case. In reply, learned Standing Counsel relied upon a Bench decision of the Supreme Court consisting of three Judges reported in AIR 1971 SC 1910 : 1971 Cri LJ 1422 (Major Som Nath v. Union of India), wherein it has been held (at p. 1425 of Cri LJ) :-

For a sanction to be valid it must be established that the sanction was given in respect of the facts constituting the offence with which the accused is proposed to be charged. Though it is desirable that the facts should be referred to in the sanction itself nonetheless if they do not appear on the face of it, the prosecution must establish aliunde by evidence that . those facts were placed before the sanctioning authorities.

In the above case the sanction order was in the following terms:-

Whereas it is alleged that Major Som Nath while functioning as Garrison Engineer, MES, Air Field at Sirsa from 13-2-1963 to 5-4-1963 by corrupt or illegal means or by otherwise abusing his position, as such public servant, obtained pecuniary advantage of Rupees 2,500/- for allowing the standing crops to be cut from the land acquired for the extension of Air Field Sirsa; and/or he dishonestly or fraudulently realised and misappropriated Rs. 2,500/- during the aforesaid period as the value of the crops cut from the land acquired for the extension of Air Field Sirsa, which crops had been entrusted to him as a public servant and he instead of depositing the said sale price into the Government Treasury converted it to his own use;

And whereas the said acts of Major Som Nath constituted offences punishable Under Section 5 (2) of the Prevention of Corruption Act, read with Section 5 (1) (c) and (d) (Act No. II of 1947) of the said Act and Section 409 of the I.P.C.

And whereas the Central Government after fully and carefully examining the materials before it in regard to the said allegations and circumstances of the case consider that Major Som Nath should be prosecuted in a Court of law for the said offence.

Now therefore, the Central Government doth hereby accord sanction Under Section 197, Code of Criminal Procedure (Act No, 5 of 1898) and Section 5 (1) (a) of the Prevention of Corruption Act, 1947 (Act II of 1947) for the prosecution of Major Som Nath for the said offences and for any other offences punishable under the provision of law in respect of

the aforesaid acts by the Court of competent jurisdiction.

By order and in the name of the President,

Sd/- A. P. Veera Raghavan

Deputy Secretary to the Gov-

ernment of India.

From the above order it is apparent that the facts which the Central Government considered for the purposes of According sanction were

(a) that the Appellant as a public servant was entrusted with crops situated on the land acquired for the extension of Air Field, Sirsa;

(b) that by abusing his position as a public servant he allowed the standing crops to be cut from the said land;

(c) that by corrupt or illegal means and by abusing his position as a public servant he obtained pecuniary advantage of Rs. 2,500/- as the value of the crops to be cut from the land and/or he dishonestly or fraudulently misappropriated that sum by

converting it into his own use instead of depositing the said sale price in the Government Treasury.

On these facts and after applying its mind the Government accorded sanction for prosecution of the offences punishable Under Section 5 (2) read with Sections 5 (1) (c) and 5 (1) (d). In this case also the sanction order is in the following terms :-

Sanction of Prosecution Under Section 6 (1) (c) of the Prevention of Corruption Act against Sri Rasananda, Patra, Upper Division Clerk, of the Office of the Tahasildar, Sadar Cuttack.

Whereas, it is alleged that Shri Rasananda Patra, U. D. Clerk being a public servant while functioning as Bench Clerk to the Additional Tahsildar in Cuttack Sadar Tahsil Office, Cuttack illegally and by abusing his position as a public servant demanded and accepted illegal gratification of Rs. 100/- on 26-9-1969 from one Krushna @ Kusei Bank of Sankarpur P.S. Sadar Cuttack as a motive or reward, on the pretext of obtaining a favourable order in a case filed by the latter challenging the validity of mutation order passed in favour of one Raghunath Rout of Balabhadrapur and thereby committed offence punishable Under Section 161, I. P. C, and Section 5 (2) of P. C. Act read with Section 5 (1) (d) of the said Act. And whereas it is alleged that the said Rasananda Patra habitually accepted or obtained illegal gratification, inasmuch as he accepted Rs. 70/- from Sri Indramani Sahu of Chaudwar in connection with the issue of a vesting patta, Rs. 3/- from Sri Duryodhan Maharana of Chaudwar for issuing a copy rent roll and Rs. 43/- from Sri Golak Chandra Lenka of Mukundapur in connection with a lease petition, as motive or reward for doing official functions and thereby committed an offence punishable Under Section 5 (2) of the P. C. Act read with Section 5 (1) (a) of the said Act.

