Ganga Kumar Srivastava vs The State Of Bihar on 20 July, 2005

Equivalent citations: AIR 2005 SUPREME COURT 3123, 2005 AIR SCW 3617, 2005 (2) UJ (SC) 1073, 2005 (7) SRJ 47, 2005 (6) JT 356, 2005 SCC(CRI) 1424, 2005 (3) RAJCRIC 684, 2005 (32) ALLINDCAS 41, 2005 (2) CALCRILR 419, 2005 (3) EASTCRIC 181, 2005 (5) SCALE 535, 2005 ALL MR(CRI) 2540, 2005 (6) SCC 211, 2005 (3) PATLJR 217, 2005 (5) SLT 393, 2005 (2) BLJR 1630, (2006) 1 MARRILJ 250, (2005) 4 RECCRIR 410(2), (2007) MATLR 7, (2006) SC CR R 210, (2005) 2 ALLCRIR 2060, (2005) 2 DMC 257, (2005) 3 CHANDCRIC 37, (2005) MAD LJ(CRI) 864, (2005) 32 OCR 72, (2005) 5 SUPREME 123, (2005) 5 SCALE 535, (2005) 53 ALLCRIC 1, (2005) 3 ALLCRILR 776, 2005 (2) ALD(CRL) 485

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Bench: B.N.Agrawal, Tarun Chatterjee

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           CASE NO.:
Appeal (crl.)  1186 of 1999

PETITIONER:
Ganga Kumar Srivastava

RESPONDENT:
The State of Bihar

DATE OF JUDGMENT: 20/07/2005

BENCH:
B.N.Agrawal & Tarun Chatterjee

JUDGMENT:
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JUDGMENT TARUN CHATTERJEE, J.

This appeal is directed against an order of conviction and sentence recorded against the appellant under section 161 of the Indian Penal Code (in short "IPC") and section 5(2) of the Prevention of Corruption Act (in short "the Act"). The appellant was tried by the Special Judge (Vigilance) North Bihar, Patna. For each of the two offences as indicated above for which the appellant was convicted, he was sentenced to undergo imprisonment for one year which will run concurrently. This conviction of the appellant was maintained by the High Court in appeal.

The only question that arises for our consideration in this appeal is whether on the evidence and materials on record, the conviction and sentence recorded against the appellant are justified or they

require to be set aside?

Briefly stated, the facts of the case giving rise to this appeal before this Court may be enumerated in the following manner:

> On 25th of June, 1985, Harendra Kumar Singh, the complainant (PW6) filed an application (Exhibit 8) alleging that the appellant who was, at the material point of time, posted as an Assistant Electrical Engineer, Electric Supply Sub-division No.3, Patna in the State of Bihar, demanded bribe of Rs.500/- for giving electric supply line for 5 H.P. motor for his agricultural work, and he had, under pressure, given Rs.100/- on 11.06.1985 to the appellant. The Assistant Sub-

Inspector of Police, Mundrika Choudhary (PW5) was directed on 25th of June, 1985 to verify the information, and according to the verifier, the informant again paid Rs.100/- as bribe to the appellant. Thereafter the accused demanded the balance amount on 28.06.1985 in the morning and thus, the appellant by demanding bribe for giving electric supply to the complainant, had committed an offence under section 161 of the IPC and also under section 5(2) of the Act. The further prosecution case was that on 28th of June, 1985 in the morning the informant (PW6) met the raiding party near the inspection bunglow at Sitamarhi where the informant produced Rs.150/- meant for giving as bribe (Rs.100/- note and another Rs.50/- note) and a memorandam was thereafter prepared. It was the case of the prosecution further that PW6 alongwith the watcher PW5 and others of the raiding party proceeded towards the residence of the appellant and the raiding party stayed away and the watcher and the informant went to the residence of the appellant with instruction to give signal on payment of bribe on demand by the appellant. The informant and the watcher on reaching the residence of the appellant enquired about the appellant from his father and were informed that the appellant was asleep, whereupon they sat in the outer room, and the father of the appellant went inside the house and called the appellant. And thereafter, the appellant came and sat in the room. The money demanded (Rs.150/-) was paid to the appellant there, who kept the same in the pocket of the flying shirt and then the watcher, in the meantime, went out and signaled the raiding party whereupon the raiding party caught hold of the appellant and recovered the bribed money in presence of two independent witnesses, namely, Kaushal Kishore Singh (PW2) and Ram Dayal Singh (PW12), and search and seizure list (Exhibit 3) was prepared over which the signature of the appellant (Exhibit 2) was taken.

