IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA, MIZORAM & ARUNACHAL PRADESH).

SHILLONG BENCH

Criminal Appeal No.1 (SH) 1999

Deva Prasad Sharma,
Son of Bhola Nath Sharma,
Resident of Inverneial Kench Trace,
Shillong-4. Appellant

-Versus-

Central Bureau of Investigation Respondent

Criminal Appeal No.1 (SH) 2000

State of Meghalaya through CBI Appellant

-Versus-

D.P. Sharma,
Chief Engineer (Civil),
North Eastern Hill University Respondent

Criminal Appeal No.2 (SH) 2000

State of Meghalaya through CBI Appellant

-**Versus-**

1. Stetnel Roy,
   Finance Officer,
   North Eastern Hill University
   Shillong.

2. W.M.R. Wahlang,
   Asstt. Finance Officer,
   North Eastern Hills University,
   Shillong.

3. Edmund S Lyngdoh,
   Contractor, New Colony,
   Jowai, Meghalaya.

4. T.S. Bareh,
   Contractor New Hill
   Jowai. Respondents.

BEFORE
THE HON'BLE MR JUSTICE T VAIPHEI

Criminal Appeal No.1 (SH) 1999

For the Appellant	:	Mr JM Choudhury, Sr Adv. Mr P Kataki, Adv Mr SP Mahanta, Adv Mr J Bora
For the Respondent	:	Mr VK Jindal, Sr Adv Mr S Jindal, Adv Mr S Dey, Adv

Criminal Appeal No.1 (SH) 2000

For the Appellant	:	Mr VK Jindal, Sr Adv. Mr S Jindal, Adv Mr S Dey, Adv
For the Respondent	:	Mr JM Choudhury, Sr Adv. Mr P Kataki, Adv Mr SP Mahanta, Adv Mr J Bora

Criminal Appeal No.2 (SH) 2000

For the Appellant	:	Mr VK Jindal, Sr Adv. Mr S Jindal, Adv Mr S Dey, Adv
For the Respondent	:	Mr JM Choudhury, Sr Adv. Mr P Kataki, Adv Mr SP Mahanta, Adv Mr J Bora Mr BK Deb Roy, Adv respdt. No.2
Date of Hearing	:	30.06.2010
Date of Judgment	:	26.11.2010

JUDGMENT AND ORDER

These criminal appeals are directed against the common judgment dated 28-10-1999 passed by the learned Special Judge, Shillong in Special Case No. 1 of 1988. In Criminal Appeal No. 1(SH) of 1999, the appellant therein is questioning the legality of his conviction under Sections 120-B/420 IPC and under Section 5(2) of the Prevention of Corruption Act, 1947. In Criminal No. 1(SH) of 2000, the Central Bureau of Investigation (CBI), which was prosecuting the case, is aggrieved by the quantum of sentence imposed upon the said appellant and is seeking the enhancement of the sentence imposed upon

him. In Criminal Appeal No. 2(SH) of 2000, the CBI challenging the acquittal of the four co-accused.

2. The case of the prosecution is that a written complaint was lodged by Dr. B.D. Sharma, the then Vice-Chancellor of the North Eastern Hill University, Shillong (NEHU) on 3-7-1985 with the Director of CBI, New Delhi alleging that the appellant in Criminal Appeal No. 1(SH) of 1999 (A-1 for short), who was the then Chief Engineer of NEHU, Shri Stetnel Roy, Appellant No. 1 in Appeal No. 2(SH) of 2000 (A-2 for short), who was the Account Officer of NEHU, Shri W.M.R. Wahlang, the appellant No. 2 in Criminal Appeal No. 2(SH) of 2000 (A-3 for short), who was the Assistant Finance Officer of NEHU, Shri N.P. Garg, the then Executive Engineer, Shri Sanjay, Senior Technical Assistant and Shri H. Nongkynrih, Section Officer, Construction Division of NEHU, had joined hand for procurement of damp seal cement from some fictitious/non-existent individuals/firms at an exorbitant rate during the year 1982 to mid-1985. As a result of this collusion, A-1 invited quotation on 12-12-1982 from 12 firms for the supply of damp seal cement (DPC) at the rate of `2.75 per kg though the actual rate at the relevant time was `5 to `7 per Kg. Again, even though the Purchase Committee had approved only two firms for supplying the materials, A-1 placed orders from many firms and persons without even specifying the quantity of the material required for construction which resulted in leaving huge quantities of the materials so purchased unused. On the basis of the complaint so lodged, a regular case was registered whereafter investigation was done by the CBI. In the course of investigation, the CBI found a prima facie case against the A-1, A-2, A-3, Shri Edmund S. Lyngdoh, the owner of the firm under the name and style of M/s E.S. Enterprise (A-4), Shri T.S. Bareh of M/s Premiere Enterprise (A-5), Shri N.P. Garg, Executive Engineer of NEHU, Shri G.L. Sharma, Jr. Engineer of NEHU, Shri Sanjay, Sr. Technical Assistant, NEHU and Shri H. Nongkynrih, S.O., NEHU and charge-sheeted them U/s 120-B/420 IPC and under Sections 5(2) r/w 5(1)(d) of Prevention of Corruption Act, 1947 (“PC Act” for short) to stand their trial. The trial court, on the basis of the charge sheet submitted by the CBI, framed the charges against the A-1, A-2 and A-3 under Section 120-B read with Section 420 IPC and Section 5(2) read with Section 5(1)(d) of PC Act , to which they pleaded not guilty. As for A-4 and A-5, charges were framed against them U/s 120-B IPC, to which they also pleaded

not guilty. In the course of trial, the prosecution examined some 21 witnesses and exhibited a number of documents to bring home the charges against the A-1 to A-5. It may be noted that the remaining accused were apparently dropped from the case at the investigation stage. At the conclusion of the trial, the trial court convicted A-1 under Section 120-B/420 IPC and under Section 5(1)(d) read with Section 5(2) of PC Act and sentenced him to undergo an imprisonment for four months with a fine of ` 15,000/- for the offence of Section 120-B IPC, to undergo an imprisonment of 6 months for the offence of Section 420 IPC with a fine of `15,000/- and to undergo a simple imprisonment for 1 year with a fine of `15,000/- for the offence punishable U/s 5(1)(d) r/w 5(2) PC Act. A-2 to A-5 were, however, acquitted of the charges and were set at liberty. This resulted in preferring a batch of three appeals against the judgment of conviction of A-1, against the judgment of acquittal of A-2 to A-5 and against the quantum of sentences imposed upon A-1. At this stage, it may be noted that A-2 (Stetnel Roy) died on 23-6-2003 during the pendency of this appeal, and the appeal against him accordingly stands abated.