And whereas, I Sri T. U. Vijayasekharan, I. A. S., Collector, Cuttack being the authority competent to remove Sri Rasananda Patra, U.D.C. from office after fully and carefully examining the materials before me and after applying my mind in regard to the said accusation and circumstances of the case, consider that the said Rasananda Patra be prosecuted in the Court of law for the said offences.

Now, therefore, I do hereby accord sanction Under Section 6 (1) (c) of the Prevention of Corruption Act for prosecution of Sri Rasananda Patra for the said offence and any other offence punishable under the provisions of law in respect of the acts aforesaid and for taking cognizance of the said offence by the Court of Law.

Sd/-

Collector, Cuttack.

Learned Standing Counsel urged that the decision reported in AIR 1971 SC 1910 : 1971 Cri LJ 1422 (supra) has full application to the facts and circumstances of this case. He further submitted that the decisions reported in (1972) 1 Cut LR (Cri) 48 and AIR 1979 SC 677 : 1979 Cri LJ 633 apply to the facts and circumstances of those cases. He also relied on a decision reported in AIR 1948 PC 82 (Gokulchand Dwarkadas Morarka y. The King) wherein it 'has been held:-

A sanction which simply names the person to be prosecuted and specifies 'the provision of the Order Which he is alleged to have contravened is not a sufficient compliance with CJ. 23. In order to comply with the provisions of, Cl. 23 it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is plainly desirable that the fact should be referred to on the face of the sanction, but this is not essential since Cl. 23 does not require the sanction to be in any particular form, nor even to be in writing. But if the facts constituting the offence charged are not shown on the face of the sanction the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority. The sanction to prosecute is an important matter; it constitutes a condition precedent to the institution of the prosecution and the Government have an absolute discretion to grant or withhold their sanction. They are not concerned merely to see that the evidence discloses a prima facie case against the person sought to be prosecuted. They can refuse sanction on any ground which commends itself to them, for example, that on political or economic grounds they regard a prosecution as inexpedient. Where facts are not referred to on the face of the sanction nor is it proved by extraneous evidence they were placed before the sanctioning authority, the sanction is invalid, and the trial Court would not be a

Court of competent jurisdiction. This being so the defect cannot be cured Under Section 537, Criminal P. G, as a defect in the jurisdiction of the Court can never be cured Under Section 537.

It has been further held :-

The giving of sanction confers jurisdiction on the Court to try the case and the Judge or Magistrate having jurisdiction must try the case in the ordinary way under the Code of Criminal Procedure. The charge need not follow the exact terms of the sanction though it must not relate to an offence essentially different from that to which the sanction relates.

This decision in AIR 1948 PC 82 which is a leading decision on the subject, has been relied on in the decisions reported in AIR 1971 SC 1910 : 1971 Cri LJ 1422 and (1972) 1 Cut LR (Cri) 48 (supra). According to the learned Standing Counsel the sanction Order (Ext. 38) shows that the sanction order was given in respect of the fact constituting the offence with which the accused is proposed to be charged and the sanctioning authority was fully appraised of the facts and circumstances constituting the offence. Relying on the statement of the I. O. (P.W. 16) who has stated that till the submission of charge-sheet all the records were with him, Mr. Mohanty argued that all the materials were not placed before the sanctioning authority. But according to the learned Standing Counsel, this statement of P.W. 16 does not show that all the materials were not placed before the sanctioning authority at any time merely because the records were with the I. O. On a perusal of the sanction order and after hearing the argument of both sides, I am of the view that, the contention of the learned Standing Counsel has considerable force and the decision reported in AIR 1971 SC 1910 : 1971 Cri LJ 1422 has full application to the facts and circumstances of this case and the sanction Order (Ext. 38) is valid.

