

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

APPELLATE SIDE

CRR 3841 OF 2017

Sandip Kumar Roy

Vs.

The State of West Bengal & Anr.

Before: The Hon'ble Justice Apurba Sinha Ray

For the petitioner	: Mr. Pradip Kumar Roy, Sr. Adv. Ms. Sumedha Mukhopadhyaya, Adv. Mr. S. Ganguly, Adv.
For the State	: Mr. Rudradipta Nandy, Ld. APP Mr. Karan Bapuli, Adv.
Reserved on	: 22.02.2026
Judgment on	: 17.03.2026

Apurba Sinha Ray, J.:-

1. This instant Revisional Application has been filed by the petitioner praying for quashing of the criminal proceeding of Special Case No. 11/16 arising out of ACB P.S. Case No. 11/2016 dated 26.11.2016 under Section 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 pending before the Court of Additional District and Sessions Judge, Bench-II, Calcutta, under Section 482 of the

Code of Criminal Procedure, 1973. The brief fact of the case is encapsulated as hereinunder.

- 2.** The petitioner is a member of the West Bengal Civil Services (Executive), having qualified in the 2011 examination. He was appointed on 31.01.2014 as Deputy Excise Collector under the Excise Department, Government of West Bengal. After completing his field training at Malda, he was posted at Canning Range, South 24-Parganas by notification dated 30.06.2015. According to him, during his tenure he discharged his duties sincerely and there were no adverse remarks against him.
- 3.** On 05.10.2016, he was directed to undergo training at Swami Vivekananda State Police Academy, Barrackpore along with newly recruited officers. He sought exemption on medical grounds, enclosing medical reports and recommendations from the Collector of Excise and Joint Commissioner (Training). His prayer was rejected. He joined the training on 01.11.2016 but during the course of physical drill he suffered severe spinal pain and was advised rest by doctors of Calcutta Medical College and P.G. Hospital.
- 4.** On 26.11.2016 at about 10:10 p.m., he was arrested by the Anti-Corruption Branch (ACB), West Bengal, on the basis of a written complaint alleging demand of Rs.1,00,000/- as illegal gratification for facilitating a bar-cum-restaurant licence at Diamond Plaza, Jessore Road, which falls outside his territorial jurisdiction. A case was registered under Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. Charge sheet was submitted on 24.01.2017.

- 5.** The petitioner contends that no preliminary enquiry was conducted; the alleged tainted money was not recovered from his possession; and the investigation was conducted contrary to the Government Notifications governing the functioning of the ACB. He further relies on RTI replies from the office of the Joint Commissioner of Police and PWD authorities stating that on 26.11.2016 (fourth Saturday) the New Secretariat Building was closed and that the complainant did not enter the building on the alleged dates. Applications for discharge under Section 227 Cr.P.C. and for dropping of proceedings were rejected by the Learned Additional District & Sessions Judge, Bench-II, Kolkata. Being aggrieved, the petitioner has filed the present revisional application under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the criminal proceeding.
- 6.** The petitioner challenges the proceeding primarily on the ground that the sanction for prosecution was granted mechanically without proper application of mind and without examining the materials, rendering the cognizance bad in law.
- 7.** It is further contended that the ACB had no authority to register and investigate the complaint in absence of assignment by the P & AR Department as required under the relevant Government Notifications, and that no preliminary enquiry was conducted before registration of the FIR against a public servant.
- 8.** The petitioner asserts that there is no proof of demand or acceptance of bribe, that the alleged tainted money was not recovered from his person, and that there was no audio or video evidence to substantiate

the prosecution case. He also contends that the alleged place of licence falls outside his jurisdiction and that there was no pending application before him.

