

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH)
SHILLONG BENCH

Crl Appeal No. 3(SH) of 2009

Shri Jatin Dutta
Aged about 69 years
s/o (L) M Dutta
r/o Motinagar, Shillong
Meghalaya :: Appellant

-Versus-

The Central Bureau of Investigation
Having office at Oakland,
Shillong, East Khasi Hills District,
Meghalaya. ::: Respondent

Crl Appeal No. 7(SH) of 2009

Shri Takap Ringu
s/o (L) Marke Rinju,
r/o C Sector,
Itanagar, Arunachal Pradesh :: Appellant

-Versus-

The Central Bureau of Investigation
Having office at Oakland,
Shillong, East Khasi Hills District,
Meghalaya. ::: Respondent

Crl Appeal No. 8(SH) of 2009

Superintendent of Police
Central Bureau of Investigation/
Anti Corruption Bureau,
Shillong-793001 :: Appellant

-Versus-

1. Shri Atul Chandra Nath
s/o (L) Daameshar Nath,
Secretary, M/s Elite Plantation and
Multipurpose Society,
Mikhir Gaon,
PS Mikhibeta,
District Morigaon, Assam

2. . Smti Ranjita Devi
d/o (L) Haliram Nath,

President, M/s Elite Plantation and
Multipurpose Society,
Mikhir Gaon,
PS Mikhibeta,
District Morigaon, Assam ::: Respondents

BEFORE
THE HON'BLE MR JUSTICE T VAIPHEI

Crl Appeal No. 3(SH) of 2009

Advocate for the appellant	::	Mr SP Mahanta, Mr AK Agarwal, Mr H Abraham, Advocates
Advocate for the respondents	::	Mr VK Jindal, Sr. Adv Mr S Jindal, Mr S Dey, Advocates
Date of hearing	::	07.12.2012
Date of judgment	::	30.01.2013

Crl Appeal No. 7(SH) of 2009

Advocate for the appellant	::	Mr SP Mahanta, Mr AK Agarwal, Mr H Abraham, Advocates
Advocate for the respondents	::	Mr VK Jindal, Sr. Adv Mr S Jindal, Mr S Dey, Advocates
Date of hearing	::	07.12.2012
Date of judgment	::	

Crl Appeal No. 8(SH) of 2009

Advocate for the appellant	::	Mr VK Jindal, Sr. Adv Mr S Jindal, Mr S Dey, Advocates
Advocate for the respondents	::	Mr SP Mahanta, Mr AK Agarwal, Mr H Abraham, Advocates
Date of hearing	::	07.12.2012

Date of judgment

::

JUDGMENT AND ORDER

This bunch of three criminal appeals are directed against the common judgment dated 9-4-2009 passed by the learned Special Judge, CBI, Shillong in Special Case No. 4 of 2002. Criminal Appeal No. 3(SH) of 2009 is filed by Shri Jatin Dutta ("A-1" for short) challenging his conviction under Section 120-B IPC and Section 13(2) of Prevention of Corruption Act, 1988 ("PC Act") and the sentence for a period of two years imprisonment. Criminal Appeal No. 7(S) of 2009 is preferred by Shri Ringu Takap ("A-2" for short) against his conviction under Section 120-B IPC and Section 13(2) of Prevention of Corruption Act, 1988 and the sentence of imprisonment. Criminal Appeal No. 8(SH) of 2009 is, however, preferred by the CBI questioning the legality of the acquittal of Mrs. Ranjita Devi ("NA-1" for short) and Mr. Atul Chandra Nath ("NA-2" for short).

2. The facts giving rise to these appeals may be briefly noticed at the outset. According to the CBI prosecuting the case, in the year 1997-98, A-2, who was the then Secretary of North Eastern Council (NEC), A-1, who was the erstwhile Under Secretary, Planning in the NEC and the later N.D. Varma, the then Director of Indian Council of Agriculture Research and Advisor to NEC (who died before framing of the charges) had entered into a criminal conspiracy with NA-1 and NA-2, who were the Secretary and President respectively of the society under the name and style of M/s Elite Plantation and Multipurpose