The defence case of the appellant was inter alia that because of the filing of a criminal case against the informant on 11.4.1985 the false case was lodged. It was the case of the appellant that the electric connection was already given to the informant on 22nd of June, 1985 and therefore there could not have been any occasion for demand and acceptance of any bribe on 25.6.1985 and 28.6.1985 for supply of electric connection to the informant. The further defence of the appellant was that the amount was planted in the flying shirt of the appellant and the prosecution case regarding the demand and acceptance of the bribe was wholly false. Accordingly, the appellant prayed for dismissal of the case.

After the Bihar State Electricity Board accorded sanction for prosecution of the appellant under section 6(1)(c) of the Act and after both the parties adduced evidence in respect of their respective cases the Special Judge (Vigilance), North Bihar, Patna by his judgment convicted the appellant under section 161 of the IPC and under section 5(2) of the Act and sentenced him to undergo rigorous imprisonment for one year each under each Act while the sentences were directed to run concurrently.

Feeling aggrieved by this judgment of the Special Judge (Vigilance), North Bihar, Patna, the appellant preferred an appeal to the High Court of Patna which was also dismissed against which the present appeal has been preferred in this Court by the accused appellant.

It is now, therefore, an admitted fact that concurrent findings of fact for conviction of the appellant under section 161 of the IPC read with section 5(2) of the Act were arrived at by the High Court as well as by the Special Judge (Vigilance), North Bihar, Patna. Since this appeal relates to interference by this Court under Article 136 of the Constitution against the concurrent findings of fact, it would be appropriate for us to consider the scope of Article 136 of the Constitution in such a situation before going to the merits of the appeal. It is now well settled that power under Article 136 of the Constitution of this Court is exerciseable even in cases of concurrent findings of fact and such powers are very wide but in criminal appeals this Court does not interfere with the concurrent findings of the fact save in exceptional circumstances. This view was expressed by this Court way back in the year 1958 in the case of State of Madras Vs. Vaidyanatha Iyer, AIR 1958 SC 61. In this decision this Court held that in Article 136 the use of the words "Supreme Court may in its discretion grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India" shows that in criminal matters distinction can be made between a judgment of conviction or acquittal. This Court further observed that this Court will not readily interfere with the findings of fact given by the High Court and the court of first instance but if the High Court acts perversely or otherwise improperly, interference may be made. In that decision, this Court had set aside a judgment of acquittal on facts as salient features of the case were not properly appreciated or given due weight to by the High Court and its approach to the question whether a sum of Rs.800/- was an illegal gratification or a loan was such that the High Court had acted perversely or otherwise improperly. From this decision it is, therefore, clear that this Court in the exercise of its power under Article 136 is entitled to interfere with findings of fact if the High Court acts perversely or otherwise improperly that is to say the judgment of the High Court was liable to be set aside when certain salient features of the case were not properly appreciated or given due weight by the High Court. Again in Himachal Pradesh Administration Vs. Shri Om Prakash, 1972 (1) SCC, 249, this Court, while considering its power under Article 136 to interfere with the findings of the fact observed as follows:

> "in appeals against acquittal by special leave under Article 136, this Court has undoubted power to interfere with the findings of the fact, no distinction being made between judgments of acquittal and conviction though in the case of acquittals it will not be ordinarily interfere with the appreciation of evidence or on findings of fact unless the High Court "acts perversely or otherwise improperly"."

