

Supreme Court of India

Harihar Prasad, Etc. vs State Of Bihar on 7 September, 1971

Equivalent citations: 1972 CriLJ 707, (1972) 3 SCC 89

Author: S Roy

Bench: J Shelat, S Roy

JUDGMENT S.C. Roy, J.

1. There were six appellants in this case. Three of them were officers of the Government of the State of Bihar and others, were contractOrs. All these persons are alleged to have entered into a criminal conspiracy for committing the offences of criminal breach of trust and cheating, in respect of large amounts of Government money earmarked for a Project known as "Mahuadar Development Block Pilot Project". The Project was for the welfare of the scheduled tribes under a scheme sponsored by the Government of India for a period ending with 1960-61.

2. Mahuadar Block is in Latehar Sub-Division of the District of Palamau. The offences are stated to have taken place between February 1957 and March 1958. Among the accused persons Narendra Kumar Banerjee (also referred to as N.K. Banerjee). was the appellant in Criminal Appeal No. 116 of 1967. He was the Additional Collector of Palamau from November 23. 1956 to September 30. 1957. He then proceeded on leave preparatory to retirement. The appellant in Criminal Appeal No. 118 of 1967 was Barneshwar Prasad Sinha alias Lallan. He was the Development Head Clerk in the Deputy Commissioner's office at Daltongani during the relevant period. Harihar Prasad. the appellant in Criminal Appeal No. 115 of 1967 was the Project Executive Officer in . his capacity of the Block Development Officer of Mahuadar throughout the relevant period. One Muhammed Usman Beg. was an overseer, and one Nand Kishore Prasad. was the Asstt. Engineer, attached to the Block. Among the contractors was Krishna Lal Sahani who was the appellant in Cri. Appeal No. 117 of 1967. now deceased, whose interests are being looked after by his son under an order of this Court, and Banarsi Lal Kohili. the appellant in Criminal Appeal No. 120 of 1967. There remains the third contractor - appellant Jwala Prasad. whose Appeal No. is Criminal Appeal No. 119 of 1967.

3. Mahuadar is situated in the interior of Palamau a District in Chhota-Nagpur. It is the headquarters of a Block comprising about 106 villages. The headquarters of the District is at Daltongani situated at a distance of about 64 miles from Mahuadar. In the villages of this Block the population is predominantly "aboriginal (scheduled tribes)". At first a National Extension Service (N.E.S.) Block was established at Mahuadar with a Block Development Officer in charge of it. The sanctioned grant for the Block was Rs. 12 lakhs. In 1956-57 the Government of India sponsored a scheme of intensive multi-purpose development for the welfare of scheduled tribes. One of the main objects was to wean away the tribal people from the pursuit of shifting cultivation and. to induce and enable them to take to settled cultivation. Pursuant to this scheme the Mahuadar N.E.S. Block was converted into a special multi-purpose Block from January 1957. In the State of Bihar, eight such special multipurpose projects were taken up. Under the scheme each Block was to have a schematic budget of Rs. 27 Lakhs. This amount of Rs. 27 lakhs was to be allocated to each Block from the very start without limiting the expenditure in the early stages. And the emphasis was laid upon the "effective and expeditious implementation of the programme". The anxiety of the Government of India for speedy implementation of the scheme was conveyed to the State Government in

correspondence which included the letter dated December 31. 1956.

4. An outline of the scheme was communicated to the Commissioners of the Divisions and was also received by S.K. Sinha. I.A.S. the Deputy Commissioner of Palamau. He was informed that Rs. 27 lakhs as aforesaid would be available for the entire period of five years. Two Schedules were attached - Schedule I contained a break-up of the schematic budget. Schedule II to the letter contained the details of estimated expenditure during the current financial year i.e. 1956-57. There were estimates for Mahuadar Block during 1956-57 estimated under different heads. This letter directed that the tentative programme as in Schedule II should be scrutinised by heads of technical departments in the light of "felt-needs", and in consultation with the Block Development Officer concerned. The District Officer was to, if necessary, make modifications after consulting the Block Advisory Committee. The programme thus finalised was to be forwarded to the Development Commissioner with the comments of the Divisional Commissioner at an early date.

5. In the District and Block levels the following steps were taken. Under the directions of the Deputy Commissioner. Palamau. the appellant Harihar Prasad. Block Development Officer, re-designated Project Executive Officer, prepared an ad hoc schematic programme for Mahuadar for five years. He forwarded this to the Deputy Commissioner. In his covering letter Harihar Prasad indicated that the programme, after approval, may be returned to him for obtaining the approval of the Block Advisory Committee. Copies of the schematic budget, prepared by Harihar Prasad. were sent to the Assistant Development Commissioner. Chhota-Nagpur, Ranchi. by the Deputy Commissioner under a forwarding letter in which he stated that he had been informed by the Block Development Officer that the programme had been drawn after discussion with the Assistant Development Commissioner.

6. N.K. Banerjee admitted that the draft of this letter forwarding the schematic programme bears his signature But Harihar Prasad said that it was not sent with his knowledge. There can. however, be no doubt that Harihar Prasad was the author of the ad hoc schematic programme. The document bears his signature on every page. The ad hoc schematic programme as prepared by Harihar Prasad was in due course returned to the Deputy Commissioner for being finalised after approval by the Block Advisory Committee. The Divisional Commissioner informed the Deputy Commissioner that the programme will be discussed in the District Officers' Conference to be held at Ranchi on May 10. 1957. The Deputy Commissioner was requested to get the programme finalised with the approval of the Block Advisory Committee. After some preliminaries, the Deputy Commissioner directed the Additional Collector to fix a date in early April. The Additional Collector. N.K. Banerjee. fixed the meeting for April 9. 1957.

7. It is not in dispute that a meeting of the Block Advisory Committee was held on April 9. 1957. But the prosecution case is that no decision was arrived at this meeting. The draft of proceedings of the meeting held on April 9. 1957. shows that it was presided over by N.K. Banerjee. the Additional Collector. There was. according to this document, a discussion by the technical heads. The schematic programme as drawn up by the Block Development Officer was considered and the budget estimates were prepared. There were many alterations with regard to the subsidy to tribal families. The Committee decided to extend help to the extent of 250 families during the current year by giving

them bullocks seeds, manures etc. Under the heading "Rural Housing" it was recorded that houses per unit would cost not Rs. 1.050/-but Rs. 1.950/-. The minutes of the proceeding further state that with these modifications the schematic programme, and budget estimates have been approved.

8. A revised schematic programme was prepared by Harihar Prasad on April 21. 1957. and the copies thereof were forwarded to the Development Commissioner Patna. and. the Assistant Development, Commissioner. Ranchi. with a covering letter under the signature of N.K. Banerjee.

9. In the meantime N.K. Banerjee addressed two letters, one to the Development Commissioner. Patna. and the other to the Block Development Officer Mahuadar. The Development Commissioner was intimated that subsidy would be given to 250 families before the onset of monsoon, and request was made for the necessary allotment of funds. In the other letter N.K. Banerjee asked the Block Development Officer to prepare the list of families to whom the subsidy was to be given.

10. In due course, however, the schematic programme was discussed at the District Officers' Conference at Ranchi on 10th & 14th of July 1957. No mention. strangely. is to be found in the proceedings of any amended programme for the grant of subsidies to the tribal families as regards "Rural Housing" the Conference seems to have taken the view that any alterations should have the approval of the Executive Engineer. Copies were in due course forwarded to the Deputy Commissioner. Palamau. and the Project Executive Officer. Mahuadar.

11. For the execution of the programme allotments of funds were made by the State Government from time to time. The first allotment was for a sum of Rs. 58,500/-for 1956-57 made by letter dated March 4. 1957. Out of this sum of Rs. 39.000/-were earmarked for subsidy to 78 families at Rs. 500/-each to be paid in kind and Rs. 15,500/-were surrendered. The second allotment was for Rs. 1.20.000/-by letter dated March 21. 1957. but this expenditure was for other heads and we are not concerned with that matter in this case.

12. For 1957-58 there were two interim allotments one for the first three months by letter dated April 11. 1957. for Rs. 51.250/-and the other on June 12. 1957. for Rs. 78.000/-. Then followed an allotment for Rs. 3.12.500/-on July 5. 1957. Out of this sum Rupees 1.72,000/-were earmarked. In addition to the allotment on July 5. 1957. a further sum of Rs. 1,55.000/-was allotted on November 4. 1957. again earmarking Rs. 75.000/-. Funds so allotted were, however, less than those indicated in the amended schematic programme.

13. The action taken for utilisation of funds by way of implementation of the scheme was as follows:-

(a) In the month of March 1957. N.K. Banerjee drew a bill for Rs. 23,400/-in favour of Kohili who had been selected by Banerjee as a contractor for the . supply of bullocks, implements etc. with a view to granting subsidy to 78 tribal families. This bill was encashed on March 13, 1957. This was a payment to Kohili by way of advance to the extent of 75 per cent, of the value of the contract given to him.

(b) On March 28. 1957. Harihar Prasad drew another bill for Rs. 15.600/-in favour of Mohd. Ayub who. was then serving as Head Clerk-cum-Cashier under the Project Executive Officer. Out of this amount Mohd. Ayub paid Rs. 14.430/-to Kohili in four instalments.