3. Mr. S.P. Mahanta, the learned counsel for A-1, submits that from the evidence adduced by the CBI, it cannot be conclusively proved by the prosecution that the market rate of the DPC was `5/- to `6/- per Kg. at the relevant point of time inasmuch as no documentary evidence to that effect or any price lists of DPC in the open market at that time was produced by the prosecution, and the trial court has grossly erred in law in convicting A-1 on the basis of the oral testimony alone. It is next contended by him that as the prosecution has miserably failed to show that it was the duty of A-1 to ascertain the rate of DPC from the market and thence submit the same to the Purchase Committee at the time of approval of the rates of the tenderers, there could not be any misconduct on the part of A-1. He also contends that when the trial court has already acquitted the other co-accused, the question of A-1 conspiring with them does not arise, and his conviction under Section 120-B IPC cannot be sustained in law. He maintains that there is no evidence to show that A-1 had induced the Purchase Committee to approve the rates of the two firms at the rate of `42.75 per Kg. and as the contract was awarded to the lowest tenderer, there was no question of A-1 inducing the Purchase Committee by deception to purchase the DPC at exorbitant price: it was the Purchase Committee, which, on its own, approved the

rate on the basis of comparative statement of the tenderers prepared by the officials. It is also the contention of the learned counsel for A-1 that the prosecution has failed to show the total requirement of DPC to be purchased by the Engineering Department and that there was surplus quantity of DPC which was lying in the store and were never utilized at the relevant time: that there was no misuse of the balance stock as it was found in good condition at the time of inspection and, as such, there was no intention on the part of A-1 to cause wrongful loss to NEHU. Mr. V.K. Jindal, the learned senior counsel for the CBI, however, submits that the impugned judgment convicting A-1 is perfectly in order, but the trial court did not appreciate the gravity of the offences committed by A-1 and has misdirected itself in imposing token sentences upon A-1, which ought to be modified by this Court by imposing maximum sentences prescribed by law. According to the learned senior CBI counsel, when the prosecution has adduced sufficient evidence to bring home the charges against A-2 to A-5, the trial court has grossly erred in law in returning a verdict of acquittal against them. Mr. B.K. Deb Roy, the learned counsel for the A-3, supports the impugned judgment and submits that no interference is called for. Mr. K. Sunar, the learned counsel for A-4 and A-5, filed his written submission, which is taken on board. In the writ submission, the learned counsel justifies the impugned judgment and contends that there is lack of evidence to convict A-3 and A-4, and the trial court rightly acquitted them.

4. Before proceeding further, it may be noted that damp proof cement (DPC) is used for mixing with cement in order to make the cement damp proof. The first point for consideration is whether there is evidence to show that the price of damp proof cement (DPC) was `5 to `7 per Kg at the relevant period of time. The allegation of the prosecution is that DPC was procured by A-1 along with other accused at `42.75p per Kg. for wrongful gain to themselves. At this stage, it may be noted that there is no dispute at the bar that DPC was purchased by NEHU at `42.75p per Kg. PW 5 and PW 4 gave oral evidence that the rates of DPC at that point of time were ranging from `6/- to `10 per Kg. depending upon the quality of the materials. He testified that he had been supplying DPC in Shillong from 1965 to 1996. PW 5 also confirmed in his cross-examination that Damp Proof Cement and Damp Seal Cement were one and the same. PW 13, who was the Executive Engineer of NEHU, in his evidence deposed that he was aware of the use of DPC in the construction of

the buildings of NEHU. According to him, in the construction of Intake Water Tank at Wahjarain in the years 1983 vide Item No. 7(17) of Ext. P-5, DPC otherwise known as water proofing compound was purchased at the rate of `10/- per kg. PW 5, who was the proprietor of M/s Bawa Paints, testified that he used to supply DPC, among others, to A-4 and A-5 and that the rate of DPC at Shillong during that period would be in the range of `6 to `7/- which would include taxes and transportation and profit. PW 13, who was the Executive Engineer of NEHU at that time, deposed that in the construction of Intake Water Tank at Wahjarain for the year 1983 water damp-proofing compound was purchased at the rate of `10/- per Kg extra vide Ext. P-5, Item No. 7(17). This testimony of PW 13 was not challenged or denied by A-1 to A-5 in their respective cross-examinations. That apart, PW 21, who was the I.O. of the case, in his cross-examination by A-1 volunteered to state that he had seized carbon copy of cash memos books and two paid bills of Mr. Hansraj Jain, who was a contractor of NEHU and also the receipt letter from Dy. Chief Engineer, PHE, Shillong showing the sale price of DPC by them and that Mr. Hansraj Jain had supplied DPC on earlier occasion @ `10/- per Kg. At this stage, the findings of the trial court in this behalf may be referred to:

> *"33. It is true as per the deposition of PW 5 he was having no idea as to what rate the DPC was sold in Shillong at the relevant time, but when the said item is sold at `2.80 to `3.30p per Kg in Delhi could the price of the said item shoot up to such an astronomical rate of ` 42.75p at the relevant period in Shillong. Definitely, the answer would be in a negative and the item under no circumstances can inflate up to such an amount, but it may be within a range of `10/- to `15/- per Kg if not lower than that. Whatever may be the circumstances, the rate to be at `42.75p per Kg appears to have been inflated with an ulterior motive. The item DPC as per the evidence of PW 4 was sold in Kg as well as in bag and it was freely available in the market during 1983-84 which was not challenged at all and A-1 also admitted in answer to Question No. 7 in his examination. Therefore, when the item is freely available in the market, it stands to no reason that the price would shoot up to ` 42.75p per Kg when the said item could be available ranging from `6 to `10/- per Kg at the relevant time.*
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> *34. Accused T.S. Bareh of the firm M/s Premiere Enterprise in answer to the questions nos 1 and 2 during his examination under Section 313 CrPC admitted that Bawa Paints Ltd. used to supply Damp Proof Cement to his firm during 1983-84 could be in the range of `6/- to `7/- per Kg. Hence from the answer of the said accused No. 4 and from the oral evidence of P.W. 5, though in the absence of documentary evidence and also that PW 5 was not having any idea as to what rate the DPC was sold at Shillong at the relevant time, yet it can be held that the rate of DPC was sold at Shillong at the relevant time, yet it can be held that the rate of DPC as per the evidence above and answer of the accused would be in the range of `6/- to `7/- per Kg at the relevant period of 1983. Nowhere in the evidence of*

PW 5 that the defense counsel could rebut that the rate as stated by him as regards the prevailing rate of the DPC during 1983-84 was incorrect.

35. I now come to the deposition of PW 16 before touching the evidence of PW 13. PW 16 Shri Santosh Kumar Chachan is the proprietor of M/s Gajand Chachan of Barabazar, Shillong which deals with hardware, paints and building materials including water proof cement and this firm as per the deposition of PW 5 is the one which DPC and paints were supplied by his firm. P.W. 16 further deposed that they used to purchase paints and water proof cement from Delhi, Calcutta and sometime from Guwahati and that during 1982-1984 his firm is dealing with water proof cement and the price of water proof cement during that period was `5/- per Kg which was sold at Shillong, but did not supply this DPC to NEHU. This witness also has not produced any document to prove the market rate of DPC. However, the defense, save and except making the suggestion during the cross-examination have not been able to discredit the evidence of the above PWs as regards the prevailing rate of the water proof cement or Damp Proof Cement during 1983-84.

36. In any case, we may not proceed to analyse the evidence of PW 13 Shri N.P. Garg who has worked in NEHU since 1984 as Executive Engineer who is also aware of the use of the Damp Seal Cement in the construction work where he deposed that the procurement of the damp seal cement was done by the Chief Engineer D.P. Sharma which was supplied by various suppliers and the said materials were received by the Assistant Engineer Sri G.L. Sharma and other staffs but PW 13 was not associated with the process of damp seal cement. He proved Ext. P-3 bills referred for payment the chargeable head charged to the construction of 150 staff quarters and the bills passed for payment for `42,750/- where he has made endorsement in different bills in exhibit P-3. He further proved Ext. P-5 the work file for the construction of Intake Water Tank at Wahjarain for the period of 6.9.83 and in one bill and by item No. 7(17) `10/- per Kg extra for water proofing compound along with other item and in the said bill the same rate of ` 10/- per Kg was paid for water proofing compound along with other items and the work was done by Hansraj Jain and the amount was paid to him. As contended by the defense, this witness PW 13 also figured as one of the accused in the FIR, however, when the charge sheet was laid, his name was not sent up for trial. It is in the contention of the defense that since the name of this witness figured in the FIR, there is no credibility for his evidence. However, defense has not been able to show as to whether the person named in the FIR should also be sent up for trial or it is the concern of the prosecution who are to be sent up for trial and during cross-examination, nowhere the defense tried to impeach the credibility of this witness and nowhere did they suggest or rebut his evidence as regards the works as per exhibit P-5 and also of the rate of `10/- per Kg extra which was paid for water proofing compound. It was only in the argument that defense canvassed that the extra means only extra item and not the rate of DPC per Kg for which I am unable to accept such contention.

