
(2011) 02 CAL CK 0098
In the Calcutta High Court
Case No : C.R.A No. 153 of 1991

Nirmalendu Ghoswami

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 03-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1947 — Section 5

Citation : (2011) 1 APLJ 238 : (2011) 4 CHN 352

Hon'ble Judges : Kanchan Chakraborty, J

Bench : Single Bench

Advocate : Sekhar Basu and Subhasish Roy, for the Appellant; Ranjit Kr. Ghosal, for the Respondent

Final Decision : Allowed

Judgement

Kanchan Chakraborty, J.—This appeal is directed against an order and judgment dated 27.3.1991 passed by the learned Judge, 4th Special Court, Calcutta convicting the Appellant/accused in Special case No. 5 of 1985 u/s 161 of Indian Penal Code u/s 5(1) (d) read with Section 5(2) of the Prevention of Corruption Act, 1947 and sentenced him to suffer rigorous imprisonment for two years and to pay a fine of Rs. 1000/- in default, to undergo rigorous imprisonment for 6 months.

2. The prosecution case, in short, is that one Gopal Krishan Sarkar lodged one written complaint dated 10.5.1985 with Central Bureau of Investigation, 13, Lindsay Street, Calcutta against the Appellant Nirmalendu Goshami on the basis of which a case No. RC 8 of 1985 dated 10.5.1985 was registered u/s 161 of the IPC and u/s 5(1) (d) read with Section 5(2) of the Prevention of Corruption Act, 1947 against the Appellant. It was the case of Gopal Krishna Sarkar that his daughter Malati Saha had a card-board factory, under name and style M/S Calcutta Packaging Industries at 77/1 A & B, A.P.C. Roy Road, Calcutta.

Sometimes in the month of March, 1985, some Inspectors of Central Bureau Department visited her factory and advised her to submit return showing annual turn over of sales. A few days thereafter, Malati Saha went to the office of Central Excise to submit return. The Appellant being an Inspector of Central Excise Department, made few corrections in the return so submitted by Malati Saha and demanded Rs. 5000/- as bribe under the threat of putting her to harassment by making frequent raids. Malati Saha expressed her inability to pay of Rs. 5000/- to the accused at that time. The Appellant told her that he would come on the 6th to collect money. On the 6th, at about 9 A.M., the Appellant came to the factory again. Malati Saha talked to her father (Gopal Krishna Sarkar the de facto complainant) over phone asking him to come to the factory then and there. The de facto complainant rushed to the factory and met the Appellant. They had spoken over the issue and a visiting card was offered by the de facto complainant to the Appellant. On 8th May, 1985 the Appellant telephoned the de facto complainant at about 3/3.30 P.M. and told him that he would be coming to his residence. At about 4.30 P.M. he came to the residence of the de facto Appellant and demanded Rs. 5000/- from him. There was a bargaining over the amount and ultimately the Appellant agreed to accept Rs. 3000/-. He told the de facto complainant to meet him at the gate No. 4 near the lift of the Podder Court building with the money at about 9.45 a.m. on 10.5.1985. On that date, the de facto complainant went there without any money. The Appellant met him at 9.45 a.m. and demanded Rs. 3000/-. The de facto complainant told him that he would have to withdraw the money from bank. Then the Appellant told the de facto complainant to meet him at that place at about 12 hours. Thereafter, it was decided that the de facto complainant would meet him with money near a pan shop at about 4.30 p.m. on that date. At that juncture, the Appellant demanded that at least Rs. 500/- had to be paid on that date as first installment. The de facto complainant thereafter, in consultation with Malati Saha, decided to report the matter to the CBI. They together went straight to the CBI office and lodged the complaint stating the entire facts. On the basis of that complaint, the CBI officials arranged for a trap in presence of two (2) independent witnesses to the effect that on that date at fixed time and place, Rs. 500/- in five numbers of 100 Rupees currency notes would be given by the de facto complainant to the Appellant in presence of two independent witnesses who participated in the trap so arranged by the CBI. Phenolphthalein powder with solution of soda and water were sprinkled on those five numbers of 100 Rupees currency notes and it was decided that at the time of payment of the money by the de facto complainant and acceptance by the Appellant, the de facto complainant would wipe his face with one handkerchief and the CBI officials who would remain present near by, would apprehend him. According to the arrangement, the de facto complainant went to the pan soap at the South East corner of Podder Court. At 4.30 p.m. The Appellant came there and the de facto complainant handed over him the said five numbers of 100 Rupees currency notes which he kept in his pocket. At that time the de facto complainant wiped his face with a handkerchief as arranged. The CBI officials who were standing near by, then and there apprehended the