(c) On April 17. 1957, Harihar Prasad drew a total amount of Rs. 90,950/-under three bills for giving advances to contractors for supply of bullocks, implements etc. for granting subsidy to 250 tribal families. These bills were encashed at Latehar sub-treasury on April 18. 1957. as follows:-

(i) in favour of Sahani...Rs. 36,375/-

(ii) in favour of Jwala Prasad ... Rs. 18.200/-

(iii) in favour of Kohili...Rs. 36,375/-

Sahani. Jwala Prasad and Kohili respectively had been given contracts for supply of bullocks, implements and seeds for distribution to 100, 50 and 100 tribal families and this money was given by way of advance to the extent of 75 per cent, of the value of the contracts.

(d) On April 20. 1957, Harihar Prasad drew three more bills as follows:-

(i) in favour of Kohili ... Rs. 79.400/-

(ii) in favour of Sahani ... Rs. 79.400/-

(iii) in favour of Jwala Prasad ... Rs. 79.400/-

This amount of Rs. 2,38.200/-was paid to the contractors by way o.f advance for construction of houses at a cost of Rs. 1,950/-per house. These bills were encashed at Latehar sub-treasury on April 22. 1957. This was by way of advance to each contractor to the extent of 85 per cent, of the value of the contracts.

(e) On July 28, 1957. Harihar Prasad drew eight bills as follows:-

(i) for Rs. 17,500/-in favour of Kohili as advance for construction of drains:

(ii) for Rs. 24,500/-in favour of Kohili as advance for payment of roads or lanes:

(iii) for Rs. 24,000/-in favour of Sahani as advance for construction of causeways:

(iv) for Rs. 20.000/-in favour of Sahani as advance for construction of causeways:

(v) for Rs. 3,500/-in favour of Sahani as advance for construction of culverts:

(vi) for Rs. 14,690/-is favour of Sahani:

(vii) for Rs. 14.690/-in favour of Kohili;

(viii) for Rs. 1.951/-in favour of Kohili.

Nos. (v). (vi) and (vii) were final payments for supplies of bullocks, implements, seeds etc. and No. (Via) for paying transportation charges for bullocks supplied by Kohili. The total of all these eight items came to Rs. 1.20.831/-All these bills were encashed at Latehar between August 1 and August 12. 1957. The advances in some cases represented 90 per cent, of the value of the contracts.

(f) On August 14. 1957. Harihar Prasad drew three more bills in favour of Jwala Prasad: the bills were (i) for Rs. 16.000/-: (ii) for Rupees 1.000/-and (iii) for Rupees 7.333/-. The total came to Rs. 24,333/-. The first payment was in respect of advance to Jwala Prasad for construction of causeways: the second was for culverts: the third was towards making final payment for supplies of bullocks etc. The advances represented 90 per cent, of the value of the contracts.

(g) Finally, on October 8. 1957. Harihar Prasad drew two bills both in favour of Kohili - (i) for Rs. 21.268-81 as final payment for the construction of drains. and another for Rs. 1.55.780/-in final payment for the paving of village roads. They were cashed at Latehar on October 16. 1957. The total came to Rupees 1,77.048.81.

14. The total of all these payments comes to Rs. 7.69.922-81. out of which Rs. 39.000/-was in respect of 1956-57 and the balance of Rs. 7.30.922-81 was referable to 1957-58. The total payments made to each of the contractors were as follows:-

To Kohili ... Rs. 3.89.294-81 To Sahani ... Rs. 1.77.965-00 To Jwala Prasad ... Rs. 1.21.933-00 To Goburdhandas ... Rs. 39.780-00 Dubey (who was acquitted).

15. The prosecution case was as follows:

Almost at the very commencement of the project at Mahuadar i.e. March 1957. the accused entered into a criminal conspiracy amongst themselves in order to cheat the Government and to misappropriate large sums of Government money under the pretext of the speedy execution of the scheme. In pursuance of the conspiracy the accused persons dishonestly misappropriated and cheated the Government of more than Rs. 5.00.000/-. N.K. Banerjee. Harihar Prasad and B.P. Sinha prepared the amended schematic programme greatly at variance with the ad hoc programme and the original Government programme contained in letter dated November 28. 1956. They did not get this amended schematic programme approved by the Block Advisory Committee and such amended programme was wrongfully forwarded to the superior authorities without, placing it before the Deputy Commissioner or consulting the other technical heads of the District. This was done with a view to bringing large sums of Government money at the disposal of the members of the conspiracy. In implementing even the amended schematic programme not only was the amended schematic programme exceeded, but even the ceilings fixed by the original Government letter dated November 28. 1956. were disregarded. Some decisions taken by the District Officers' Conference were also willfully contravened. Huge expenditures were incurred, although necessary allotment of

funds had not been made by the State Government. Bills for large amounts were drawn up in favour of the contractors. N.K. Banerjee himself drew a bill, although he was not the drawing and disbursing Officer, and undue favour was shown to the contractors in various ways. The contractors were selected because they were known to the trio - i.e. N.K. Banerjee, Harihar Prasad and B.P. Sinha. Contracts went to them without calling for the tenders. Huge advances were made to them without taking any security from them. To secure easy passage of bills through the treasury, advance payments were not mentioned as such. No care was taken to see that the contractors executed proper agreements. The articles supplied by the contractors and the works executed by them were worth far less than the amounts paid to them, but payments were made to them at full rates. The favours shown to the contractors were in consideration of illegal gratification paid by them to N.K. Banerjee, Harihar Prasad and B.P. Sinha, Harihar Prasad so manoeuvred matters that not a single proposal of his was placed for sanction before the Deputy Commissioner and all his proposals were blindly approved by N.K. Banerjee, Additional Collector, although he had no authority to do so. The whole thing was rushed through and the Deputy Commissioner and other superior District authorities were totally ignorant about the true manner in which the scheme was being worked out. Large personal gains were made under the cover of implementation of the schemes. Such schemes were made illegally and dishonestly by each of the accused persons at the cost of the Government.

16. On October 25, 1957, the Assistant Development Commissioner Sri R.N. Sinha visited Mahuadar. He apprehended serious irregularities in the Block and suggested thorough investigation. Accordingly, Sri C.S. Kumar who had succeeded N.K. Banerjee as Additional Collector on November 20, 1957, visited Mahuadar, and made some enquiries. He also noted certain irregularities. This was followed up by an audit of the accounts of the Block between November 29 and December 21, 1957, by a party of auditors. The auditors' report revealed a series of serious irregularities of various kinds in connection with the implementation of the scheme. Further enquiries were made and ultimately the first information report was filed on August 7, 1958 by Sri R.C. Prasad, Additional Deputy Development Commissioner. In the first information report, Mohd. Ayub (P.W. 205) was also named as an accused, but as investigation proceeded it transpired that he was not in the same. Accordingly he was discharged.

17. Investigation was conducted by a Deputy Superintendent of Police. Sanction for the prosecution of the Government servants was accorded on different dates in November, December 1959 and January 1960. The Special Judge took cognizance on April 30, 1960. Trial began on December 15, 1961 and was concluded on May 27, 1964. In all 701 witnesses were examined on the side of the prosecution and 22 on the side of the defence. There was a large mass of documentary evidence on both sides. The Special Judge delivered his judgment on July 24, 1964.

18. Rule 75 of the Bihar Financial Rules, Vol. I, lays down that "sanction to any given expenditure becomes operative as soon as funds have been appropriated to meet the expenditure". Rule 497 lays down that before any Government money can be spent, two conditions must be fulfilled: (i) it must be sanctioned by competent authority; and (ii) funds must have been appropriated for it. Rule 201 provides for the administrative approval at various stages. It further provides that if in the case, whether on grounds of urgency or otherwise, an executive officer is required by superior authority to carry out a work or incur a liability which involves any infringement of these financial rules, the

orders of such authority should be conveyed in writing. In case of some emergency the officer may proceed to carry out the necessary work on his own responsibility, but he must immediately intimate to the Accountant General that he was incurring an unauthorised liability. So far as the Blocks are concerned the allotments used to be made by the Development Commissioner. It is in evidence that no money could be spent by any Block or Project without allotment by the Government, i.e. by the Development Department. Only the Development Department can make allotments.

19. Further evidence is that the Deputy Commissioner was not competent either to make allotment or re-appropriate for any work of a Project. Re-appropriation has been defined by the Rules which means "the transfer of funds from one unit of appropriation to another such unit". The only authority which could order re-appropriation was the Development Department of the State Government.

20. From the Rules and the evidence in the case it is clear that the drawing and disbursing officer has no authority to draw any bill or to make any payment for an item for which no allotment of funds has been received by him from the concerned Government Department. Where a payment has to be made in excess of the allotment, he must first obtain an order of re-appropriation from the concerned Department of the Government.

21. There is another set of rules of the Finance Department, which: for the purpose of this case, is relevant. Funds under one head of expenditure cannot be utilised under another head. That would require an order of re-appropriation. The Rules also provide that it is only the drawing and disbursing officer, named in the order of the Government, who is competent to draw bills upon the treasury. Although the Deputy Commissioner has no doubt a supervising power, he cannot act as the drawing officer. In the present case the drawing and disbursing officer was the Project Executive Officer Harihar . Prasad. Considering the relevant bills in the background of these Rules, it appears (a) that the first bill was within the allotment, but N.K. Banerjee who drew the bill was not the drawing and disbursing officer. In paragraph 44 of his evidence P. W. 52 the Deputy Commissioner says that "N.K. Banerjee had no financial powers. He had no powers to accept tenders, giving contracts or ordering payment of money." From this it follows that the action of N.K. Banerjee in drawing the bill was wholly unjustified. His action in giving directions for purchase of articles for providing subsidy to the families and making or ordering payments of money to the contractors was also wholly unjustified.