37. A close perusal of exhibit P-5 relating to the bills for providing water supply to NEHU Campus at Mawkynroh-Umshning for construction of Intake Water Tank at Wahjarain and Wahshalynnai in item 7(17), it was depicted extra for water proofing cement as regard in the said bill was only for extra requirement and not that the rate is `10/- per Kg. In the said item 7(17) of the said bill in the file exhibit P-5 in column unit it was shown as Kg and the rate is `10/- which means per Kg. To say that water proofing compound is not the Damp Proof Cement without any supportive evidence to that effect will not make the Court to accept such contention. In exhibit P-1(5) Resolution No. 14 it has been described Purchase of Damp Seal Water Proofing Compound, hence I see not difference as regards water proofing compound and damp seal cement or damp seal water proofing compound. Interestingly, in the cross-examination of PW 13 not a word was said that Water Proofing Compound is not Damp Seal Cement or Damp Proof Cement or that the rate as shown in the said bills to be `10/- was not per Kg but only for extra requirement. When this witness PW 13 who belongs from the institution of NEHU and was in the capacity of Executive Engineer whose name also reflected in the FIR when he proves this

particular item in Exhibit P-5, it is strange to note that the defense neither impeached his credibility nor challenged that no such construction was taken or that if it was taken, the use of water proofing compound shown at `10/- per Kg was not in relation to the Damp Seal Cement or Damp Proof Cement as the case may be, but it is only for extra requirement. Assuming that PW 5 and PW 16 weight no relevancy in absence of the documentary evidence, but evidence of PW 13 with regard to the bills pertaining to construction of Intake Water Tank at Wahjarain and Wahshalynnai in the file exhibit P-5 would be probative and corroborative evidence in so far as the rate of water proofing compound at `10/- per Kg during the period of 1983. The said bill was also signed by the Chief Engineer of NEHU besides the Junior Engineer. Undoubtedly, the bills were passed and payment made. That being the position, could it be said that the rate of Damp Proof Cement during the relevant period of 1983 would be at the rate of `42.75p per Kg when the bills for the work carried out in 1983 itself water proofing compound shown to be `10/- per Kg from the same institution i.e. NEHU."

5. In my opinion, the aforesaid findings of the trial court do not suffer from any infirmity and are based on solid evidence. That apart, in his examination under Section 313 CrPC, the following incriminating evidences against A-1 were put to him:

"7. PW 4, Kamal Kumar Jhunjhunwala deposed that M/s J.C. Construction had been doing government construction work during 1983/1984 and he also as one of the partner of the said firm did construction work of the Guest House of NEHU during 1984 and that he knows the item of Damp Proof Cement which is mixed with the cement in order to make the cement water proof and that the said D.P.C. was issued to his firm free of cost by the NEHU for the purpose of mixing with the concrete cement and they have utilized the DPC supplied and that his item is sold in K.G. as well as in bag and it was freely available in the market during 1983/1984. What have you to say?

Ans: It is right.

"Q.9. P.W. 5 further deposed that in Shillong, the firm to whom Damp Proof Cement and paints wwere supplied are Kedarmal and Sons, Meghalaya Hardware, Deb Brothers, Gajachand Chachan, Sharma Hardware and in Jowai the Damp Proof Cement used to be sold to one E.S. Enterprise and Premiere Enterprise and that during 1983/1984 the Damp Proof Cement of 50 kg weight was sold at the rate between `80/- to `85/- at Delhi plus tax and for one Kg packet, the same used to be sold at `2.80 to `3.30 per Kg and in Shillong the rate of one kg of damp proof cement would be in the range of `6 to `7 inclusive of taxes, transportation and profits. What do you say against the said evidence?

Ans: I do not know."

The statement made in defense by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution. The legal position in this behalf is explained by the three-Judge Bench of the Apex Court in ***State of U.P. v. Lakhmi, (1998) 4 SCC 336***, in the following manner:

"8. As a legal proposition we cannot agree with the High Court that statement of an accused recorded under Section 313 of the Code does not deserve any value or

utility if it contains inculpatory admissions. The need of law for examining the accused with reference to incriminating circumstances appearing against him in prosecution evidence is not for observance of ritual in a trial, nor is it a mere formality. It has a salutary purpose. It enables the Court to be apprised of what the indicted person has to say about the circumstances pitted against him by the prosecution. Answers to the questions may sometimes be flat denial or outright repudiation of those circumstances. In certain cases the accused would offer some explanation to incriminative circumstances. In very rare instances the accused may admit or own incriminating circumstances adduced against him, perhaps for the purpose of adopting legally recognized defenses. In all such cases the court gets the advantage of knowing his version about these aspects and it helps the court to effectively appreciate and evaluate the evidence in the case. If an accused admits any incriminating circumstances appearing in evidence against him there is no warrant that those admissions should altogether be ignored merely on the ground that such admissions were advanced as a defense strategy.

9. Sub-section (4) of Section 313 of the Code contains necessary support to the legal position that answers given by the accused during such examination are intended to be considered by the court. The words "may be taken into consideration in such enquiry or trial" in sub-section (4) would amount to a legislative guideline for the court to give due weight to such answers, though it does not mean that such answers could be made the sole basis of any finding.

10. Time and again, this Court has pointed out that such answers of the accused can well be taken into consideration in deciding whether the prosecution evidence can be relied on, and whether the accused is liable to be convicted of the offenses charged against him; vide ***Sampat Singh v. State of Rajasthan; Jethmal Pithaji v. Asstt. Collector of Customs; Rattan Singh v. State of H.P.***

11. We make it clear that answers of the accused, when they contain admission of circumstances against him are not by themselves, delinked from the evidence, be used for arriving at a finding that the accused had committed the offence."

6. In the instant case, A-1 in his examination under Section 313 CrPC admitted that he was aware of the fact that DPC was freely available in the market. However, when the incriminating question was put to him to the effect that during 19883-1984 DPC of 50 kg weight was sold at the rate between `80/- to `85/- at Delhi plus tax and for one kg packet, the same used to be sold at `2.80 to `3.30 per kg and in Shillong the rate of one kg of DPC would be in the range of `6 to `7 inclusive of taxes, transportation and profit, he answered, "I do not know". That apart, A-5 (T.S. Bareh), in his examination under Section 313 CrPC admitted that the rate of DPC at Shillong during 1984 would be in the range of ` 5 to `7 per kg inclusive of tax, transportation and profits. He also stated that he quoted the rate of `42.75p Kg which was approved but he did not force them to approve, and it was up to the officer to approve or not. From the aforesaid evidence, I have no doubt that the prosecution has established without any shadow of doubt that the market price of DPC at Shillong in

the year 1984 was ranging from `5/- to `10/- per Kg and that NEHU had purchased DPC at the rate of `42.75p per Kg.