9. Reliance is placed on RTI documents to contend that the ACB office was closed on the relevant date and that the complainant did not enter the New Secretariat Building, thereby casting serious doubt on the genesis of the complaint.
10. It is urged that the investigation was conducted without jurisdiction and in violation of the statutory mandate, and therefore the entire proceeding is liable to be quashed.
11. Mr. Roy, appearing for the petitioner, has submitted several case laws in support of his contention. In **Ashoo Surendranath Tewari vs. The Deputy Superintendent of Police, EOW, CBI** reported in **(2020) 9 SCC 636**, the Hon'ble Supreme Court has been pleased to observe that the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceedings for prosecution is identical and the exoneration of the person concerned in the adjudication proceeding is on merits. In case it is found on merit there is no contravention of the provisions of the Act in the adjudication proceedings the trial of the person concerned shall be an abuse of process of Court.
12. The learned Counsel Mr. Roy has also relied upon the decision of **Maqbool Hussain vs. The State of Bombay** reported in **(1953) 1 SCC 736**.

13. The Learned Counsel Mr. Roy has also drawn the attention of this Court to the facts that the instant revisional application has been filed by the petitioner in the year 2017 seeking quashing of the criminal proceeding arising out of ACB PS Case No. 11 of 2016 under Section 7, read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 including the order of rejection of the application under Section 227 of the Cr.P.C. After filing of the said revisional application there are certain developments. The petitioner came to know that on the basis of a request of the Legal Remembrances of the State of West Bengal the Special Public Prosecutor who was in-charge of the case was directed to submit detailed and specific reports, so as to consider the merits for withdrawal of both the ACB P.S. Case No. 11 of 2016 of the Prevention of Corruption Act read under Section 13(1)(d) and 120 B IPC against the present petitioner. Pursuant to the said requisition the Special Public Prosecutor in-charge of the case by letter dated 21.11.2017 gave his detailed opinion in respect of withdrawal of both the aforesaid cases. After receipt of the said report the Legal Remembrancer asked the Senior Public Prosecutor to give his specific opinion about the withdrawal of criminal cases and the Special Public Prosecutor by letter dated 11.12.2017 submitted his specific report to the legal remembrancer in affirmative. Copies of those reports were also sent to the DIG ACB of West Bengal by letter dated 16.09.2022 for necessary action from his end. The petitioner obtained the copy of the said reports on the basis of RTI application. From the said documents it will appear that the complaint which was lodged by the

Inspector of the ACB P.S. Case No. 11 of 2016 was ended in FRT (Mistake Of Fact) as the said complainant failed to substantiate the allegation made thereunder and by an order dated 17.03.2018 the Trial Judge accepted the said FRT and dispose the Special case No. 02 of 2017. From the Government orders dated 24.08.2012 and 30.11.2012, it is found that ACB P.S. investigates those cases only which are assigned to them by the Government in the P & AR Department to ensure protection of a public servant from frivolous and vexatious complaints.

14. It is also contended that in the same year i.e. 2017 the petitioner challenged the Departmental Proceedings initiated against him by the Excise Department on the self-same, cause of action being case No. OA 450 of 2017 which was decided ultimately by an order dated 04.09.2025 by Hon'ble State Administrative Tribunal setting aside the Departmental Proceedings entirely.

15. Mr. Nandy, appearing for the State, has argued that the present case was registered on the basis of a complaint lodged before the Superintendent of Police, Anti-Corruption Branch by one Swastik Nag. In the said complaint it was alleged that the petitioner had demanded a sum of ₹16 lakhs as illegal gratification for facilitating the grant of an excise licence at Dumdum, North 24 Parganas, out of which ₹1 lakh was to be paid as the first installment.

16. It is further argued that on 25.11.2016 the petitioner called the complainant and demanded payment of the said first installment.

Thereafter, on 26.11.2016, the complainant was asked to meet the petitioner at his residence. There are materials in the case diary to substantiate such allegations.

17. He further submits that during the hearing, the petitioner raised five objections, namely:

- (i) That the Anti-Corruption Branch office was closed on Saturday (26.11.2016),
- (ii) That no preliminary enquiry was conducted,
- (iii) That the formation and functioning of ACB under the notification dated 22.11.2012 were questionable,
- (iv) That the petitioner was posted in Canning Range, South 24 Parganas whereas the alleged licence related to North 24 Parganas, and
- (v) That the tainted money was not recovered from his personal possession but from a sofa.