Again in Balak Ram Vs. State of UP, 1975 (3) SCC 219 this Court also held that the powers of the Supreme Court under Article 136 of the Constitution are wide but in criminal appeals this Court does not interfere with the concurrent findings of the fact save in exceptional circumstances. In Arunachalam Vs. P.S.R. Sadhanantham, 1979(2) SCC 297 this Court while agreeing with the views expressed on the aforesaid mentioned decisions of this Court has thus stated :

> "The power is plenary in the sense that there are no words in Article 136 itself qualifying that power. But, the very nature of the power has led the court to set limits to itself within which to exercise such power. It is now the well established practice of this Court to permit the invocation of the power under Article 136 only in very exceptional circumstances, as when a question of law of general public importance arises or a decision shocks the conscience of the court. But within the restrictions imposed by itself, this Court has the undoubted power to interfere even with findings of fact, making no distinction between judgments of acquittal and conviction, if the High Court, in arriving at those findings, has acted "perversely or otherwise improperly"."

In Nain Singh Vs. State of UP, 1991(2) SCC 432 in which all the aforesaid decisions as referred to herein above were considered and after considering the aforesaid decisions on the question of exercise of power under Article 136 of the Constitution and after agreeing with the views expressed in the aforesaid decisions finally laid down the principle that the evidence adduced by the prosecution in that decision fell short of the test of reliability and acceptability and therefore, was highly unsafe to act upon it. In State of U.P. Vs. Babul Nath (1994) 6 SCC 29 this Court, while considering the scope of Article 136 as to when this Court is entitled to upset the findings of fact, observed as follows:

> "At the very outset we may mention that in an appeal under Article 136 of the Constitution this Court does not normally reappraise the evidence by itself and go into the question of credibility of the witnesses and the assessment of the evidence by the High Court is accepted by the Supreme Court as final unless, of course, the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record."

From the aforesaid series of decisions of this Court on the exercise of power of the Supreme Court under Article 136 of the Constitution following principles emerge :

> i) The powers of this Court under Article 136 of the Constitution are very wide but in criminal appeals this Court does not interfere with the concurrent findings of the fact save in exceptional circumstances.
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> ii) It is open to this Court to interfere with the findings of fact given by the High Court if the High Court has acted perversely or otherwise improperly.

iii) It is open to this Court to invoke the power under Article 136 only in very exceptional circumstances as and when a question of law of general public importance arises or a decision shocks the conscience of the Court.

iv) When the evidence adduced by the prosecution fell short of the test of reliability and acceptability and as such it is highly unsafe to act upon it. And

v) The appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record. (underlining is ours) Keeping the above position of law as enunciated and settled by the aforesaid series of decisions of this Court, we shall now examine the evidence adduced by the parties and the materials on record and see in view of the nature of offence alleged to have been committed by the appellant whether the concurrent findings of fact call for interference in the facts and circumstances of the case.

Questioning the propriety of the judgment under appeal Mr. Sanyal, the learned senior counsel appearing for the appellant had raised two-fold submissions before us. The first submission was that the absence of a legal sanction under section 6 of the Act would vitiate the entire proceeding notwithstanding the fact that the absence of sanction had not resulted or occasioned in failure of justice. The second submission was that the findings of fact arrived at by the Special Judge which were confirmed by the High Court were liable to be set aside on the ground that such findings of fact were not based on due and proper consideration of the materials on record and proper appraisal of evidence, and that there was failure on the part of the High Court as well as of the Special Judge in coming to a proper conclusion of fact on the question whether the appellant in fact was liable to be prosecuted under section 161 of the IPC and section 5 of the Act.

In view of our judgment that we propose to render on the merits of the appeal, we do not think it necessary to consider the question of sanction in this appeal. Let us, therefore, examine whether this Court in the exercise of its power under Article 136 of the Constitution is entitled to interfere with the findings of fact arrived at by the High Court and the Special Judge.