22. The second bill was also covered by the allotment letter. Out of Rs. 15,600/-. Rs. 8,100/- were paid after March 31, 1957, when the allotment had lapsed under the Financial Rules. Again out of Rs. 15,600/- a sum of Rs. 7,500/- was paid to Kohili under orders of Banerjee who had no power to order the payment and so this payment was also irregular.

23. (iii) On April 17, 1957 Harihar. Prasad drew three bills for an aggregate sum of Rs. 90,950/-. This was for giving advances to the contractors, Sahani Jwala Prasad and Kohili for supplies of bullocks etc. for giving subsidy to 250 tribal families. The only letter of allotment regarding this matter which had been received from the Development Department was dated April 11, 1957 for an

amount of Rs. 51.250/-. This was meant for expenditure 'on all heads. Out of this sum only Rs. 6.250/-were earmarked for irrigation which included the head relating to subsidy to tribal families. In that letter it was clearly indicated that the Block Development Officer was authorised to incur expenditure "to the extent shown in the statement enclosed". It follows that the action of Harihar Prasad taken under the directions of Banerjee in drawing these bills much in excess of the allotted amount was in utter disregard of the Government order. The total expenditure under these three bills exceeded even the entire allotment of Rs. 51.250/-. It appears that on April 20. 1957. Harihar Prasad drew three bills covering Rs. 2,38,200/-. At that time no amount was at all provided for expenditure under the head "Rural Housing" so that this entire amount was wholly unauthorised. This unauthorised action of Harihar Prasad had been approved by Banerjee.

24. (iv) Harihar Prasad drew the next set of bills on July 28. 1957. as advances in connection with contracts for construction of drains and pavements of village roads, as also for construction of causeways and culverts. By July 23. 1957. the total funds allotted for expenditure for this purpose was Rs. 28.000/-only and this expenditure was also in excess of the Government allotment.

25. (v) Harihar Prasad made further payments by way of final payments for construction of drains and pavements of village roads. The total expenditure in connection with the contracts for construction of drains and pavements amounted to Rs. 2.19.048-81 as against Rs. 28.000/-which had been allotted by the Government for expenditure under the head "Health and Rural Sanitation". In other words, he had paid out nearly Rs. 2.00,000/-in excess of his authority.

26. (vi) In the same manner on July 28. 1957 the total allotment of funds under the head "Communication" was Rs. 24,000/-. Harihar Prasad made advances for construction of causeways and culverts to the extent of Rs. 47.500/-. Under this very head he incurred further expenditure of Rs. 17.000/-on August 14. 1957. Thus he spent Rs. 40.000/-more than the authorised amount. On or about Feb.15.1958 the Addl. Deputy Development Commissioner had authorised the total expenditure of Rs. 1.09.500/-under the relevant heads. But this revised allotment was made long after the expenditure had already been incurred. The revised allotment was for Irrigation Rs. 50,000/-. for Health and Rural Sanitation Rs. 12,000/-. Communications Rupees 12,500/-and Rural Housing Rs. 35.000/-. There was no allotment for expenditure under the head "Rural Housing" in the previous allotment letters.

27. It was argued that what had been really allotted for expenditure for the entire project was Rs. 27 lakhs and that was clear from the Government letter. This contention has no force. Nowhere in the Government letter is it indicated that the ordinary rules of the Government relating to financial matters had been abrogated. That the Rules had not been abrogated is made clear from the fact that the Development Commissioner of the Government of Bihar had thought fit. in spite of the previous letter, to make allotment of the funds from time to time. If it were true that the entire amount of Rs. 27 lakhs had been allotted from the very beginning then such periodical allotments would have been unnecessary. In one of the allotment letters it was clearly stated that "The Project Executive Officers are authorised to incur expenditure to the extent shown in the statement enclosed". This shows that the State Government was insisting upon the expenditure to be limited to the extent of allotments made.



28. N.K. Banerjee and Harihar Prasad must have known that the responsibility for allotting additional funds for the speedy implementation of the Project was that of the State Government, and it was not proper for them to proceed to incur the expenditure under the cover of speedy implementation of the Project. The excess expenditure under the various heads could not be justified as bona fide action on the part of N.K. Banerjee or Harihar Prasad.

29. Another feature of this case is that not a single contract was entered into after reference to the Deputy Commissioner. In fact the only order of the Deputy Commissioner S.K. Sinha is dated March 11. 1957. upon a note in connection with the expenditure for Rs. 39,000/-. After this the matter was not placed before the Deputy Commissioner ever. From his tour diary it appears that he left Daltonganj at 2 P. M. on March 11. 1957 and returned to Daltongani at 7 p. m. in the evening. He went on tour again on March 12. 1957 at 10 a. m. and proceeded on inspection from where he returned to Daltongani at 3 p. m. but after a halt of about 4½ hours he left for Latehar where he stayed until the morning of March 14. 1957 and returned to Daltongani at 8-30 a. m. In the meantime N.K. Banerjee placed orders with Kohili for supply of bullocks and gave him an advance of Rs. 23,400/-. P. W. 52 the Deputy Commissioner was absent in respect of all subsequent contracts. The records show that in most cases the transactions were entered into by Harihar Prasad with the approval of N.K. Banerjee on occasions when the Deputy Commissioner happened to be away from the headquarters. The tour diary shows that Sri. S.K. Sinha the Deputy Commissioner proceeded on casual leave in the evening of April 17. 1957 and returned some time on April 23. 1957. In the meantime two large transactions had been entered into by Harihar Prasad with the approval of N.K. Banerjee - one for placing a contract with Sahani. Kohili and Jwala Prasad for bullocks etc. for 250 families. In that connection total amount of Rs. 90,950/-was paid. The contracts in respect of construction of colonies were also entered during the leave of absence of P. W. 52. In that connection Rupees 2,38,200/-were advanced to the contractors. The tour diary shows that the Deputy Commissioner left for Daltongani on tour in the forenoon of July 27. 1957 and came back in the forenoon of July 29. 1957. During this short interval two more large transactions were entered into by Harihar Prasad with the approval of N.K. Banerjee. One for drains and pavements and the other for construction of causeways and culverts. It was also during this period that a further sum of Rs. 31,000/-odd was paid to these two contractors on account of final payments. The record shows that S.K. Sinha was on regular leave from August 10. 1957 to August 24. 1957. During this period a further sum of Rs. 24,333/-was paid to Jwala Prasad. These payments are significant. They show that it could not have been a mere accident that all these transactions were entered into when the Deputy Commissioner was away from the headquarters. It therefore stands to reason to hold that the transactions had been entered into behind the back of the Deputy Commissioner by arranging things in such a fashion that each time Harihar Prasad was able to secure the approval of Banerjee to his actions. It could not have been due to mere chance but in pursuance of the conscious design to keep the Deputy Commissioner in dark.

30. This Court has given the matter its utmost consideration. It is of the view that it was not a matter of mere accident. The act was deliberate. The design reflected the mind of the conspirators. "For several months, from time to time, fraud was woven into the texture of this pattern. At last the enormity of the defalcations caused suspicion, and ultimately caused a split in the veil of secrecy and fraud became known.

31. A point was made about the letter which Harihar Prasad addressed to the Deputy Commissioner on July 18, 1957. It appears that in spite of requisition for much larger funds in connection with the revised programme made under letters dated April 24, 1957, the Development Department had allotted no funds for expenditure under the head "Rural Housing" and the funds allotted in respect of "Irrigation Health and Rural Sanitation" and "Communication" were also far short of the proposals submitted to the Government. N.K. Banerjee in this connection, prepared the draft of a letter to be addressed to the Deputy Commissioner. Through Banerjee it was put up before S.K. Sinha and S.K. Sinha has given evidence which indicates that the column of actual expenditure incurred upto June 30, 1957 which is to be found in that letter was non-existent when the document was put up before him for signature. It appears that the information which P.W. 52 S.K. Sinha wanted was withheld from him by clever manipulation.

32. On behalf of the accused strong reliance was placed upon this Exhibit (Ext. 18/3) as indicating that all expenditure incurred upto date had been brought to the knowledge of the Deputy Commissioner. But the High court held that "it is not correct to say that the actual expenditure incurred up-to-date had been brought to the notice of P. W. 52. It is" also not correct to say that P.W. 52 had authorised expenditure within the limits indicated in the revised schematic programme." As already stated the revised schematic programme was not sent up to P.W. 52 Deputy Commissioner. The High Court was satisfied that the true state of affairs were not brought to the notice of the Deputy Commissioner and we are satisfied that the draft letter was 'a clever attempt to mislead the Deputy Commissioner so that he might get no clear idea with regard to the prevailing state of affairs in the matter of expenditure over the Project.

33. Besides it was so-felt that by merely looking at the figure mentioned in Ext. 18/3 the Deputy Commissioner P.W. 52 could not possibly have got an inkling into the true manner in which the various transactions had been entered into by N.K. Banerjee or by Harihar Prasad with the approval of N.K. Banerjee. The relevant papers relating to the various transactions were not put up before P.W. 52 and he had, therefore, "no opportunity to scrutinise them in order to understand the real position relating to those transactions.

34. It appears that certain monthly reports used to be submitted by the Block authorities. But these could not Give to the higher authorities a true picture of the manner in which the expenditures had been incurred at the block level. Merely from these reports the authorities concerned could not have known the true manner in which the expenditures were being incurred.

35. The matters regarding the payment of Rs. 23.400/-as advanced to Kohili and Rs. 7.500/-which was paid to Kohili on March 30, 1957. have been dealt with by the High Court in detail and we agree with those findings.