18. In reply to the **first objection**, the State submits that the ACB was functioning on the said date. By an order dated 23.11.2016 passed by the learned Additional District and Sessions Judge, Bench-II, Bichar Bhavan, in connection with ACB P.S. Case No. 10 of 2016, one accused, namely Subhasish Chakraborty, was remanded to police custody and remained in the custody of the ACB during the relevant period. Consequently, the ACB office was functioning on 26.11.2016. The RTI replies obtained from PWD and Kolkata Police cannot determine the functioning of the ACB.

19. In response to the **second objection**, the State submits that in trap cases a preliminary enquiry is not mandatory where a cognizable offence is disclosed. The pre-trap and post-trap memoranda prepared by the investigating agency demonstrate that the necessary

procedures were followed before and during the trap, and the same from part of the case diary.

20. With regard to the **third objection** concerning the formation and guidelines of the ACB under the notification dated 22.11.2012, the State submits that apart from the said notification there was another notification being No. 2208 P.S. Cell dated 14.11.2012, by which the ACB Police Station was empowered to register and investigate offences under the **Prevention of Corruption Act, 1988** throughout the State of West Bengal.

21. In response to the **fourth objection**, the State relies upon Section 7 of the **Prevention of Corruption Act, 1988**, which penalises acceptance of illegal gratification by a public servant for rendering any service in relation to official functions. Therefore, the fact that the petitioner was posted in Canning Range, South 24 Parganas does not negate the allegation that he demanded money for facilitating a licence relating to Dumdum, North 24 Parganas.

22. The State further refers to the post-trap memorandum and the statement of the shadow witness, which indicate that the petitioner had also offered to facilitate a bar-cum-restaurant licence in exchange for money, thereby showing his knowledge and involvement in such matters.

23. In response to the **fifth objection** that the alleged bribe money was not recovered from the petitioner's personal possession but from a sofa, the State submits that, as reflected from the pre-trap memorandum, the complainant produced Government currency notes

amounting to ₹1 lakh consisting of ₹2000 (14 pieces), ₹500 (101 pieces) and ₹100 (215 pieces). The said notes were treated with phenolphthalein powder and the serial numbers were duly recorded.

24. During the post-trap proceedings, the left and right hand wash of the petitioner were collected in bottles marked Ext. A and Ext. B and sent to the Forensic Science Laboratory. The report dated 23.12.2016 confirmed the presence of phenolphthalein and sodium carbonate in both samples, indicating that the petitioner had handled the tainted currency notes. The seizure list appears at pages 5–6 of the case diary, the forwarding letter and FSL form at pages 116–121, and the FSL report at page 363.

25. The complaint also records that the petitioner contacted the complainant on 25.11.2016 and 26.11.2016. This is corroborated by the statements of the Nodal Officers of Bharti Airtel Limited (page 349 of the case diary) and Vodafone Services (page 371 of the case diary).

26. In response to the query regarding ₹2000 notes, it is submitted that by notification dated 08.11.2016 the **Reserve Bank of India** withdrew the old ₹500 and ₹1000 notes and introduced new ₹500 and ₹2000 notes. The complainant has also stated that part of the payment was agreed to be made in old currency which he had converted.

27. On the basis of the trap proceedings, forensic report and other materials in the case diary, the State submits that a prima facie offence under Section 7 of the **Prevention of Corruption Act, 1988** is

made out. Accordingly, the State prays that the revisional application be dismissed.