In our view the findings of the courts below were vitiated as due and proper consideration of the materials on record and also proper appraisal of evidence was not made by them. As noted hereinearlier, the appellant was Assistant Electrical Engineer at the material point of time, In-charge of electric supply. The complainant Harendra Kumar Singh had applied for electric connection on the ground that he had purchased a motor of 5 H.P. after taking loan from Central Bank of India which was filed on 21st February 1983. This application was placed before the appellant and when the said application was filed the appellant demanded Rs.500/- as bribe for giving electric connection. According to the complainant, although several persons who also applied like the appellant for supply of electricity later than the complainant were provided the electricity connection but the supply of electricity so far as appellant was concerned, was not allowed only because the appellant had failed to pay bribe of Rs.500/. Under these circumstances the aforesaid

application was filed before the Chairman of Electricity Board stating the entire facts and on the basis of which show-cause was issued to the appellant on 1st April 1985. On being enraged, the appellant implicated the complainant for electrical theft and started a proceeding against him. However, on payment of Rs.100/- the matter was compromised by the appellant with the complainant. The said amount of Rs.100/- bribe was paid to the appellant on 11th June 1985. According to the prosecution case, the appellant also promised to hush up the case filed against him and give electrical connection on payment of Rs.400/-. However, the complainant was confident of having his work done on further payment of Rs.300/- only. An application was filed by the complainant on 25th June 1985 before the Superintendent of Police (Vigilance Department), Patna, Bihar on the basis of which a watcher of the department Shri Mundrika Choudhary was deputed to verify the allegation. A report was submitted by the watcher (Ext. 6) dated 26th June 1985 to the Superintendent of Police (Vigilance) who by his order dated 26th June 1985 directed the Deputy S.P. (Vigilance) to institute a case, take up investigation and organize a raiding party. The report of the watcher also disclosed, inter-alia, that the amount of Rs.100/- was accepted by the accused as bribe and he had also asked the appellant in presence of watcher to manage Rs.400/- more. According to the prosecution case the complainant had undertaken to pass the aforesaid sum of Rs.200/- on 28th June 1985 at about 8.00 a.m. A raiding party was organized consisting of 12 persons including Shri Baidahi Sharan Mishra, a Magistrate and a Deputy Superintendent of Police and Shri Verma was heading the raiding party. On 27th June 1985 they proceeded towards Sitamarhi and reached there at night. At Sitamarhi the aforesaid raiding party met the complainant Harendra Kumar Singh in the morning of 28th June 1985 who informed them that they should be ready with Rs.150/- to be given to the accused as bribe. A memorandum of G.C. notes was then prepared and complainant instructed to give the money to the appellant on demand. The raiding party then went near the house of the appellant at about 7.15 a.m. of the same day i.e. on 28th June 1985. Mundrika Choudhary and the complainant went to the residence of the appellant, and the other members of the raiding party however asked to sit in the outer verandah of the residence of the appellant. The appellant came there and demanded rupees 150/- and told him to bring an end to his case. Accordingly, the complainant paid Rs.150/. The watcher then came out and gave the signal on which the raiding party reached the spot. According to the prosecution case, the appellant had kept the bribe amount of Rs.150/- (one note of Rs.100/- and the other note of Rs.50/-) in the upper pocket of the flying shirt. The raiding party searched the accused in presence of two independent witnesses and recovered the said amount from the said pocket and prepared seizure list which was made Ext.15.

After investigation, the charge sheet was submitted against the appellant. Cognizance of the offence was taken and trial proceeded. In defence, the appellant pleaded not guilty to the charges framed against him. He sought to allege in defence that he was falsely implicated in the case on account of filing a case against the complainant. His further defence was that no delay in fact occurred in giving electricity connection to the complainant on account of any lapse on his part.

The prosecution had examined as many as 13 witnesses in support of its prosecution case. Besides, oral evidence prosecution also relied on some documents exhibited in this case. Let us now examine whether the evidence adduced from the side of the prosecution oral and documentary could lead the courts below to come to a conclusion of fact that the appellant should be prosecuted for taking bribe

under section 161 of the IPC and also under section 5(2) of the Act. So far as this payment is concerned, the courts below however did not rely on the said evidence of complainant saying a sum of Rs. 100/- as first instalment was paid by him to the appellant on 11th June 1985. That being the position, we do not think it necessary to go into the question whether in fact Rs.100/- as first instalment was paid to the appellant on 11th June 1985, as stated by the complainant.