5. Now I will deal with the merits of the case. To prove the case prosecution examined sixteen witnesses. P.W. 1 was the Additional Tahasildar, Cuttack from 1906 to 1970. He has stated that he disposed of Misc. Case No. 6/66 Under Section 8 (1) of the O.E.A. Act on 3-6-1967. That case was filed by one Raghunath Rout and one Kusei Barik filed a review petition (Ext. 1) on 16-8-1969

which was endorsed by the Tahsildar to him and on receipt of this petition he disposed of the same on 24-9-69. P.W. 2 was the Additional Tahsildar, Cuttack from 1969 to 1970 and he has stated that he is acquainted with the handwriting of Sri Ghadei, the then Tahasildar, Cuttack, and he proved the endorsement and the initials of Sri Ghadei which have been marked as Exts. 2, 2/1 and 2/2 respectively, P.W. 3 was the Tahsildar Cuttack from June, 1967 to April, 1970. He has stated that the accused was serving as an Upper Division Clerk under him and was placed in charge of vesting section. He has proved the writings (Exts. 4 and 5) which are in the hand of the accused. The evidence of P.W. 4 who was the Bench Clerk of P.W. 3 is of no consequence, P.W. 4 has stated that he is not acquainted with the writings of the accused. In cross-examination he has stated :-

I was the Bench Clerk of the Tahsildar, Cuttack Sadar. The record was put up to him by me up to 3-6-1966 for necessary orders and thereafter I put up the same before the Addl. Tahsildar for necessary orders up to 5-6-1967 when it was disposed of. I was the custodian of this record till its disposal on 5-6-1967. The case was reopened on 16-8-1969 and Sri Harekrishna Jee, the then Bench Clerk of the Tahasildar was the custodian of that record at that time. The accused had no occasion to deal with the record till I was there as Bench Clerk of Tahasildar, Cuttack Sadar, i. e., till 5-6-1967.

P.W. 5 has stated that in Jesto 1969 when Durjodhan Maharana (not examined) requested the accused for Jamadharya Patta in his favour, the accused told him that it would cost him Rs. 5/-. Durjodhan expressed inability to pay Rs. 5/- and agreed to pay Rupees 3/- and told that he had no money and would send after three to four days. Accordingly Durjodhan sent Rs. 3/- to the accused through him and he had paid the money to the accused who accepted the same. P.W. 6 has stated that he filed an application in the Anchal Officer for settlement of rent for vesting patta in respect of the land leased out in his favour. He proved the application scribed by Laxmidhar Satpathy (P.W. 10) which was marked as Ext. 10. He made over the application to the accused who told him that it would be allowed if Rs. 100/- was paid. He paid Rs. 70/- to the accused in presence of P.W. 10 and the accused accepted the same. In spite of payment he did not get the patta, so he approached the accused several times to return the money, but the