Court's view:-

28. After considering the submission and counter-submission of the parties and also taking into consideration the judgments cited from the side of the petitioner, it appears that the State has made a case under Prevention of Corruption Act on trap evidence. So far as regards the allegation that the relevant formalities or preliminary enquiries were not properly done by the Investigating Agency, I find that the State has produced materials showing that on 25.11.2016 and 26.11.2016, phone calls were exchanged between the petitioner and the complainant. It is also found from the investigation that the petitioner handled the tainted money which was treated with Phenolphthalein powder and the petitioner was requested to wash his right hand in the relevant solution. After such a wash, the water turned pink. The said pink coloured solution, which was the right hand wash of Sandip Kumar Roy, was seized, sealed and labelled at the spot and all the team members put their signatures on the label of the bottle.

29. The statement of the shadow witness clearly indicated that there was a demand of illegal gratification from the side of the petitioner and on demand the complainant produced the tainted money before him.

30. Needless to mention the trial of the case does not begin and this Court is called upon to consider whether there is prima facie material against the present petitioner for framing charges under the provisions of Prevention of Corruption Act or not. It appears that the shadow witness and other witnesses, who derived knowledge from the said shadow witness, narrated how the demand of illegal gratification came from the side of the petitioner. It is trite law that in trap laying cases the issue of demand of illegal gratification is of vital importance.
31. In this regard, the Hon'ble Supreme Court in various decisions has discussed the issue of demand of illegal gratification under Prevention of Corruption Act. Section 7 of Prevention of Corruption Act has laid down the following provisions.

“7. Offence relating to public servant being bribed

- Any public servant who,-

(a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or

(b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or

(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person. shall be punishable with imprisonment for a term which shall not be less than three years but which

may extend to seven years and shall also be liable to fine.”.

32. From the above it appears that the ingredients of the offence under Section 7 of the Prevention of Corruption Act are ;

a) That the person accepting the gratification should be a public servant;

b) That he should accept the gratification for himself and the gratification should be as a motive or reward for doing or forbearing to do any official act etc.

33. In **C. Sukumaran vs. State of Kerala** reported in **(2015) 11 SCC 314**, the Hon’ble Supreme Court has been pleased to hold that demand of illegal gratification is sine qua non for constituting an offence under Section 7 and 13 (1)(d) of the Prevention of Corruption Act. If the demand of bribe and acceptance thereof is not established, conviction under Section 13(2) of the Act is not sustainable.

34. In **P. Satyanarayana Murthy vs. State of A.P.** reported in **(2015) 10 SCC 152** the Hon’ble Apex Court has been pleased to observe as hereunder :

“23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1) (d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefore, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under

these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal -gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder.”

- 35.** In **K. Shanthamma vs. State of Telangana** reported in **(2022) 4 SCC 574**, the Hon’ble Supreme Court has reiterated that proof of demand of bribes by public servants and its acceptance by them is sine qua non for establishing offence under Section 7 of Prevention of Corruption Act. In the said case demand which is sine qua non for establishing offence under Section 7 of the Act was not established and as a result the impugned judgment passed by the Hon’ble High Court was set aside and the appellant was acquitted.
- 36.** In **Mir Mustafa Ali Hasmi** reported in **(2024) 10 SCC 489**, the Hon’ble Apex Court was pleased to observe that the prosecution must prove both the demand and acceptance of bribe beyond reasonable doubt for a conviction under the Prevention of Corruption Act.
- 37.** In the said decision the Hon’ble Apex Court has discussed the observation of the Hon’ble Apex Court in **Neeraj Dutta – versus – State (Government of NCT of Delhi)** reported in **(2023) 4 SCC 731**. For the purpose of understanding the issue in hand, I wish to recapitulate what the Hon’ble Apex Court has laid down in paragraphs 28 and 29 of the said decision:

“28. A Constitution Bench of this Court in the case of Neeraj Dutta v State (Government of NCT of Delhi), (2023) 4 SCC 731 was called upon to answer a reference on the question as to whether the circumstantial evidence can be relied upon to prove the demand of illegal gratification and whether in the absence of evidence of the complainant direct/primary, oral or documentary, would it be permissible to draw an inferential deduction of culpability/guilt of a public servant under Sections 7 and 13(1)(d) read with Section 13(2) of the Act based on other evidence adduced by the prosecution. This Constitution Bench traversed the entire history of the judicial pronouncements on the issue and held as below:-

“88. What emerges from the aforesaid discussion is summarised as under:

88.1. (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d) (i) and (ii) of the Act.

