

(2003) 05 SIK CK 0002

In the Sikkim High Court

Case No : Criminal R. No's. 1, 2, 3, 4, 5, 6, 7 and 10 of 2003

Nar Bahadur Bhandari etc.

APPELLANT

Vs

State, etc.

RESPONDENT

Date of Decision : 01-05-2003

Acts Referred:

Citation : (2003) CriLJ 2799

Hon'ble Judges : Ripusudan Dayal, C.J;N. Surjamani Singh, J

Bench : Division Bench

Advocate : Milon Kumar Mukherjee, Bhaskar Raj Pradhan, N.B. Bhandari, A.K. Upadhyaya, S.D. Tamang, Srinivas Agarwal, Sonam Wangdi Bhutia, Norbu Tshering Bhutia, P.K. Pradhan, Minzur Bhutia, A.B. Gurung and Party in Person, for the Appellant; I.D. Vaid, Spl. P.P. and Vipin Kumar, Inspector, C.B.I. New Delhi in person, for the Respondent

Judgement

Ripusudan Dayal, C.J.—All these Criminal Revisions have been filed to challenge the Order dated 15-11-2002 by the learned Special Judge, P. C. Act, Sikkim at Gangtok in Criminal Case No. 8/1997 ordering the framing of charge against the petitioners.

2. RC-8/84-CIU-(A) was registered by SP/CBI CIU-(A), New Delhi on 7-8-1984 at 1610 hrs. against Shri Nar Bahadur Bhandari, former Chief Minister of Sikkim, Shri P.K. Pradhan, the then Secretary Rural Development Department, Government of Sikkim, Gangtok, M/s. Kumar Traders, Jorethang, Sikkim and others u/s 120B, IPC read with Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947. The investigation resulted in the filing of the charge-sheet on 14-9-1994 by Shri G. Verma, Dry. SP/CBI/SPE/ ACU(V)/New Delhi against 17 accused persons. Two of them namely, accused No. 3 H.P. Karki and accused No. 16 Shri N. P. Bhandari died before the impugned order of charge was passed by the learned trial Court and so, the proceedings were dropped against them. Against the remaining 15 accused persons, order of charge was passed by the learned Special Judge by the impugned order. Eight of them have

filed these petitions.

3. Prosecution case, in brief, is that the Government of Sikkim during the year 1983-84 took a decision to implement 36 Rural Water Supply Schemes in the State of Sikkim under the Minimum Needs Programme at a cost of Rs. 1,62,31,630/-, through a cabinet decision dated 24-11-1983. In the said decision, it was specifically mentioned that the works worth more than Rupees one lakh shall be carried out by issuing tenders except for the North District. The works worth less than Rs. 1 lakh were to be executed through panchayat nominees. The approval of the cabinet was communicated to the Secretary, Rural Development Department for necessary action vide Memo No. 1168/ CAB/83 dated 7-12-1983. Pursuant to that decision, the Rural Development Department issued notice inviting sealed tenders from enlisted contractors having resources and experience in such works for execution of the 15 Rural Water Supply Schemes in East, South and West districts of the State including the following 12 schemes in which investigation was conducted by the Central Bureau of Investigation:

(i) Rural Water Supply Scheme at Upper Tintek under Rakdong Gram Panchayat at East District.

(ii) Rural Water Supply Scheme at Malbasey under Malbasey Gram Panchayat, West District.

(iii) Rural Water Supply Scheme at Upper Raley and Khasey within Samdong Kambel Gram Panchayat in East District.

(iv) Rural Water Supply Scheme at Zerung within Berfung, Zerung Gram Panchayat in South District.

(v) Rural Water Supply Scheme at Biring under Biring within Linkey Thekabung Gram Panchayat Unit in East District.

(vi) Rural Water Supply Scheme at Samdong under Samdong Gram Panchayat in West District.

(vii) Rural Water Supply Scheme at Sadam under Sadam Gram Panchayat in South District.

viii) Rural Water Supply Scheme at Khamdong Gram Panchayat, Khamdong, East District.

ix) Rural Water Supply Scheme at Patuk under Simik Linzey Gram Panchayat in East District.

x) Rural Water Supply Scheme at Budang Thangsing within Khamdong Gram Panchayat in East District.

xi) Rural Water Supply Scheme at Pachak under East Pendam Gram Panchayat in East District.

xii) Rural Water Supply Scheme at Singyang in West District.

The said tender notice was published on 19-12-1983 fixing 18-1-1984 as the last date for the receipt of the tenders. It was mentioned in the tender notice that the contractors who were residents of the villages where the Water Supply Schemes were to be implemented were to be given preference. In response to the said tender notice, various tenders were received in the Rural Development of the Government of Sikkim and the same were opened on 18-1-1984 by the Tender Committee. Then followed the preparation of comparative statements in respective files of each scheme showing the rates quoted by each tenderer. Prosecution case is that the statements showed that the eligible contractors in different schemes had offered to execute the respective work at a rate much below the approved rate. Some of the contractors had even quoted 20% below the approved rate. When the matter was thus being processed, accused No. 1, Shri N.B. Bhandari, the then Chief Minister of Sikkim, and accused No. 2-Shri P.K. Pradhan, the then Secretary, Rural Development Department, Government of Sikkim in connivance with each other entered into a criminal conspiracy to issue work orders in favour of the contractors/accused Nos. 3 to 17 for the execution of the above 12 Schemes for which quotations had already been received in the office and the files were being proceeded to award work in the names of the lowest tenderers. In furtherance of their common object, accused No. 2 in consultation with accused No. 1, issued the work orders in the names of the contractors who had not quoted the lowest rates ignoring the recommendations of the officers of the concerned department for awarding the contract work to the lowest tenderers. Thus, by awarding contract work in favour of the contractors who quoted higher rates, accused Nos. 1 and 2 caused pecuniary advantages to the rest of the accused persons with corresponding pecuniary loss to the State of Sikkim.