Appellant and took him to a shop belonging to a Chinese. Therein, the said five numbers of 100 Rupees currency note were recovered from the inner pocket of his trouser. The visiting card of the de facto complainant was also seized from his possession. Everything was done in presence the two independent witnesses who took part in the trap. Thereafter the case was investigated into and ultimately ended in a charge-sheet against the Appellant for committing the offence mentioned earlier. Before that, sanction for prosecution was obtained by the I.O. from the competent authority. The Appellant was arrayed to face charge u/s 161 IPC and u/s 5(1) (d) read with Section 5(2) of the Prevention of Corruption Act. He pleaded innocence. As a result, the Trial commenced and the learned Special Judge, upon consideration of the evidence on record, oral and documentary, came to the findings which has been impugned in this appeal.

3. The point to be decided in this appeal is whether the order and judgment passed by the learned Special Court is sustainable in law.

4. Mr. Sekhar Basu, the learned Senior Counsel appearing for the Petitioners has made manifold argument. However, the main thrust of his contentions are:

a) that the learned Special Judge committed an incurable mistake while framing charges against the Petitioner. He has drawn the attention of this Court to the charge framed by the learned Court on 12.12.1986 and submitted that while framing charge u/s 5(1) (d) read with Section 5(2) of the Prevention of Corruption Act, the Petitioner was described as a public servant employed in Calcutta Excise Packaging Industries at 77A, APC road Calcutta. This mistake has obviously caused prejudice to the Petitioner and only on this ground, the entire trial is liable to be set aside;

b) that the learned Special Court ought to have considered the antecedents of de facto complainant and his daughter Malati Saha before accepting the case of the prosecution. Mr. Basu contended that the de facto complainant is a business man and has knowledge enough to understand that once excise return is filed and accepted, no one from that department is required to be gratified by them. Since Malati Saha, the proprietor of the M/S Calcutta packaging industries filed the return and the same was accepted by the department after some corrections, neither the de facto complainant nor Malati Saha had any reason to bribe the Petitioner. Instead of going to the office of the Central Bureau Investigation, they could report the matter to the high official of Central Excise department because there was no latches on their part. Going straight to CBI appears to be unusual for such business men;

c) that learned Court ought to have considered the discrepancies in the statement of the de facto complainant (P.W. 1) and his daughter Malati (P.W. 2) in the matter of reporting the entire episode to the CBI. Mr. Basu has drawn attention of this Court to the statement of the P.W. 1 and submitted that the P.W. 1, in his examination-in-chief, stated that he suggested his daughter that in order to stop the harassment, they must inform CBI. So, both of them went to the office of the

CBI straight from the factory. The P.W. 2, Mr. Basu submitted, has stated in her examination-in-chief stated that on the 10th day of May, she came to know from the P.W. 1 that the Petitioner/accused Mr. N. C. Ghoswami had been apprehended by CBI at the time of accepting bribe from him. Mr. Basu submitted that if the evidence of the P.W. 1 and P.W. 2 are taken into consideration on this issue, only conclusion can be reached at is that the P.W. 2 had no idea about the lodging of complaint to the CBI, arrangement of trap and apprehension of the Petitioner by CBI official before that was disclosed to her by her father the P.W. 1. In that case, the statement of P.W. 1 that he together with his daughter (P.W. 2), upon consultation, gone straight from CBI office from the factory to report the incidence in order to stop harassment, can not be believed. Learned Court failed to take note of this discrepancy in the statement of the P.W. 1 and P.W. 2 on this material point of fact;