36. With regard to the payment of Rs. 23.400/-it was argued that there was urgency of spending about Rs. 50.000/-by March 31, 1957. for the financial year 1956-57. N.K. Banerjee was in the position of the Deputy Commissioner and he directed the payment of Rs. 23.400/-to Kohili so that the work could be expeditiously done. There might have been irregularity in the making of the payment, it was urged, but the transaction was a bona fide transaction. It was urged that he called

for tenders. It was also urged that he was not an outsider or an interloper and that he did not do anything with a guilty mind. There has been said his counsel. Mr. Mukerjee. "some departure from the strict rules of procedure" but his conduct does not show a guilty mind. We have considered every one of the propositions urged by Mr. Mukerjee but find there is no substance in any of them.

37. On the Question of urgency it must be pointed out that although the Government wanted expeditious implementation of the programme in 1956-57 it had never suggested that the Rules should be abandoned. Neither the Deputy Commissioner nor the Development Commissioner had ever suggested that the Rules could be flouted with impunity. Mr. Mukerjee appearing for the appellant Banerjee tried to suggest that his client's conduct was bona fide, and that everything was done in good faith. It was urged that he had called for tenders. But there is evidence that the appellant had no powers either to call for the tenders or to accept them. He took advantage of the absence of Deputy Commissioner, there was undue haste in doing things. These facts leave no doubt that he had a guilty mind.

38. The next transaction to be considered was a set of three contracts which Harihar Prasad entered into under the orders of N.K. Banerjee for purchase of bullocks, seeds, implements etc. for the purpose of giving subsidy to 250 tribal families. In the original letter it was contemplated that subsidy should be given to 78 families every year. In the ad hoc programme hereinbefore mentioned it was stated that subsidy would be given to 114 families in the second year. But this was purported to be raised to 250 families during the financial year 1957-58 in pursuance of a tentative decision to this effect said to have been taken by the Block Advisory Committee which met at Mahuadar on April 9. 1957. The first order bearing the same date was passed by N.K. Banerjee and it made a reference to the said purported decision of the Block Advisory Committee. According to the order sheet subsidy of Rs. 500/-per family was to be given. N.K. Banerjee directed in this order that the Block Development Officer was to keep the list of families for grant of subsidy ready and to move the Development Commissioner for allotment of funds. In the meantime tenders should be called for supply of bullocks by April 16. 1957. The next order, in the order-sheet is dt. April 16. 1957. which showed that in pursuance of the tender notice only three tenders were received, one from Kohili and two others from Sahani and Jwala Prasad. The order of April 16. 1957 shows that the three tenders were accepted as follows:

Kohili's for 100 pairs:

Sahani's for 100 pairs: and Jwala Prasad's for 50 pairs.

The order was passed by N.K. Banerjee who directed, the Block Development Officer to take agreements from each contractor and to make him an advance payment to the extent of 75 per cent, of the total supply. The supply was to be completed within a fortnight of the advance. N.K. Banerjee further recorded that the order for supply of seeds and implements should be placed by the Block Development Officer.

39. The next order is dated April 17. 1957. This was recorded by Harihar Prasad as follows:

Record received. Agreement executed by the three contractors have been accepted and the payment orders for Rs. 36,375/-, Rs. 36,375/- and Rs. 18,200/- have been signed and bills made over to the contractors.

Under the tender notice bullocks were to be specifically supplied at Mahuadar. but a clause was added in the agreement to the effect that transportation charges could be claimed for transport from Daltongani to Mahuadar. This was a contravention of the tender notice.

40. The relevant three bills were written out by the appellant Barmeshwar Prasad and drawn by Harihar Prasad and they were all drawn from the treasury on April 18, 1957. The final payments of supplies of bullocks etc. were made to each of the three contractors. There were payments in favour of Sahani and Kohili respectively for Rs. 14,690/- and a further payment of Rs. 1,951/- to Kohili on account of transportation charges. In favour of Jwala Prasad there was a bill for Rs. 7,333/- which was drawn as late as August 14, 1957. This bill was encashed at Latehar Sub-Treasury. The total payments made to the contractors by way of advance and supply of bullocks came to Rs. 1,29,714/-. The total amount which could be spent for giving subsidy to 250 families was Rs. 12,500/- out of which Rs. 3,750/- were earmarked for purchase of manures.

41. A considerable part of this expenditure of Rs. 1,29,714/- was totally unauthorised because no decision was actually taken at the Block Advisory Committee meeting held on April 9, 1957 for giving subsidy to 250 families. The rates of supply were inflated at the instance of Banerjee: he was acting on his own initiative and this led to an extra expenditure of Rs. 50,000/- without any justification whatsoever. Besides, the sum of Rs. 1,951/- which was paid to Kohili by way of transportation charges was totally unjustified. This payment had also been made under the orders of Banerjee. That there was no decision taken at the meeting of the Block Advisory Committee on April 9, 1957, there should be no doubt 17 witnesses were called by the prosecution in the matter. 8 of them are official witnesses who were at that time i. e. April 9, 1957, holding different posts in the District. The High Court was of the view:

All the witnesses, however, are unanimous on the point that no decision was taken at the meeting on these subjects.

These witnesses bore no animosity towards N.K. Banerjee and many of those witnesses could not have combined together to give false evidence in this case. We agree with the High Court that no decision on any matter was taken at the meeting of the Block Advisory Committee held at Mahuadar on April 9, 1957.

42. A point was tried to be made that Ext. 7/4 was a proceeding of the meeting held on June 9, 1957. Proceeding of this meeting goes to show that the "proceeding of the last meeting was read over and confirmed", and it is suggested that the last meeting meant the meeting held on April 9, 1957. This Ext. 7/4 is not a reliable document. It is purported to have been typed in November 1957 though the meeting was held in June 1957. It did not bear the signature of the Commissioner who presided over the meeting. This contention, therefore, has no substance.

43. It follows from what has been stated above that the revised schematic programme was prepared without either the approval of the Block Advisory Committee or the technical heads of the District and that it was forwarded to the superior authorities by N.K. Banerjee, assisted by Harihar Prasad and the Development Clerk B.P. Sinha. It does not appear that the amended schematic programme was ever placed before the Deputy Commissioner. The High Court has said that the amended schematic programme was prepared during the absence of the Deputy Commissioner from his headquarters and there is no wonder that he had not seen it either before its despatch or even subsequently. It is strange that although he had returned from casual leave and was present at the headquarters on April 24, 1957 he was not asked to sign the forwarding letter, although in the case of the ad hoc schematic programme the forwarding letter was signed by him. Prosecution suggests that this showed that the Deputy Commissioner was kept in dark as to the contents of the amended schematic programme. Exhibit 6 is the notice calling for tenders. It appears from the tour diary that on April 9, 1957 Banerjee had gone to Natarhat and that he returned to Mahuadar on April 11, 1957. It follows that the order contained in Ext. 6 for passing a copy on the Notice Board could not have been signed by Banerjee on 9th or 10th April, 1957. After considering all these matters the High Court was of the view:

The authenticity of Ext. 6 as a notice calling for tenders is thus greatly in doubt, and the prosecution is, therefore, justified in urging that in truth, no such notice was issued and that Ext. 6 was a make-believe document, brought into existence subsequently in order to give the impression in that the contracts to Kohili, Sahani and Jwala were given after following the requirements relating to calling for tenders.

Therefore the orders of Banerjee dated April 16, 1957 for giving contracts for seeds and implements were passed without calling for tenders and Harihar Prasad gave contracts for these items also to Kohili, Sahani and Jwala Prasad without calling for tenders. In his order of April 16, 1957, Banerjee had directed the Block Development Officer to make advance payment to the three contractors. He omitted to ask the contractor to furnish securities as required by the Financial Rules. Whether security would be taken or not when advance is given, was not a matter of discretion and this plea of Banerjee that it was a discretionary matter is untenable.

44. The manner in which these three bills were encashed from the treasury has been styled by the High Court to be "extraordinary". It was observed that "there was, exhibition of hot haste not only in drawing these bills, but also in securing their encashment at the District treasury". We agree with these views of the High Court in this behalf. In this matter Banerjee has also shown undue solicitude for the three contractors whom he had himself selected for the contracts in question.

45. With regard to the contracts which were given on the basis of the decisions taken on April 9, 1957, the following is the conclusion which the High Court has arrived at:

(i) The entire contract was entered on the basis of a fabricated proceeding Ext. 7/1 of the B.A.C:

(ii) Ext. 7/1 was prepared on 16-4-1957, but the order in the order-sheet (Ext. 4/11 was passed on 9-4-1957;

- (iii) The tender notice (Ext. 61 mentioned in the order was not issued at all:
- (iv) The order to pay transport charges amounting to Rs. 1.951/-passed by N.K. Banerjee was wholly unjustified in face of Ext. 6 which bore his signature:
- (v) The notice (Ext. 61 was totally silent as to the number of bullocks and the price per pair at which they were to be purchased:
- (vi) The order-sheet and the agreements were totally silent as to the Quantity of seeds or the nature of implements which were to be purchased:
- (vii) A clause relating to transportation charges was added in each of these agreements in contravention of the tender notice (Ext. 61:
- (viii) The total advances amounting to Rs. 90,950/-exceeded even the amount mentioned in the ad hoc programme and far exceeded the allotment of Rs. 6.250/-received under the allotment letter. Therefore, a substantial part of this expenditure was unauthorised:
- (ix) In the bills no mention was made that the amounts mentioned therein represented advances to contractors as enjoined by the relevant rule of the Bihar Treasury Manual. Therefore. the fact of payment of advance was suppressed from the knowledge of Treasury. Besides. undue haste was made in getting the bills paid at Daltongani treasury which was facilitated by the unauthorised act of Banerjee in counter signing them:
- (x) No security was taken for making such heavy advances and thus Rule 329 of the Bihar Financial Rules was infringed;
- (xi) The final payment of Rupees 1.27.663/-exceeded the ceiling expenditure at the rate of Rs. 500/-per family and the expenditure was far in excess of the allotment received from the Government;
- (xii) The transaction was entered into in extreme haste on 17-4-1957. a date on which the Deputy Commissioner was on casual leave. The result was that the real nature of the transaction was kept away from the knowledge of the Deputy Commissioner: and
- (xiii) Nearly Rs. 20.000/- .if not more, was paid to the contractors for which there was no justification at all.