So far as the second instalment of Rs.100/- as bribe on 25th June 1985 is concerned, the courts below relied on the evidence of the watcher Mundrika Choudhary and held that the said amount was received by the appellant in favour of the watcher Mundrika Choudhary. The courts below also relied on the report of the watcher which was Ext.C and also on the evidence of PWs5 and 6 and therefore concluded that the appellant had accepted bribe to the extent of Rs.100/- on 25th June 1985. In our view, this alleged payment of Rs.100/- as bribe on 25th June 1985 could not be satisfactorily proved by the prosecution in view of the fact that it is an admitted position that appellant had filed an application for grant of casual leave for going to Darbanga to see his married ailing sister. It also appears from the statement made by the appellant under section 313 of the Cr.P.C. that the appellant also stated categorically that he was not present in the office on 25th June 1985. In order to prove that he had taken casual leave the appellant not only produced the application for casual leave from the record it also examined Shri Satya Narayan Lal who deposed on his behalf in this case. In his evidence DW1 had stated categorically that estimates were given to the companion of the complainant on 25th June 1985 and was so given by him, also stated categorically in his evidence that on 25th June 1985 the accused was on casual leave and had gone to Darbanga for seeing his ailing sister. However, it is not in dispute that the casual leave application was marked as Ext.E in this case. The fact of his absence from the office on 25th June 1985 was not accepted by the courts below on the ground that the casual leave register was not proved nor the officer granting leave was examined in this case. Therefore, the courts below discarded the evidence of DW1 Satya Narayan Lal and also the application for casual leave Ext.E only on the ground that the appellant had failed to discharge the onus which lay on the appellant to prove such fact to show that he was not present in the office on 25th June 1985. We are unable to agree with the aforesaid findings of the courts below. In our view, even if casual leave register was not produced, the application made for casual leave on that particular date admittedly was produced by the appellant in the case. In order to prove that the leave application and also to prove that he was not in the office on 25th June 1985 the appellant had examined one of the officers of the department, who categorically stated in his deposition that the appellant had taken casual leave on that date and in fact had gone to Darbanga for seeing his ailing sister. Therefore, the courts had gone in error manifestly by drawing an adverse inference against the appellant for not producing the casual leave register in the case. Was it not also a duty to call upon the authorities to produce or call for the casual leave register only to show that the appellant was physically present in the office on that date? In our view, therefore, there was no reason for the court to discard the application for grant of casual leave which was supported by the evidence of DW1 Satya Narayan Lal to show that the appellant was not present on 25th June 1985 when the instalment of Rs.100/- was paid to the appellant in presence of the watcher. Therefore, we are of the view that the courts below acted improperly by discarding the application for grant of casual leave and also by discarding the evidence of DW1, who is an officer of the Board and thereby the conclusion of fact arrived at by the courts below that he was present in the office on 25th June 1985 and accepted bribe for a sum of Rs.100/- from the

complainant cannot be accepted. Accordingly, the courts below had acted improperly to come to a conclusion of fact on the aforesaid factual aspect of the matter which shocks the conscience of this Court and which lead us to hold that the evidence adduced by the prosecution in this respect fell short of the test of reliability and acceptability and therefore it was highly unsafe to act upon it.