d) that the learned Court failed to take note of the discrepancy in respect of meeting time of the P.W. 1 with P.W. 4 and P.W. 6 and regarding time and manner of giving five(5) numbers of 100 Rs. Currency notes by the P.W. 1 to the CBI officials in the CBI office. Mr. Basu submitted, the P.W. 1 stated in his cross-examination that he reached CBI office at about 11/11.30 a.m. and he went back to his residence at about 12/12.15 hours to bring money. The witnesses i.e. the P.W. 4 and P.W. 6 were waiting in the CBI office before he left for his residence for bringing money. According to the P.W. 4, he went to the CBI office at about 01 P.M. where he met the de facto complainant. He stated further that the de facto complainant produced Rs. 500/- wherein chemical was applied. The P.W. 6 Gobindo Halder stated that he was at CBI at about 12.00/12.30 a.m. on 10.5.1986 where he met the de facto complainant. Five numbers of 100 Rupees. Currency notes were shown to him by DSP, CBI. Mr. Basu submitted that if the evidence of P.W. 1, P.W. 4 and P.W. 6 are considered properly on this particular aspect, it will show that the P.W. 4 had no occasion to watch the P.W. 1 to hand over five numbers of 100 Rupee Currency notes to the CBI official in the CBI office. Again, the evidence of P.W. 1 to the effect that before he left for his residence for bringing money, he met the P.W. 4 and P.W. 6 at CBI office can not be accepted. Therefore, according to Mr. Basu, there is doubt as to source of said currency notes which alleged to have been used in the Trap;

e) that the learned Court was completely oblivious of the major discrepancies in the prosecution case in respect of search and seizure of 500/- Rs. from the possession of the Petitioner. According to the witnesses, 500/- Rs which was used in the trap was recovered from the pocket of his trouser inside a shop room belonging to a Chinese. At the time of seizure, the door was closed from inside. Mr. Basu has taken me to the seizure list which has been marked as exhibit 7 and drawn attention of this Court that the place of seizure mentioned in the seizure list as "in front of the shop of Kam zoo at 15, Sunyat street on the Western footpath." Mr. Basu submitted that this discrepancy on material and vital point should not have been lost sight of the learned Trial Court. According to him, this discrepancy alone is enough to create doubt in the prosecution case;

f) that everything happened in the shop room of Kam Zoom, the Chinese man but, he was not examined by the prosecution. Withholding his examination in Trial obviously creates doubt in the prosecution case. The learned Court ought to have considered this fact in favour of the Petitioner;

g) that the alleged process of seizure of Rs. 500/-, if the oral evidence of the prosecution witnesses is believed, was done beyond the public view within a closed room by the CBI official in presence of the de facto complainant, a man interested in the prosecution and the P.W. 4 and P.W. 6. Their evidence was not corroborated, by any independent witnesses. Since all of them were parties to the trap alleged to have organised by the CBI, they can not be said to be independent witnesses and their evidence should not have been accepted by the learned Trial Court sacrosanct;

h) that the learned Court ignored the vital incident to the effect that the Petitioner was taken to hospital from the spot as he lost his sense. That fact leads to different story which has never come into light.

i) that there are discrepancies in the evidence in respect of keeping the currency notes by the Petitioner in the pocket of his trouser. Had the witnesses witnessed the incident of giving and taking of the money, there should not have been any discrepancies. This point was not at all considered by the learned Trial Court.

5. Mr. Basu contended that the learned Special Judge failed to consider the above factors while appreciating the evidence adduced on behalf of the prosecution. The judgment impugned was passed by not appreciating the evidence on its proper perspective and that being so, the judgment impugned is a perverse one and is liable to be set aside.