Society registered under the Societies Registration Act, 1860 (“the Society” for short) and caused wrongful loss to the Government of India and, conversely, wrongful gain to NA-1 and NA-2 by sanctioning financial assistance of Rs.4,14,619/- and disbursing the first instalment of Rs. 2,07,309/- in favour of the Society purportedly for plantation of *Agar* (an aromatic plant) at an inflated rate at the time when the Society was not even registered. The NEC is a statutory body fully funded by the Central Government and is assisting the State Governments of the North East Region to undertake developmental works and for generating self-employment, etc. by undertaking various projects or by granting financial assistance for industry and minerals, transport and communication, social and community services, manpower development, water power development, forest, plant resources, etc. The Secretary, NEC was empowered to accord administrative approval for expenditure sanction of various schemes up to Rs.5 (five) crores subject to fulfilment of certain conditions such as approval by the Planning Commission and the scheme being technically viable and scrutinized by the Financial Advisor, etc. The decision on such project is taken on the advice/recommendation of the Sectoral Heads, Planning Advisor and Financial Advisor. After A-2 joined the NEC as Secretary in 1996, he held a discussion with A-1 and the late ND Varma (“the deceased Director” for short) to formulate a new scheme for intensive cultivation and plantation to be included in the NEC budget for 1997-98 and decided to start a pilot project to support plantation of rubber, tea garden, *Manjium*, medicinal plants, *tung* and *Agar*, etc. through registered societies and group of individuals. The minimum area

required for such plantation was fixed at two hectares. A fund of Rs. 215 lakhs was kept aside for direct funding by NEC. Out of the total project cost, ten percent was to be contributed by the applicant and the balance ninety percent was to be provided as grant-in-aid. NGOs and individuals of the Region were eligible to submit their applications for financial grants through concerned departments of the State Government of the Region for the consideration of the Secretary, NEC and the last date of receipt of the application was fixed on 18-8-1997.

3. According to the prosecution, NA-1 and NA-2 submitted the application dated 18-8-1997 seeking financial assistance for Rs.5,53,700/- for plantation of *Agar* over a land measuring 3.5 hectares under the NEC scheme. At the time of submitting the application, the Society was not even registered. Mr. J.S. Syiem, the Planning Advisor to NEC (PW 7), in order to finalize the details of the new scheme of intensive cultivation, convened a meeting on 8-9-1997 attended by the deceased Director, Mr. Promode Kant, Forest Advisor to NEC, Mr. K.N. Hazarika Advisor, Industries to NEC and Mr. Gautam Sen, Financial Advisor to NEC wherein it was decided that due to problem of theft and effective protection required, plantation in one and half hectare of land would be sufficient for each farmer. Though this recommendation was sent to A-2 (Secretary, NEC) on 13-10-1997, he did not agree with the same due to criminal conspiracy and had decided that plantation of *Agar* should be a minimum of two hectares per family and two hectare per member in case of registered NGO societies. According to the CBI, Pramode Kant, Adviser (Forest), had calculated the cost of plantation of *Agar* at the rate of Rs. 7,250/-

per hectare and intimated the same to the Planning Advisor vide his letter dated 31-10-1997, but the deceased Director worked out the cost of such plantation at the rate of Rs.1,02,375/- per hectare and forwarded the same to A-1. Such high rate was calculated by the deceased Director in collusion with A-2, A-1, NA-1 and NA-2 with the dishonest intention of causing wrongful gain to themselves and causing wrongful loss to the Government. Only few persons were selected though a number of applications were submitted by interested parties. The application of the Society was received by A-1 who put his initial and date in token of having received the same on 22-8-1997. One Mrs. Phida Dkharman, dealing assistant, was asked by A-1 to put up the said application and a list of applications for *Agar* plantation from the State of Assam and Manipur (?). A-1 processed the file on 23-10-1997 and recorded in the note sheet that twenty-nine applications were received for *Agar* cultivation. On request, the Indian Council of Agriculture Research prepared one model scheme for cultivation of *Agar* in one hectare at the rate of Rs.1,02,375/- and suggested that a minimum of 2.52 hectare could be viable for economic return. He also recommended for consideration 2.5 hectare as the minimum area for *Agar* cultivation and also recommended the five societies including the Society (Serial No. 29 of the list of applications) for the financial grants without setting out any criteria for selection. The matter was thereafter placed before the Planning Advisor, who, however, advised that all applications for plantation so received should be considered after the Scheme was finalised and could not be considered piecemeal and that the Advisor (Forest) should also examine the scheme. A-1, however, processed the