4. On 27-2-1995, the learned trial Court observed : "Seen the written report filed by the prosecution stating that on verification by the I.O. the accused was found to be dead. Since the death is confirmed the case against him stands abated." Subsequently, an application dated 26-7-2002 was filed by accused No. 1-Shri N.B. Bhandari stating inter alia that Shri N.P. Bhandari had died on 17-7-1977 and praying for a direction to the I.O. to enquire as to the exact date, month and year of death of Shri N.P. Bhandari. Thereafter, reply was filed by Shri Vipin Kumar, Inspector, ACU (V) dated 5-10-2002 to the effect that the verification conducted by the I.O. had revealed that accused No. 16-Shri N.P. Bhandari had died sometime in July/August, 1977 and that he had neither submitted that tender nor executed the work nor received the payments and the proceedings against him also abated much earlier vide order dated 27-2-1995. It was further stated in the reply that verification had further revealed that actually Shri Nandmani Bhandari the real brother of late N.P. Bhandari "used his card of contractorship, forged his signature in the tender documents and other documents related to this scheme, by impersonating as N.P. Bhandari and cheated the department by getting the contract and receiving the payments. He

also cheated the I.O. by impersonating before him as N.P. Bhandari," for which separate charge-sheet will be filed. Prayer was made to the effect that the permission may be accorded to conduct further investigation for probing the role of N.M. Bhandari which will be without prejudice to the case under trial. It was also stated that the "evidence with respect of Scheme No. 11 may kindly be deleted." On 4-10-2002, the learned trial Court recorded the submission of the learned Public Prosecutor that entire Scheme No. 11 "be not considered in the present case and the record relating to the same be deleted" and accepted the same. While referring to this scheme, the learned trial Court in the impugned order has stated that "Shri N.P. Bhandari having expired the offence against him stood abated." The omission to mention that the record relating to the scheme had stood deleted vide his order dated 4-10-2002 does not militate against the fact that this scheme has been deleted altogether in this case. This fact is admitted by the learned counsel for the petitioner, Shri Milon Kumar Mukherjee and also by the learned Public Prosecutor, Shri I. D. Vaid.

5. The learned trial Court considered the material on record in order to find whether prima facie there was sufficient material to frame charges against the accused persons. He referred to the material on record with respect to each scheme individually and then observed :

"19. The facts and circumstances mentioned in the foregoing paragraphs indicate that Sri N.B. Bhandari, accused No. 1 and accused No. 2-Sri P.K. Pradhan abusing their official positions as the public servants connived with the rest of the accused persons and awarded the contract works of each scheme to them discarding the legitimate claims of each lowest tenderer and caused loss to the State with corresponding pecuniary advantages to the concerned accused persons. It is seen that in each scheme lowest tenderer had not been awarded the work but the work order was issued in the name of other persons some of whom had not even submitted their quotations being not eligible to execute the work. All the official norms and procedures have been ignored. Although the defence contended that one of the conditions in the NIT authorised the competent authorities to give preference to a local tenderer the case of the prosecution is that in the instant case even some of the local tenderers have been ignored and the contract works have been awarded to the favourites of accused No. 1.

20. P.W. Shri T.P. Koirala who was then Senior Accounts Officer, RDD, has stated that awarding contract works to the contractors other than the contractors who quoted the lowest rate without any valid reason is against the financial rules. In all the schemes the work has been entrusted to persons who have not quoted the lowest rate. Prosecution documents reveal that the lowest tenderers were willing to execute the work but Shri P.K. Pradhan accused No. 2 at the instance of accused No. 1-Shri N.B. Bhandari negotiated with rest of the accused persons and awarded work in their favour despite the fact that the State cabinet had taken the decision that these Rural Water Supply Schemes shall be executed

through open tender.

21. Learned defence counsel have urged that since the general condition No. 6 of the NIT empower competent authority to reject any tender without assigning any reason, there has been no irregularity not to speak of illegality when quotations of lowest tenderers were rejected and the authorities concerned awarded the contract work to accused persons by giving valid reasons. The reason behind incorporating such clause in the NIT is to provide safeguard to the Department for rejecting unqualified or disputed and defective tenders. In the instant case quotations of the lowest tenderers were accepted and the department in its normal course of business have recommended for the award of work to such lowest tenderer.

22. Interference of accused No. 1-Shri N.B. Bhandari in the official process, entertaining request of the tenderer who had not quoted the lowest rates or of those person who did not even submit the quotations and ordering accused No. 2-Shri P.K. Pradhan to award contract work to them despite the official recommendations to award work to the lowest tenderer is an act of abuse of official position. Therefore, accused Nos. 1 and 2 both being public servants are responsible for offences of criminal misconduct u/s 5(2) read with Section 5(1) (d) of Prevention of Corruption Act, 1947 corresponding to Section 13(2) read with Section 13(d) of P.C. Act, 1988.

23. The offence of criminal conspiracy involves meeting of minds of two or more persons agreeing to do or causing to be done an illegal act in terms of such agreement. Therefore, direct evidence to prove the offence of criminal conspiracy is rarely available. The Court has to draw inference from the established facts. The learned counsel for the accused No. 1 have submitted that except in one or two instances there is no evidence to show that the accused No. 1 had even met accused No. 2 and directed him to award the work to particular persons.

24. The role played by the accused No. 1, Sri N.B. Bhandari is that he recorded note for award of work to Shri H.P. Karki (since deceased). It is also on record that accused No. 2-Shri P.K. Pradhan on 13-2-1984 wrote in his note that he discussed the matter with H.C.M. i.e., accused No. 1. In respect of Water Supply Scheme at Malabasey accused No. 1-Shri N.B. Bhandari marked the request of the accused Nos. 4 to 8 dated 6-12-1983 to Shri P.K. Pradhan accused No. 2 for awarding the work in their favour. Similarly he had also marked the request letter of accused Nos. 4 to 8, which is dated 18-1-1984 to Chief Engineer for awarding the work to Sri T. Tshering on their behalf. In the file D. 9 there is a note of Shri P.K. Pradhan accused No. 2 to the effect, "discussed with HCM today. Please, issue work order as already ordered at page 10 after settling the rate with N.P. Tamang." In the file relating to Samdong Water Supply Scheme there is an endorsement of accused No. 1. "Please, put up with the comparative statement." In respect of Water Supply Scheme Patuk, in file D. 15 page 47 there is a note of Sri N.B. Bhandari accused No. 1 addressed to Secretary, Rural Development Department i.e. accused No. 2 to put up the file after tender.

Besides this there are witnesses who implicate accused No. 1-Sri N.B. Bhandari in connection with other schemes. Statement of P.W. 27 Sri T. T. Bhutia implicate Shri N.B. Bhandari accused No. 1 in respect of scheme Zerung. Statement of P.Ws. 13 and 14 implicate accused No. 1 in respect of Water Supply Scheme at Biring. Statement of P.W. 15 implicates Shri N.B. Bhandari accused No. 1 in respect of Water Supply Scheme, Sadam. Statement of P.W. 28 Shri C.D. Bhutia implicates Shri N.B. Bhandari accused No. 1 in respect of Budang and Singyang Water Supply Schemes.