88.2. (b) In order to bring home 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. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

88.3. (c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

88.4. (d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) If there is an offer to pay by the bribe-giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe-giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 13(1)(d)(i) and (ii) of the Act. (iii) In both cases of (i) and (ii) above, the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Sections 13(1)(d)(i) and (ii), respectively of the Act. Therefore, under Section 7 of the Act, in

order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Sections 13(1)(d)(i) and (ii) of the Act.

88.5. (e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

88.6. (f) In the event the complainant turns "hostile", or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

88.7. (g) Insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d)(i) and (ii) of the Act.

88.8. (h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature."

29. Thus, in addition to answering the primary issue raised in the matter, the Constitution Bench also went on to hold that in order to bring home the guilt of the accused, the prosecution has to prove the demand of illegal gratification and the subsequent acceptance, by either direct or circumstantial evidence."

38. In **P. Somaraju vs. State of Andhra Pradesh** reported in **(2025) SCC Online SC 2291**, the Hon'ble Apex Court has also laid down that statutory presumption under Section 20 of Prevention of Corruption Act is not automatic and it arises only once foundational facts of demand and acceptance are proved. In the said case, the sole basis of prosecution to prove demand and acceptance is narration of

the complainant which reveals serious infirmities. The complainant has no proof other than his own oral statement that he visited the accused, wherein the accused allegedly made his first demand for a bribe. The defence has consistently maintained that alleged demand and acceptance of bribes never took place. The Hon'ble Apex Court observes that unless DWs' evidence is shown to be inherently improbable or contradicted by record, it cannot be discarded solely because they were professionals who had cause to interact with the appellant's office.

39. In view of the above judicial decisions it transpires that the prosecution is under a heavy duty to show that there is a demand from accused and in pursuance of such demand, the tainted money mixed with Phenolphthalein powder are handed over to the accused. It appears in this case, the prosecution has been able to show that during investigation the witnesses including shadow witness have stated that there was a demand for illegal gratification from the side of the petitioner and the petitioner had handled such tainted money. Therefore, so far as the stage of the proceedings is concerned, it cannot be said at this moment that ingredients of offences punishable under Section 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 are not attracted.

40. It is true that the petitioner has raised the objection that on the relevant date i.e. 26.11.2016 was Saturday and therefore, the

complainant cannot use the premises of ACB unit to lodge the complaint against the petitioner. The notification dated November 22, 2012 published in Kolkata Gazette by Principal Secretary to the Government of West Bengal is reproduced hereinbelow:-

**“GOVERNMENT OF WEST BENGAL
Home (Police) Department**

NOTIFICATION

No. 2208 P.S. Cell dt. November 14, 2012.- In exercise of the power conferred by clause (S) of section 2 of the Code of Criminal Procedure, 1973(2 of 1974), the Governor is pleased hereby to specially declare the office at 9th Floor, 'A' Wing, New Secretariat Buildings, No. 1, Kiran Sankar Roy Road, Kolkata - 700001 to be a Police Station named as Anti-Corruption Branch Police Station within the meaning of the said Act with jurisdiction throughout the State of West Bengal only for the purposes of registration and investigation of the offences relating to Prevention of Corruption Act, 1988 (49 of 1988).

By order of the Governor,

Sd/-

*Principal Secretary to the Government of West
Bengal”*

- 41.** From the above it is found that the office at 9th Floor, 'A' Wing, New Secretariat Buildings, No. 1, Kiran Sankar Roy Road, Kolkata – 700001 was declared as Police Station namely Anti-Corruption Branch Police Station within the meaning of Code of Criminal Procedure, 1973 with the jurisdiction throughout the State of West Bengal for the purpose of registration and investigation of the offence

relating to Prevention of Corruption Act, 1988. As we all know no Police Station is closed during Saturday and Sunday or on any holiday, the objection of the petitioner in this regard is not tenable.