accused did not repay the same. P.W. 7 has stated that he had been to Tahasil Office, Cuttack on 20-2-1969 where the accused was the Bench Clerk. He had taken five to six petitions of five to six persons including himself in respect of some land at Agrahat. He made over the petitions to the accused who told him that Rs. 25/- would be required for each petition. As he did not have sufficient money, he paid Rs. 35/- to the accused who accepted the same and demanded Rs. 25/- on each petition as it would involve a lot of labour and the petitions had to be sent to Agrahat. At that time one Gopal Lenka (P.W. 9) and Laxman Lenka (P.W. 8) were present there. After a fortnight when he enquired about the petitions from the accused, the latter told him to come after one week. After a week when enquired he was informed by the accused that the petitions had been sent to Agrahat for enquiry. But subsequently he came to know that no such petitions had been sent to Agrahat for enquiry. So he asked the accused to refund the money, but the accused did not return the same. P.W. 8 has stated that the accused was Peskar to the Additional Tahasildar of Cuttack Sadar Tahasil. In 1969 he had been to Tahsil office with one Nakula Nahaka and Gitarani Bisei to file three applications for vesting patta and he made over the applications to the accused who demanded from him Rs. 25/- for each application. He paid Rs. 21/- at the rate of Rs. 7/- per application to the accused through Golakh Lenka (P. W, 9). The accused demanded more money, but he expressed his inability to pay more. Then the accused asked him to come after five or six days. He went to the accused five or six days after. The accused told him that the applications had been sent to the R. I. and asked him to come after 5 to 7 days. When he went after five to seven days, the accused told that the papers were pending with the Tahasildar. Thereafter as nothing happened, he demanded refund of the money, but ultimately the accused did not return the money. P.W. 9 is Golakh Chandra Lenka. He has stated that when he filed the application P, Ws. 7 and 8 were present and that time the accused did not ask for money. This witness was declared hostile and was cross-examined by the prosecution. P.W. 10 stated that he filled up the application form (Ext. 11) containing the signature (Ext. 10). He had scribed the application of P. W, 6 and made it over to P.W. 6 to file the same before the Additional Tahasildar. The accused was then the Bench Clerk to the Additional Tahsildar. When the application was filed the accused demanded Rs. 100/ from P.W. 6 and P.W. 6

agreed to pay Rs. 70/- and paid the same to the accused and he was informed about the same. P. W, 11 has stated that the accused was the Bench Clerk to the Additional Tahsildar. On 13-9-1969 he filed an application for cancelling the order of mutation made in favour of Raghunath Rout in respect of a piece of land which he had purchased. According to him he filed an application on 16-8-1969 for review of the order passed in favour of one Raghunath Rout in respect of a piece of land which he had purchased. The case was fixed to 19-9-69 on which date he went to the Anchal office and met the accused who demanded Rs. 100/- from him as bribe and said that he would get a favourable order passed in the same. Thereafter the case was adjourned to 22-9-1969. On that day he could not arrange money to give to the accused and accordingly informed the accused. So the case was adjourned to 26-9-1969. On 26-9-1969 he arranged Rs. 100/- and went to the Vigilance office and met P. W, 16, the Vigilance Inspector. There he lodged a written report which is marked Ext. 11. He produced the amount of Rs. 100/- consisting of eight 10 Rupee G. C. Notes and four 5 Rupee G. C. Notes before the Vigilance Inspector, P, W. 16. P.W. 16 prepared a memorandum which is marked as Ext. 12 and thereafter he, P.W. 12 the Magistrate and one Harekrushna Das (P.W. 13) signed on Ext. 12. Then they all went to Chandini-chouk in a jeep. From there P.W. 11 and P.W. 13 went to Anchal Office. P.W. 16 asked P.W. 11 to pay the amount of Rs. 100/- consisting of eight 10 Rupee G. C. Notes and four 5 Rupee G. C. Notes to the accused on demand and after the payment is made to put his napkin on his head as a signal to the trap party. Accordingly he went to the accused and on demand by the accused paid Rs. 100/- and gave the above mentioned signal to the trap party. Thereafter P. Ws. 12 and 16 rushed to the accused, gave their identity and offered their persons to be searched P.W. 16 searched the person of the accused and recovered the amount of Rs. 100/- which was paid by P.W. 11, The numbers of the Notes consisting of eight 10 Rupee G. C. Notes and four 5 Rupee G. G. Notes were compared with Ext. 12, the memorandum which was previously prepared and it was found that the numbers tallied. P.W. 16 seized the amount of Rs. 100/- under seizure list, Ext. 14, P.W. 16 further seized an amount of Rs. 18/- and some papers from the pockets of the accused under seizure list, Ext. 15. P.W. 16 also seized the pant and Hawain of the accused under seizure list, Ext. 16 and the napkin of P.W. 11 under seizure