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27. While considering the material on record to find out whether there is a prima facie case the Court is not required to make roving enquiry and evaluate the materials meticulously so as to test the veracity of the prosecution case. It is now settled by the decisions of the Apex Court that the truth, veracity and the effect of evidence which the prosecutor proposes to adduce at the time of trial is not to be meticulously weighed in the sensitive balance and the charge has to be framed if there are grounds for presuming that the accused person has committed the offence. If the facts emerging from the record taken at face value discloses prima facie case the charge can be framed. At this stage if strong suspicion arises that there is ground for presuming that the accused persons have committed offence as alleged by the prosecution then the law requires that charges is to be framed.

28. Facts and circumstances as noted earlier make out a prima facie case against all the accused persons u/s 120-B of I.P.C. and further u/s 5(2) read with Section 5(1)(d) of P.C. Act, 1947 corresponding to Section 13(2) read with Section 13(1)(d) of P.C. Act, 1988 against accused No. 1-Sri Nar Bahadur Bhandari and accused No. 2-Sri P.K. Pradhan. Hence, to come for framing of charges u/s 120-B, I.P.C. against accused No. 4-Sri Nar Bdr. Rawat, accused No. 5-Sri Harka Singh Chawan, accused No. 6-Sri Hari Prasad Rai, accused No. 7-Sri R.B. Subba, accused No. 8-Sri Hari Prasad Sharma, accused No. 9-Sri S.D. Tamang, accused No. 10-Sri Bhim Bahadur Gurung, accused No. 11-Sri Sriniwas Agarwal, accused No. 12-Sri Chetan Das Ghimiray, accused No. 13-Sri A. B. Gurung, accused No. 14-Sri Norbu Tshering Bhutia, accused No. 15-Shri Sonam Wangdi Bhutia and accused No. 17-Sri Minzur Bhutia and also u/s 5(2) read with Section 5(1)(d) of P.C. Act, 1947 corresponding to Section 13(2) read with Section 13(1)(d) of P.C. Act. 1988 against accused No. 1-Sri Nar Bdr. Bhandari and accused No. 2-Sri P.K. Pradhan."

It would appear that though in paragraph 28 the learned trial Court had observed that there was a prima facie case against all the accused persons u/s 120-B of I.P.C., he, at the same time, stated that charge under that section was to be framed against accused Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 17 and omitted to mention the names of accused Nos. 1 and 2. It is apparent that the omission was by inadvertence and if charge under that section has to be framed pursuant to this order, the charge is to be framed against accused Nos. 1 and 2

also under that section.

6. We have heard the learned counsel for the parties. The main arguments were urged by Mr. Milon Kumar Mukherjee, Senior Advocate, who advanced arguments on behalf of the petitioner-Shri N.B. Bhandari. Learned counsel appearing for the other petitioners supported him. On behalf of the State Mr. I. D. Vaid, the learned Special Public Prosecutor, C.B.I. made arguments. Following points were urged on behalf of the petitioners :

(i) The learned trial Court has directed the framing of the charge of conspiracy u/s 120-B simpliciter and not to commit offences punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards and so the Court could not take cognizance of the offence of criminal conspiracy without the consent of the State Government as per the provision of Sub-section (2) of Section 196 of the Code of Criminal Procedure, 1973 and since no such consent was given by the State Government to the initiation of the proceedings u/s 120-B, cognizance could not be taken by the Court, of the offence of criminal conspiracy;

(ii) The offences which were allegedly committed by the accused persons were committed prior to the coming into force of the Prevention of Corruption Act, 1988 and as such, the accused persons could not be charged with the offence punishable u/s 13(2) read with Section 13(1)(d) of the P.C. Act, 1988.

(iii) FIR in the instant case was recorded u/s 154, Cr. P.C. by the Superintendent of Police/CBI/CIU-(A), New Delhi which has not been declared to be a Police Station by the State Government and as such FIR was not recorded by the officer-in-charge of a Police Station and so the FIR which was the basis of investigation was not proper within the meaning of Section 154, Cr. P.C. and as such the investigation based thereon is contrary to law.

(iv) Prima facie there is no sufficient material to frame charges against the accused persons. Notice inviting tender clearly stated that contractors who are residents of the villages where the Water Supply Schemes are being implemented would be given preference and also that the Department of Rural Development reserves the right to reject any of the tenders without assigning any reason therefor, and so rejection of the tenders which quoted lowest rates and award of work to those tenderers who had offered higher rates could not constitute material to warrant framing of charges against the accused persons. In a commercial transaction it is always open to the authority concerned not to accept the lowest bid. It was urged on behalf of Shri N.B. Bhandari that there was absolutely no nothing from him on the files of two schemes namely, (vii) and (xii).

7. As regards point (i), it is true that under the provisions of Sub-section (2) of Section 196 of the Code of Criminal Procedure, 1973, Court cannot take cognizance of the offence of any criminal conspiracy u/s 120-B of the Indian Penal Code, if the criminal conspiracy is simpliciter and not to commit an offence

punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings. However, it would not be correct to say that the criminal conspiracy for which the accused persons have to be charged in the instant case and discussion in the order of the learned trial Court, it would appear that the criminal conspiracy for which the accused persons are to be charged is the criminal conspiracy to commit an offence punishable u/s 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947. It is true that the learned trial Court used the expression in paragraph 28 of the order that the facts and circumstances made out a prima facie case against all the accused persons u/s 120-B of the Indian Penal Code without specifically adding "read with Section 5(2) and Section 5(1)(d) of the Prevention of Corruption Act, 1947, it is to be construed that the omission was inadvertent. When charge of criminal conspiracy is to be framed, the charge has to specify the offence punishable u/s 120-B of the Indian Penal Code read with Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947. The offence u/s 5(2) is punishable with imprisonment, which may extend to seven years and also to fine and as such no consent of the State Government or District Magistrate was required u/s 196(2) of the Code of Criminal Procedure.

8. As regards point (ii), the impugned order of the learned trial Court specifies that Shri N.B. Bhandari and Shri P.K. Pradhan committed the offence u/s 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 corresponding to Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. It is submitted on behalf of the petitioners that the provisions of Section 13(1)(d) of the Act of 1988 are more harsh than the provisions of Section 5(1)(d) of the Act of 1947 and, therefore, the petitioners shall be highly prejudiced if they are to be charged under the corresponding provision of, Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. There is merit in this submission. Section 30 of the Prevention of Corruption Act, 1988 states :

"30. Repeal and saving

(1) The Prevention of Corruption Act, 1947 (2 of 1947) and the Criminal Law Amendment Act, 1952 (46 of 1952) are hereby repealed.

