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AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 694 of 2012

Jitendra Sahu, S/o R.P. Sahu, Aged About 50 Years Head Constable at Present Post Police Station- Farashgaon Kondagaon, District- Kondagaon, Chhattisgarh

... Appellant

versus

State of Chhattisgarh, through- Special Police Establishment, LoKayukta Office Jagdalpur, District – Bastar, Chhattisgarh

--- State/Respondent

For Appellant	: Mr. Rahil Arun Kochhar and Mr. Leekesh Kumar, Advocates.
For State	: Ms. Nandkumari Kashyap, PL

Hon'ble Smt. Justice Rajani Dubey

C A V Judgement

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 30.07.2012 passed by learned Special Judge (Prevention of Corruption Act) Jagdalpur (C.G.) in Special Criminal Case No. 01/2007 whereby the appellant has been convicted for the offence punishable under Section 7, 13 (1) read with Section 13(2) of Prevention of Corruption Act, 1988, (for short, "the Act,

1988") whereby the learned trial Court has sentenced the appellant in the following manner with a direction to run both sentences concurrently:

Conviction	Sentence
U/S 7 Prevention of Corruption Act, 1988	RI for one year, pay a fine of Rs. 2,000/-, in default, to undergo additional RI for 03 months.
U/S 13(1) read with Section 13(2) of Prevention of Corruption Act, 1988	RI for 02 years, pay a fine of Rs. 3,000/- in default, to undergo additional RI for 03 months.

2. The case of the prosecution, as unfolded from the impugned judgment and the records of the case are that the complainant- Madhav Mandal owns a shop in Farasgaon namely Kirti Automobile, where he operates the business of buying and selling of Yamaha motorcycles. On 01.09.2005, complainant- Madhav Mandal appeared before a Anti-Corruption Bureau Office, at Jagdalpur and submitted a written complaint stating that Shivlal Markam, a resident of Farasgaon, had purchased a Yamaha motorcycle from his shop six to seven months earlier in installments. After the installments were paid, the vehicle documents were returned to him, however, servicing fee of ₹250 remained outstanding. On 04.08.2005, when his younger brother namely Chandra Prakash Mandal demanded the servicing amount from Shivlal Markam in his absence, a dispute arose between them, which was reported by both parties to Police Station- Farasgaon. Subsequently, on 31.08.2005, a compromise was reached between the parties after a cordial discussion. However, even after that, Head Constable Jitendra Sahu came to his shop and told him that a case under the Atrocities Act had been filed against him based on Shivlal's report and that the matter would be settled if he paid one thousand

rupees. To verify the veracity of complainant's complaint, a Crime No. 0/2005 was registered, and a small tape recorder with a blank cassette was given to the complainant with the instruction to record his conversation with the accused and return the cassette. Then, on 01.09.2005, he went to Farasgaon and taped the conversation with the accused regarding the bribe and on 02.09.2005 came to the Anti-Corruption Bureau Office, Jagdalpur and returned the cassette. A script was prepared on the basis of the cassette, and the cassette was seized and on the said date, Crime No. 0/2005 was registered for offence under Section 7 of the Prevention of Corruption Act and the matter was investigated. Panch witnesses namely R.R. Thakur, Block Education Officer, Jagdalpur and Umesh Chandra Lal Srivastava, Sub-Divisional Public Relations Officer, Jagdalpur, were summoned from the Collector's office for the trap proceedings and were introduced to the complainant- Madhav Mandal. After reading the complaint dated 02.09.2025 and questioning the complainant- Madhav Mandal, regarding the complaint, the said witnesses made a note and signed the complaint after being satisfied. The complainant produced 10 currency notes of Rs. 100 denomination which were tainted with phenolphthalein powder by Constable Ramsewak Sinha and kept in the left pocket of the shirt of the complainant with an instruction to give it to the appellant on being demanded and thereafter give signal to the trap party. All the necessary procedure were duly explained to the complainant.