42. Although the aforesaid objection of the petitioner is not sustainable, he has rightly pointed out that the Anti-Corruption Branch can register and investigate only those cases which are assigned to them by the P & AR Department, Government of West Bengal. Although the learned State Counsel has contradicted such objection contending that in trap cases a preliminary enquiry is not mandatory where a cognizable offence is disclosed, but the relevant notification dated 22nd November, 2012 of the Personnel & Administrative Reforms Department, Government of West Bengal issued by the Chief Secretary, Government of West Bengal shows otherwise. The aforesaid order is reproduced hereinbelow.

“ PART-VI

***Govt. & Other Departmental Orders.
Government of West Bengal
Personnel & Administrative Reforms
Department
Writers' Buildings, Kolkata- 700 001
No. Vig.- 283 (SPAR)/2012 Date : November
22, 2012
ORDER***

WHEREAS the Governor has been pleased to establish a Police Station namely Anti-Corruption Branch Police Station vide Home Department Notification No. 2208 PS Cell, dated November 14, 2012 (hereinafter referred to as said Notification);

AND WHEREAS the Governor has also been pleased to extend the jurisdiction of the said Police Station throughout the State of West Bengal;

NOW, THEREFORE, the Governor is pleased to state that

(1) It is stipulated that the said Police Station will carry out investigation of those cases only which is to be assigned to them by the State Government in P & AR Department;

(2) A Preliminary Enquiry shall be undertaken by the said Police Station of the assigned cases;

(3) On completion of Preliminary Enquiry by the said Police Station, a comprehensive report of the Preliminary Enquiry undertaken, together with documents substantiating the Preliminary Enquiry report, shall mandatorily be sent to the State Government in the P & AR Department for further scrutiny;

(4) P & AR Department would send the Preliminary Enquiry Report with documents to the concerned department for obtaining their views, if any. The department concerned must send their views within one month of receipt of the report, otherwise it would be presumed that they have no comment thereon;

(5) The State Government, if satisfied that there is a prima facie case of criminal misconduct found against the alleged accused persons, may issue necessary directions, to initiate action as per law;

(6) During the course of Preliminary Enquiry, pertaining to the abuse of official position by a

public servant in the matter of business/commercial decision, the important difference between a business risk and a malafide conduct should be kept in mind with a view to ensuring that while corrupt public servants are suitably dealt with, bonafide business and/or commercial decisions taken by public servants in discharge of their official duties, are not questioned;

(7) The above provision shall also be applicable to a retired public servant subject to provision of any other law in force for the time being.

Note : In cases where the State Vigilance Commission recommends lodging of Criminal cases, the State Government may refer such cases to the Anti Corruption Police Station after examination.

Sd/-

Chief Secretary to the Government of West Bengal”

- 43.** The said notification has delineated the periphery and function of Anti-Corruption Branch Police Station to the effect that such Police Station will carry out investigation of those cases only which are assigned to them by the State Government in P&AR Department. It is further stipulated that a preliminary enquiry shall be undertaken by the said Police Station of the assigned cases and after completion of preliminary enquiry a comprehensive report alongwith documents shall compulsorily be sent to the State Government in P & AR

Department for further scrutiny. The said Government order has further mentioned that necessary steps are to be taken against the delinquent Officer, if there is a prima facie case of criminal misconduct. In this regard, although the complaint was lodged by a private party on 26.11.2016 the same was not considered in the light of the Government order dated 22.11.2012 and as soon as the said complaint was received, the Investigating Officer started laying down of trap evidence, without following the mandatory requirement as mentioned in the aforesaid order. No preliminary enquiry took place at the instance of the Investigating Officer nor the complaint was sent to the P & AR Department for receiving further instruction.