7. The next point for determination is whether the finding of the trial court that it was A-1 was mainly responsible for the purchase of DPC at an exorbitant rate of `42.75 per Kg, is correct? Vide Ext. P-1(3), it is seen that the Purchase Committee on 6-8-1983 resolved to purchase the DPC at the rate of `42.75p per Kg. However, PW 13 in his evidence deposed that DPC or water proofing compound had been purchased by NEHU from one Hansraj Jain at the rate of `10/- per Kg for construction of Intake Water Tank at Wahjarain vide Item No. 7(17) of Ext. P-5. According to PW 13, the procurements of DPC were made by A-1. This witness was serving as Executive Engineer of NEHU at the relevant time, and was aware of the use of DPC in the construction of building at NEHU. The cross-examination of this witness did not elicit anything to contradict his statement or impeach his credibility. In his cross-examination, this witness revealed that purchase of materials including DPC was done by the Engineering Wing which meant the Campus Development Department. The following findings of the trial court are instructive:

> *"39. The Purchase Committee was apprised with those quotations and showing the lowest rate to be `42.75p per Kg. Purchase Committee definitely on the advice of the technical member mainly of A-1 accepted the rate on a bona fide belief that it was the lowest rate of the DPC prevailing at the relevant period. However, the evidence of PW 5, PW 6 and PW 16 and also the answer of one of the supplier T.S. Bareh (A-5) to question No. 2 of his examination under Section 313 CrPC that the rate of Damp Seal Cement during 1983-84 could be `6/- to `7/- per Kg and the evidence of PW 13 proving one of the bills in exhibit P-5 as regards the rate of water proofing compound to be `10/- per Kg. is supportive of the prosecution case and argument that the non-technical members of the purchase committee were definitely misled as to the actual prevailing market rate of the item Damp Proof Cement.*
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> *40. The quotation for the supply of the DPC were floated prior to the sitting of the Purchase Committee and the accused persons, namely, A-1 has not produced anything to show as under whose authority and under whose direction that the said quotations were called. After calling for the quotations still in the notice circulated for meeting of the purchase committee to be held on 6-7-83 there was no specific agenda for supply of Damp Seal Water Proofing Compound. It was only when the Purchase committee sat that this particular item was introduced and the same would not have been introduced without A-1 in particular bringing the said item to be discussed. It may be argued that no such thing reflected anywhere either in the evidence or in the resolution of P-1(5). However, by inference, it is to be deduced that A-1 being a technical member would have played a dominant and crucial role for introducing the said item on the said date in the absence of the specific agenda and the purchase committee which as per the deposition of PW 9 the most responsible of NEHU at the relevant time, deposing that the purchase committee depended on the suggestion of the technical member who was in the rank of Chief*

Engineer and whose confidence was taken before accepting the rate. PW 6 Sri O.D. Shira also in his deposition adduced that Chief Engineer was also a member of the Purchase Committee who is to make decision for the purchase of Damp Seal Cement. This piece of evidence by these witnesses was not challenged or rebutted whatsoever in the cross-examination and this evidence further proved that A-1 being one of the technical member of the Purchase Committee, his suggestion, opinion prevails on the purchase committee in so far the quality, quantity and the rate is concerned specially for making decision for the purchase of Damp Seal Cement. Hence, A-1 played a crucial and dominant role, and the purchase committee consisting of the non-technical members as well would be convinced of his advise and suggestion. Hence, when the rate of the said item as per one of the bill in exhibit P-5 shows that the rate of Water Proofing Compound was `10/- per Kg, it is beyond the stretch of imagination that the same item would cost `42.75p per Kg during the relevant period of the year. Even without direct evidence showing the accused has misled the purchase committee, the above evidence would amply show that non-technical members of the purchase committee were definitely misled and they were made to accept the rate of `42.75p per Kg of DPC as the lowest rate."

8. I have perused the statement of PW 6, who was the Asst. Registrar i/c of administration in the NEHU at that time and who deposed that as the convener of the Purchase Committee, he convened the meeting of the Purchase Committee on 6-7-1983 in which the quotation of M/s Premiere Enterprise, Jowai and M/s Edmunds Lyngdoh, Jowai at the rate of `42.75p were approved. He, however, deposed that in the resolution, the quantity of material to be supplied was not mentioned, which was left to the decision of the Department and that the Department meant A-1(Chief Engineer). He also stated that as the Purchase Committee approved the rate and the name of the two firms, namely, M/s Premiere Enterprise and M/s Edmunds S. Lyngdoh, the Department was required to purchase the materials only from these two firms. He testified that the Chief Engineer (A-1) was also a member of the Purchase Committee and was to make the decision for the purchase of DPC. PW 13 was the Executive Engineer of NEHU at that point of time. Though his name initially appeared in the FIR, he was subsequently not charge-sheeted. According to him, he was aware of the use of DPC in the said construction work. He deposed that the procurement of DSC (DPC) was done by the A-1. It must be a remarkable Chief Engineer who was not aware of the prevailing market price of DPC at Shillong in those days. When these incriminating circumstances were put to him in his examination under Section 313 CrPC, he did not utter a single word to assert that the market rate of DPC at Shillong at the relevant period was not ranging from `5/- to `10/-. All that he said was that he was not aware of the market rate of DPC at that time or that `42.75p was the accepted and approved rate of DPC. These evasive replies, taken together with the

evidences of PW 6 and PW 13 and Item No. 7(17) of Ext. P-5, complete the link in the chain of circumstances against A-1 that he knowingly recommended the inflated rate of the DPC at `42.75, when the same was available in the local market at prices ranging from ` 5/- to `10/-. It was his duty as a Technical Officer to advise the Purchase Committee the market rate of the material in question so as to enable NEHU to purchase the same at reasonable rate. He, being the Chief Engineer of NEHU, was expected to know the rate of DPC and was also expected to, and, in fact, had the duty, to appraise the Purchase Committee about the prevailing market rate at Shillong at that time. In my opinion, the trial court was completely right in concluding that A-1 played a dominant and crucial role in the decision of the Purchase Committee to approve the rate of `42.75p per Kg for DPC as against the prevailing market rates ranging from `5/- to `10/- per Kg. In the result, I hold that the prosecution has proved to the hilt the responsibility of A-1 in the decision of NEHU to purchase the DPC at an inflated rate.

9. Coming now to the question as to whether A-1 placed supply orders and procured DPC from 58 other firms without the approval granted by the Purchase Committee, there can be no dispute that the Purchase Committee approved the purchase of the DPC only from the firms of A-4 and A-5 vide the resolution of the Purchase Committee dated 6-7-83. P.W. 6 in his evidence deposed that as the Purchase Committee had approved the rate and the name of the two firms, namely, M/s Premier Enterprise and M/s Edmund S. Lyngdoh, the Department was required to purchase the materials only from these two firms. PW 12 was the Junior Engineer at NEHU, who deposed that his job was to look after the construction works that were being undertaken at NEHU; that for doing his duties, he used to get order from the Chief Engineer (A-1); for the construction of the buildings, they were asked to use DPC which were obtained from the market through various suppliers; that as soon as the DPC reached the site, they entered in the stock register showing their quantity; that Ext. P-4 was the Stock Register in two volumes starting from 1983 and volume 2 is with effect from 1ist June, 1984 to 1985; that Ext. P-4(1) was the entries with regard to receiving of DPC and the issue thereof and same was maintained by him under his hand; that he identified his signature as Ext. P-4; that similarly entries were also made 141,142,143,144,145 and that Ext. P-4(3) to (6) were his signatures; that the entries

showed the name of the supplier, the quantity and the rate; that in the second volume of the Stock Register Ext. P-4 for the year 1984-85, the entries regarding receipt of DPC started from page 141 to 154 and that Ext. P-4(7) to Ext. 4(20) were those exhibits out of which Ext. P4(7) to P-4(14) were the entries made by him; that Ext. P-3(1) to P-(71) were the various bills in respect of the supply of DPC by various parties at the rate of `42.75. The examination-in-chief of PW 12 remained virtually undisputed in the cross-examination. In fact A-3, A-4 and A-5 declined to cross-examine him. The cross-examination made by A-1also did not elicit any tangible result to benefit him.