We are in agreement with the views expressed above.

46. The next item of expenditure related to the construction of rural housing. The Government scheme provided for a total expenditure of Rupees 2,50.000/-over rural housing during entire period of five years. In Schedule II it was mentioned that the expenditure over this head for 1956-57 would be Rs. 46.200/-and the seven colonies consisting of six houses each should be completed at a

cost of Rs. 1,100/-per house - total Rs. 46,200/-. The ad hoc programme provided expenditure of Rs. 2,50,000/-for phased programme. The revised programme mentioned that the expenditure to be incurred under this head in 1957-58 alone would be Rs. 3.27.000/-. It provided that the number of colonies to be constructed should be 28 and according to this scheme entire construction of the colonies should be completed in one year. This revised programme was prepared in accordance with the so-called decision of the Block Advisory Committee stated to have been arrived at on 9-4-1957. The revised programme contemplated construction of one unit at a cost of Rs. 1.950/-. It was the view of the High Court, with which, we agree, that the proceeding of the meeting, of which Ext. 7/1 purports to be a draft, far from being the correct record of the proceedings is in fact a fabricated document. The order-sheets in respect of contracts for construction of colonies by Kohili. Sahani. Jwala Prasad and Gobardhan Dubey bear the dates April 20 and April 21. 1957. Reference has been made to the decision of the Block Advisory Committee for construction of all the 28 colonies in a single year at a cost. of Rs. 1.950/-per unit. This was a false recital of facts in the order-sheets. These order-sheets further mention that necessary provision of fund has accordingly been made in the schematic programme and budget estimates. Kohili was given contract for construction of 2 colonies and Sahani and Jwala Prasad for 8 colonies each. The three contractors were advanced sums to the extent of 80% of the estimated cost. The reference to the statement in the order-sheet that provision had been made for funds in the schematic programme and budget estimate was false. There was a statement that Harihar Prasad had selected the contractors after a long per-suasion by the then Deputy Commissioner. It is clear that the selection of the three contractors had been made by Harihar Prasad at his own initiative and 85% of the proposed cost was advanced to each of them. All this was done when the Deputy Commissioner had proceeded on casual leave and the order-sheets could not have been out up before him. The advantage of the Deputy Commissioner's absence was taken and it was stated that Harihar Prasad had fixed up the contractors as advised by him. Moreover Harihar Prasad had gone a step further. He forwarded the proposal for making advance to the three contractors entirely on his own account without application from the contractors for such an advance. All these actions were taken by Harihar Prasad behind the back of the Deputy Commissioner. He was banking upon the Additional Collector N.K. Banerjee to approve of those actions. These order-sheets bear an endorsement in the pen of N.K. Banerjee. He approved the proposals of Harihar Prasad.

47. It is clear from the record that all the necessary steps for making advances to Kohili. Sahani and Jwala Prasad were completed by Harihar Prasad in a single day and in order to lend his full support to the actions of Harihar Prasad. N.K. Banerjee went out of his way to endorse approval to all his actions. The truth was that all these actions were taken by Harihar Prasad of his own accord, since he knew fully well that it would have the full support of N.K. Banerjee whenever necessary. In respect of this matter of giving contracts for the construction of colonies the entire ceiling of Rs. 2.50.000 was being exceeded. The advance of 85% came to Rupees 2,38.000/-which was very near Rupees 2,50,000/-and N.K. Banerjee must have known that the total cost would amount to Rs. 2,80,000/-far in excess of the ceiling.

On April 22. 1957. an advance was paid of Rs. 39.780/-to Gobardhan Dubey for four colonies. This had also the approval of N.K. Banerjee. Thus the advance made to the four contractors amounted to Rs. 2.78,100/-although the total ceiling fixed was Rs. 2.50.000/-. This action clearly shows that

Harihar Prasad and N.K. Banerjee were acting in concert in the matter of grant of contracts. This was done without even complying with the formalities of calling for tenders. These order-sheets bore the approval of N.K. Banerjee. The fact that he had signed those order-sheets was proved by the evidence of the Deputy Commissioner. This evidence is supported by the Establishment Clerk Tapeshwari Prasad. Banerjee made a false denial and this fact lends support to the conclusion that he was acting in concert with Harihar Prasad in the matter of grant of contracts for the construction of colonies to the three contractors. With regard to Harihar Prasad there was no doubt that he was acting in concert with the contractors. Stamps for the agreements with Sahani and Kohili were purchased on April 17, 1957, and for Jwala Prasad had been purchased on April 19, 1957. These were purchased even before Harihar Prasad had recorded his first order in the order-sheets. This indicates that Harihar Prasad had privately arranged with Kohili, Sahani and Jwala Prasad for grant of contracts for construction of colonies and it was falsely mentioned in the order that he had fixed up the contractors as advised by the Deputy Commissioner.

48. In making the advances a point should be noted. Although the Rules provided that security should be taken from the contractors. Harihar Prasad was guilty of contravention of these Rules and his action could not be said to be bona fide.

49. There is another aspect of the matter. When the original contract was given, the work of construction of houses proceeded at so slow a rate that the contractors asked for extension of time and ultimately when the work was stopped there was a total loss of at least Rupees 20,000/-. The total value of 12 houses not built, at Rs. 1,950/-per house, for which 85% had been advanced to the contractors, was about Rs. 20,000/-. This was wrongful gain to the contractors. In fact the loss to the Government was much more. According to the estimates made by the Executive Engineer the loss suffered by the Government was in the region of Rs. 60,000/-.

50. There was another aspect of the case. There is evidence that quality of the construction was very poor and many of the houses so constructed fell. Taking into consideration these, circumstances, the High Court observed:

The wrongful gain which Kohili, Sahani and Jwala Prasad had thus made was the direct outcome of the actions of Harihar Prasad approved by N.K. Banerjee, in giving the contracts to them and making large advances to them in a reckless manner.

We approve of these observations. The reason for the conclusion is that Harihar Prasad N.K. Banerjee, Kohili, Sahani and Jwala Prasad were all acting in league with one another and that there was a conspiracy to misappropriate Government money. This transaction alone appears to be sufficient to bring home the charge of criminal conspiracy to commit criminal breach of trust in respect of Government money.

51. The next item of expenditure was in respect of construction of drains and paying of village roads. These contracts were given to Kohili alone. In the original Government letter there is a provision for drains and for paving of village lanes. In the ad hoc programme similar provision was made for the year 1956-57. In the amended programme however the provision in 1957-58 for construction of



drains was Rs. 36,000/-while that for paving of village lanes was Rupees 12,250/-only.

52. The first order dated July 2, 1957, mentions about the decision of the District Co-ordination Committee for taking immediate steps for improvement of the roads. By the same order it was directed that a meeting of the Mukhiyas should be called on July 22, 1957, for discussing the problem. The next order is dated July 23, 1957. It says that the discussion with Mukhiyas had taken place. Then it gives the reasons why Kohili was being given the contract. It was stated that payments will be made to him on actual measurement. The next orders were both dated July 26, 1957. In both the cases, N.K. Banerjee approved the agreements on July 28, 1957. On July 28, 1957, there was another order about the applications of Kohili in connection with the construction of drains and paving of roads, in which advance of 90 per cent, of the cost of the contract was asked. These applications were allowed, and on the same date bills were prepared in favour of Kohili, one for Rs. 17,500/-as advance for construction of drains and the other for Rs. 24,500/-as advance for the paving of roads.

53. The next document is dated September 24, 1957. It is an application of Kohili asking for final measurement and early payment. An overseer was appointed to take the measurements of the drains and pavements. On the next day, i.e. on September 27, 1957, the overseer so deputed had taken measurements and the value of the work done worked out at Rs. 51,691/-. whereas the allotment sanctioned in the budget during the entire schematic programme was Rs. 39,500/-. Similarly with regard to the work for paving of village roads, the value worked out at Rs. 2,66,415/-and the balance payable to the contractor was Rs. 1,75,311/-. After interim payment, a bill was prepared in favour of Kohili for Rs. 1,55,780/-representing the final payment. It, therefore, appears that the total payments made to Kohili were as follows:

Rs. 38,768-81 for construction of drains; and Rs. 1,80,280-00 for paving of village roads.

It is clear that the action of Harihar Prasad was most improper and unjustified. The action of N.K. Banerjee in giving approval to the works was also not done in good faith. These contraventions were deliberately done.