file further on 1-12-1997 ignoring the remark of the Planning Advisor and reiterated his earlier recommendation for sanctioning *Agar* plantation in 4.5 hectares by the Society, among others at an estimated cost of Rs.35,83,250/- and submitted the file directly to A-2 for consideration on 1-12-1997. A-2 gave his approval on 12-12-1997 and returned the file to A-1, who then recorded in the note sheet that A-2 had agreed to NEC support for the Society, among other societies, and proposed sanctioning of Rs.4,14,619/- in favour of the Society and sought for financial concurrence.

4. It is the further case of the CBI that on 23-12-1997, in the absence of the Financial Advisor/Deputy Financial Advisor, ? gave his concurrence to the proposal. Thereafter, A-1 issued the sanction order for Rs.4,14,619/- and released Rs.2,07,309/- as the first instalment, which was received by NA-2 and NA-1 vide their joint letter dated 23-1-1998. It is the further allegation of the prosecution that during inspection of the plantation on 8-7-1998 by one Raman Deka, Agricultural Extension Officer, it was found that the *Agar* plantation was not satisfactorily done, and the farmers of the Society had instead planted some other plants. The prosecution also alleged that one B.K. Nath, a member of the Society, had purchased fencing wires and materials from M/s Kamrup Wire Products Ltd. for private plantation of his teak wood at the cost of Rs.39,000/- vide receipt dated 5-12-1997, Rs. 38,760/- vide receipt dated 24-12-1997 and Rs.46,170/- vide the receipt dated 5-1-1998, and he got the date changed in the first two receipts by one Gopal Sarkar, proprietor of the said firm to 5-2-1998 and 24-2-1998 for audit requirement and such wills were

accepted by the Society for submitting utilization certificate of the fund to NEC. Thus, according to the prosecution, after investigation of the case, they found a prima facie case of criminal conspiracy amongst the official accused i.e. A-1 and A-2 and the private accused, namely, NA-1 and NA-2, which caused wrongful loss to the Government to the tune of Rs.2,07,309/- and they were accordingly charge-sheeted under Section 120-B/420/409 IPC and Section 13(2) r/w Section 13(1)(d) PC Act. On their appearance before the learned Special Judge, CBI, Shillong, the charges against them under Section 120-B/420 IPC and Section 13(2) read with Section 13(1)(d) of the PC Act were framed against the appellants, who, however, pleaded not guilty to the charges and claimed to be tried. In the course of trial, the CBI examined as many as 18 witnesses and exhibited some 31 documents and 9 Paper Marks to substantiate the charges against the appellants and the non-appellants. At the conclusion of the trial, the trial court convicted A-1 and A-2 under Section 120-B IPC and Section 13(2) read with Section 13(1)(d)(i) PC Act but acquitted NA-1 and NA-2 by giving them the benefit of doubt. He, therefore, sentenced A-1 and A-2 to imprisonment for a period of 6 months for commission of the offence punishable U/s 120-B IPC and another two years of imprisonment with a fine of Rs. 30,000/- and, in default thereof, to undergo another six months of imprisonment for the commission of the offence punishable under Section 13(2) PC Act. It may be noted that the trial court used the depositions and exhibits in Special Case No. 2/2001 and Special Case No. 3 of 2002 for this case as these evidence are common and inter-related. Aggrieved by this judgment, A-1 and A-2 preferred this appeal under Section 374 CrPC.

The CBI also preferred an appeal under Section 378(2)(b) CrPC against the judgment of acquittal in respect of NA-1 and NA-2.