10. I have carefully gone through P-4(1) to P-4(6) volume 1 of the Stock Register maintained by PW 12 and found that apart from 19-5-1983 4-6-1983 i.e. even before the purchase was approved by the Purchase Committee, apart from A-4 and A-5, DPC were supplied by M` Memjulet Passah (two metric tonnes), E.S. Enterprise (6 metric tones) and M/s B.L. Sona (14 metric tones). The quantities purchase from A-4 and A-5 are 22 and 6 metric tones respectively (Both M/s Premiere Enterprise and M/s T.S. Bareh are operated and run by A-5). Again, from 3-1-1984 to 27-3-1984, vide Ext. P-4(3) and P-4(4), the firm under the names and styles of M/s Shadeep Associates, M/s Ramesh & Co., Bam Bha Lang Traders, M/s T. Scott Pariot, M/s Sanjay Enterprise, M/s Carry Work, M/s Hills Supply Syndicate, M/s Prindian Lyngdoh, J. Thuboh and M/s G.S. Solly, without the approval of the Purchase Committee, supplied some 28 metric tonnes of DPC to NEHU. That is not all, vide Ext. P-4(5) and Ext. P-4-6, Pearl Enterprise, J. Lamare Enterprise, M/s Shadeep Associates, B. Laloo, J. Langstieh, Fair Deal Enterprise, M/s Sanjay Enetrprise, T. Laloo and M/s Rapsang Enterprise, without the approval of the Purchaser Committee, supplied some 23 metric tones of DPC to NEHU. That is not all. Ext. P-4(9) to P-4(20), which are found at another Stock Register maintained by the NEHU, undoubtedly demonstrated that virtually the same firms along with some other firms such as Amanda Pathaw, B.T. & Co. , F. Ranee, Peter Nongkynreih, Roberson Lamare, Rafiellang Kharkongor, Shri R. War, Shri S. Dkhar, Shri B. Lyngdoh, A. Kharkongor, Joycee Enterprise, Mr. C. Lyngdoh, Mr. S. Harrish, Kharsing Trading Corpn. M/s G.S. Jolly, Shri S. Nongkhlaw, Shri W. Kharsing, Shri R. Kharchanday, The Construction House, Shri Dominic Swer, M/s NBCC, Shri M. Nongkynrih, Shri M. Ranee, Shri Krosby Hek, M/s B. Syiem, MW Khongwar, M/s Misfu, M/s J.C. Construction, M/s Bimli , Shri T.R Moksha, Shri F.H. Diengdoh, Shri M. Syiem, Shri L.

Kurkalang, Smt. P. Lyngdoh, K. Warjiri, R. Swain, Ermin K. Suchiang, Mr. F.M. Nyngdoh, N. Lyngdoh, A. Nongdhar, Shri Olson Wahlang, Shri Roland, WarMr. Kalliyus Dhar, Mrs. V.D. Deingdoh, Mr. P.D. Laloo, Francis G. Mawlong, Jesterwell Kharchandy, M/s T. Syiemlih, R. Roayal Naziar, and Shri Samsar Marbaniang who were not approved by the Purchase Committee and who did not even submit quotations, were allowed to supply a huge quantity of DPC i.e. some 108 metric tones to NEHU between 1-6-1984 to 22-2-1985. In the light of the aforesaid evidence, it has been proved by the prosecution without any shadow of doubt that A-1 purchased some 108 metric tones of DPC from firms other than M/s Premier Enterprise and M/s Edmund S. Lyngdoh without the approval of the Purchase Committee.

11. At this stage, it may be noted that there can be no dispute at the bar that in terms of the resolution at Exhibit P-1(5), the quantity was not mentioned by the Purchase Committee. According to PW 6, the quantity to be procured was left to the decision of the Department according to the actual requirements. He further testified that as the Purchase Committee was not required to go into the requirement of the material, the same was left to the Department and that the Department meant the Chief Engineer. PW 7 is the Senior Technical Assistant at NEHU and was attached to Campus Development Department at the relevant time. He acknowledged the receipt of DPC supplied by firms in the store of NEHU. In his cross-examination by A-2, he deposed that Campus Development Department came under the Engineering Department of NEHU, which placed the orders for supply of DPC and that it was the Engineering Department which fixed the quantity for supply of DPC according to the requirement of the Department; that the DPC supplied by the supplier was received by the Engineering Department, which also checked the quality and quantity of the DPC supplied. PW 12 was the Assistant Engineer of NEHU at the relevant time and was looking after the construction works that was being created at NEHU. According him, he was doing his duties on the orders of A-1. He deposed that for construction of the buildings, they were asked to use DPC which was obtained from the market through various suppliers; that as soon as the DPC reached the store, they were entered in the Stock Register showing their quantities. He exhibited the Stock Registers in two volumes starting from 1983 and volume 2 was with effect from 1-6-1984 to 1985 vide Ext. P-4. Ext. P-4(1) pertained to the entries with regard receiving the DPC and the issue

thereof, which were maintained by him under his hand; that the other entries were made at page 141,142,143,144 and 145, and that those entries showed the names of the suppliers, the quantity and the rate. He also testified that in the second volume of the stock Register (Ext. P-4) for the year 1984-85, the entries regarding the receipt of DPC commencing from page 141-154 had been recorded, which were exhibited as Ext. P-4(7) to P-4(20) out of which those entries from Ext. P-4(7) to P-4(14) were made by him. He then deposed that a total of 143 metric tonnes of DPC was received in the store of NEHU and till the closure of the stock book, i.e. 22-2-85, 97.441 metric tones of DPC remained unused.

12. Thus, from the aforesaid evidence of PWs 6, 7 and 12 and Ext. P-4, it is crystal clear that the Purchase Committee did not decide the quantity of DPC to be purchased; that the decision to procure the quantity of DPC had been left by the Purchase Committee to A-1and that it was A-1 who took the decision to procure and had procured 143 metric tonnes of DPC from the firms of A-5, A-6 and the above-mentioned individuals and firms. As already noticed, the latter firms and individuals did not even submit their quotations nor were they called upon to do so. PW 21, who is the Investigating Officer of the case, in his evidence, stated that the DPC was purchased in huge quantity and a major portion of the DPC remained unused in the Campus of NEHU and that the proportion of DPC required to be mixed with the ordinary cement was 1 kg of DPC in one bag of ordinary cement of 50 kgs. Though extensive cross-examination was done on behalf of A-1, it is interesting to note that this part of the statement of PW 21 was never disputed or denied by A-1. It is not even the case of A-1 that 143 metric tonnes of DPC were completely utilized in the constructions of the buildings in question. If one kilogram of DPC is required to be mixed with fifty kilogram of cement, it does not require an expert in building construction to determine that the purchase of 143 metric tonnes was grossly excessive and disproportionate to the need of the construction of the buildings in question. Once it is proved by the prosecution that 143 metric tonnes of DPC had been procured and that the proportion of DPC required to be mixed with ordinary cement was one kilogram of DPC with fifty kilogram of cement, the burden of shifted to A-1 to show with evidence that 143 metric tonnes of DPC was actually required for the construction of the buildings in question. Having failed to discharge this burden, there is no difficulty in holding that the total quantity of DPC purchased by NEHU was not actually required for the construction works in NEHU;

that some 97.44 metric tonnes of DPC worth about Rupees forty lakhs had remained unused and that it was none but A-1 who was responsible for this.

13. That apart, the total quantity of DPC purchased was for `61,13,250/-, but the case fof the prosecution is that financial concurrence was obtained only for `12,00,000/-. P.W. 15 used to work as Controller of Examination at NEHU from 3-4-1984 to 28-2-1989. In his deposition, he stated that in March, 1985, he was entrusted with the additional responsibility of the post of the Finance Officer. According to him, for every purchase, financial concurrence and expenditure sanction were required under the rules. He also revealed that normally for purchase up to `20,000/-, they used to have limited tenders and for purchases more than ` 20,000/-, they used to have open tenders. He further deposed hat in the notice inviting tenders (NIT), the rules required that specification of the materials and the quantity thereof were included. In his cross examination, he disclosed that financial concurrence to the order of `12,00,000/- had been obtained for the purchase of D.S.C./DPC. Ext. P-6 is the File No. CT/Genl/P/26/83. At page 12 of this file, it is mentioned that financial concurrence for the said amount was obtained. There is thus presumptive evidence that out of `61,13,50/-, financial concurrence to the order only of `12,00,000/- was obtained for the purchase of DPC. The onus of prove has now shifted upon A-1 to A-3 to rebut this presumption by adducing evidence or material. Having not done so, the prosecution has proved to the hilt that the purchase for DPC for the amount exceeding `12,00,000/- was unauthorized and illegal.