6. Mr. Ranjit Kumar Ghosal, the learned Counsel appearing for the Respondent/ State contended that the oral testimonies of the P.W. 1 was entirely corroborated by the P.W. 4 and P.W. 6 who were no way connected either with the CBI or with the P.W. 1. If so, their evidence can not be discarded merely because of some discrepancies which are trifles in nature. In a Criminal Trial, Mr. Ghosal contended, Court has to look at the quality of evidence not quantity. So, non-examination of the Chinese shop-keeper has no impact. He contended further that since the Appellant was apprehended on the footpath together with five numbers of 100 rupee currency notes used in trap, the place of seizure has been shown in the seizure list at footpath in front the shop of the Chinese man. The irregularity in framing of charges also not caused any prejudice to the Appellant. Therefore, the findings of the learned Special Judge being well founded is to be affirmed and the appeal is liable to be dismissed.

7. On perusal of the FIR (Exhibit I) it appears that the Appellant demanded Rs. 5000/- from the P.W. 2 on 3.5.1985 for the first time. The P.W. 2 reported the P.W. 1 that the Appellant told her that he would be coming on 6.5.1985 again at 09 a.m. On 6.5.1985, he came to the factory of the P.W. 2 who contacted the P.W. 1 over phone who came to the factory then and there. The P.W. 1 reached

there, had spoken to the Appellant over the issue and expressed his inability to make payment. But 8.5.1985, the Appellant, after confirming over phone, came to the residence of the P.W. 1 at about 4.30 p.m. and at that time he reduced the demand to Rs. 3000/- from Rs. 5000/- and asked the P.W. 1 to pay that sum of money on 10.5.1985 at Poddar Court, near the lift at gate No. 4. The P.W. 1 met him at 9.45 a.m. and expressed his inability to pay money. But, the Appellant told him to bring atleast Rs. 500/- by 4.30 p.m. and pass that money in front of a pan shop situated at the South East corner of Rabindra Sarani. But the P.W. 1 went back to the factory, discussed the matter with the P.W. 2 and both of them decided not to pay the Appellant. Thereafter, the written complaint (exhibit 1) was lodged with the CBI on the same date by the P.W. 1 who together with P.W. 2 went to the CBI office directly from the factory. The time of lodging the FIR, however, is not mentioned anywhere.

8. Without going line by line of the deposition of the prosecution witnesses, it would be more expedient and effective, if the points raised by Mr. Basu is considered, in seriatim.

9. Mr. Basu contended that there is grave mistake in framing of charges causing serious prejudice to the Appellant.

10. Admittedly the Appellant was an Inspector of Central Excise Department. But, astonishingly enough, the charge u/s 5(1) (a) read with Section 5(2) of the Prevention of Corruption Act against him has been framed as-

Secondly:

That you, in between 3.5.85 and 10.5.85 at Calcutta being a public servant employed at Calcutta Excise Packaging Industries at 774, 4, P. C. Road, Calcutta by corrupt or illegal means or otherwise by abusing your position as public servant obtained for yourself a pecuniary advantage to the tune of Rs. 500/- from Shri Gopal Sarkar, father of Smt. Malati Saha, Prop. Of M/S Calcutta Packing Industries and thereby committed an offence punishable u/s 5(1) 9 (d) r/w, Section 5(2) of the prevention of Corruption Act, 1947 and within my cognizance.

11. The error apparent on the face of record i.e., no doubt, is grave one which after a period of 30 years can not be cured. Question is how fatal it is? According to Mr. Basu inaccuracy in framing of charges u/s 5(1) (a) read with Section 5(2) of the Prevention of Corruption Act is fatal because accused is a public servant by virtue of his attachment with a Government office. Since, that wrong acquisition was read over and explained to him, he could not give any explanation to that in the Trial Court.

12. According to Mr. Ghosal, when the Appellant faced the Trial by active participation, he was not prejudiced in any manner because of inaccuracy in framing of charge. There can not be any debate as to the principle of law that the accused should be informed with certainty and accuracy, the exact nature of the