(2) Notwithstanding such repeal, but without prejudice to the application of Section 6 of the General Clauses Act, 1897 (10 of 1897), anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provision of this Act."

9. A bare reading of Sub-section (2) of Section 30 makes it manifest that repeal of the Prevention of Corruption Act, 1947 would be without prejudice to the application of Section 6 of the General Clauses Act. Section 6 states:

"6. Effect of repeal.-- Where this Court, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not--

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

A combined reading of Section 30 of the Prevention of Corruption Act, 1988 and Section 6 of the General Clauses Act, 1897 would show that no right or obligation acquired or incurred by any person under the Prevention of Corruption Act, 1947 would be affected by the repeal of that Act. Thus, the obligation of the accused persons under the Act, 1947 could not be enhanced after repeal of that Act by the enactment of the Act of 1988. As such, when the charges have to be framed, no mention is to be made of the corresponding provisions of the Prevention of Corruption Act, 1988. This position is conceded by Shri Vaid, the learned Special Public Prosecutor, CBI.

10. As regards point (iii), Section 2(s) of the Code of Criminal Procedure, 1973 states that "police station" means any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf. Thus, Police Station means besides any post or place also the local area which has been declared to be so by the State Government. The Central Bureau of Investigation was constituted u/s 2 of the Delhi Special Police Establishment Act, 1946 for the investigation in any Union Territory of the offences notified u/s 3. Section 5(1) empowers the Central Government to extend to any area in a State not being a Union Territory the powers and jurisdiction of the members of the Delhi Special Establishment for the investigation of any offences or classes of offences specified in a notification u/s 3. When the powers and jurisdiction of the members of the Delhi Special Police Establishment are extended to any such area under Sub-section (1) of Section 5, Sub-section (2) of that section empowers a member thereof to discharge the functions of a police officer in that area and while so discharging

such functions such member is deemed to be a member of the police force of that area and is vested with the powers, functions and privileges of an officer belonging to that police force. This is subject only to any order that the Central Government may make in this behalf. Sub-section (3) of Section 5 provides that where any such order under Sub-section (1) is made in relation to any area, then, without prejudice to the provisions of Sub-section (2) any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector may subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer-in-charge of a police station in that area and when so exercising such powers, shall be deemed to be an officer-in-charge of a police station discharging the functions of such an officer within the limits of his station. Thus, subsection (3) clearly provides that any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector may exercise the powers of the officer-in-charge of the Police Station in that area to which the powers and jurisdiction of the Delhi Special Police Establishment have been extended under the provision of Sub-section (1). It further provides that such an officer is to be deemed to be an officer-in-charge of a police station discharging the functions of such an officer within the limits of his Station. There is no dispute that when the FIR was recorded the Central Government had already extended the powers and jurisdiction of the members of the Delhi Special Police Establishment Act, 1946 to the entire State of Sikkim. As such, under the provision of Sub-section (3) of Section 5 any officer of the rank of sub-inspector or above of is to be deemed to an officer-in-charge of a police station discharging the functions of such an officer within the limits of Sikkim. When a statutory provision specifically provides that such an officer shall be deemed to be an officer-in-charge of the police station it is of no consequence that no declaration has been made by the State Government under Sub-section (5) of Section 2 of the Code of Criminal Procedure. As such, there is absolutely no merit in the submission that First Information Report recorded in this case is contrary to the provisions of the Code of Criminal Procedure. Our view finds support from the judgment of the Jammu and Kashmir High Court in *Sushil Kumar Khajuria v. State*, 2000 Cri LJ 682.

11. As to point (iv) on the question whether there is sufficient material to warrant the framing of charges against the accused persons, Section 239 of the Code of Criminal Procedure, 1973 provides that the Magistrate can discharge the accused if he considers the charge against the accused to be groundless. This is to be done after considering the police report and the documents sent with it u/s 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard. It is necessary for the Magistrate to record reasons for passing an order of discharge. But if the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence which he is competent to try and which could be adequately punished by him, he has u/s 240 no alternative except to frame charge in writing against the accused person. Section

240 does not require him to record any reason for entertaining the opinion that there is ground for presuming that the accused has committed an offence. The Supreme Court held in *State of Bihar Vs. Ramesh Singh*, after referring to Sections 227 and 228 of the Code of Criminal Procedure:

".... Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter u/s 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of this guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding *prima facie* whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order u/s 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one u/s 228 and not u/s 227."

12. In *State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc.*, an argument was advanced that a *prima facie* case can be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. The Court held :

"30. In our view, better and clearer statement of law would be that if

there is ground for presuming that the accused has committed the offence, a Court can justifiably say that a prima facie case against him exists, and so, frame charge against him for committing that offence."

Similarly, it was held in Union of India (UOI) Vs. Prafulla Kumar Samal and Another, Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, and Dilawar Balu Kurane Vs. State of Maharashtra, that the Court has to sift evidence on record and other documents only for the limited purpose of ascertaining whether a prima facie case has been made out against the accused. The Supreme Court held in Smt. Om Wati and Another Vs. State, through Delhi Admn. and Others, that no reasons are required to be recorded when the charges are to be framed against the accused persons. The Court further observed:

"12. We would again remind the High Courts of their statutory obligation to not to interfere at the initial stage of framing the charges merely on hypothesis, imagination and far-fetched reasons which in law amount to interdicting the trial against the accused persons. Unscrupulous litigants should be discouraged from protracting the trial and preventing culmination of the criminal cases by having resort to uncalled for and unjustified litigation under the cloak of technicalities of law."

13. The law is well-settled as to what constitutes criminal conspiracy. The essence of the offence of criminal conspiracy defined in Section 120A, IPC is that there must be an agreement between two or more persons to do or cause to be done any illegal act or an act which is not illegal by illegal means. The conspiracy consists not merely in the intention of two or more persons but in the agreement of two or more persons to do such an act. Such agreement may be proved by direct evidence or may be inferred from the acts and conduct of the parties. Such an agreement cannot often be proved by direct evidence and it often happens that participation in overt acts in pursuance of the alleged agreement provides good grounds for the inference of participation in the agreement itself. The Supreme Court held in State of Himachal Pradesh Vs. Krishan Lal Pardhan and Others, that it is wrong to think that every one of the conspirators must have taken active part in the commission of each and every one of the conspiratorial acts and only then the offence of conspiracy will be made out. The offence of criminal conspiracy consists in the meeting of minds of two or more persons for agreeing to do or causing to be done an illegal act or an act by illegal means, and the performance of an act in terms thereof. If pursuant to the criminal conspiracy the conspirators commit several offences, then all of them will be liable for the offences even if some of them had not actively participated in the commission of the offences. It was pointed out in Firozuddin Basheeruddin and Others Vs. State of Kerala, .