5. The trial court recorded the findings that though as many as 31 applications for Agar plantation were received, A-1 recommended only five applications including that of the Society for consideration notwithstanding the fact that the Planning Advisor (PW 5) vide his note at Ext. 10 made it clear that all the proposals for intensive plantation should be examined at the sametime after framing of the scheme and that the scheme for medicinal and aromatic plants were to be examined separately and had asked A-1 to put up all the applications received for intensive plantation together as no application could be considered piecemeal. However, all the applications were not put up together by A-1 as asked by him. According to the trial court, when there were as many as 31 applicants, on what basis only five applicants were selected by A-1 for processing and on what basis the Society was selected, and for what reason or reasons, A-1, instead of heeding the advice of the PW 5, put the note directly to A-2, which is indicative of abuse of his official position to help the Society obtained pecuniary advantage at the expense of the Government. The trial court also found that vide Ext. 15 at page 115 of file No. NEC/FOR/INTENSIVE/98 Vol. II, Promod Kant, Forest Advisor to NEC (PW 8) in his note dated 19-3-98 called the file relating to *Texus Bacatta* and *Agar* plantation, but A-1 never put up this file by stating that the file was dealt with by the deceased and that A-1 wanted the existing system to continue. The trial court relied on Paper Mark 2, which is a Xerox copy of the minutes of the

meeting convened by P% on 8-9-1997 to formulate the scheme for intensive cultivation and recorded the finding that the participants of the meeting were of the view that the problem of *Agar* cultivation is that “it is highly liable to theft by others. So the question of protection is very important and unless the tree is protected effectively the farmer may not be able to harvest the crop. Therefore, the Committee recommended that one-half hectare would be sufficient for each farmer.” Thus, according to the trial court, ignoring the aforesaid note given by PW 5, the recommendations of the participants of the meeting dated 8-9-1997 (Paper Mark 2) and the note dated 19-3-98 of PW 8 are another indication of abuse of their official positions by A-1 and A-2 to help NA-1 and NA-2 obtained the financial grant improperly. The trial court observed that A-2 might have a discretionary power, but such discretionary power like any discretionary power should not be exercised arbitrarily especially when there was a suggestion for adopting certain norms at Paper Mark 2 and in the face of objection raised by PW 5. Thus, from the official notes at Ext. 10, 11, 13 and 15 as well as Paper Mark 2, it has been proved to the hilt that A-1 and A-2 had by-passed all other Sectoral Heads and approved the application of the Society without any justification and released the first instalment amounting to Rs.2,07,309/-. The learned Special Judge, therefore, found A-1 and A-2 guilty of criminal conspiracy punishable under Section 120-B IPC. He also found A-1 and A-2 abusing their official positions to enable NA-1 and NA-2 to obtain a financial assistance amounting to Rs.2,07,309/- by causing wrong loss to the Government, and are,

therefore, punishable under Section 13(2) read with Section 13(1)(d)(ii) of the PC Act.

6. Unfolding his submissions, Mr. D. Das, the learned senior counsel for A-2, argues that the question of A-2 deviating from any rules of procedure does not arise on the facts of this case inasmuch as no guidelines or rules were formulated by the Government at the relevant time, and the finding of the trial court to that effect is, therefore, untenable and perverse; this alone is enough to set aside the impugned judgment of conviction. He further submits that the CBI has miserably failed to prove that A-2 obtained a valuable thing or pecuniary advantage to himself or to any other person for the simple reason that none of the prosecution witnesses have ever made any allegation to that effect; the question of A-2 abusing his position as a public servant or by means of corrupt or illegal means to obtain for himself or for any other person any valuable thing or pecuniary advantage cannot, on the facts found in this case, arise at all. He maintains that all the bills passed from NEC have financial concurrence followed by sanction order and that on the evidence of some of prosecution witnesses, it has been established that all the Sectoral Heads were involved in sanctioning the application of the Society and in releasing the first instalment amounting to Rs.2,07,309/- to the Society, and the application was processed through proper channels; the findings to the contrary recorded by the trial court are, therefore, based on no evidence. The learned senior counsel, therefore, submits that the impugned judgment of conviction cannot be sustained in law and is liable to be set aside.