charge brought against him. But, defect in charge is not fatal unless the accused, in fact, is misled by such error or omission. However, in the ultimate analysis, the issue is one of the prejudice caused to the accused and failure of justice resulting therefrom. Causing of actual prejudice can not be judged hypothetically. It depends on facts, circumstances of the case, background, status and education etc. of the accused concerned. It is not the case of the Appellant before the Trial Court that he was misled by the charge nor that he failed to understand that being a public servant by virtue of his employment in the Central Excise Department, he was arrayed to face charge u/s 5(1) (b) read with Section 5(2) of the Prevention of Corruption Act. Mere plea of prejudice is not enough - it is to be shown how and why he is prejudiced. He pleaded not guilty to the charge, took active part in the Trial and explained the inculpatory evidence against him while he was examined u/s 313 Code of Criminal Procedure. The Appellant is an educated man and knew very well that he was an employee of Central Excise Department and not an employee of Calcutta Excise Packaging Industries. The Appellant got sufficient notice of the matter with which he is charged. In such a case, no prejudice can be inferred. So, I do not agree with the contention of Mr. Basu on this issue.

13. Next point raised by Mr. Basu is related to the conduct of the de facto complainant (P.W. 1) and his daughter (P.W. 2). It, obviously, strikes one's mind as to why the CBI was chosen by him to fix the Appellant for corruption. No doubt, the P.W. 1 and P.W. 2 are persons well acquainted with business and connected matters. The return was submitted by the P.W. 2 for her business in time. So, there was no apprehension on the part of the P.W. 1 and P.W. 2 to be harassed by the department save and except for the reasons best known to them. Normally and ordinarily no one goes to CBI even in case one apprehends harassment by an ordinary Government Employee but, brings such a fact to the notice of or informs the high officials. The reason behind informing CBI in this case, does not appear to be matching with the background. I find that officially either the P.W. 1 or the P.W. 2 had no reason for gratifying the Appellant when return was duly and timely submitted by the P.W. 2 and there was no illegality or irregularity in the business of the P.W. 2. Return was filed in March and demand of bribe was made in the month of May. In the month of May, no one claims Puja gift. Had the P.W. 1 and P.W. 2 actually been harassed by the Appellant, they could have informed the high officials of the Central Excise Department. The incident started on 3.5.1985. Even on 10.5.1985, the P.W. 1 remained inactive but did whatever he was told by the Appellant. The question is why ? This question has not been answered. Atleast, I do not find.

14. So, in the context above, the next question raised by Mr. Basu should be taken into consideration, i.e., why there is discrepancy in the statement of the P.W. 1 and P.W. 2 regarding taking action against the Appellant through the CBI. If the evidence of the P.W. 1 and P.W. 2 is read minutely, then, it will reveal that the P.W. 2 had no knowledge that her father, the P.W. 1 even contemplated of taking action against the Appellant through CBI. According to the evidence of the

P.W. 2, she came to know about apprehension of the Appellant by the CBI afterwards from the P.W. 1. On the other hand, according to the evidence of the P.W. 1, he had discussion with the P.W. 2 on 10.5.1985 over the issue and they together decided not to pay bribe to the Appellant but to inform CBI. They, therefore, together went to the office of the CBI and lodged the FIR. The discrepancy is explicit. This fact leads to only acceptable conclusion that the P.W. 1 had entire control over the P.W. 2 as well as her business. So lodging of the FIR with CBI obviously was his idea. The P.W. 2, according to her statement, did not even visit the office of the CBI while the P.W. 1 clearly stated that after having discussion with the P.W. 2, they went to CBI office straight way from the factory. Naturally, this discrepancy also leads to the another conclusion that the P.W. 1 kept the P.W. 2 in dark about his action and that he made false statement in Court. One aspect should not be lost sight of that none but the P.W. 1, according to the FIR, handled the Appellant from the very inception i.e. 3.5.1985. Therefore, what can be gathered from the discussion above is that only the P.W. 1 had taken up the matter with the CBI in order to fix the Appellant knowing well that he or his daughter was under no immediate threat of any action from the Central Excise department for return being filed correctly and in time, which he did not even disclose to the P.W. 2. This conduct of the P.W. 1 is not natural. According to the statement of the P.W. 1 in his cross-examination in chief, he did not take money with him on 10.5.1985 when he met the Appellant at 9.30 a.m. This fact goes to show that he did not intend to pay the Appellant at all from the very inception. If so, it is not understood why he kept the deal pending for about a week. The question strike one's mind automatically.