3. The trap party proceeded for the place of incident i.e., Kirti Automobile. After reaching to the spot, all the members of the trap party sat hiding nearby. At around 6.00 pm, accused Jitendra Sahu on Hero Honda motor cycle number CG-03-1389 came to the shop of complainant-

Madhav Mandal and sat on a chair and started talking to him. A little while later, at 6:30 pm, the complainant signaled the trap party by making a gesture on being instructed beforehand by the trap party, who arrived at the shop and introduced themselves to the accused, upon which he stood up. Inspectors M.L. Negi and Ashok Dubey apprehended him, but the accused freed one of his hands, took out the money from the left pocket of his full pant and dropped it on the floor. Then, Constable Dhanshyam Sahu prepared a solution of sodium carbonate powder in a clean glass. The accused's fingers were dipped in the solution and washed and its colour turned pink which was sealed. The bribe amount was seized from the possession of the appellant and on being tallied with the description of the notes mentioned in the preliminary Panchnama, it were found to be same tainted notes. The constable then prepared another aqueous solution of sodium carbonate in which the left pocket of the full pant worn by the accused was dipped and washed by panch witness Umesh Lal Srivastava, its colour too turned pink and the same was sealed in a clean glass bottle and a slip signed by the panch witnesses was affixed. After completing necessary necessary formalities, the charge-sheet was filed before the learned trial Court for the offences under Sections 7, 13 (1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 against the appellant followed by framing of charges by the learned trial Court accordingly, which were abjured by the appellant and he pleaded for trial.

4. In order to bring home the guilt, the prosecution has examined as many as 12 witnesses to prove its case against the accused person. Statement of the accused was also recorded under Section 313 of Cr.P.C., in which he denied all the incriminating circumstances

appearing against him in the prosecution case and pleaded his innocence and false implication in the case. However, two witnesses examined by him in his defence.

5. The learned trial Court after hearing the counsel for the respective parties and considered the material available on record thereby convicted and sentenced the accused/appellant as mentioned in inaugural para of this judgment. Hence, this appeal.
6. Assailing correctness and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant submits that the impugned judgment passed against the appellant is *per se* illegal and contrary to the material available on record. The prosecution has failed to prove the necessary ingredients of the offence beyond all reasonable doubt. Statements of the prosecution witnesses are full of contradictions and omissions, but the learned trial Court did not consider the same properly. The prosecution has failed to prove the alleged demand of bribe and acceptance of bribe by the appellant. Seizure of the currency notes from the appellant has also not been proved. There are many contradictions and omissions in the statements of the prosecution witnesses i.e., PW-1 R.R. Thakur, PW-2 Ramsewak Sinha, PW-3 Shivalal Markam, PW-4 Jaideo Bhoi, PW-5 Ashok Kumar Dubey, PW-6 Jagpati, PW-7 Ghanshyam and PW-12 M.L. Negi. There is no independent witnesses examined by the prosecution about delivery of illegal gratification of Rs. 1000/-, the solitary testimony of PW-3, is not sufficient for the purpose of payment. It has been further argued by learned counsel for the appellant that on the date of the incident i.e., 21.08.2005, the complainant had offered the bribe which was refused by the appellant, but the learned trial Court has held it

otherwise. He would also submit that there is no voice sample or test report of the frequency of the voices of complainant and the appellant so as to hold that there was conversation between the appellant and complainant either in mobile phone or in tape recorder. Learned counsel would further submit that the story of demand of bribe by the appellant from the complainant is not proved, but even the story of payment of the money by the complainant is not established beyond reasonable doubt of that being so, the rule of presumption engrafted in Section 4(1) of the PC Act, cannot be made use of for convicting the appellant. The trap witnesses is an interested witnesses in the sense that he is interested to see that the trap laid by him succeeded and it could not be advisable to rely upon his evidence without corroboration. Learned trial Court did not minutely appreciate the oral and documentary evidence on record which make it clear that the prosecution has utterly failed to prove demand and acceptance of bribe by the appellant. Hence, the impugned judgment is liable to be set aside and the appellant be acquitted of all the charges leveled against him. In support of their contention, they relied upon the judgment passed by Hon'ble the Apex Court in the matter of P. Somaraju vs. State of Andhra Pradesh¹, and in the matter of Rajendra Kumar Yadav(died) and others vs. State of Chhattisgarh,² passed by this Court.