Let us now turn to another aspect of the matter. Let us examine whether the evidence from the prosecution side conclusively proved payment of Rs.150/- by the complainant to the appellant on 28th of June, 1985 in presence of two witnesses and the watcher. On this also, we are of the view that the High Court and the Special Judge were in error by holding that the prosecution had been able to prove its case to the hilt. It is true that in the statement made under section 313 of the Cr.P.C. the appellant admitted the presence of the watcher and the complainant on 28th June, 1985 but his defence was that as soon as he put on the flying shirt hanging on the peg he was caught and was forced to sit in the standing car. The defence case was that taking advantage of the absence of the appellant the money was kept in the pocket of the flying shirt of the appellant and he was caught as soon as he came out and put on the flying shirt. It is also true that it was not disputed by the appellant that on 28th June 1985 Rs.150/- was recovered from the flying shirt of the appellant. It was also not disputed that such recovery was made in presence of the complainant and the watcher. Therefore, the examination by the courts below was that whether in fact the money was kept by the complainant in absence of the appellant in the flying shirt. In this connection prosecution had sought to prove this case by producing PW5 the watcher and the complainant PW6. It is true that these two witnesses fully supported the demand and acceptance of the amount by the appellant but it is an admitted position that (P.W.10) K.K. Verma, Dy. S.P. who had investigated the case admitted in his evidence that the watcher had told him that the appellant had come in ganji and lungi and had put on the bushshirt hanging in the room where he was sitting. Evidence on the part of K.K.Verma (PW10) was sought to be explained by the courts below by saying that the fault in recording statement of the watcher by the I.O. was acceptable. In view of the aforesaid admission of the watcher that the appellant came with ganji and lungi, as admitted by PW5 before PW10 it would be difficult for us not to accept the version of the appellant that the notes were planted by the complainant in presence of the watcher before the appellant had entered the room where the complainant and the watcher were sitting. There is no dispute in this case that phenolphthalein powder was not used by the vigilance to prosecute the case on the alleged recovered notes for the purpose of charging the appellant for bribe. In Som Prakash Vs. State of Delhi (1974) 4 SCC 84 it was observed "It is but meet that science-oriented detection of crime is made a massive programme of police, for in our technological age nothing more primitive can be conceived of than denying the discoveries of the sciences as aids to crime suppression and nothing cruder can retard forensic efficiency than swearing by traditional oral evidence only, thereby discouraging liberal use of scientific research to prove guilt." In Raghbir Singh Vs. State of Punjab (1976) 1 SCC 145 while discarding the oral and documentary evidence laid on behalf of the prosecution is not such as to inspire confidence in the mind of the court, the Supreme Court observed at paragraph 11 as follows:

> "We may take this opportunity of pointing out that it would be desirable if in cases of this kind where a trap is laid for a public servant, the marked current notes, which are used for the purpose of trap, are treated with phenolphthalein powder so that the handling of such marked currency notes by the public servant can be detected by

chemical process and the court does not have to depend on oral evidence which is something of a dubious character for the purpose of deciding the fate of the public servant." (Emphasis is ours) We must not forget that in a trap case the duty of the officer to prove the allegations made against a Government officer for taking bribe is serious, and therefore, the officers functioning in the Vigilance Department must seriously endeavour to secure really independent and respectable witnesses so that the evidence in regard to raid inspires confidence in the mind of the court and the Court is not left in any doubt whether or not any money was paid to the public servant by way of bribe. It is also the duty of the officers in the Vigilance Department to safeguard for the protection of public servants against whom a trap case may have been laid.

In view of the discussions made and the decisions of the court above, we are of the opinion that considering the fact that the present case was also a case of trap of a public servant a duty was cast upon the authorities to use phenolphthalein powder for the purpose of proving the charge of bribe of the appellant without relying only on the oral and documentary evidence adduced from the side of the prosecution. Therefore, in our view, where admittedly the recovered notes were not treated with phenolphthalein powder so that the handing of such marked notes by the appellant could be detected by chemical process and the court need not here to depend on the oral evidence which is something of a dubious character to decide the fate of a public servant. Keeping the aforesaid in our mind, we are of the view that the defence was much more probable. Defence case was that the bushshirt hanging in the peg where the complainant came, the appellant was at that point of time asleep in the next room and father of the appellant went to wake him up and at that point of time the notes were thrust into the pocket of the hanging bushshirt, which the appellant wore when he came to the outer room as he was in his ganji and lungi. In view of our discussions made hereinabove, we are of the view that the defence case must be held to be probable. Accordingly, we must hold that in the light of the discussions made hereinabove, the evidence led on behalf of the prosecution was not such as to inspire confidence in the mind of this Court, and therefore, we are not at all satisfied that the appellant either demanded Rs.150/- from the complainant or the complainant paid bribe to the appellant by handing over two marked currency notes to him.