15. Next point raised by Mr. Basu can not possibly be ignored. The P.W. 1 stated clearly that the P.W. 4 and the P.W. 6 were called on by the CBI officials and they came there before the P.W. 1 went to his residence for bringing money. They were waiting there. The P.W. 4, Mahadeb Prasad Basu, an anthropologist, reached the CBI office at 01.00 P.M. and found the de facto complainant (P.W. 1) as well as the P.W. 6 present there already. The P.W. 1 placed five(5) numbers of 100 rupee currency notes before the CBI Officer in his presence. The P.W. 6, Gobindo Halder, went to the CBI office at 12.30 hours and met the P.W. 1 and P.W. 4 who were already there before he reached. If so, the P.W. 4 reached the office of CBI earlier than the P.W. 6. Therefore, the statement of the P.W. 4 that he found the P.W. 6 at CBI office when he reached there is not correct. The statement of P.W. 1 that when he went to his house at 12 hours to bring money, the P.W. 4 and P.W. 6 were waiting in the CBI office is also incorrect. Therefore, the statement of the P.W. 4 and P.W. 6 that Rs. 500/- was produced by the P.W. 1 to the CBI officer in presence of the P.W. 4 and P.W. 6 is also not correct. Had five(5) numbers of 100 rupee currency notes been found in the possession of the DSP, CBI when the P.W. 6 reached there at 12.30 hours, the P.W. 4 could not have watched the P.W. 1 to hand over said currency notes to the CBI officer when he reached there at 01.00 p.m. The statement of the P.W. 1, P.W. 4 and P.W. 6 are not corroborating to each other on this two points and that leads to

another doubt as to credibility of their testimonies. The P.W. 6 was an employee of Hindustan Fertilizer at Durgapur having connection with Inspector Rana of CBI. He was used as trap witness. Of course, there is no impediment in doing so. But, in that case his evidence needs corroboration with the evidence of independent witnesses and, that is lacking in this case. Therefore, this point raised by Mr. Basu can not be ignored simply by categorizing the above discrepancies as "trifle in nature" rather they cast shadow of doubt on prosecution case.

16. This Court is not oblivious of the fact that according to the statement of the P.W. 1, P.W. 4, P.W. 6 and CBI officials who took part in the trap, the alleged search and seizure of five(5) numbers of 100 rupee currency notes was made inside the shop room of a Chinese. The Appellant was taken to that shop room immediately after his apprehension and the door of the room was kept closed from inside before the search and seizure was done in presence of the P.W. 1, P.W. 4, P.W. 6 and CBI official as well as the Chinese shop-keeper. So, none but the Chinese shop-keeper was the only independent witness to said search and seizure. Mr. Basu pointed out rightly that there is a glaring discrepancy in respect of place of search and seizure which, no doubt, casts heavy shadow of doubt on the prosecution case in the perspective of the facts above. The seizure list (Exhibit 7) unmistakably shows that five(5) numbers of 100 rupee currency notes were sized from the pocket of the Appellant "in front of the shop of Kam zoo at 15, Sunyat street on the Western footpath." This discrepancy as to the place of search and seizure, in my estimate, has shaken the base of the prosecution case. The Chinese man who according to the P.W. 1, P.W. 4 and P.W. 6 and CBI officials, was present during the search and seizure has not been examined. He was the only independent witness to the search and seizure. Had the search and seizure been done out side his shop according to the seizure list, then the matter would have been different. But according to the statement of the witnesses it was done inside his closed shop room. What to believe - the oral testimony of witnesses or the contents of the seizure list which is the foundation of the prosecution case ? The learned Trial Court excused the prosecution for withholding the evidence of the Chinese man but failed to take note of its impact. The learned Special Judge was also completely oblivious of the discrepancy as to the place of search and seizure. This discrepancy has serious impact on the prosecution case because unless the money used in trap is not proved to have been seized from the possession of the Appellant beyond all reasonable doubt, the case of the prosecution can not be said to have been established. This is a case of corruption against a Government official. This discrepancy was not also considered by the sanctioning authority although, according to the prosecution case, entire case docket was placed before the sanctioning authority for his perusal. Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amounts to serious misdemeanor or misconduct of the type alleged in this case and a FIR is lodged against him, there must be some suitable preliminary enquiry into the allegation by a responsible officer. The lodging of such report against a person who happens to be a Inspector of the

Central Excise Department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belongs to.