7. Mr. SP Mahanta, the learned counsel for A-1 (Mr. Jatin Dutta), while supporting the contentions of learned senior counsel for A-2, also makes additional submissions. In the first place, he submits that the evidence of PW 5 (who was at the relevant time the Planning Adviser to NEC), who had called for the meeting on 8-9-1997 vide Paper Mark 2 would go to show that the minutes of the meeting dated 8-9-1997 (Paper Mark 2) was never approved by the Secretary, and the same was only a record of the discussion, a fact corroborated by the evidence of PW 19 and, as such, such a recommendation could not be binding upon any official. In any case, contends the learned counsel, Paper Mark 2 is merely a Xerox copy, and is not admissible in evidence and the trial court has acted illegally in relying on this inadmissible evidence to convict the appellants. It is submitted by the learned counsel that prior to the discussion held on 8-9-1997 vide Paper Mark 2, a decision had already been taken by A-2 and PW 5 on 17-7-1997 vide the Note Sheet of File No. NEC/Agri/1-97 regarding the modus operandi for intensive cultivation/plantation and these were printed in the media and was published in the *Sentinel*, *Apphira* and *Shillong Times* in their issues dated 29-7-1997. The trial court grossly erred in convicting A-1 without taking these facts in account. It is also the contention of the learned counsel that the NEC scheme for intensive cultivation was for societies and not for individuals and altogether five proposals of registered societies were received which included 29 individual applications of different members of M/s Barak Valley Hills Tribe Development Council and those 29 applications individual applications and all applications for *Agar* plantation were

taken up and processed at the sametime, and the trial court is wrong in holding that those applications were processed on piecemeal basis. Drawing my attention of the evidence of PW 6, PW 10 (Financial Advisor to NEC) and Exhibit B, financial concurrence was given for sanction of the grants, and no objection was ever raised by PW 10 before or after the sanction order, and this evidence was completely overlooked by the trial court while convicting A-1. It is pointed out by the learned counsel that the deceased Director had calculated all the components including cultivation, maintenance, fencing, growing period, etc. for propagation of *Agar* plant for a certain period of years keeping in view the local price index and the conditions prevalent in the area at that time, and the trial court has completely ignored these glaring facts while sanctioning the scheme and had recommended the cost for the plantation at the rate of Rs.1,02,375/- per hectare and only the first instalment was released, and the question of sanctioning a higher rate than prescribed cannot arise. Referring to the evidence of PW 8, the learned counsel submits that as *Agar* was included in the Agriculture Sector, there was no irregularity on the part of the deceased Director, who was the ex-officio Advisor to NEC (Agriculture & Allied) to deal with the file of *Agar*, in examining the proposal of the Society and no written order was issued by PW 8 or otherwise for putting up the file prior to the release of the first instalment of grant. According to the learned counsel, the prosecution witness have established that there was proper utilization of fund released to the Society by the NEC, which goes to show that the first instalment had been utilized to the maximum by the Society, and there is thus no evidence to hold that the appellants have abused their official

positions: A-1 is entitled to be acquitted, The learned counsel also submits that the conviction of A-1 under Section 120-B IPC cannot be sustained in law when the trial court acquitted NA-1 and NA-2. It is further contended by the learned counsel that when the trial court has already discharged all the co-accused in five cases based on the same complaint, it should not have convicted the appellant in the instant case: the conviction of the appellant by holding that he had misused his official position in this case and on the same breath holding the six co-accused demonstrably shows that the conviction of A-1 is illegal. It is also the contention of the learned counsel that there is no whisper of evidence to prove that A-1 misappropriated the released fund or that he had received pecuniary advantage by putting the Government to a loss; the conviction of A-1 is thus unsustainable in law. Finally, the learned counsel submits that the prosecution has miserably failed to prove that a criminal conspiracy was hatched by A-1 and A-2 together with NA-1 and NA-2 to defraud the Government and that A-1 abused his official position to help NA-1 and NA-2 obtained pecuniary advantage, and, as such, his conviction is liable to be set aside.

8. Mr. V.K. Jindal, the learned senior counsel for the CBI, however, vehemently supports the findings of the trial court in respect of A-1 and A-2 and submits that the trial court has correctly appreciated the evidence on record. He contends that the evidence i.e. the documentary evidence exhibited by the CBI and fully corroborated by the evidence of official witness and other evidence on record clearly establishes the commission of the white collar crimes and the manner