list, Ext. 17. At the time of seizure the accused was trembling and could not say anything, P.W. 12 is the Magistrate 1st Class, who accompanied the vigilance party on 26-9-1969. He has stated that P. Ws. 11 and 13 were present in the office of S. P. On enquiry P.W. 11 gave him the details and the purpose of trap and said that a misc. case was pending in the court of Additional Tahsildar and unfavourable order was passed against him and the accused had told him that if he would pay Rs. 100/- the accused would get a favourable order passed in his favour. P.W. 11 showed him an amount of Rs. 100/- comprising of eight 10 Rupee and four 5 Rupee G.C. Notes the numbers of which were noted down in Ext. 12. He has narrated the details of the trap and has corroborated the evidence of P.W. 11. P.W. 13 who accompanied the trap party has also corroborated P.Ws. 11 and 12 P.W. 14 is the Officer-in-charge; Vigilance, Cuttack who has drawn up the formal F.I.R. (Ext. 18). P.W. 15, is the Government examiner of questionable documents.

6. In his defence the accused has examined 2 D. Ws. The accused in his statement Under Section 313 Cr. P. C. has denied all the allegations made against him. He has further stated that P.W. 11 borrowed a sum of Rs. 100/- from one Balakrishna Naik (D. W. 1) and the latter asked the former to send the amount through the accused. The accused has further stated that Balaram Rout is the brother of Raghunath Rout and P.W. 11 had a case against Raghunath Rout in Tahasil Office. As the accused used to go to the house of Balaram Rout, thinking that the case would be decided in favour of Raghunath Rout, P.W. 11 gave him an amount of Rupees 100/- and informed the Vigilance department According to him, P.W. 11 asked him to give the amount of Rupees 100/- to Balaram Naik, To support the defence version, D. W. 1 Balakrishna Naik has stated that he lent a sum of Rs. 100/- to P.W. 11 and asked him to repay the same to the accused: D, W. 2 was examined to say that he had filed a petition before the Tahasildar and one Golakh Lenka (P.W. 9) was present when he filed the petition and on that day he did not pay any bribe to the accused.

7. In this case the following facts are not disputed; an application, by P.W. 11 was pending for review of- the order passed in favour of Raghunath Rout in Misc. Case No, 6/66. The accused was an Upper Division Clerk and was posted as Bench

Clerk to the Additional Tahasildar, Cuttack and on 26-9-1969 he was in that post. The accused received Rs. 100/- from P.W. 11. It is now to be seen whether the accused had accepted Rs. 100/- from P.W. 11 by corrupt or illegal means or otherwise by abusing his position as a public servant and whether he was habitually accepting or obtaining from different persons for himself any gratification other than legal remuneration as a motive or reward for doing any official act or for showing favour to any person or for rendering services to any person in exercise of his official function. It is also to be seen how far the defence version can be accepted in preference to the prosecution case.

8. It is to be seen how far the acceptance of bribe of Rs. 100/- from P.W. 11 by the accused can be believed. The trap was conducted on 26-9-1969-Before that P.W. 11 had filed an application (Ext. 1) for review which was pending before the Additional Tahsildar, P.W. 11 has categorically stated that he had filed a review petition. On 19-9-69 to which date the case was fixed he went to Anchal Office where the accused told him that if he would pay bribe of Rs. 100/-, the accused would get a favourable order passed from the Additional Tahasildar, and that he would pay the amount on 26-9-69 to which date the case was adjourned. The order-sheet of the case shows that the review petition was filed on 16-8-69 and thereafter it was posted to 8-9-1969, 9/9/1969 and 13/9/1969. On 18/9/1969 it was directed to be put up on 19-9-69. But on 19-9-1969 no order was passed. It transpires that on 23-9-69 the final order has been passed by the Additional Tahasildar which was signed on 24-9-69. Mr. Mohanty, learned Counsel for the appellant, submitted that the final order dismissing his application was passed on 28-9-1969 and this has been signed by the Additional Tahasildar on 24-9-1969. So by 24-9-1969 nothing was left to be done. Therefore, the question that the accused took bribe does not arise as by then P.W. 11 must have known that the orders had already been passed. But this argument of Mr. Mohanty will not hold good because on 13-9-1969 the case was directed to be put up on 19-9-1969 on which date no orders were passed and the orders were delivered on 23-9-1969. On 19-9-69 when P.W. 11 went to the accused the latter demanded bribe and he was told that the case had been fixed to 22-9-1969. He believed the same and on 22-9-1969 he again appeared before the accused and expressed his inability to pay. So the accused told him that the case had been fixed to 26-9-1969, and P.W.