"23. Conspiracy is a clandestine activity. Persons generally do not form illegal covenants openly. In the interests of security, a person may carry out his part of a conspiracy without even being informed of the identity of his co-

conspirators. Since an agreement of this kind can rarely be shown by direct proof, it must be inferred from circumstantial evidence of co-operation between the accused."

14. As regards the material on record, there is ample proof that contracts were not awarded in any of the schemes in question to the contractors who had offered the lowest rates. In some cases, the contracts were awarded to the persons who had offered the highest rates. In some cases negotiation was entered into and the persons to whom work was awarded were required to reduce their rates but not so much as to bring the rates at par with the rates of those who had offered the lowest rates. It is doubtful whether such negotiation was permissible. Shri N.S. Lepcha (PW-2) who was the Chief Engineer in the Rural Development Department and a member of the Tender Committee has stated in his statement recorded u/s 161, Cr. P. C., that strictly speaking the lowest tender has to be accepted unless there are certain valid reasons for its rejection and the reasons have to be recorded in writing and in these cases no such procedure has been followed although he had pointed out these lapses to the concerned officers from time to time. Shri T.P. Koirala, PW-5 who was the Senior Accounts Officer in the Rural Development Department and who was also a member of the Tender Committee has stated that the award of the contracts to the contractors other than those who had offered the lowest rates without any valid reasons was against the Financial Rules and there was no question of negotiations with the contractors for award of the work, since the cabinet decision was very specific in this regard. On behalf of the petitioners an attempt has been made to justify the award of the contracts to the persons other than those who had offered the lowest rates on the ground that the notice inviting tender specifically provided that preference shall be given to those contractors who are residents of the villages where the Water Supply Schemes are being implemented. The learned Special Public Prosecutor has submitted that preference does not mean that contract could be awarded to the contractors who had offered the highest rates and that only means that if two contractors had offered the same rates and one of them was the resident of the village where a particular Water Supply Scheme was to be implemented, preference could be given to him. We enquired from the counsel of the petitioners as to whether they would like the word "preference" to be interpreted by this Court at this stage. They submitted that the Court might not give interpretation at this stage, lest it should prejudice the trial, if trial has to proceed. On the face of the evidence on record, this Court would not be justified in holding that a prima facie case is not made out against the accused persons. It has also been submitted on behalf of the petitioners that one of the terms of the notice inviting tender stipulated that the Rural Development Department reserves the right to reject any or all the tenders without assigning any reasons thereof. Though it might not be necessary to communicate any reason to the tenderers who had offered the lowest rates, yet the department could not be said to be justified in rejecting the tenders quoting the lowest rates only because the term in the notice authorised the

department to do so. A governmental authority cannot act arbitrarily and cannot reject the lowest tender without there being any sufficient ground for doing so. Reference was made on behalf of the petitioners to *Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others*, where it was held that the "award of contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness." This authority is of no help to the petitioners, since it clearly lays down that even if the authority concerned is not bound to accept the lowest rates, it has to act in a reasonable manner according to the norms laid down by the authority.

15. In an attempt to show that prima facie case has not been made out against the accused persons, we were led through the records of all the schemes 4n question on behalf of the petitioners who were represented by counsel. In respect of the first five schemes, we record our observations as under :

(i) Rural Water Supply Scheme at Upper Tintek under Rakdong Gram Panchayat at East District.

Eight Contractors had submitted tenders in respect of this scheme. The lowest rates were quoted by Shri G.D. Sharda at 15% below the scheduled rates. Shri H.P. Karki, accused No. 3 quoted the second highest rates at .02% below the scheduled rates meaning thereby that six Contractors had offered lower rates than the rates offered by accused No. 3, Shri H.P. Karki. This scheme was dealt with in file D-7. The J. E. recommended the name of Shri G.D. Sharda who had tendered the lowest rate. The D. E. also recommended on 28-1-1984 the name of Shri G.D. Sharda stating that no tenderer was from Tintek. Shri P.K. Pradhan, the R.D.D. Secretary (A-2) made a note on 30-1-1984 to the effect that the rate offered by the local contractor, Shri H.P. Karki is accepted in view of the scheme to be maintained by the local body and beneficiaries. On the file there is also a note of 13-2-1984 of Shri P.K. Pradhan (A-2) "Discussed with HCM today. Pl. issue work order as instructed at Page 9". There is also a note at Page 42 of the file in the hand of Shri Nar Bahadur Bhandari on his letter-head "Please award the work order to Shri H.P. Karki, Rakdong, E. Sikkim." This note was marked to Secretary, R.D.D. The work order was accordingly issued in favour of Shri H.P.

Karki on 23-2-1984 vide Page 43. Shri N.S. Lepcha who was the Chief Engineer of the Rural Development Department and was also a member of the tender committee has stated u/s 161 of the Cr. P. C. as PW-2 that the Secretary vide his order dated 30-1-1984 had ordered to award the work to Shri H.P. Karki on the ground that the scheme was to be maintained by the local bodies etc., and thereafter the file was seen by him and the Senior Accounts Officer. He has further stated that in the meanwhile, a complaint was received from the Gram Panchayat of Rakdong against Shri H.P. Karki and then Shri P.K. Pradhan vide his endorsement dated 2-2-1984, on the complaint, ordered to withhold the issue of work order till the matter was finalised. He has further stated that subsequently a reference was received from the Chief Minister which was marked to the Secretary, R.D.D. on 22-2-1984 stating that the work order be awarded to Shri H.P. Karki. In view of the orders of the Chief Minister, the contract was awarded to Shri H.P. Karki at 0.02% below the scheduled rates as against the lowest rates of 15% below the scheduled rates without any valid reason against the Financial Rules. His statement is corroborated by the statements of Shri K.K. Rai, PW-3 who was the D. E. and Shri K.P. Pothan, PW-4 who was the J.E. at the relevant time.

(ii) Rural Water Supply Scheme at Malbasey under Malbasey Gram Panchayat. West District.