14. The next question for determination is whether A-1 entered into a criminal conspiracy with A-2, A-3, A-4 and A-5 in the purchase of a huge quantity of DPC beyond the actual requirement for the constructions in question at an exorbitant rate. As A-2 has died during the pendency of this appeal, I will confine my enquiry to the involvement of A-3, A-4 and A-5. A-3 was the Assistant Financial Officer of NEHU while the deceased A-2 was the Finance Officer. At this stage, I may refer to the findings of the trial court in respect of the involvement in the criminal conspiracy, which are at paragraph 58 of the judgment:

> *"58. A-3 in answer to question No. 9 of his examination denied that he was present when the item of Damp Proof Cement was discussed, hence he was not aware of the resolution but signed the said minutes of the resolution in good faith. However, there is no evidence from his side to disprove and contradict of his not being present when the item of Damp Proof Cement was discussed and P.W. 9 categorically deposed that Mr. Wahlang also attended the meeting and signed the report. However, A-3 admitted of the existence of the bills for supply of Damp Proof Cement and to have signed in exhibits P.3(1) to P(71) and also of his signatures appearing in exhibits P.3(72) to P.3(172). No doubt, as for A-2, there is nothing to prove that he signed in any of the bill, still then, he being the Head of the Finance Department cannot be said to be oblivious of the duties when he was also one of the members of the Purchase Committee and definitely his supervision is necessary and that while the Purchase Committee has approved the supply of the Damp Proof Cement from two firms only, but the bills as passed by Finance Department through A-3 shows that the bills were in regard of supply of many firms besides the two approved firms. Indeed, the action of A-3 clearing the bills of other firms in violation of the minutes of the resolution of the Purchase Committee where he and A-1 and A-2 were also members of the Purchase Committee respectively would indicate that he is also concerned in the conspiracy. However, since Engineering Department is show to be the main Department for checking the bills and having satisfied passed the bills and sent the same to the Finance Department for necessary payment of which Engineering Department, A-1 is definitely Head of that Department, of which P.W. 10 also had signed in those bills. True, A-3 also had got the bills passed when he signed the same but, P.W. 10 also is one of the signatories of the bills for payment and sine the quality, quantity and the rates are to be satisfied by the Engineering Department is only to pass the bills and since prosecution has failed to rope in the other persons signing in the ills, there is doubtful nature in evidence to have been attracted only to A-2 and A-3 from the Finance Department."*

15. In my opinion, though the trial court correctly appreciated the evidence the involvement of A-3 in the crime, it fell into gross error in concluding that "since the prosecution had failed to rope in the other persons signing in bills, there is a doubtful nature in evidence to have been attracted only to A-2 and A-3 from the Finance Department." If there is evidence to bring home the charge against the accused, the fact that the other accused who were involved in the crime had not been prosecuted can hardly be a ground for acquitting such an accused. This reminds me of the observations of the Apex Court in ***Ram Narayan Popli v. CBI, (2003) 3 SCC 661***, when it said:

> *"384. The convictions of Accused 1, 3 and 5 are in order and are maintained. A question about the sentence was raised. Noramlly, cases involving offences which corrode the economic stability are to be dealt with sternly. It is, however, noticed that A-5 has died during the pendency of the appeal. A-1 and A-3 were small flies who appeared to have been caught in the web of A-5's machinations. Apparent reason for their involvement is greed and avarice. There may be substance in the plea raised by the learned counsel for the accused-appellants that higher-ups of MUL and banks cannot certainly be unaware of the goings-on, and have not*

proceeded with and given clear chit. Though this is certainly a matter of concern, yet that cannot be a ground for sympathetic view of A-1 and A-3' conduct …….."

In the instant case, there is evidence to show that he was present when the item of Damp Proof Cement was discussed in the meeting of the Purchase Committee on 6-8-1983, a fact he himself admitted in his examination under Section 313 CrPC though he claimed that he was not aware of the said resolution: he signed the minutes of the resolution. This is his answer to question No. 7 in the accused examination:

"Ans. It is a fact that Mr. D.S. Shira convened the Purchase Committee on 6-7-83, but at the relevant time when the Damp Proofing Compound was discussed I had to leave the Purchase Committee as I was called by an Assistant of Finance Department for passing on the spot payment of T.A. Bills of Members of Board of Under Graduate Studies meeting. I went back to the Purchase Committee only after the item of DPC had been discussed. However I signed the minutes in good faith. I was junior most officer and member."

16. Once A-3 admitted his presence in the meeting of the Purchase Committee on 6-7-83 and duly signed the minutes of the meeting containing the DPC item, the onus is for him to prove that he was not present when the item of DPC was discussed or that he was not in any manner aware of the resolution regarding the purchase of DPC. No evidence is led by him to rebut the presumption that he was a party to the resolution for the purchase of the DPC. As a responsible official, he could not have signed, or, at any rate, was not expected to sign, on the dotted line without ascertaining the contents thereof. His conduct is, therefore, inconsistent with his claim of innocence. As a member of the Purchase Committee and one dealing with finance of NEHU, it was expected of him to ascertain the market price of DPC at that time. He could not simply act as the rubber stamp of A-1. It was also expected of him to ascertain the use of DPC and the quantity required for the construction works at NEHU. That apart, Ext. P-3 is the payment order amounting to ` 85,570/- in respect of supply of 2000 kg of DPC in favour of Sanjay Enterprise, Qualapatty, Shillong at the rate of `42.75p per kg, to whom no supply order was approved by the Purchase Committee. This was duly signed by him vide Ext. P-3(72). Similarly, Ext. P-3(2) is the payment order dated 27-4-1984 for `85,500/- for 2000 kg of DPC issued in favor of another firm at the rate of `42.75p per kg., namely, Carry Worth, Palton Bazar, Shillong, a

firm, whose supply order was never approved by the Purchase Committee. The payment order was duly signed by A-3 vide Ext. P-3(78). Ext. P/3(4) is the payment order for 2000 kg. of DPC at rate of ` 42.75p per kg. issued in favour of the firm of A-4/5. The payment order was duly signed by A-3 vide Ext. P/3(75). Similarly, Ext. P/3(5) is the payment order for supply of 2000 kg. of DPC amounting to `85,500/- issued in favour of the firm of A-4/5 at the rate of `42.75p per kg. Ext. P/3(76) is the signature of A-3. Ext. P/3(7) is the payment order dated 8-6-1984 for supply of 2 metric tones of DPC amounting to `85,500/- at the rate of `42.75p per kg issued in favour of another firm Hills Supply Syndicate, not approved by the Purchase Committee. Ext. P/3(78) is the signature of A-3. Likewise, payment orders issued and duly signed by him for DPC items at the same rate to a number of firms most of which not approved by the Purchase Committee are found at P/3(8) to P/3(71). On the face of these documentary evidences, it is clear that A-3 cannot claim that he was not involved in duping the NEHU. From the evidence of PW 13, who produced the Bills relating to the construction of intake water tank at NEHU for the year 1983 vide Ext. P-3 and P-5, that DPC was purchased by them at the rate of `10/- per kg, it becomes crystal clear A-1, A2 and A-3, who were involved in the purchase and passed the bills were aware or were deemed to have been aware that the then prevailing market price of DPC was, at any rate, ranging between `5/- to `10/- per kg and not `42.75p per kg.