7. *Ex adverso*, learned counsel for the respondent/State supporting the impugned judgment submits that the learned trial Court minutely appreciated the oral and documentary evidence and rightly convicted the appellant. Therefore, the impugned judgment does not suffer from

¹ 2025 SCC OnLine SC 2291

² CRA No. 82 of 2003

any irregularity or infirmity warranting interference by this Court in the instant appeal.

8. Heard learned counsel for the parties and perused the material available on record including the impugned judgment.
9. It is evident from record of learned Trial Court that it framed charges against the appellant for offence punishable under Sections 7 & 13(1) (d) read with Section 13 (2) of Prevention of Corruption Act, 1988. learned trial Court after appreciating the oral and documentary evidence, convicted and sentenced the appellant for the aforesaid offences.
10. PW-3 Shivlal Markam has stated that in the year 2003-2004, he had purchased a motorcycle from the showroom of the complainant- Madhav Mandal and he did not receive any paper from the complainant, in relation to the motorcycle, despite he paid the full payment, therefore, he lodged a complaint against the complainant Madhav Mandal at Police Station- Farasgaon vide Ex. P/11, wherein he admitted his signature on A to A part. After lodging the complaint, Madhav Mandal said he agreed to give the documents related to the motorcycle and later he gave all documents to him. Since he got all the documents, therefore, he did not want any further proceedings on the report against the complainant made by him. Then, he contacted with the accused Jitendra who was posted at Police Station- Farasgaon, he brainwashed him by saying that you people have made mockery of the justice by taking it into their own hands and further asserted him that they both are criminals and they are liable to pay one thousand rupees, only then the case will be settled. After passage of 8-10 days, he was called at Madhav Mandal's shop by the accused, as such, he reached

the spot and gave five hundred rupees to the accused Jitendra. Further stated when the trap proceedings was going on against the accused, he was sitting in the showroom.

In his cross-examination, he admitted that the accused Jitendra had demanded one thousand rupees as a bribe, but he gave five hundred rupees to him and he did not lodge any complaint before any police station or forum. The witness further admitted that no complaint was lodged with the Anti-Corruption Bureau regarding the alleged demand of five hundred rupees and also admitted that he had given five hundred rupees as a bribe to the accused before eight days of the trap proceedings.

Some question was asked by the defence, which is reproduced hereinbelow for ready reference as under:-

" प्रश्न- अपने अभियुक्त को पांच सौ रुपए रिश्त की राशि कब दी थी ?

उत्तर- जिस दिन ट्रैप हुआ उसके पहले ही मैं उसी दिन अभियुक्त को पांच सौ रुपए रिश्त दिया था । "

Some question was asked by the Court which is reproduced hereinbelow for ready reference as under:-

" न्यायालय द्वारा प्रश्न :-आपने अभी पहले बताया की ट्रैप होने के आठ दिन पहले अभियुक्त को पांच सौ रुपए रिश्त दिया था जबकि आप अभी यह बता रहे हैं की, जिस दिन ट्रैप की कार्यवाही हुई दिन ट्रैप के पहले मैंने अभियुक्त को पांच सौ रुपए के राशि रिश्त के रूप में दी थी उन दोनों में से कौन सी बात सही है ?

उत्तर- मैं अभी जो यह बताया हु की, ट्रैप के दिन ही ट्रैप के पहले अभियुक्त को 500 रुपए रिश्त दिया हु वह बात सही बतलाया हु । पूर्व मैंने आठ दिन पहले अभियुक्त को रिश्त के रूप में पांच सौ रुपए दिया जाना इस आधार पर भुलवंश बता दिया था की, ट्रैप के आठ दिन पूर्व अभियुक्त से यह तय हुआ था की , मैं उसे पांच सौ रुपए रिश्त दूंगा जबकि, अभियुक्त एक हजार रुपए मांग रहा था ।"

In para 9 of his cross-examination, he admitted as under:-

"यह कहना सही है की चंद्र प्रकाश मंडल और माधव मंडल के विरुद्ध जब थाना में रिपोर्ट किया तो उस रिपोर्ट के बाद उन्होंने मुझे मेरे द्वारा खरीदी गयी गाड़ी का पैपर्स दे दिया था। यह कहना सही है की, उसके बाद मैं और चंद्र प्रकाश मंडल और माधव मंडल ने आपस में राजीनामा कर लिया है। यह कहना सही है की, लिखित राजीनामा को हमलोगों ने थाना में ले जाकर पेश कर दिया था। यह कहना सही है की, अभियुक्त ने मुझसे एवं माधव मंडल से इस बात के लिए पैसे मांगे थे की राजीनामा के आधार पर दोनों का मामला वे समाप्त कर देंगे "