For this scheme, five persons offered their rates. The lowest rate of 4.51% below the scheduled rate was offered by Shri K.K. Pradhan. Accused persons A-4 to A-8 vide their letter dated 6-12-1983 requested the then Chief Minister (A-1) to grant this work to them. Accused No. 1 marked this letter to the RDD, Secretary (A-2). The prosecution case is that since accused Nos. 4 to 8 were not qualified contractors, they could not offer their own tenders. So, Nar Bahadur Rawat A-4, Harka Singh Chewan A-5, Hari Prasad Rai A-6 and Ratan Bahadur Limbu A-7 made an application dated 18-1-1984 to the then Chief Minister (A-1) for awarding the work to T. Tshering who had offered the rate 5% above the scheduled rate. Shri N.S. Lepcha, PW-2 has stated that with respect to this scheme, the lowest tender was made by Shri K.K. Pradhan who had offered the rate 4.51% below the scheduled rate and the second lowest tender was made by Shri B.S. Lama who had offered the rate 3.55% below the scheduled rate. He has further stated that on 2-2-1984 Shri P.K. Pradhan, the then Secretary, RDD, accused No. 2 ordered for the release of TDR of Shri B.S. Lama and directly endorsed the file to Shri K.K. Rai, Divisional Engineer and there is nothing on the file to show how the TDR of B.S. Lama who was the second lowest tenderer was ordered to be released on 2-2-1984. The file was again shown to Shri P.K. Pradhan on 4-2-1984 who ordered to find out if Shri R.K. Goel who had offered the rate of 5% above the scheduled rate was prepared to execute the work at scheduled rate and if so the work order be issued in his favour on the ground that Shri K.K. Pradhan had some work in hand and Shri B.S. Lama and Shri T. Tshering had withdrawn their TDRs and Shri C.B. Chewan had not undertaken any work with the department. He has further stated that Shri T.P. Koirala, Under

Secretary (Accounts) dealt with the file vide his note dated 4-2-1984 saying that R.K. Goel was present in the office and he was ready to execute the work at scheduled rate at Malbasey. In view of the order of the then Secretary, RDD, the work order relating to this scheme was awarded to R.K. Goel of Jorethang at scheduled rate as against 4.51% below of Shri K.K. Pradhan resulting in loss to the Government to the tune of Rs. 17,246/- approximately. He has further stated that in this matter, the work order was awarded to Shri Goel against the normal procedure without any reasons. It is an admitted position that Shri R.K. Goel was not a resident of Malbasey. The statement of N.S. Lepcha is corroborated by Shri K.K. Rai PW-3, the then D. E. and Shri K. P. Pothan, the then Junior Engineer PW-4. Shri R.K. Goel, PW-11 has stated that in December, 1983, Shri Nar Bahadur Rawat (A-4) along with Shri R. B. Subba (A-7), Shri H.P. Sharma (A-8), Shri H.P. Rai (A-6) and Shri K.S. Chewan (A-5) approached him at Jorethang and informed him that tenders for construction of Rural Water Supply Scheme at Malbasey were going to be called by the RDD shortly and they were very much interested in getting the said contract. He has further stated that those persons informed him that they had already contacted Shri N.B. Bhandari, the then Chief Minister, who belongs to their village to award the work to them and Shri Bhandari had stated that since they were very small contractors, the RDD will not be in a position to award the work to them as the cost of the construction of the said scheme was high and contractors of higher category are only eligible to submit tenders for the said water supply scheme. He has also stated that these persons approached him to submit the tender in his name on their behalf quoting the rate 5% above the scheduled rate and he assured to do so. He has further stated that after the tender notice was published, Shri Nar Bahadur Rawat (A-4) who is distantly related to Shri Nar Bahadur Bhandari (A-1) again approached him to submit the tender on their behalf and accordingly he purchased the tender documents and submitted the same along with the required earnest money quoting the rate 5% above the scheduled rate. He has further stated that they had assured him that they would be able to get the tender accepted at 5% above. He has also stated that since he himself was interested in getting the said work, he left Gangtok for Jorethang. After about a week, Shri Nar Bahadur Rawat and others informed him that they had contacted Shri N.B. Bhandari and Shri P.K. Pradhan for getting the said work and Shri Pradhan told them that there is another contractor, Shri T. Tshering who had also quoted 5% above the scheduled rates and it would be difficult to get the work in the name of Shri R.K. Goel until Shri T. Tshering withdrew his offer. They had informed him that they had contacted Shri T. Tshering and requested him to withdraw the offer, but Shri T. Tshering had refused to withdraw his offer on the pretext that he had already spent a sum of Rs. 5,000/- for the said work and he would withdraw his offer if he was paid Rs. 5,000/- as compensation. Since, Hari Prasad Rai and others had informed him that he did not have that much money to give to Shri T. Tshering, he gave them Rs. 5,000/- on their request under receipt which is available at page 4 of File No. 8 which was seized by the CBI from his residence on 8-6-1984. He has further stated that Hari Prasad Rai and Nar Bahadur Rawat had informed

him on 3-2-1984 that Shri T. Tshering had withdrawn his offer on receipt of Rs. 5,000/-. Thereafter, he contacted Shri T.P. Koirala, the Under Secretary, Accounts who informed him that it had been decided to award the said contract to him provided he was ready to execute the same at scheduled rate as the interested parties had already indicated to him that they would be ready to execute the work at scheduled rate. He agreed for the same and left for Jorethang. Further, he has stated that after about a week, Shri Nar Bahadur Rawat along with others again approached him at Jorethang and showed the work order. They also informed him that it would be very difficult for them to execute the said work as they did not have necessary funds and experience to implement the said work involving huge amount and that they would hand over the work to him provided he paid them sum of Rs. 50,000/-. Finally, the matter was settled at Rs. 35,000/- out of which Rs. 5,000/- had already been paid by him and the balance amount of Rs. 30,000/- was paid to them and all these aforesaid five persons executed a written agreements for having settled the matter. Shri T. Tshering has stated as PW-12 that he gave the tender at 5% above the scheduled rate at the instance of accused Nos. 4 to 8 and subsequently withdrew the same at their instance after getting the amount of Rs. 5,000/-. He has also stated that on 18-1-1984, he submitted the tender in the RDD Office and accused Nos. 4 to 8 wrote an application to the then Chief Minister requesting him to award the work to them in his name. He has further stated that when the tenders were opened, he was present at the place where the tenders were opened while the other persons, i.e., A-4 to A-8 had gone to the then Chief Minister along with the application dated 18-1-1984. Shri B.S. Lama, PW-10 has stated that he was the second lowest tenderer having quoted the rate of 3.55% below the scheduled rate and he withdrew his TDR since Shri P.K. Pradhan, the then Secretary, RDD (A-2) had informed him that since Shri K.K. Pradhan had offered the lowest rate, contract could not be awarded to him.

(iii) Rural Water Supply Scheme at Upper Raley and Khasey within Samdong Kambel Gram Panchayat in East District.