in which they were committed, for which the interference of this Court is not called for. According to the learned senior counsel, quoting from the decision of the Apex court, the expression “proof beyond reasonable doubt” is merely a guideline, not a fetish, and the prosecution is not required to meet any and every hypothesis put forward by the appellants. He further submits that a reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based on reason and common sense; man may lie but documentary evidence will never. He also agrees with the submission of the learned counsel for the appellants that the trial court, while convicting the appellants, could not have or ought not to have acquitted the private accused i.e. NA-1 and NA-2 when the evidence on record is sufficient to conclude that there was criminal conspiracy amongst the appellants, NA-1 and NA-2 to defraud the Government: there was no question of giving benefit of doubt to these non-appellants. The learned senior counsel also points out that as per the evidence of PW-24, who was the Registrar of Societies at the relevant time, the Society was registered only on 4-9-1997 while the evidence of PW 9 established that the application of the Society was signed by NA-1 as late as 18-8-1997 and, therefore, submits that the application of the Society for the grant-in-aid was not even a registered society on 18-8-1997 when the application was submitted: PW 5 (who was the Principal Chief conservator of Forest at that time) revealed that the application of the Society was forwarded by him on 18-8-1997.

9. Assailing the acquittal of NA-1 and NA-2, the learned senior counsel, while discussing the evidence of PW 18, submits that though the learned Special Judge recorded the findings that "... so from his deposition (PW 18) it appears that Mr. Takap Ringu (A-2 herein), Mr. Jatin Dutta (A-1) and (L) N.D. Verma (the deceased Director) conspired with NA-1 and NA-2 and due to the said conspiracy calculated the rate per hectare on higher side and ignoring the note of J. Syiem, who processed the file of M/s Elite Plantation and Multi-purpose Society, approved and released an amount of Rs.2,07,309/-, which had not been used for plantation of Agar till 8-7-1998 and furnished some fake bills with utilization certificate of grant-in-aid without following any procedure as such and the (I/O) found that accused persons are guilty", yet he proceeded to convict A-1 and A-2 and acquit NA-1 and NA-2: the acquittal of NA-1 and NA-2 is thus irrational inasmuch as no immunity can be given to them when they were found to be a part and parcel of the criminal conspiracy and cannot, therefore, be sustained in law.

10. I have carefully gone through the impugned judgment as well as the L.C. records. I have also given my thoughtful consideration to the submission advanced on behalf of the rival parties. From the evidence of PW 5, PW 8 and other prosecution witnesses, I have no hesitation to hold that no set of guidelines governing/regulating the manner in which financial grant to support intensive Agar cultivation were to be sanctioned by the NEC, was made at the time when the Society (Elite Plantation and Multipurpose Society) was sanctioned the financial grant in question. The case of appellants is that in the

absence of such guidelines, no irregularity could have been committed by the appellants in sanctioning the grant to the Society. At this stage, it may be noted that NA-1 and NA-2 were the Secretary and President respectively of the Society and that neither NA-1 nor NA-2 disputed that they received the financial grant amounting to Rs.2,07,309/- from the NEC. There cannot also be any dispute by now that Paper Mark 2, which is the minutes of the meeting convened by PW 5 on 9-8-1997, is not admissible in evidence inasmuch as this document is merely a Xerox copy and not the original document. Moreover, the recommendations made by the high officials of NEC such as Planning Advisor, Financial Advisor, Environment and Forest Advisor and other Sectoral Heads recorded in the minutes of the said meeting were never approved by the Secretary, NEC (A-2) and, as such, they cannot be held to be binding upon the officials of the NEC. However, the moot point is whether, notwithstanding the absence of any such guidelines, A-1 and A-2 had the unfettered power to pick and choose the beneficiary for grant of financial assistance? In my opinion, they did not have. From the evidence of PW 7 (Planning Advisor), PW 8 (Financial Advisor), PW 13 (Accountant in the Finance Wing of the NEC in 1997-98), PW 15 (the informant) and PW 19 (Forest Advisor to NEC), it has been proved that there was an established office practice and procedure requiring the examination of any application for financial support for intensive cultivation by all Sectoral Heads such the Planning Advisor, Financial Advisor, Forest Advisor, etc., and it was only after their examination that the matter was finally to be placed before the Secretary, NEC for final decision. True, the Secretary, NEC had the discretion to overrule the

recommendation/assessment of the Sectoral Heads but with a cogent reason and not whimsically. This is obviously a salutary and wholesome practice prevailing in any Government establishment to ensure that the financial support so granted is extended to deserving applicants for a genuine case and that there was no arbitrariness in the decision-making process.