There is yet another aspect of the matter. Admittedly, supply of electricity was restored or his house was connected with electric supply. According to the prosecution case, the supply of electricity was restored in the month of July 1985 whereas the appellant took a stand that before the complaint was made by him regarding the allegation of bribe the electric supply was already given to the complainant. According to the appellant, such connection was given to the complainant on 22nd June 1985. If this restoration of electric connection dated 22nd June 1985 to the complainant can be accepted to be correct then there could have been no occasion for demand and acceptance of bribe either on 25th June 1985 and 28th June 1985 for the supply of electric connection. As noted hereinearlier,

according to the prosecution case and also from the materials on record the electric connection to the complainant was alleged to have been given on 8th July 1985. As noted hereinearlier, the appellant however took a stand that the electric connection was made on 22nd June 1985. The necessary entry regarding electric connection was proved by the appellant by relying on Ext.F. Ext.G was also relied on by the appellant which was an intimation by Shri Bachhu Tiwary bearing endorsement of the appellant to the effect that connection was given on 22nd June 1985. However, the complainant refused to give any certificate and thereby the appellant advised Shri Tiwary to get certificate from Local Mukhia which is Ext.C in the present case. Ext.K is an application of Ram Deo Rai to the Executive Engineer stating that electric connection had been given to the complainant on 22nd June 1985.

In order to prove that the electric connection was given to the complainant on 22nd June 1985, a report of Shri Bachu Tiwary was submitted in which it has been categorically stated that the Junior Engineer had already given the certificate regarding giving electric connection to the complainant. Ext.G. was produced to show that the complainant did not give any certificate and therefore the certificate was taken from the local Mukhia. An adverse inference was drawn by the courts below for non-production of Shri Tiwary in the witness box. It is an admitted position that Ext.F was the document which clearly shows that electric connection was given to the complainant on 22nd June 1985. It is also not in dispute that the report was submitted to that effect by Bachu Tiwary, the then Junior Engineer. Since Bachu Tiwary was not examined the courts below could not rely on the report of the Bachu Tiwary. However, electric connection was sought to be proved by producing a certificate from the local Mukhia to show that electric connection was given on 22nd June 1985. The materials on record and also from the Ext.I it is clear that the work order was signed on 11th June 1985. Ext.I is the letter said to have been written to the complainant by the Electrical Executive Engineer, Electricity Division, Sitamarhi. Ext.K is also the report of the Headline Man to show that electric connection was given on 22nd June 1985 and it was re-connected on 8th July 1985 when the meter was brought by the complainant from his residence. The accused- appellant also sought to explain by Ext.L series to show that he was making all efforts for giving electric connection to the complainant and so is Ext.M. From all these documents, we are of the view that electric connection was given to the complainant on 22nd June 1985 and the same was re-connected on 8th July 1985. Therefore, we are of the view that the courts below were manifestly in error in discarding the materials produced by the appellant to show that the electric connection was given on 22nd June 1985 and not on 8th July 1985 whereafter the vigilance enquiry was started against the appellant.

Even otherwise, the defence of the accused was more probable and therefore it should be accepted. It was one of the defence of the appellant that because of starting a criminal case against the complainant, the trap case was initiated by the vigilance department at the instance of the complainant. It is not in dispute that a complaint at

the instance of the appellant was made against the complainant and another for alleged theft of electricity and the complainant was found guilty which was however set aside in appeal. In the background of this fact and other circumstances as noted hereinearlier can it not be said that the defence case was more probable than that of the prosecution case and that in the facts and circumstances and evidence on record the defence case must be accepted The aforesaid dramatic case was initiated by the vigilance department at the instance of the complainant. On consideration of the entire materials on record and in view of our discussion made hereinabove, we are therefore of the view that courts below including the High Court had acted in a manner which was not warranted and the defence of the accused- appellant was probable and therefore no conviction could be made against the accused-appellant.

We are also of the view that it is more probable that in order to put the appellant into trouble in his service the trap case was initiated by the vigilance department at the instance of the complaint filed by the complainant because of the fact that a criminal case was initiated by the appellant against the complainant for theft of electricity. Therefore, we must hold that in view of the discussions made hereinabove the judgments and orders of the court below are liable to be set aside on the ground that such findings of fact and appreciation of evidence are vitiated as the evidence adduced by the prosecution fell short of the test of reliability and acceptability,and, as such, it was highly unsafe on the part of the courts below to act upon it. For the reasons aforesaid, we set aside the judgment of the High Court as well as of the Special Judge and exonerate the appellant from the charges found against him.

The appeal is therefore allowed.