17. Similarly, A-4 and A-5 could not claim that they were not aware of the market price of DPC at that point of time. In fact, as someone dealing with DPC, the inference is inevitable and the conclusion inescapable that they knew the market rate of DPC was ranging from `5 to `10 in those days. Even if A-1 was silent on the said market price, they ought to have disclosed the said information to the Purchase Committee. A-5 (T.S. Bareh) in his examination admitted that firm under the name and style of M/s Premier Enterprise belonged to him,; that during 1983-84, the rate of DPC in Shillong could be in the range of `6/- to `7 per kg. and that he quoted the rate of `42.75p per kg. which was approved but he did not force them to approve, and it was up to the office either to approve or reject. This clearly shows that he was not only aware of the fact that the market price of DPC was `6/-

to `7/- per kg. in those days, but he chose to inflate the price of DPC at `42.75p. per kg. However, A-4, who is the Proprietor of M/s Edmund S. Lyngdoh, in his examination under Section 313 CrPC claimed that he did not know the rate of DPC at that time in Shillong. His firm had also supplied DPC to NEHU at the rate of `42.75p per. As a supplier of and as someone dealing with, DPC at that time, it is incomprehensible as to how he could claim that he did not know the prevailing price market of such an item at Shillong. He also did not say that `42.75p per kg. was the market price of DPC at that time nor did he deny that the market price of DPC was `42.75p per kg at that time. This amounts to an evasive answer. An evasive answer by the accused in his statement under Section 313 CrPC is also a circumstance which can go against him in a criminal case. Both A-4 and A-5 knowing fully well that the market price of DPC was ranging from `5/- to `10/- at that time had, however, quoted `42.75p per kg in order make wrongful gain to themselves and, conversely, to cause wrongful loss to NEHU.

18. The question to be determined is whether there is criminal conspiracy amongst A-1, A-2, A-3, A-4 and A-4 to cheat NEHU. Section 120-A defines the offence of "criminal conspiracy", which says that when two or more persons agree to do, or cause to be done (i) an illegal act, or (ii) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy. The offence of criminal conspiracy was succinctly explained by the Apex Court in ***K.R. Purushothaman v. State of Kerala, (2005) 12 SCC 631*** in the following manner:

> *"13. To constitute a conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary hat all the conspirators must know each and every detail of the cons[piracy. Neither is it necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial act. The agreement amongst the conspirators can be inferred by necessary implication. In most of the cases, the conspiracies are proved by circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy. While appreciating the evidence of the conspiracy, it is incumbent on the Court to keep in mind the well-known rule governing the circumstantial evidence viz. each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn, and no other hypothesis against the guilt is possible. Criminal conspiracy is an independent offence in the Penal Code. The unlawful agreement is the sine qua non for constituting offence under Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or*

> *more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion of the plan would not per se constitute conspiracy. The offence of conspiracy shall continue till the termination of the agreement."*

In ***Nur Mohd. Mohd. Yusuf Momin v. State of Maharashtra, (1970) 1 SCC 696***, the Apex Court had held:

> *"……. Criminal conspiracy postulates an agreement between two or more persons to do, or cause to be done, an illegal act or an act which is illegal act, by illegal means. It differs from other offences in that mere agreement is made an offence even if no step is taken to carry out that agreement. Though there is close association of conspiracy with incitement and abetment the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated by Section 107, I.P.C. A conspiracy from it very nature is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested quarters or from utter strange` But, like other offences, criminal conspiracy can be proved by circumstantial evidence. Indeed, in most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedents and subsequently conduct, among other facts, constitute relevant material. In fact because of the difficulties in having direct evidence of criminal conspiracy, once reasonable ground is shown for believing that two or more persons have conspired to commit and offence then anything done by any one of them in reference to their common intention after the same is entertained becomes, according to the law of evidence, relevant for both proving the conspiracy and the offence committed pursuant thereto. ……."*

19. In the case at hand, the involvement of A-1, A-2 (now deceased), A-3, A-4 and A-5 duping NEHU has been clinchingly established. The Purchase Committee approved only two firms, namely, M/s Edmund S. Lyngdoh and M/s Premier Enterprise, which belonged to A-4 and A-5 respectively, but these two accused also supplied two metric tones each of DPC in the names of M/s E.S. Enterprise and T.S. Bareh vide Ext.P-3(3) and Ext. P-3(4) at the rate of `42.75p per kg on 7-11-1983 *i.e.* even before the Purchase Committee considered the question of purchasing the DPC, that too, when the Purchase Committee never approved these two firms as suppliers of DPC. A-1 admitted in his examination under Section 313 CrPC in answer to Question No. 13 admitted that he had issued the supply order at Ext. P-2/1 and Ext. P/25 proved by PW 7. In his answer to Question No. 39, A-1 also admitted it might have been that supply orders of about 60 suppliers were given. These fully corroborate PW 12, who exhibited P-3/1 and Ext. P/71 indicating that supplies of DPC were made at the rate of `42.75p by firms other than the firms of A-4 and A-5. The stock register at Ext. P-4 exhibited by PW 12 also contained the entries which show the names of the firms and the quantity supplied by them. The quotations were demonstrably invited by A-1 who then got the quotations of A-4 and A-5 at an inflated rate approved

subsequently by the Purchase Committee without the agenda being included in the meeting. A-2 and A-3, who were members of the Purchase Committee, passed the bills of 58 firms whose names were not approved by the Purchase Committee.

20. The offence of cheating and dishonestly inducing delivery of property is dealt with by Section 420 IPC. The offence of cheating is made of two ingredients: deception of any person and fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property. To put it differently, the ingredients of the offence are that the person deceived delivers to someone a valuable security or property, that the person so deceived was induced to do so, that such person acted on such inducement in consequence of his having been deceived by the accused and that the accused acted fraudulently or dishonestly when so inducing the person. To constitute the offence of cheating, it is not necessary that the deception should be by express words, but it may be by conduct or implied in the nature of the transaction itself. Then, Section 5(2)(d) of the Prevention of Corruption Act, 1947 says that a person is said to commit the offence of criminal misconduct if he, by corrupt or illegal means or otherwise by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage. The juxtaposition of the word “otherwise” with the words “corrupt or illegal means”, and the dishonesty implicit in the word “abuse” indicate the necessity for a dishonest intention on the part of the public servant to bring him within the meaning of Section 5(1)(d) of the Act. The term “dishonest intention” means an intention to cause wrongful gain to one person, or wrongful loss to another. Such gain or loss may be for the benefit of a third party.

21. In the light of the aforesaid evidence and considering the surrounding circumstances, antecedents and the subsequent conducts of A-2 and A-3 in knowingly approving the inflated price of the DPC coupled with the conduct of A-4 and A-5 in knowingly quoting an inflated price of DPC, the inference is irresistible and the conclusion inescapable that there was definitely an implied agreement amongst A-1, A-2 (now deceased), A-3, A-4 and A-5 to defraud NEHU for their wrongful gains to the order of over `50 lakhs (which would come to not less than twenty crores at today’s price). All the accused are thus guilty of criminal conspiracy to cheat NEHU. In the light of my above

findings, the prosecution has proved to the hilt that they hatched a criminal conspiracy to cheat NEHU and in deceiving NEHU to purchase DPC at the inflated rate of `42.75p when the prevailing market price was ranging from `5/- to `10/-, which they knew, for inducing it to pay `49,00,000/- (Rupees forty-nine lakhs)only with an intention of causing wrongful gain to themselves or, conversely, wrongful loss to NEHU. A-1 and A-3 are equally guilty of criminal misconducts punishable under Section 5(2) of the Prevention of Corruption Act, 1952. Therefore, the trial court rightly convicted A-1 but wrongly acquitted A-3. A-3 is accordingly convicted under Sections 120-B/420 IPC and Section 5 (a) (d) of the Prevention of Corruption Act, 1947. Similarly, as A-4 and A-5 have been found to be involved in the criminal conspiracy to cheat NEHU by quoting highly price of DPC and by supplying the same at an exorbitant rate of `42.75p per Kg. thereby causing wrongful gain to themselves and, conversely, by wrongful loss to NEHU, the trial court acted illegally in acquitting them. Consequently, A-4 and A-5 are guilty of the offences punishable under Section 120-B/420 IPC and are convicted accordingly.