11. As per Ex. P/1, Madhav Mandal is a complainant, but before his examination in the trial Court, he died.
12. PW-1 R.R. Thakur is a panch witness, stated that Inspector of Anti-Corruption Bureau had introduced with another Inspector M.L. Negi, thereafter M.L. Negi had introduced him to the complainant- Madhav Mandal and other panch witness S.D.O. Ramesh Shrivastava through telephone and they read out the written complaint (Ex. P/1) of the complainant- Madhav Mandal, wherein he admitted his signature on A to A part. He has stated about all the preliminary proceedings and stated that they went with the complainant- Madhav Mandal and Madhav Mandal went to his Jyoti Parts shop and sat. After one and half an hour, the accused/Head Constable Jitendra Kumar Sahu came to the shop of the complainant on his motorcycle. They were talking to each other and they both were inside the shop. After half an hour, the complainant came out from his shop and signaled the trap party by making a gesture, then all the trap party reached to the shop of the complainant. Inspector of Anti-Corruption Bureau, M.L. Negi introduced himself to the accused/Jitendra Sahu. Inspector Negi grabbed the wrist of the accused's left hand and also Constable Ashok Dubey grabbed the wrist, but the accused freed one his hands, took out the money from

the pocket of his full pant and dropped it on the floor. After that he picked up the notes lying on the floor, there were 10 notes of Rs. 100 each.

In para 19 of his cross-examination, he admitted this fact that he was aware about the dispute between Chandrakant Mandal, brother of Madhav Mandal and Shivlal Markam and also he came to know that Shivlal Markam did not have any direct dispute with Madhav Mandal. Further, he was very well aware that cases under the Atrocities Act are not registered in normal police stations. In para 22 of his cross-examination, he admitted the suggestion of defence that he picked up the bribe amount from the ground/floor and gave it. In para 23, he also admitted this suggestion of defence when the accused caught by the trap party, at that time, he raised an objection by saying that the complainant Madhav Mandal himself called him through telephone to come his shop.

13. Other members of police party i.e., PW-2 Constable- Ramsewak Sinha, PW-5 Constable Ashok Kumar Dubey and PW-7 Constable Ghanshyam Sahu and PW-12 D.S.P. M. L. Negi/Investigating Officer have stated about the preliminary proceedings and trap proceedings and admitted their signatures in all documents.
14. From close scrutiny of statements of all the witnesses, it clearly shows in the present case that the complainant- Madhav Mandal was not examined before learned trial Court as he died during the trial and recovery was also not made from the accused Jitendra Sahu.
15. PW-1 R.R. Thakur and other witnesses have stated that bribe money was recovered from the floor and as per witnesses, the accused took money out of his pant and threw it on the floor.

16. PW-3 Shivlal Markam has admitted this fact in his statement that he did not lodge any complaint against the accused for demanding of bribe amount, despite he gave him Rs. 500/-.
17. Ex. P/1 is a written complaint by the complainant- Madhav Mandal and was exhibited by panch witness.
18. In the present case, there is no tape recording of conversation between the accused and the complainant regarding demand of bribe is produced to substantiate the allegation of demand by the accused. Thus, there is no proof of demand of bribe amount.
19. PW-1 R.R. Thakur has stated in his examination-in-chief and in his cross-examination that he picked the bribe money from the floor and seized.
20. As per seizure memo (Ex. P/3), seizure of 10 currency notes of 100 denomination was made from the accused Jitendra Sahu, but in proceeding memo (Ex. P/4), it was mentioned that accused took out all money from his pant and threw it on the floor.
21. PW-12 Investigating Officer- M.L.Negi has admitted this suggestion of defence that Shivlal Markam did not mention giving the accused five hundred rupees during the trap proceedings. Further admitted this fact that when the pant of the accused was searched, no money was recovered from it, only the bribe amount which had fallen on the floor was recovered and no amount other than one thousand rupees was recovered from the floor. He also admitted that Ex. D/3 is complaint of one Virendra Kaushik, wherein he lodged the complaint against the complainant- Madhav Mandal and Prakash Mandal with the allegation that he had purchased one motorcycle from the Kirti Automobile and paid the entire amount, despite that they did not provide him the

relevant documents in relation to the motorcycle.