54. The Question arose whether Harihar Prasad had decided to give these contracts to Kohili from before. This is also apparent from the fact that the contracts were given to Kohili in complete disregard of the Government Rules under which it was incumbent that tenders should have been called for. Explanation has been given. But Harihar Prasad had no authority to contravene the Rules relating to the necessity of calling tenders. It appears that Harihar Prasad had a design that the contracts should anyhow go to Kohili and it is clear that some arrangement had been arrived at between these two men from before. N.K. Banerjee was a party to the design because he could not have acted in good faith when he approved the actions taken by Harihar Prasad without calling for the tenders. That Harihar Prasad had decided to give the contracts to Kohili from before also appears from the manner the Mukhiyas' meeting was held and it was recorded by Banerjee that the Mukhiyas and the local people were unwilling to take up the works. On this aspect the High Court said:

The hurried manner in which the contracts were given to Kohili, without even calling for tenders, indicates that Harihar Prasad had already come to some arrangement with Kohili before he gave the contracts to him. That seems to be the reasons why Harihar Prasad offered an unduly low Government subsidy to the Mukhiyas. He must have known that the Mukhiyas would not agree to take up the works on such low terms. Evidently, Harihar Prasad manoeuvred to secure the contracts for Kohili.

In our view these observations are justified in the light of the evidence on record.

55. The agreements were accepted by Harihar Prasad on July 26, 1957, even before he submitted the records to the Additional Collector. Harihar Prasad evidently was confident that all his actions would be approved by N.K. Banerjee. Banerjee in his turn gave blind approval on July 28, 1957, despite so many defects in the agreements. In Court he sought to escape responsibility for his actions by denying his signatures. But the Deputy Commissioner's evidence is there, and it is manifest that his denial was false. N.K. Banerjee has been proved to have been acting in concert with Harihar Prasad in showing undue favours to Kohili.

56. Kohili had submitted completion report and had mentioned therein that the total length of drains cut was 37.014 running feet and total payings done was 47.075 sq. feet. Although no drains had been cut in five of the villages, and no Payings had been done in eleven of the villages, yet Harihar Prasad took no action against Kohili. On the other hand he lost no time in drawing up bills for making payments for these works. Such payments exceeded the schematic programme. It is clear that Harihar Prasad had in this matter acted far in excess of his powers and had knowingly exceeded the ceilings fixed in the original Government letter as well as in the amended schematic programme.

57. The allotment letter had in unmistakable terms stated that the Block Development Officer must see to it that the actual expenditure under any of the primary units should, on no account, exceed the ceiling limits prescribed in schematic budget. Harihar Prasad was responsible for the contravention of such limits and payments made by him to Kohili were wholly unauthorised and his action cannot be said to have been done in good faith.

58. With regard to the drains and paving of lanes, the High Court made the following observations:-

(i) The contracts were given to Kohili by making false averments in both the order-sheets relating to the decision of the District Co-ordination Committee as well as to the inability of the Mukhiyas or the local people to take up these works:

(ii) The contracts were given to Kohili without recording any order for calling for tenders. Kohili had filed tenders for which he was present at Mahuadar from before on 22-7-1957 and his tenders were readily accepted by Harihar Prasad.

(iii) The agreements executed by Kohili were accepted by Harihar Prasad without prior approval of N.K. Banerjee or any other competent officer. The approval accorded by N.K. Banerjee was not merely unauthorised, but also unjustified. He had given his approval with a false reason that the

P.N. Order had powers to accept tenders upto Rs. 20.000/-. In Court, N.K. Banerjee made a false denial of his signatures in his orders dated 28-7-1957 in both the order-sheets:

(iv) In the agreements Exts... no mention was made of the specification or the nature or extent of the works to be done in the different villages so much so that even the figures 36.000 running feet and 12,250 square feet were not mentioned therein. It was for the first time mentioned in the agreement... that the drains to be constructed were kutcha whereas in the other agreement... wide discretion was left to the contractor to do the Payings with stone chips or gravels as it suited him:

(v) Large advances of a total of Rs. 42,000/-were given to Kohili upon his mere asking for the same and without any security whatsoever:

(vi) The bills... for advances were prepared and drawn from the Treasury without disclosing therein that they were in respect of advances and thus the Treasury Officer was defrauded into making payments without getting any inkling that the payments were by way of advances:

(vii) The construction of drains and pavements were hastily made and the ceilings fixed in all the documents... were exceeded in an incredibly short time:

(viii) Final payment for both the works were made to Kohili on the basis . of a false measurement book... prepared by Usman Beg;

(ix) The final bills... were drawn up by mentioning false figures in the column meant for showing the appropriation for the current year. In fact there was no actual allotment of funds as mentioned therein:

(x) The total ceilings for both these works fixed for the entire schematic period of five years was shown to have exceeded in less than two months or in less than one month, if... were to be relied upon as genuine; and

(xi) The nature and duality of the works were most superficial and it resulted in a loss of nearly two lacs of rupees to the Government.

We hold that the High Court was right in making these observations.

59. The last of the series of transactions related to the grant of contracts for construction of causeways and culverts. Under letter of the Government dated April 15. 1956. it was the ' Deputy Commissioner who had been delegated with the cowers of the Head of Department for the purpose of working such. Blocks and the Project Executive Officer was declared to be the drawing and disbursing officer in regard to his Block in respect of allotted funds placed at his disposal. The Additional Collector had absolutely no financial powers of any kind in relation to the working of the Block. He was not competent to give administrative approval or financial sanction with regard to any original work, nor was he competent to accept tenders for works. These powers were to be exercised by the Deputy Commissioner except that in the matter of tenders the Project Executive

Officer had powers to accept them upto Rs. 20.000/-. S.K. Sinha has given evidence that the Additional Collector N.K. Banerjee had no power (i) to accept scheme on behalf of Government: (ii) to call for tenders; (iii) to accept tenders: and (iv) to incur financial commitments regarding any block matters. During the Deputy Commissioner's absence on tour. N.K. Banerjee was expected to deal only with routine matters. Harihar Prasad was the drawing and disbursing officer but that power had to be exercised in respect of the funds placed at his disposal.

60. In the allotment letter it was stated that the Block Development officers were not to exceed the ceiling limits prescribed in the schematic programme. N.K. Banerjee or Harihar Prasad had no power at all to accord administrative approval or financial sanction to any original work. Such power was vested in the Deputy Commissioner to the extent of Rs. 20.000/-subject to budget provision.

61. The contract for causeways and culverts was given to two contractOrs. Sahani and Jwala Prasad. There were order-sheets relating to the grant of contract for causeways to Jwala Prasad and similarly there were order-sheets for grant of contract for causeways to Sahani. In both orders, it was stated that the Deputy Commissioner had given his administrative sanction to the execution of the causeways at an estimated cost of Rupees 7,467/-and it was necessary to construct it within the financial year 1957-58. The truth was that there was no such administrative sanction given by the Deputy Commissioner and it was only a fictitious document. By the next order four tenders, each one of Jwala Prasad. were accepted. Similarly eleven tenders each one of Sahani were accepted. Thereafter, agreements executed by the two contractors were separately accepted on July 20. 1957. On July 28. 1957. the Additional Collector. N.K. Banerjee. recorded an order of approval. On July 28. 1957. an advance of Rs. 47.500/-was made to Sahani and on August 14. 1957. an advance of Rs. 17,000/-was made to Jwala Prasad. The total sum so advanced, namely. Rs. 64.5007-represented 90 per cent, of the total estimated cost of construction of causeways and culverts. Two roads were mentioned, but it was not mentioned in the order-sheet or in any other document about the actual spots where causeways were to be constructed on the two roads. Thus by splitting up one work into 15 items Harihar Prasad had accepted tenders for construction of causeways at a cost more than three times in excess of his powers.

62. With regard to the construction of culverts the relevant order-sheets are both in the names of Jwala Prasad and Sahani. In the first order. it was mentioned that the Deputy Commissioner had given administrative sanction. As in the other case two roads were mentioned, but the orders did not give any indication of the actual spots where the construction had to be made. As in the other case N.K. Banerjee as Additional Collector had approved the action taken by Harihar Prasad in connection with the works for construction of causeways and culverts. The Additional Collector was aware that he had no power to give approval. Therefore, he knowingly acted beyond his powers. The case of N.K. Banerjee is that none of those order-sheets has been signed by him. Harihar Prasad on the other hand says that each of those order-sheets has been signed by N.K. Banerjee by way of approval of the work. S.K. Sinha deposed as follows:-

None of the order-sheets... bear my initial. I did not ever receive any of them till I was the D.C.I saw them for the first time during investigation. They have been signed by Harihar Babu and N.K. Banerjee.

N.K. Banerjee made false denial of his signatures on the order-sheets. The High Court held that the tenders of Jwala Prasad and Sahani were really not submitted and this fact was fictitiously mentioned in the relevant orders on that date. The tenders were also not accepted in a bona fide manner. The High Court has given reasons for it and we see no reason to differ from those reasons.

63. It was recited in the agreement for the construction of causeways and culverts that these were to be made according to the plan and estimate attached to them, but the agreement did not show that any such plan or estimate was attached to them. According to Harihar Prasad the plans and estimates might have been detached from the agreements during the police investigation. But the case of the contractors was otherwise. According to them no plan or estimate was attached to the agreement as executed by them. The High Court found it impossible to accept this suggestion of Harihar Prasad in the matter. Considering all evidence in this behalf, the High Court observed:

Therefore, the hurry which had been displayed in giving the contract for these works was not due to his anxiety of getting the work done as quickly as possible, but for some ulterior purpose, namely, to make the total Payment of Rs. 64,500/- to the contractOrs.

We agree with these observations.

64. Another strange factor with regard to the making of advances was that the pattern followed was that the form of the bill used was Form No. 37 meant for fully vouchered contingent bill, and not the Form No. 37A meant for making advances to contractOrs. The result was that the treasury did not know that payments were being made to the contractors by way of advance. This was wrong.