22. Coming now to the quantum of sentence, the trial court sentenced A-1 (Deva Prasad Sharma) to undergo simple imprisonment for a period of one year under Section 5(2) of the Prevention of Corruption Act, 1947 and pay a fine of `25,000/- and, in default thereof, to undergo another two months' of imprisonment. He was further sentenced to suffer simple imprisonment for six months under Section 420 IPC with a fine of `15,000/- and, in default thereof, to undergo another simple imprisonment for two months. He was also sentenced to undergo simple imprisonment of four months with a fine of `15,000/- under Section 120-B IPC and, in default thereof, to suffer another simple imprisonment for a period of two months. Aggrieved by this, the CBI preferred the connected Criminal Appeal No. 1(SH) of 2000. Notice was duly issued to A-1 to show cause against the appeal for enhancement of his sentence. Assailing the inadequate sentences, Mr. V.K. Jindal, the learned senior counsel for CBI, submits that the age of A-1 and his status as a retired person cannot be valid grounds for showing leniency to him by the trial court: these are not the relevant considerations for imposing lesser period of sentences, more so, when he has been demonstrably found to have caused wrongful loss to NEHU to the order of some `62,00,000/-. According to the learned senior counsel, the trial court has completely

overlooked the gravity of the offences committed by A-1, who ought to have been awarded maximum punishment prescribed by law so as to deter others from following suit. Refuting the contention of the learned senior counsel for CBI, Mr. S.P. Mahanta, the learned counsel for A-1, submits, assuming but without admitting that A-1 is guilty to the offences charged against him, that the trial court has rightly imposed the appropriate sentences. According to him, old age always plays an important and relevant consideration in considering the quantum of sentence to be imposed upon a convicted person: A-1 is now over 80 years old and is a retired Government servant. It is thus submitted by the learned counsel for A-1 that no interference is called for in the impugned sentence. I have given my careful consideration to the rival submissions made on behalf of the prosecution and the accused, but cannot persuade myself to hold that the sentences imposed by the trial court upon A-1, considering the gravity of offences for which he has been convicted and the huge financial loss sustained by NEHU due to his fraudulent conduct and the leading role played by him in the commission of the crimes, are adequate; they are absolutely inadequate for white color crimes. This is a clear case of making private gain by A-1 at the cost of the public. An educational institution has been made by him as a milch cow to enrich himself at the expense of student community. He does not deserve any sympathy from this Court. The fact that the case has been pending for 29 long years can hardly be a ground for imposing a punishment lesser than the minimum statutory sentence prescribed by law inasmuch as he himself has been equally, if not more, responsible for adjourning the hearing of the appeal from time to time. In this connection, the following observations of the Apex Court in ***Madhukar Bhaskarrao Joshi v. State of Maharashtra, (2000) 8 SCC 571*** are apt:

> *"18. When corruption was sought to be eliminated from the polity all possible stringent measures are to be adopted within the bounds of law. One such measure is to provide condign punishment. Parliament measured the parameters for such condign punishment and in that process wanted to fix a minimum sentence of imprisonment for giving deterrent impact on other public servants who are prone to corrupt deals. That was precisely the reason why the sentence was fixed as seven years and directed that even if the said period of imprisonment need not be given*

the sentence shall not be less than the imprisonment for one year. Such a legislative insistence is reflection of Parliament' resolve to meet corruption cases with a very strong hand and to give signals of deterrence as the most pivotal feature of sentencing of corrupt public servants. All public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequences. If on the other hand a public servant is given the impression that if he succeeds in protracting the proceedings that would held him to have the advantage of getting a very light sentence even if the case ends in conviction, we are afraid its fallout would afford incentive to public servants who are susceptible to corruption to indulge in such nefarious practices with immunity. Increasing the fine after reducing the imprisonment to a nominal period can also defeat the purpose as the corrupt public servant could easily raise the fine amount through the same means."

19. In the present case, how could the mere fact that this case was pending for such a long time be considered as a "special reason"? That is a general feature in almost all convictions under the PC Act and it is not a speciality of this particular case. It is the defect of the system that longevity of the cases tried under the PC Act is too lengthy. If that is to be regarded as sufficient for reducing the minimum sentence mandated by Parliament the legislative exercise would stand defeated."

I may also profitably quote the observations of the Apex Court in ***Ram Narayan Popli case*** (*supra*) at paragraph 382 of the judgment, which read thus:

"382. The cause of the community deserves better treatment at the hands of the court in the discharge of its judicial functions. The community or the State is not a persona non grata whose cause may be treated with disdain. The entire community is aggrieved if economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of the moment upon passions being aroused. An economic offence is committed with cool calculation

and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with a permissive eye, unmindful of the damage done to the national economy and national interest, as was aptly stated in ***State of Gujarat v. Mohanlal Jitamalji Porwal****."*

Though the aforesaid observations were rendered in the context of an economic offence, I do not see why the same principles should not be held applicable to corruption cases of public servants, who are indulging in looting of public money.

23. On considering the case from all angles, I am satisfied that this is a fit case for enhancing the sentences imposed by the trial court upon A-1: the trial court has, without any apparent reasons or on taking into account extraneous matters, chosen to be economical in the quantum of sentences awarded by it upon A-1. Resultantly, Criminal Appeal No. 1(SH) of 2000 stands allowed. Criminal Appeal No. 1(SH) of 1999 is accordingly dismissed. A-1 (Shri Deva Prasad Sharma) is consequently sentenced to undergo five years of rigorous imprisonment with a fine of `1,00,000/- (Rupees one lakh) for his conviction under Section 420 IPC and, in default of payment of fine, to undergo another R.I. for one year. He is also sentenced to suffer five years of rigorous imprisonment with a fine of `1,00,000/- for commission of the offence punishable under Section 5(2)(d) of the Prevention of Corruption Act, 1947 and, in default of payment of the fine, to undergo another one year of rigorous imprisonment. He is further sentenced to undergo another three years of rigorous imprisonment for his conviction under Section 120-B IPC with a fine of `50,000/- and in default thereof, to suffer another R.I. for six months. The sentences are to run concurrently. The quantum of sentences are accordingly enhanced. The bail-bonds of A-1 shall stand cancelled. He shall surrender forthwith before the trial court to serve out

the sentences imposed upon him by this judgment, failing which the trial court shall take coercive measures to take him to custody.

24. In so far as the appellants in Criminal Appeal No. 2(SH) of 2000 are concerned , Shri W.M.R. Wallang (A-3), whose acquittal has been reversed by me, and is accordingly convicted under Sections 120-B/420 IPC and Section 5(2)(d) of the Prevention of Corruption Act, 1947, Shri Edmund S. Lyndoh (A-4) and Shri T.S. Bareh (A-5) whose acquittal have been overturned by me, and who have been convicted under Sections 120-B/420 IPC, are required to be heard on the question of their sentences. Criminal Appeal No. 2(SH) of 2000 is hereby allowed. In terms of the decision of the Apex Court in ***Santa Singh v. State of Punjab, (1976) 4 SCC 190***, Criminal Appeal No. 2(SH) of 2000 is remanded to the trial court with a direction to pass appropriate orders after giving the three appellants (A-3, A-4 and A-5) an opportunity to be heard in regard to the question of sentence under Section 235(2) CrPC. A-3, A-4 and A-5, who are now on bail, shall appear before the trial court as and when called upon to do so for the sentence hearing, failing which such steps as may be necessary including coercive measures to ensure their attendance in court shall be taken by the court. Order accordingly.

Transmit the L.C. records to the trial court forthwith.

JUDGE

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