He also admitted that he recorded the statement of the accused Jitendra Sahu vide Ex. D/4, wherein he stated in para 39 as under:-

“.....मैंने शिकायत कर्ता गण को कार्यवाही कर पैसा वापस दिलाया था। इसी बात की रंजिश रखकर प्रार्थी व्दारा मुझे फसांने की कार्यवाही की गई। उसने यह भी बताया था कि आज दिनांक 02.09.05 को करीब 18:00 बजे मुझे आटो मोबाईल्स में बुलाया और अपने कुर्सी के पास बैठाया तथा एक हजार रुपये पैसे देने की बात कहते हुए मेरे फुलपेंट के बाये पॉकिट में जबरन भर दिया। इस तरह साजिश कर रंजिश वंश पकड़वाया है पैसा मैंने नहीं लिया है।”

22. It has been held by the Hon'ble Apex Court in the matter of **P. Somaraju (supra)** in paras 18 and 19, which read as under:-

“18. The statutory presumption under Section 20 of the PC Act is not automatic and arises only once the foundational facts of demand and acceptance are proved. The same has been reiterated time and again by this Court; in the recent decision of Rajesh Gupta vs. State³ through Central Bureau of Investigation,⁹ it was held:

“17. For an offence under Section 7 of PC Act, the demand of illegal gratification is a sine qua non to prove the guilt. Mere recovery of currency notes cannot constitute an offence under Section 7 of PC Act, unless it is proved beyond reasonable doubt that accused voluntarily accepted the money, knowing it to be a bribe. The proof of acceptance of illegal gratification can follow only if there is proof of demand.”

19. It is therefore vital to examine these elements before the circumstance of recovery can assume any significance. We

once again rely on the observation of this Court in Rajesh Gupta (*supra*):

“16.The law is well-settled by the judgments of this Court in Panna Damodar Rathi vs. State of Maharashtra (1979) 4 SCC 526 and Ayyasami vs. State of Tamil Nadu (1992) 1 SCC 304, whereby it has been clarified that the sole testimony of the complainant, who is the interested witness, cannot be relied upon without having corroboration with the independent evidence.”

23. It has been held by this Court in the matter of **Rajendra Kumar Yadav (died)** (*supra*) in paras, 17 18 and 19, which read as under:-

“ 17.In the matter of Raghbir Singh (*supra*) the Hon’ble Supreme Court held in para 11 of its judgment as under:

“11. It is clear from the aforesaid discussion that the evidence led on behalf of the prosecution is not such as to inspire confidence in the mind of the court and we must say that we are not at all satisfied that the appellant either demanded bribe of Rs. 50/- from Jagdish Raj or that Jagdish Raj paid bribe of Rs. 50/- to the appellant by handing over five marked currency notes to him or that five marked currency notes of Rs. 10/- each were recovered from the pocket of the appellant when his person was searched by the raiding party. We may take this opportunity

of pointing out that it would be desirable if in cases of this kind where a trap is laid for a public servant, the marked currency notes which are used for the

purpose of trap, are treated with phenolphthalein powder so, that the handling of such marked currency notes by the public servant can be detected by chemical process and the court does not have to depend on oral evidence which is sometimes of a dubious character for the purpose of deciding the fate of the public servant. It is but meet that science oriented detection of crime is made a massive programme of police, for in our technological age nothing more primitive can be conceived of than denying the discoveries of the sciences as aids to crime suppression and nothing cruder can retard forensic efficiency than swearing by traditional oral evidence only, thereby discouraging liberal use of scientific research to prove guilt. Vide **Som Prakash v. State of Delhi,(1974) 3 SCR 200 = (AIR 1974 SC 989 = 1974 Cri LJ 784)**

18. This Court also observed in the matter of Shatrujan Lal Verma (supra) in paras 27 & 28 of its judgment as under:

“27. Learned trial Court while relying the statements of U.K.Sinha and Anil Kumar that Ram Bharose has not demanded money from the complainant. Even if the explanation of the accused is to be taken into consideration and money was kept by Ram Bharose but there is no evidence that Ram Bharose has demanded money. In subsequent paragraph, he has stated that even for the sake of argument, Ram

Bharose be treated accomplish still his evidence can be taken into consideration. But the learned trial Court has nowhere recorded its finding that accused has demanded the money and in paragraph 43 of its judgment has recorded the finding that money has given by the U.K. Sinha to the accused in lieu of change of telephone instrument. therefore, it is illegal gratification.