65. Banerjee was succeeded by another person as Additional Collector in October 1957. He visited Mahuadar on November 20, 1957, and submitted a report to the Deputy Commissioner on November 25, 1957. This was followed by correspondence in which the contractors claimed that they were entitled to claim for the materials, labour and transportation charges which they had incurred in connection with the contracts. It is alleged by the State that the contractors were not in any mood to refund the advances and the Government sustained substantial loss because no security had been taken from the contractOrs. The High Court was right in holding that both Banerjee and Harihar Prasad were actuated with dishonest intention in suffering the contractors to secure large sums of Government money for their benefit. The attitude of the contractors was such, says the High Court, that both the public servants concerned (Banerjee and Harihar Prasad) and the contractors (Sahani and Jwala) had one design, namely, that of causing wrongful loss to the Government and securing wrongful gain to the contractOrs. With these observations we agree. Therefore, there is sufficient material on the record to bring home the charge of criminal conspiracy that has been framed against them under Section 120B read with Section 409 of the Indian Penal Code.

66. In order to show that the accused persons had made wrongful gains the prosecution brought On record statements relating to the bank accounts of five of the accused persons. N.K. Banerjee. B.P. Sinha, Kohili. Sahani and Jwala Prasad. From the materials on the record it appears that N.K. Banerjee had six different accounts in his name. There was a Savings Bank Account in the joint names of N.K. Banerjee and his wife for the period March 14, 1957 to December 31, 1957. This

account started with an opening deposit of Rs. 9,000/-on March 14. 1957. The closing balance on December 31. 1957 was Rs. 10.112-50 including interest. The question arose from where did this sum of Rs. 9,000 come to the hands of Banerjee ? It may be pointed out that only on March 13. 1957. Kohili had cashed the bill for Rs. 23,400/-which had been drawn by Banerjee. He could not have got his money from out of his earnings on account of salary or travelling allowance. It was shown that between January 1957 and September 1957 Banerjee had drawn a total of Rs. 8.486-59 by way of his salary and travelling allowances. The net pay during this time drawn by Banerjee was about 600/-per month. The second statement of his account, which was a current account in the name of Banerjee, shows that all his pay and travelling allowance bills were credited to that account. There were no withdrawals from this account by cheque in April. May. June and November. 1957. It may, therefore, be legitimately inferred that the sum of Rs. 9.000/-which was the opening deposit in the savings bank account was not the earning of Banerjee from his pay and travelling allowances. Banerjee had satisfactorily accounted for a part. The explanation that the balance was given by his wife was not a sufficient explanation. Banerjee has failed to discharge the onus to explain the matter satisfactorily. The remaining statements of account were such as do not call for any adverse comments. The High Court has further considered if . some of the money belonging to Banerjee was his brother's money. It is not necessary to go into the details of this matter.

67. Next we turn to the bank accounts of B. P. Sinha. He had maintained seven accounts, some in his own name and some in the names of his wife or minor daughters. One of the accounts shows that his net pay was only Rupees 104/-per month in January 1957. which was raised to Rs. 108/-per month in August 1957. His total earnings from pay and travelling allowances from January 1957 to December 1957 amounted to about Rs. 1,307/-. He had a postal savings-bank account in the name of his wife Shanti Devi. On April 16. 1957. Rupees 5,000/-were deposited in the said account. There were also two other savings bank accounts standing in the names of his minor daughters. In 1957 there were three deposits in this account - Rupees 1.500/-on March 25. 1957; Rs. 1.500/-, on. April 10. 1957; and Rs. 2.000/-on April 16. 1957. Another account was opened on April 10. 1957 with a cash balance of Rs. 1.451/-. Only six days later on April 16. 1957 a significant date, there was another cash deposit of Rs. 2.550/-in this account. On June 25. 1958 a' sum of Rs. 3,990/-was withdrawn from this account, leaving a balance of Rs. 101/-. There was also a fixed deposit account which B. P. Sinha had opened in the name of his wife Shanti Devi in the Punjab. National Bank at Ranchi with a deposit of Rs. 10.000/-on April 29. 1957. This account was later transferred to Daltongani. Another account was opened in the name of Shanti Devi on August 3. 1957. with a deposit of Rs. 11.000/-. Sinha had opened another cash certificate account in the Punjab National Bank at Daltongani with a cash deposit of Rupees 10.000/-on March 8. 1958. The deposit slip of this account shows that the person who had made the deposit was Kohili. B. P. Sinha admitted that this amount was deposited in his account by Kohili. but maintained that the money was meant for payment to Jwala Prasad and he paid it to him subsequently. It may also be mentioned that Kohili asserted at the trial that he did make the deposit in B. P. Sinha's account, but it was not correct to say that he had given the money to him for payment to Jwala Pra-sad. He gave another reason for the deposit. The High Court held that at least a portion of the sum of Rs. 10.000/-which Kohili had deposited in the account of B. P. Sinha on March 8. 1958 was a payment by way of illegal gratification to B. P. Sinha. On a consideration of the evidence, we agree with this view.

68. It appears from an examination of the various documents that from March 25. 1957 to March 8. 1958. there were cash deposits totalling Rs. 27,501/- in various accounts of B.P. Sinha. Out of this the High Court was of the view that Rs. 2,500/- was undoubtedly paid to him by Kohili as illegal gratification. With regard to the remaining sum of Rs. 25,000/- it could not have been his own earnings out of his pay and travelling allowances. Sinha had therefore a duty to explain how such a large amount was acquired by him. B.P. Sinha tried to give many explanations but such explanations were unacceptable to the High Court. The High Court observed:

But the evidence with regard to the properties of B. P. Sinha and his wife appear to me to be wholly insufficient to explain the significant spurt in his various accounts at the relevant period as already shown above...I am, therefore, clearly of the opinion that B. P. Sinha has failed to account for these deposits and it would be legitimate to infer that he had made large illegal gains between March 1957 and March 1958. and that lends considerable support to the prosecution case that he was a member of the conspiracy and had been actuated with dishonest intention in relation to the various transactions with which he : was associated, as already described above.

Harihar Prasad had no bank account. Therefore, among the accused persons, who were public servants, only N.K. Banerjee and B.P. Sinha have been proved to have had bank accounts.

69. Summing UP the position of misappropriation, the High Court observed as follows:

The various ways in which various Government orders were contravened or disregarded and large sums of Government money were paid to the different contractors in the shape of wasteful expenditure and special solicitude was shown to them in making those payments, lead reasonably to the conclusion that a criminal conspiracy had been entered into in which Banerjee. Harihar Prasad. B.P. Sinha. Kohili. Sahani and Jwala Prasad were participating. The object of the conspirators obviously was to misappropriate Government money under the pretext of speedily executing the project sanctioned for the block. The actual misappropriation of funds was made by the contractors, while facilities for making the misappropriations were afforded to them by the public servants concerned, namely. Banerjee. Harihar Prasad and B. P. Sinha and the conspirators" had . succeeded in achieving their objective in a large measure.

We are in agreement with these observations.

70. A considerable argument before this Court took place on the evidence of Mohd. Ayub. P.W. 205. Mohd, Ayub's evidence furnished the only direct evidence of conspiracy and acceptance of illegal gratification on the part of the public servants concerned. Mohd. Ayub was the Head Clerk-cum-Accountant of the Mahuadar Block. Later he became Head Clerk-cum-Cashier. He was subordinate to the Block Development Officer. He had deposed in respect of many matters. Two of them are important. The first is that of March 28. 1957. at the bungalow of N.K. Banerjee at Daltongani. He said that on March. 28. 1957. in the evening Harihar Prasad took him to the bungalow of N.K. Banerjee where B.P. Sinha. ' Sahani Kohili, Jwala Prasad and Gobardhan Dubey were present. They were taking tea. There it was agreed that Kohili. Sahani. Jwala Prasad and Gobardhan Dubey. would be given all contracts. This was followed by the preparation of a bill for

Rs. 15.600/-. Briefly, this is the direct evidence of the conspiracy. The other incident which Mohd. Ayub has deposed is that Rupees 37.500/-were contributed by the contractors and given to Harihar Prasad. Harihar Prasad took Rs. 10.000 and save Rs. 5,000/-to B.P. Sinha. Then Mohd. Ayub and others went to Banerjee's bungalow and there from a distance he saw that Harihar gave the bundle of the currency notes of the value of Rs. 20.000/-to Banerjee. A lot has been discussed as to whether this evidence should be accepted by the Court or not. We have given consideration to this matter and we are of the view that there is inherent improbability of this evidence being true. As such it would not be right to rely upon this bit of direct evidence in the case. We are, therefore, not relying upon the evidence of Mohd. Ayub and as such the question as to whether he was a competent witness or not. or whether Mohd. Ayub's evidence should have been acceded or not. and such other questions, do not arise.

71. The High Court concludes its observations on the case as follows:

Thus, having considered the relevant materials on the record. I find that it was not a case merely of contravention of the various Government instructions or of incurring expenditures in excess of the limits fixed in the Government letter ...or of funds placed at the disposal of the Block authority under the allotment letters...of the Development Department. It was a case of dishonestly paying out large sums of Government money, under the pretext of speedy implementation of the project. to secure pecuniary advantages to contractors selected by N.K. Banerjee at his own initiative without calling for tenders in the usual manner.