10. PW 7, who was the Planning Advisor to NEC at NEC at the relevant time, has deposed that after the meeting held on 8-9-1997 vide his office note dated 27-10-1997, he had specifically advised that all the applications received in respect of Agar plantation should be considered at the same time. The said note dated 27-10-1997 is exhibited as Ext. 10. He had mentioned therein that such applications could not be considered piecemeal and the Advisor (Forest) should also examine the file. However, he further testified, he did not know what had happened thereafter as the same was never re-submitted. From Ext. 13, it is seen that the file was directly placed by A-1 before A-2 on 1-12-1997 and vide the note dated 23-12-1997, A-1 mentioned that A-2 had approved for the financial support of Rs.4,14,619/-, among others, in favour of the Society vide Ext. 10(3). The statement of PW 7 is corroborated in full by the statement of PW 8, who also tendered the same evidence as PW 19 in Special Case No. 2 of 2001 and who testified in his cross-examination that PW 7 had advised in his note dated 23-10-97 that all such applications should be processed at same time after the guidelines had been evolved. In his examination-in-chief, he testified that A-1 had directly placed the six proposals including the proposal of the Society before A-2 against the

advice of PW 7 and that the Forest Advisor should be consulted with regard to the applications for Agar plantation. He also deposed that A-1 did not mention any reason for selecting these six beneficiaries including the Society from amongst the 29 applications for Agar plantation so received. According to PW 8, A-1 in his note dated 1-12-1997 (Ext.13) indicated that he was submitting the note as directed by A-2 and that A-2 signed the same on 12-12-1997 meaning thereby that he had given his approval for the proposal submitted by A-1. It is further deposed by PW 8 that the Ministry of Environment & Forest, Govt. of India had given an estimate of Rs.10,215/- per hectare for plantation of non-timbers such as Agar plantation in the North Eastern Region and further allowed addition of up to 50% in activities like awareness creation, Joint Forest Management, Fencing, etc., yet the grant was sanctioned to the Society at the rate of Rs.1,02,375/- per hectare, which was about 8 to 9 times higher than the amount estimated by the said Ministry. PW 11, who had tendered his evidence in Special Case No. 3 of 2002, also corroborated the statements of PW 7 and 8, and deposed that in this case, the normal channel of submission of file was not followed by A-1, who directly submitted the file to A-2 on 1-12-1997 and on the approval by A-2 on 12-12-1997 whereafter the draft sanction was prepared and put up by A-1 on 23-12-1997 before the Financial Advisor not for financial concurrence but to see whether the draft sanction order was in order and the same was simply marked to S.O. (Finance). The note dated 23-12-97 at Ext. 12(B) shows that the concurrence was never given by the Financial Advisor as he was apparently on tour, but the concurrence was given by the Deputy Secretary. The evidence of PW 17 is also to the same

effect. The cross-examination of PW 7, 8, 11 and 17 did not elicit anything to falsify their testimonies. The net effect of the unshaken testimonies of the prosecution witnesses is that the charge against A-1 and A-2 that they have abused their respective official positions has been proved to the hilt by the prosecution. The fact that a sum of Rs.2,07,309/- was received by the Society is not an issue here inasmuch there was no denial to this effect by any of the accused.

11. The next question to be decided is, whether the released amount was utilized for the purpose for which it was sanctioned by A-1 and A-2? PW 18, who is the I.O. of the case, deposed that investigation revealed that after receiving the grant-in-aid the said Society did not complete the plantation of Agar till 8-7-1998 when Shri Ramen Deka, Agricultural Extension Officer of the concerned area inspected the plantation. He further testified that afterwards, the Society used the fake bills obtained from M/s Kamrup Wire Products Ltd. of Shri Gopal Sarkar and submitted the same to NEC along with the utilization certificate. It is interesting to note that the said Ramen Deka was never examined by the prosecution to prove that the Society did not complete the plantation till 8-7-1998. However, the prosecution examined one Gopal Sarkar, the Proprietor of M/s Kamrup Wire Products, which is a factory dealing with the manufacture and sale of fencing wires, as PW 15. All that he deposed is that one Mr. Nath had purchased fencing wires from him about 8/9 years back in Guwahati for his house and that he had also purchased chain link fencing and three line G.I. wires and that the estimated cost of it was below Rs.40,000/-. According to him, this gentleman