11 believed the same. Admittedly the accused had no knowledge that the order had been delivered on 23/24-9-1969 and that the lawyer for the petitioner had seen the same on 25-9-1969. But there is no evidence that the lawyer has told the same to the petitioner (P.W. 11). P.W. 11 knew the date to be 26-9-69 to which the case had been adjourned and on that day he informed the vigilance department about the demand made by the accused. So there is nothing to disbelieve the evidence of P.W. 11. There is also nothing to disbelieve P. Ws. 12, 13 and 16 that the accused accepted bribe of Rs. 100/- from P.W. 11 on 26-9-1969. The defence plea appears to be vague and it is difficult to believe the evidence of D. Ws. 1 and 2. The accused was the Bench Clerk to the Additional Tahsildar and he had demanded the money from P.W. 11 as gratification which was not a legal remuneration and it was for rendering some service, i. e. to get a favourable order passed on his review petition from the Additional Tahsildar. The prosecution has also established beyond reasonable doubt that the accused demanded bribe of Rupees 100/- from P.W. 11 and received the same, so he is guilty Under Section 5 (1) (d) read with S: 5 (2) of the Act. From the evidence of P. Ws. 1.1, 12, 13 and 16 it is, also clear that the accused has committed an offence Under Section 161, IPC

9. It may be mentioned here that the eight 10 Rupee and four 5 Rupee G. C. Notes (M. Os. I to XII) were found missing on 28-10-1978 after the evidence in the case was over and the same could not be traced. But this will not in any way affect the prosecution case as admittedly the accused had accepted Rs. 100/- from P.W. 11.

10. Regarding the offence Under Section 5 (1) (a) read with Section 5 (2) of the Act, the allegation against the appellant is that he being the Bench Clerk to the Additional Tahasildar incepted bribe of Rs. 70 from P. W, 6 on 31-12-68 Rs. 3/- from Duryodhan Maharana in June, 1969; Rs. 43/- from P.W. 9 and Rs. 35/- from P.W. 7 on 20-2-1969; and Rs. 100/- from P.W. 11 on 26-9-69. P.W. 6 has stated that he filed an application in Anchal office for settlement of rent in vesting patta in his favour. His application has been marked as Ext. 10/1. The signature on the application has been marked as Ext. 10. According to him he made over the application to the accused. On receipt of the application the accused told him that

it would be allowed if Rs. 100/- was paid. He however could not pay Rs. 100/-, but paid Rs. 70/-. This application was scribed by P.W. 10 Laxmidhar Satpathy. The accused received the money and said that he would see that the rent would be settled in vesting patta in his favour. Thereafter the P.W. 6 approached the accused for settlement of the rent in vesting patta. But as nothing happened, he demanded the money which was paid to the accused. But the accused did not pay the same in spite of several demands. P.W. 10 supported P.W. 6 about the demand. P.W. 10 has stated that P W, 6 told him that the accused demanded Rs. 100/- but he had agreed to pay Rs. 70/-. Thereafter P.W. 6 told him that he had paid Rs, 70/- to the accused. So the evidence of P.W. 6 finds support from the evidence of P.W. 10 and there is no reason to disbelieve their evidence.

P.W. 5 has stated that in Jesto 1969 when Durjodhan Maharana requested the accused for Jamadharya patta in his favour, the accused demanded Rs. 5/-from him, but Durjodhan Maharana expressed inability to pay Rs. 5/- and agreed to pay Rs, 3/-, and paid the same through P.W. 5 to the accused. This Durjodhan Maharana has not been examined as he was dead. The learned Judge has considered the evidence of P.W. 5 and has accepted the same, P. W, 5 in his cross-examination hat. stated:-

I knew accused a month prior to the payment of the above sum to him. To obtain Jamadharya patta, one has to pay court-fee. I paid Rs. 3/- to accused towards cost of such court-fees.