28. Learned trial Court while convicting the accused nowhere recorded its finding whether the accused has demanded money and thereafter the money was given to him. On the contrary, the appellant has categorically stated that the complainant tried to give forcefully money and he did not accept the same, therefore, basic ingredient to prove the offence under Prevention of Corruption Act has not been proved by the prosecution by any cogent evidence. In his defence the accused has stated that the complainant has forcefully given money to him and he has not accepted and thrown the notes under the table which was kept by Ram Bharose in his pocket and has drawn unnecessary assumption and presumption that peon cannot dare to keep money in his pocket and has disbelieved the defence taken by the accused under Section 313 CrPC without any rhyme and reason which is perverse finding.

Referring to the decision of Constitution Bench of the Hon'ble Supreme Court in the matter of *Neeraj*

Dutta Vs. Govt. of NCT of Delhi reported in (2022)

SCC Online 1724, this Court observed in para 30 of the judgment as under:

30. Considering the entire facts and circumstance and the evidence of the witnesses on record, this Court finds that the prosecution had failed to prove its case beyond reasonable doubt. There is suspicion regarding the demand and acceptance of bribe amount for which the accused appellant was charge sheeted under Sections 7 and 13(1) (d) r/w 13(2) of the Prevention of Corruption Act. The trial Court while convicting the appellant has not considered the relevant aspects of the matter thereby committed illegality, Therefore, I am of the view that the accused deserves to be acquitted from the charges leveled against him."

19. In light of the aforesaid decisions, if the facts and evidence available in the present case are examined, it is seen that the learned trial Court nowhere recorded its finding that the prosecution has proved the fact of demand by the accused from the complainant and thereafter accepted the bribe amount given by the complainant. From the evidence of the complainant and the panch witnesses it is clear that the complainant gave Rs.526/- on the same date towards stamp fee and at the time of trap, 7-8 currency notes of 100 denomination were recovered from the pocket of the accused, out of which were four tainted

notes. PW-7 states that at the time of trap, only Rs.400/- was kept in the pocket of the complainant whereas the investigating officer states that apart from this amount, Rs.526/- was also kept in the pocket of the complainant but he did not make entry to this effect in the preliminary panchanama of Ex.P/2. Thus, looking to the nature and quality of evidence adduced by the prosecution, the whole trap proceedings appear to be suspicious and the prosecution has failed to prove demand and acceptance of bribe by the appellant beyond reasonable doubt. Being so, the benefit of doubt has to be credited to the appellant."

24. In light of the aforesaid decisions, if the facts and evidence available in the present case are examined, it is seen that the learned trial Court nowhere recorded its finding that the prosecution has proved the fact of demand by the accused from the complainant, it is also evident that the complainant called the accused in his shop and money was not recovered from the cloth of the complainant and it was recovered from the floor and also in this case complainant was not examined before learned trial Court as he died, so it is clear in the present case that demand and recovery both are not proved beyond reasonable doubt, but the learned trial Court did not appreciate all these facts minutely and thereby has wrongly convicted the appellant for the aforesaid offences.
25. *Ex consequenti*, the appeal is **allowed**. The impugned judgment is set aside and the appellant is acquitted of the aforesaid charges.
26. The appellant is reported to be on bail. Keeping in view the provision of Section 481 of BNSS, 2023., the appellant is directed to furnish the personal bond a sum of Rs. 25,000/- before the Court concerned which

shall be effective for a period of six months along with an undertaking that in the event of filing of special leave petition against the instant judgment or for grant of leave, the aforesaid appellant on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

27. The trial Court record along with a copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

Sd/-

(Rajani Dubey)

JUDGE

AMIT PATEL