went to him only once for purchase of fencing wires, etc. and did not go to him thereafter. This is a very ambiguous statement. He did not even indicate as whether the said Nath is NA-2 or not. No attempt was also made by the prosecution to establish that the said Nath is none other than NA-2. No other witness was examined by the prosecution to substantiate their case that the fund sanctioned and disbursed to the Society was never utilized for plantation of Agar as sanctioned and disbursed by the appellants. It is the duty of the prosecution to prove the charges against the accused beyond reasonable doubt. The question is whether the prosecution, having failed to prove that the fund was not utilized for the intended purpose, can bring home the charges against the appellants and the non-appellants under Section 13(2) read with Section 13(1)(d)(ii) PC Act? Section 13(1)(d) is in the following terms:

“13. (1) A public servant is said to commit the offence of criminal misconduct

(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest;

* * *

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine.

13. Thus, to attract the provisions of Section 13(1)(d)(ii) of the Prevention of Corruption Act, public servant should obtain for himself or any other person any valuable thing or pecuniary advantage by abusing his official position as a public servant. The term “abuse” is explained by the Apex Court in **M. Narayan Nambiar v. State of Kerala, AIR 1963 SC 1116**, to mean “misuse i.e. using his position for something for which it is not intended”. The Apex Court, while analysing Section 5(1)(d) of the Prevention of Corruption Act, 1947, which is virtually in *pari materia* with Section 13(1)(d) of the Prevention of Corruption Act, 1988, observed:

“Let us look at the clause ‘by otherwise abusing the position of a public servant’, for the argument mainly turns upon the said clause. The phraseology is very comprehensive. It covers act done ‘otherwise’ than by corrupt or illegal means by an officer abusing his position. The gist of the offence under this clause is that a public officer abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage. ‘Abuse’ means mis-use i.e using his position for something for which it is not intended. That abuse may be by corrupt or illegal means or otherwise than those means. The word ‘otherwise’ has wide connotation and if no limitation is placed on it, the words ‘corrupt’, ‘illegal’ and ‘otherwise’ mentioned in the clause become surplusage, for on that construction every abuse of position is gathered by the clause. So some limitation will have to be put on that word and that limitation is that it takes colour from the preceding words along with which it appears in the clause, that is to say something savouring of dishonest act on his part.”

(Emphasis mine)

14. Though the aforesaid observations have been rendered in the context of the repealed Prevention of Corruption Act, 1947, I do not find any reason why the same construction cannot be placed on Section 13(1)(d)(ii) of the Prevention of Corruption Act, 1988. So understood, in order to come within the mischief of Section 13(1)(d)(ii), there has to be something savouring of dishonest act on the part of

the accused. By dishonest act, it means that the accused has to do the act of commission or omission in order to cause wrongful gain to one person and wrongful loss to another. Therefore, to bring home the charge against the accused under Section 13(2) of PC Act, 1988, it has to be proved that he must abuse his official position to cause wrongful gain to one person and wrongful loss to another. If no wrongful gain is caused to NA-1 and NA-2 by abuse of the official position by A-1 and A-2 and, conversely, if no wrongful loss is caused to NEC or the Government, no criminal liability can be fastened upon A-1 and A-2 even if they are found to have abused their respective official positions: this may constitute a misconduct warranting disciplinary proceeding. In the case at hand, I am afraid, the prosecution has miserably failed to prove that the fund amounting to Rs.2,07,309/- disbursed to and received by the Society was not utilized by NA-1 and NA-2 for the purpose for which it was sanctioned, namely, for doing Agar plantation. Consequently, it is difficult to sustain the impugned judgment of conviction, which is, therefore, liable to be interfered with.

15. The offshoot of the foregoing discussion is that Criminal Appeal No. 3(SH) of 2009 and Criminal Appeal No. 7(SH) of 2009 are therefore, allowed. The impugned judgment of conviction and sentence passed by the learned Special Judge, CBI, Shillong is hereby set aside. The appellants are, therefore, acquitted and are set at liberty forthwith. The appellants need not surrender to their bail-bonds, which stand cancelled. Criminal Appeal No. 8(SH) of 2009 is

without merit and is, accordingly, dismissed. Transmit the L.C.
Records without any delay.

JUDGE

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