No money is to be paid to the Bench Clerk towards the cost of court-fee and the accused had no business to accept cash towards the court-fee. However, there is ambiguity in the evidence of P.W. 5. In my view the evidence of P.W. 5 cannot be accepted and this allegation is not proved.

P.W. 7 has stated on 20-2-1969 the accused was the Bench Clerk to the Additional Tahasildar. On that day he went to Tahasil office with 5 to 6 applications of 5 to 6 persons including himself for some land located at Agra-hat. He made over the applications to the accused who told him that Rs. 25/-for each application would be required as it would involve a lot of labour and the applications had to be sent to Agrahat for enquiry. At that time P. Ws. 8 and 9 were present there. As he

had not sufficient money, he paid Rs. 35/- to the accused who accepted the same but demanded Rs. 25/- for each application and told him to enquire after a fortnight. After a fortnight when he met the accused, the accused told him to come after a week. After a week he was informed that the applications had been sent to Agrahat for enquiry, but on enquiry it was found that the applications had not been sent to Agrahat. So he demanded Rs. 35/- which was paid to the accused, but could not get back the same. Similarly P.W. 8 has stated that he made over some applications to the accused for vesting patta. The accused demanded Rs. 25/- per each application. Others also filed the applications and similar demands were made and he also paid the money. At that time P. Ws. 7 and 9 were present there. PW 9 did not support PW 8 and he was declared hostile and was cross-examined and contradicted by his previous statement where he stated about the demand made by the accused.

11. On a consideration of the evidence of PWs 7 and 8 the learned Judge has accepted their evidence and I also see no reasons to disbelieve their testimony. Prosecution alleges that PW 9 paid a sum of Rs. 43/- to the accused on 20-2-1969, but PW 9 did not support the prosecution case. So there is no other evidence to show that PW 9 actually paid Rs. 43/- to the accused. It was further alleged by the prosecution that the accused demanded Rs. 100/- from PW 11 who paid the same to the accused on 26-9-1969. As I have already held that the prosecution has been able to prove this item of charge, it is not necessary to deal with the same once again.

From the aforesaid discussion of the evidence it is clear that the accused was the Bench Clerk to the Additional Tahasildar and in that capacity he had accepted bribes from PWs. 6, 7, 8 and 11. The prosecution has been able to prove that the accused has committed an offence Under Section 5 (1) (a) read with Section 5 (2) of the Act. As already held, the accused has also been found guilty Under Section 161, IPC Mr. Mohanty cited a decision reported in (Deepchand Jot Ram v. The State) and submitted that the appellant did not receive any illegal gratification but it was by way of mamul. But this case has no application to the present case as in that case the accused received a small sum of money after the case was over,

12. After considering the evidence on record and hearing the learned Counsel for both sides, I see no reason to interfere with the finding of the learned Special Judge, Vigilance, that the accused-appellant is guilty Under Sections 5 (1) (a) and 5 (1) (d) read with Section 5 (2) of the Act and Under Section 161, IPC

Regarding the sentence, it is submitted that the occurrence is of the year 1969 and in the meantime more than 12 years have elapsed and it is not desirable to send the appellant to jail after such a long lapse of time, I accept the above submission,

13. In the result, therefore, I maintain the conviction of the appellant Under Section 161, I.P.C, and Under Section 5 (1) (a) and Section 5 (1) (d) read with Section 5 (2) of the Act. But in my view the period of sentence already undergone along with a fine of Rs. 2,500/- in default to undergo R. I. for six months Under Section 161, IPC will meet the ends of justice and no separate sentence need be imposed Under Sections 5 (1) (a) and 5 (1) (d) read with Section 5 (2) of the Act.

The appeal fails and is dismissed subject to the aforesaid modification in sentence.