Six persons had offered their rates for this scheme! Shri Prem Prakash Agrawal quoted the lowest rates at 12% below the scheduled rates. It is alleged that though Prem Prakash Agrawal had quoted the lowest rates, the contract was awarded in the name of Shri N.P. Tamang at scheduled rates on the ground that his name had been recommended by the Panchayat, although President of the Gram Panchayat had recommended the name of Shri Kesar Singh Chhetri. Case of the prosecution is that, as the accused S.D. Tamang was a political supporter of Shri Nar Bahadur Bhandari (A-1), accused No. 2 Shri P.K. Pradhan discussed the matter with accused No. 1 and issued work order in favour of Shri N.P. Tamang, the father of the accused No. 9 Shri S.D. Tamang at scheduled rates and thus a loss of Rs. 37,600/- was incurred by the State with corresponding pecuniary advantage to Shri N.P. Tamang by not awarding the work to the lowest tenderer, Shri Prem Prakash Agrawal at 12% below the scheduled rates. This scheme was dealt with in file D-9 according to which the lowest tender was

submitted by Prem Prakash Agrawal at 12% below the scheduled rates. Second lowest rates were offered by Kedar Somani at 8% below, the third lowest by L.N. Sharda at 6.31% below, the fourth lowest by Kesar Singh Chhetri at 5% below, the fifth lowest by Nem Tshering Lepcha at 2% below and the highest rates were offered by Shri N.P. Tamang at 9% above the scheduled rates. The contract was awarded to Shri N.P. Tamang who quoted the highest rates. Shri N.S. Lepcha, PW-2 has stated that Shri K.K. Rai, D. E. on 28-1-1984 had recommended the name of Shri N.P. Tamang wrongly stating that he was the second lowest tenderer. He has further stated that since Prem Prakash Agrawal who had offered the lowest rates in Sadam Water Supply Scheme and had been recommended by him for that scheme, his name was not recommended by him for this scheme. The second, third and fourth tenderers were outsiders and, therefore, he recommended the name of Shri Nem Tshering Lepcha who was the fifth lowest. Further, he has stated that the name of Shri Tamang had been wrongly recommended by Shri K.K. Rai, D. E. by stating that Shri Tamang quoted the rate of 9% below whereas he had offered the rate of 9% above. Thereafter, the file was put up by him to Shri P.K. Pradhan, Secretary R.D.D. who vide his Order dated 30-1-1984 ordered the issue of the work order to Shri N.P. Tamang after the rates are negotiated with him, since he had been endorsed by the beneficiaries. Thereafter, the file was put up to him and since there was no endorsement of the local beneficiaries as stated by the Secretary, R.D.D., he ordered to find out the said endorsement of the local beneficiaries. He has further stated that since there was no endorsement of the local beneficiaries in the file, his objections remained unattended and in view of the representation dated 1-2-1984 of the local Panchayat recommending award of the contract to Shri Kesar Singh Chhetri and the endorsement of Shri P.K. Pradhan dated 2-2-1984 issue of work order was withheld. Thereafter, the file was again sent by the Secretary, R.D.D. on 13-2-1984 when he ordered the issue of work order in favour of Shri N.P. Tamang after settling the rates with him since he had discussed the matter with the Chief Minister. Thereafter, the file was marked by this witness to Engineer on Special Duty for negotiating the rates with Shri N.P. Tamang. Shri Tamang filed his letter dated 13-2-1984 agreeing to execute the work at scheduled rates. Since the Secretary, R.D.D. had already issued the order in favour of Shri Tamang, the work order was issued in his favour. According to this witness, since the contract was not awarded to the lowest tenderer, Shri Prem Prakash Agrawal at 12% below the scheduled rates, the total loss to the State exchequer was Rs. 37,600/- approximately. His statement was corroborated by Shri K.K. Rai, D. E. (PW-3) and Shri K.P. Pothan, J. E. (PW-4). Shri Prem Prakash Agrawal PW-15 has stated that Shri N.P. Tamang to whom the contract was awarded is the father of Shri S.D. Tamang who is the General Secretary of the Youth Congress (I) of their area and that the scheme was executed by Shri S.D. Tamang and not by Shri N.P. Tamang, contractor to whom the work order had been issued.

(iv) Rural Water Supply Scheme at Zerung within Berfung. Zerung Gram

Panchayat in South District:

Six persons quoted their rates and the rates of Shri Tashi Wangdi Bhutia at 15% below the scheduled rates were the lowest. The third lowest rates at 9.51% offered were those of accused No. 11, Shri Srinivas Agarwal. Despite Shri Tashi Wangdi Bhutia having been the lowest tenderer, the work was, with the approval of accused No. 1, awarded in favour of Shri Srinivas Agarwal. Prosecution case is that this was done ignoring the recommendation of the officers to award the work to the lowest tenderer Shri Tashi Wangdi Bhutia and, as such a loss was incurred to the State exchequer to the extent of Rs. 14,815/- and corresponding pecuniary advantage to accused No. 11. Shri N.S. Lepcha, PW-2 has stated that he had recommended the lowest tender of Shri Tashi Wangdi Bhutia vide his note dated 30-1-1984 but when the file was put up to the Secretary, Rural Development Department, he ordered the award of the work to Shri Khartam who had quoted 1% below the scheduled rates, in view of his being a local person and in pursuance of the order of the Chief Minister dated 26-1-1984 on the representation of Shri Khartam. He has further stated that in view of the orders of the Secretary, Rural Development Department, the work order was issued in favour of Shri Khartam. But in the meanwhile, a complaint was orally made by Shri Tashi Wangdi Bhutia who was the lowest tenderer stating that Shri Khartam who had been issued the work order was not actually a Class II "A" contractor but a Class III contractor. Thereupon, a reference was made to the Chief Engineer, Sikkim Public Works Department to verify the matter vide this witness's letter dated 3-2-1984. Subsequently, a confirmation was received from the Chief Engineer, Sikkim Public Works Department vide his letter dated 18-2-1984 saying that Shri Khartam was a Class III contractor and the department had not issued any certificate to him as Class II "A" contractor as claimed by him. Therefore, he recommended the cancellation of the work order issued in favour of Shri S.K. Khartam and for awarding of the contract to any of the contractors who had tendered for the same. Thereupon, Shri P.K. Pradhan (A-2), Secretary Rural Development Department vide his note dated 20-2-1984 recommended the award of work to Shri Srinivas Agarwal at 9.51% below the scheduled rates as against the lowest tender of Shri Tashi Wangdi Bhutia followed by Shri R.L. Kondoï. Shri N.B. Bhandari (A-1) approved the award of work to Shri Srinivas Agarwal vide his endorsement dated 20-2-1984. Since Shri Srinivas Agarwal had already withdrawn the TDR, he was asked to redeposit the TDR to start the work immediately by Shri P.K. Pradhan. Accordingly, the work order was issued in favour of Shri Srinivas Agarwal at 9.51% below the scheduled rates as against the lowest tender of 15% below quoted by Shri Tashi Wangdi Bhutia and thus a loss of Rs. 14,816/- approximately was incurred by the State Government. It is an admitted fact that neither Shri Tashi Wangdi Bhutia nor Shri Srinivas Agarwal was the resident of the area within which the scheme was to be executed. His statement has been corroborated by Shri K.K. Rai, PW-3 and Shri K.P. Pothan, PW-4. Shri K.K. Rai the then Divisional Engineer (PW-3) has also stated that actually the contract should have been awarded to Shri Tashi Wangdi