17. The discrepancies noted above and the backdrop discussed earlier if taken together, creates heavy doubt as to the genuinity of the prosecution case and indicates that the prosecution must have suppressed the actual state of fact.

18. It was the case of the Appellant through out the Trial that Rs. 500/- was thrust into a pocket forcibly by the P.W. 1 and CBI officials which he was again forced to bring out inside the shop room of a Chinese man. He was also manhandled at that time. Withholding the evidence of the Chinese man, admission of the Appellant in the Medical College Hospital soon after the incident and the discrepancy in respect of search and seizure as well as the discrepancy in the statement of the P.W. 1, P.W. 2, P.W. 4, P.W. 6 regarding their meeting in the CBI office, production of five numbers of 100 rupee currency notes etc. have strengthened that doubt.

19. On careful appraisal of the evidence of the P.W. 1, P.W. 4, P.W. 6 , P.W. 10 and P.W. 12, I also find some discrepancies in their statements on material points.

20. The P.W. 9 is the Inspector of the CBI who arranged for the trap. He has stated that the P.W. 1 was found making over something to the accused and immediately thereafter both of them started walking towards the Poddar Court. He and others followed them up to 20/25 yards. He has also stated that inside the shop room of the Chinese the accused denied to have received any money and refused to take out money from his pocket. Thereafter the P.W. 9 searched his pocket and recovered five numbers of 100 rupee currency notes from the inside pocket of the accused. The P.W. 9 who conducted the entire trap made no whisper about the signal to be given or given by the P.W. 1 by wiping of his face with a handkerchief and doing " Namaskar" at the time of payment of money. He has stated only that the P.W. 1 walked together with the accused after payment for about 20/25 yards before the accused was apprehended.

21. The P.W. 10 has not stated about wiping of face by the P.W. 1 with handkerchief. He stated about the signal "Namaskar". According to the P.W. 10, after making payment, the P.W. 1 moved away from the Pan shop and the accused started walking through by the eastern side Footpath towards North where he was apprehended.

22. The P.W. 6 in his cross-examination stated that he had seen the P.W. 1 to pay Rs. 500/- to the accused who put that money inside the pocket of his trouser. There is no story of "Namaskar" or wiping of face with any handkerchief.

23. The P.W. 4 has not stated anything about signal by "Namaskar" or wiping of face by P.W. 1. He stated that after accepting the money near the pan shop from the P.W. 1, the accused walked about 20/25 steps and was apprehended by the CBI officers.

24. The P.W. 1, on the other hand, stated clearly that he did "Namaskar" as well

as wiped his face with handkerchief. He stated that as soon as he made payment, the CBI official apprehended the accused. In his cross-examination he stated that after receiving of the money, the accused moved for about 08/10 steps and was apprehended. The P.W. 1 stated further in his cross-examination that after making payment he started working towards the opposite direction.

25. So there are three versions given by the prosecution witnesses regarding the manner of payment and receiving of the money. Their statements are not corroborating to each other and not supported by any independent witness.

26. Upon consideration of the matter in totality as discussed above, it appears to me that there is substance in the points raised by Mr. Basu. I find it very difficult to rely on the prosecution case. The learned Special Judge did not consider the case of the prosecution case on proper appreciation of the evidence, facts and circumstances. I concede to the submission of Mr. Basu that the prosecution case is not at all free from reasonable doubt. I do not agree with the view taken by the learned Special Judge. There are some loose ends in the prosecution case which can not be joined together in order to record conviction of the Appellant. The order of conviction which has been impugned in this appeal is liable to be interfered with. In my estimate, the Appellant should be given benefit of doubt.

27. In the conspectus of the facts and circumstances as well as discussion above, I allow the appeal and set aside the judgment and order impugned.

28. The Appellant be set at liberty at once and discharged from the bail bond, if any.