- 44.** Now, the question whether a preliminary enquiry is mandatory in trap cases has been a subject of significant judicial discussion in India. The general rule is found in the judgment of **Lalita Kumari vs. Government of Uttar Pradesh and Ors.** reported **(2014) 2 SCC 1** wherein the Supreme Court held that registration of an F.I.R is mandatory under Section 154 of the Cr.P.C if the information discloses a cognizable offence. However, the Court curbed out certain categories where a preliminary enquiry may be conducted before registering an F.I.R., including matters of corruption, medical negligence cases, matrimonial disputes and commercial offences. While Corruption is listed as a category for preliminary enquiry, the Courts have clarified that trap cases are an exception to this exception. In a trap case, “the information” received by the Police or Anti Corruption Bureau is usually specific, actionable and involves an

immediate criminal act. Therefore, a formal preliminary enquiry to verify the truthfulness of the information is generally not necessary before proceeding with the trap. The reasons are manifold. Firstly, the nature of a trap requires secrecy and speed. Conducting the lengthy preliminary enquiry would likely tip off the accused and result in the destruction of evidence. Secondly, in a trap the primary evidence is the actual recovery of the tainted money and the chemical tests conducted at the spot. Thirdly, Courts have repeatedly held that if the information discloses a clear cognizable offence of a demand for a bribe, the police can proceed directly to trap and subsequently register the F.I.R. . Therefore, in the context of trap cases, a preliminary enquiry is not a legal necessity. The objective of a preliminary enquiry is to ensure that innocent persons are not subjected to frivolous prosecution. However, in a trap, the verification of the document is usually done through a pre-trap memo and the presence of independent witnesses, which serves as a safeguard similar to a preliminary enquiry but in a much more compressed time frame. In this regard, the Hon'ble Supreme Court in two decisions such as **State of Karnataka vs. T.N. Sudhakar Reddy** reported in **2025 SCC Online SC 382** and **State of Karnataka vs. Channakeshava H.D.** reported in **2025 SCC Online SC 753** has been pleased to observe that the accused does not have a vested right to demand preliminary enquiry.

- 45.** It is also not convincing at this stage that when the petitioner was in-charge of Canning range he could not claim illegal gratification

for facilitating the opening of a liquor shop in Dumdum range. The manner and mode of corruption cannot be defined in a straitjacket formula. The corrupt officials know many tricks to manifest that they have the ability to facilitate the opening of liquor shops even outside their jurisdiction.

46. The case law of **Ashoo Surendranath Tewari (supra)** records that when adjudication proceedings (disciplinary proceedings) are decided on merits against the same set of facts, such decision may have certain bearings on criminal cases. But in this case the disciplinary proceeding was not decided on merits. The State Administrative Tribunal has quashed the departmental proceedings on the grounds, inter alia, that the disciplinary proceeding was a long pending issue and further, there was no proof of demand of illegal gratification from the side of the petitioner etc. This Court has already discussed that there are sufficient materials to show that there was demand for illegal gratification and accordingly, the same should be tested in trial. A fact can be said to be proved when there is a full trial or the parties are given opportunity to adduce evidence in disciplinary proceedings. Without giving such an opportunity, the Tribunal has held that the allegation was not proved by the complainant.

47. The case law of **Maqbool Hussain (supra)** is also not applicable in this case, since the departmental proceeding was not allowed to continue on merits. No evidence was allowed to be considered in such proceedings. The said proceeding was terminated during its pendency by the Tribunal.

- 48.** Hence, I do not find sufficient material to allow the prayer for quashing the criminal proceeding of Special Case No. 11/16 arising out of ACB P.S. Case No. 11/2016 dated 26.11.2016 under Section 7, 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988 pending before the learned Court of Additional District and Sessions Judge, Bench-II, Calcutta, under Section 482 of the Code of Criminal Procedure, 1973 at this stage.
- 49.** Accordingly, CRR 3841 of 2017 is dismissed on contest.
- 50.** Let the duplicate case diary be handed over to the learned Public Prosecutor.
- 51.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of usual formalities.

(APURBA SINHA RAY, J.)