Bhutia who was the lowest tenderer and he did not know why Shri Tashi Wangdi Bhutia was ignored. Shri Tashi Wangdi Bhutia PW-27 has stated that in spite of the fact that he was the lowest tenderer the work order was not issued in his favour but the same was issued in favour of Shri Srinivas Agarwal who was a staunch supporter of accused No. 1. He has further stated that he contacted Shri N.B. Bhandari to enquire as to why the work order had not been awarded to him even when he was the lowest tenderer and then Shri Bhandari told him that he was making a political propaganda against him and so no work could not be awarded to him.

(v) Rural Water Supply Scheme at Biring under Biring within Linkey Thekabung Gram Panchayat Unit in East District.

Six persons submitted tenders in respect of this scheme. Shri G.D. Sarda and Choley Dorjee Bhutia offered the lowest rates at 5% below the scheduled rates. Of all the tenderers, Shri Choley Dorjee Bhutia was the only one who was the resident of the area within which this scheme was to be executed. However, as per the note of the Divisional Engineer, the work was not to be awarded to Shri G.D. Sarda as he was executing another work. Vide note dated 28-1-1984, the Chief Engineer recommended the award of the work to Shri Choley Dorjee Bhutia at 5% below the scheduled rates. Application dated 30-1-1984 was submitted by Shri N.B. Pakhring to the Divisional Engineer stating that due to certain reasons he was not able to supervise his work at Bering Water Supply Scheme and, therefore, he was authorising Shri Chetan Das Ghimeray to supervise and execute the work on his behalf. This letter bears the endorsement of accused No. 1 dated 13-2-1984 "I have already decided to offer this work to Mr. Pakhring." There is a note of the same date by accused No. 2 to the effect that since Shri Choley Dorjee Bhutia had already got the work of school building which was yet to be completed, though the time given had expired, it might not be proper to entrust this work to him which was to be completed in time and the tender offered by Shri N.B. Pakhring of Deorali Bazaar was accepted and the work order might be issued to him but it might be made quite clear that the office would not allow any other person to execute the work. Shri Choley Dorjee Bhutia PW-13 has stated that though he was the lowest tenderer, the work was not awarded to him and the work was awarded to Shri N.B. Pakhring which work was executed by Shri Chetan Das Ghimeray who is a party-man of Shri N.B. Bhandari. Shri Pakhring is admittedly not a resident of the area within which the scheme was to be executed as he is a resident of Deorali, Gangtok. Shri N.B. Pakhring, PW-14 has stated that since Shri Choley Dorjee Bhutia and Shri G.D. Sarda had offered the lowest rate being 5% below, and also because he himself had quoted the higher rate at par, he did not pursue the matter. At that time Chetan Das Ghimeray a contractor of lower category approached him saying that he would get the work order issued in his (Ghimeray's) name even when the rates quoted by him were higher, if he himself was ready to give the contract to him. Thereupon, this witness told Shri Pakhring that his rates were higher and so the work order could not be issued in his favour but he insisted that he might get the work order

issued through the Secretary Rural Development Department and the Chief Minister if he agreed to hand over the work to him. Thereupon this witness told him that if he could manage to get the work order issued, he would have no objection to hand over the work to him and the TDR deposited by him should be returned. Thereupon, Shri C.D. Ghimeray requested him to submit a petition saying that due to certain reasons he was not able to supervise the work and as such Shri C.D. Ghimeray might be allowed to execute and supervise the work. That petition was taken by Shri C.D. Ghimeray personally. Thereafter, this witness was again requested by Shri C.D. Ghimeray to issue another petition saying that he would not sub-let the work and he would himself execute it, since the Secretary Rural Development Department wanted such a petition from him. Thereafter, the work order was issued in his favour and as already decided the work order was handed over to Shri C.D. Ghimeray for execution and he himself had nothing to do with the said work. He has also stated that there were certain difficulties in getting the stores from Rural Development Department by Shri C.D. Ghimeray and so Shri Ghimeray approached him to issue the letter of authorization in his favour and, accordingly, the letter was issued in favour of Shri Ghimeray. He has also stated that at that time, the brother-in-law of Shri Ghimeray was working in the party office of Shri N.B. Bhandari, the then Chief Minister, and managed to get the work through the Chief Minister.

16. The above observations do not persuade us to hold that prima facie case has not been made out in any of the above schemes. Reasons have been recorded by the learned trial Court regarding all the eleven schemes and since we do not see any reason to interfere with the decision of the learned trial Court, we have not considered it necessary to record our observations in relation to the Schemes other than those referred above. As pointed out earlier, even it was not necessary for the trial Court to record reasons for holding that prima facie case has been made out against the accused persons. So, while upholding the decision of the trial Court in respect of the other schemes also it is not necessary for us to record our observations with respect to the other schemes. We may however, point out that it was submitted on behalf of accused No. 1 that there was no noting by that accused in respect of schemes Nos. (vii) and (xii). But even with respect to these schemes, there is some evidence which justified the learned trial Court in holding that prima facie case was made out. There is some oral evidence to the effect that persons concerned were the staunch supporters of accused No. 1. The mere fact that accused No. 1 did not make any noting with respect of these two schemes would not justify our interference with the decision of the trial Court.

17. Accordingly, charge shall be framed against Shri Nar Bahadur Bhandari, accused No. 1 and Shri P.K. Pradhan, accused No. 2 u/s 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947. Charge shall also be framed against all the accused persons, except accused No. 3 and accused No. 16 who have since died, u/s 120B, IPC read with Section 5(2) and 5(1)(d) of the Prevention of Corruption Act, 1947. Charges have to be framed in respect of

schemes Nos. (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), and (xii). The accused persons shall appear before the learned trial Court on 6-5-2003. The Criminal Revisions thus stand disposed of.