Upon the most modest estimate, the High Court observed, the net loss caused to the Government by reason of these transactions was Rs. 2.80.191/-as detailed below:

(i) Subsidies for 78 tribal families ... Rs. 8,191/-	(ii) Subsidies for 250 tribal families ... Rs. 20,000/-	(iii) Construction of rural colonies ... Rs. 20,000/-	(iv) Construction of drains and pavements ... Rs. 2,00,000/-	(v) Construction of causeways and culverts ... Rs. 32,000/-
<hr/> Rs. 2,80,191/-				

72. On the question of bona fides, the High Court observed:

I feel convinced that there was total lack of bona fides on the part of the public servants concerned in the matter, of handling Government money and it would be perfectly legitimate to hold that Banerjee. Harihar Prasad. B.P. Sinha., Saharil. Kohili. and Jwala played their respective roles in pursuance of a conspiracy, the real purpose of which was to make illegal gains for all of them by dealing With Government money in , such . a dishonest manner as to enable the contractors to. commit criminal breach of trust in respect of large sums of Government money.

...The contractors themselves were in league with these public servants and they successfully misappropriated substantial portion of Government money which they had obtained through the dishonest acts of the public servants concerned.



B.P. Sinha had no dominion over the Government money as Harihar Prasad and N.K. Banerjee had. but his activities in relation to the various transactions leave no room for doubt that he was also in league with the other accused persons. For example the bills referred to in the order dated April 17. 1957. were written out by Barmeshwar Prasad. as has already been mentioned. He extended whatever assistance he was capable of rendering to facilitate the illegal payments. He was a party to the preparation of the proceedings of the Block advisory Committee meeting and to the make-believe of tender notice. The accused persons are guilty under Section 120B read with Section 409 Indian Penal Code. N.K. Banerjee. Harihar Prasad and B. P. Sinha are also guilty under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act.

73. On behalf of Harihar Prasad a point was raised that because a part of the trial was held at Mahuadar. and part at Netarhat, there was no fair trial. It appears that this was done for reasons of convenience and the Government had also issued a notification to enable the court to hold circuit sittings at Mahuadar and Netarhat. The learned Judge came to the conclusion that it would be just and convenient to hold part of the trial at Mahuadar and part at Netarhat. It also appears that the accused persons had no objection to the trial taking place at both the places. It appears that in both these places, the accused persons were represented by lawyers. No prejudice was caused and; we do not hold that this point is one of substance.

74. The next point was with regard to consent or sanction. There is no doubt that in respect of B.P. Sinha consent was properly given by the Deputy Commissioner. So consent was also given in respect of N.K. Banerjee and Harihar Prasad by the Chief Secretary. This is not a case of sanction or consent under Section 196-A. Criminal P.C. On the question of the applicability of Section 197. CrPC, the principle laid down in two cases, namely. Shreekantiah Ramayya Munipalli v. State of Bombay. and Amrik Singh v. State of Pepsu. was as follows:

It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties: but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary.

The real question therefore is whether the acts complained of in the present case were directly concerned with the official duties of the three public servants. As far as the offences of criminal conspiracy punishable under Section 120B read with Section 409. I.P.C. and also Section 5(2) of the Prevention of Corruption Act are concerned they cannot be said to be of the nature mentioned in Section 197 of the CrPC. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the CrPC is. therefore, no bar.

75. The accused persons after conviction and sentence by the High Court of Patna have applied for and obtained special leave and their appeals are Nos. 115-120 of 1967 as hereinbefore mentioned. In this Court their cases were taken up together. But they were represented by separate counsel.

76. Mr. Mukerjee represented N.K. Banerjee. His points have already been dealt with.

77. Accused Sinha was similarly separately represented. For him it was urged that there is not one finding against him of wrongful act. This is not correct as he had been responsible for most of the documents as has been held by the High Court. Moreover, his bank accounts : were such as suggested that he was not acting bona fide. This has already been dealt with.

78. On behalf of Kohili several propositions were put forward. One of them was that an appropriate definition of conspiracy has been given by the celebrated jurist Willes. J. in *Mulcahy v. Regina* (1868) 3 HL 306 at p. 317 as follows:-

A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act. or to do a lawful act by unlawful means. So long as such a design rests in intention only. it is not indictable. When two agree to carry it into effect, the very plot is an act in itself and the act of each of the parties, promise against promise *actus contra actum*. capable of being enforced, if lawful, punishable if for a criminal object or for the use of criminal means.

It was urged that a mere agreement will not do: mere intention will not do. This case of (1868) 3 HL 306 has been referred to in this Court in a recent case, namely. *Lennart v. Director of Enforcement*. but there it was referred to for a different purpose.

79. This Court, and previously the Judicial Committee of the Privy Council, have often pointed out that where there is a Code and where words have been designedly chosen in respect of a subject-matter. it is not proper to first go into the English Cases on the subject without considering the words of the Statute. Speaking on behalf of the Judicial Committee. Lord Sinha in *Ramanandi Kuer v. Kalwati Kuer*. 55 Ind App 18 at p. 23 : AIR 1928 PC 2 at P-4 observed as follows:

It has often been pointed out by this Board that where there is a positive enactment of the Indian Legislature the proper course is to examine the language of that statute and to ascertain its proper meaning uninfluenced by any consideration derived from the previous state of the law - or of the English law; upon which it may be founded.

80. A similar view has been expressed by this Court in the *Sales Tax Officer v. Kanhaiya Lal*. .

81. On behalf of Kohili it was urged that mode of execution is important in such matters. Secrecy. . it was said, is the badge of conspiracy. Openness destroys the evidence as to the conspiracy. All transactions, it was stated, were open. That this submission is not correct is evident from the efforts which had to be made and the mass of evidence which had to be called to disprove one document only i. e. the proceedings of April 9. 1957, The accused persons tried to keep the veil of secrecy.. This continued until by the very weight of the wrongful acts the veil was split and the conspiracy was out. But this was not apparent from the very beginning.

82. Then it is urged on behalf of Kohili that one must look at the individual acts to test a charge of conspiracy. It is pointed out that 40 bullocks were rejected by the Block Development Officer. This

act goes to show that there was no conspiracy, because it is an act which one would not expect from a conspirator. We have considered this matter. We are of the view that an M.L.A. had written a letter on March 31. 1957. complaining that bad bullocks were being supplied. This is Ext. 78. It was not until June 4. 1957. that Kohili protested to the Deputy Commissioner that the bullocks had been wrongfully rejected. In Ext. 83. therefore, there was ample opportunity for the Block Development Officer when he came to know that an M. L. A. had taken exception to try to save his skin by rejecting a few bullocks and acting in the manner that he did. This is not such a point as would Bo to show that there was no conspiracy. because of the act or conduct of the conspirators was contrary to the agreement of conspiracy.

83. On behalf of Kohili was given a long list of acts pleading innocence. Occurrences appearing therein, as has already been pointed out. do not show that Kohili was innocent.

84. Lastly, on behalf of Sahani's son. a submission was made that Sahani had done a lot of work and had collected materials. ' We repeat that these are questions of fact only in which the Trial Court and the High Court have made exhaustive observations. We are not prepared to go into these questions.

85. In this case the charge-sheet was submitted on April 19. 1960. and the trial before the Special Judge ended in 1964. seven years ago.

86. In the matter of sentence we have also noticed the following facts-

- (a) the comparative ease with which money could be taken out of the Treasury;
- (b) the internal audit of an expanding department was far from satisfactory: and
- (c) there was that want of vigilance which would have prevented the officers of the Government from committing crime and repeating the same.

87. In "The Ethics of Punishment". Sir Walter Moberly observed at p. 48. quoting Bentham:

The principal end of punishment is to prevent like offences... In many cases it is impossible to redress the evil that is done; but it is always possible :to take away the will to repeat it....

There is no much chance of these offences being repeated now. In the circumstances of the case, we make the following order:

- (i) The appellant N.K. Banerjee is convicted under Section 120B read with Section 409 of the Indian Penal Code, and sentenced to undergo rigorous imprisonment for eighteen months and to pay a fine of Rs. 20,000/-or in default to undergo rigorous imprisonment for six months more. N.K. Banerjee is also convicted under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act and sentenced to undergo imprisonment for one year.

(ii) The appellant Harihar Prasad is convicted under Section 120B read with Section 409 of the Indian Penal Code and is sentenced to undergo rigorous imprisonment for eighteen months and to pay a fine of Rs. 20.000/-and in default a further rigorous imprisonment for six months. Harihar Prasad is also convicted under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act and is sentenced to undergo rigorous imprisonment for a year.

(iii) The appellant B.P. Sinha is convicted under Section 120B read with Section 409 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for eighteen months and to pay a fine of Rs. 20.000/-or in default to undergo rigorous imprisonment for six months more. B.P. Sinha is also convicted under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act and is sentenced to undergo rigorous imprisonment for one year.

(iv) The substantive sentences of imprisonment in the case of N.K. Banerjee. Harihar Prasad and B.P. Sinha will run concurrently.

(v) All other convictions of N.K. Banerjee. Harihar Prasad and B.P. Sinha are set aside.

(vi) Appellant Kohili and Jwala Prasad are each convicted under Section 120B read with Section 409 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for eighteen months. Each of them is also sentenced to pay a fine, which in the case of Kohili will be Rs. 30.000/-and in the case of Jwala Prasad will be Rupees 20.000/-with rigorous imprisonment for six months in default in case of each of them.

(vii) Sahani is dead. Under an order of Court his interests are being looked after by his son. His conviction under Section 120B read with Section 409 of the Indian Penal Code remains, but in his case in view of Section 70. of the Indian Penal Code the fine is fixed at Rs. 25.000/-

88. With these modifications, the criminal appeals are dismissed.