
(1983) 04 PAT CK 0007
In the Patna High Court

Sita Sharan Srivastava (deceased) and Another APPELLANT
Vs
State of Bihar RESPONDENT

Date of Decision : 13-04-1983

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 161, 165
Prevention of Corruption Act, 1988 — Section 5

Citation : (1984) CriLJ 878

Hon'ble Judges : M.P. Varma, J

Bench : Single Bench

Judgement

M.P. Varma, J.—The two appeals Nos. 206 of 1980 and 228 of 1980 have been heard together as they arise out of a common judgment, dated 16-6-1980, passed in Special Case No, 23 of 1980 by Sri Shyamnandan Prasad Verma, Special Judge, C.B.I. Patna. Criminal Appeal 206 of 1980 has been preferred by Sita Sharan Srivastava, whereas Criminal Appeal 228 of 1980, has been preferred by M.S. Ramaiah.

2. Prosecution case, as stated in the judgment under appeal can be summarised in brief as follows:

3. During the United, Front Government formed in Bihar in the year 1967, one man Commission, known as Aiyar Commission was constituted under the Commission of Enquiry Act, 1952 to go into certain complaint against the then Ministers of Congress Government. The Aiyar Commission gave its findings on the 3rd February, 1969, in pursuance whereof, as a follow-up action, a regular case was instituted on 3-6-1970 by the Special Police (Establishment) Central Bureau of Investigation (for brevity "C.B.I.1) New Delhi being case, R.C. 11/70 against the then ex-Minister M.P. Sinha (now deceased), River Valley Project Department (for brevity described as "R.V.P.D."). B.N. Sinha, Chief Administrator (now deceased), S.S. Srivastava, Financial Adviser, R.V.P.D., Government of Bihar (appellant in Criminal Appeal 206/80) (now deceased,) and M.S. Ramaiah, a contractor (appellant in Cri. Appeal. 228/80) and a few others for offences u/s

120B/5(2)(d) Prevention of Corruption Act, and also under Sections 161 and 165, Penal Code. Charge-sheet was submitted against B.N. Sinha, S.S. Shrivastava and M.S. Ramaiah. M.P. Sinha had died during investigation while Sri B.N. Sinha died during trial leaving in the field of contest only two persons namely, S.S. Shrivastava and M.S. Ramaiah. The two accused having faced the trial were convicted by the judgments under appeal and it was during the pendency of this appeal that S.S. Shrivastava also died, in whose place his wife Smt. Sudha Shrivastava stood substituted, since the sentence imposed upon late S.S. Shrivastava included payment of fine as well besides imprisonment. M.S. Ramaiah, who has filed a separate appeal is the only surviving accused to see the finality of the case up to the present stage.

4. In the year 1962 a very prestigious irrigation project contemplated to irrigate more than 28 lac acres of lands in Bihar, U.P. and Nepal was taken up by the Government of India in collaboration with the Government of Bihar and U.P. It was for this purpose that a Board known as Gandak Control Board, was set up for regulating the project work. The Government, of Bihar was made responsible for the construction of all the projects, the costs whereof were to the tune of Rs. 150 crores. The Board constituted a technical committee which decided to get prestressed concrete bridges constructed. During the period in between 1964 and 1967 late M.P. Sinha was the Minister, in charge, Irrigation. The Department of R.V.P. was under him. B.N. Sinha (late) was the Chief Administrator as well as the Secretary of the Department. S.S. Shrivastava was the Financial Adviser-cum-Chief Accounts Officer heading the Finance and the accounts Department of the Project. P.R. Guha was the Chief Engineer in 1964-65 and after his retirement, he was succeeded by one B.L. Singh.

5. The Chief Engineer of the Project had the delegated authority to decide and accept tenders for the Project work up to the ceiling limits of Rs. 25 lacs. Tenders of the value beyond that were to be decided by the Gandak Control Board. In order to avoid delay in holding regular meetings and taking decisions, the Gandak Control Board resolved that the question of acceptance of tenders were to be decided by an Emergency Committee, consisting of the Chief Administrator, the Financial Adviser-cum-Chief Accounts Officer, both of the R.V.P.D., the Chief Engineer, Gandak Project and also the Secretary, Finance Department, Government of Bihar. The Project was to be executed without unnecessary delay and for that purpose tenders were invited. Accused M.S. Ramaiah in pursuance of the invitation offered tender for execution of the work. After some examination and scrutiny, the tender of M.S. Ramaiah was accepted for construction of a large number of bridges with prestressed concrete docking in Gandak Canal passing through the districts of Champaran, Muzaffarpur and, Darbhanga on the eastern side and the district of Saran on the western side. M.S. Ramaiah, as per terms of the contract proposed to furnish plants, labours, materials and" other equipments and to perform all other work in accordance with the prices, set forth in the schedule attached to the tender and also started and undertook to commence the work within thirty days of the notice of acceptance. He undertook

to complete the same within the completion date to be finally approved by the Department. He also furnished earnest money, as asked for of Rs. 1,40,000/- in the shape of Bank guarantee. The tender having been finally accepted, P.R. Guha, the then Chief Engineer communicated on 3-2-65 to M.S. Ramaiah telegraphically, the acceptance of the tender (vide Ext, A-I) which was subsequently confirmed by a covering letter, bearing No. 656 of the same date. The accused M.S. Ramaiah was asked to arrange to start the work immediately without any loss of time. M.S. Ramaiah was asked to send the machinery, etc., for taking up the work of construction at site of the work, where bricks were available. He was also required to make arrangement for procuring stone chips and sone sand etc. Several negotiations through correspondence ensued regarding transportation of the materials to the work site and the casting yard, which were to form part of the contract (Ext. 7/45). On 12-5-1965 M.S. Ramaiah wrote to the Superintending Engineer, Tirhut Canal Circle of the Gandak Project (vide Ext. 7/6) incorporating therein that although he had posted his staff from April, 1965 on the northern bank of the Ganges at Pahlezaghat to obtain railway wagons for transport and also staff at Manpur/Gaya to obtain railway wagons, he could not get any wagon due to emergency condition prevailing everywhere and in tire given situation collection of Sone sand would become almost impossible in coming months due to onset of Monsoon. It has been said that there was emergency from April, 1965 on account of armed conflict between India and Pakistan (vide Ext. S-I) and hence, he was compelled to start transporting Sone sand at Pahlezaghat through road in anticipation of the approval of the Department. The letter also mentioned a request to the Superintending Engineer to use his good office to provide him railway wagons at least at Manpur and Gaya for carriage of stone chips. Again on 12-7-1965 M.S. Ramaiah wrote to the Superintending Engineer stating that two months had passed but he had not heard anything regarding the allotment of wagons and he was drawn to the necessity of making arrangement for the transportation of materials by available trucks. He, therefore, sought confirmatory letter from the Superintending Engineer whether action taken by him was correct (vide Ext. 7/15).

6. The main trouble started on the receipt of the letter dated 3-8-1965 issued by the Superintending Engineer A.K. Sinha (P.W. 4) (the letter vide Ext. 7/16) wherein he informed that although the final copy of the agreement for the contract in question had not been received till then in his office, but in the tendered document in the specification, it had been clearly mentioned that the procurement of the gross aggregage was the sole responsibility of the contractor and the Department was just obliged only to assist him in securing priority in the allotment of railway wagons for transport and also that the efforts had already been made by the Department to procure wagons and further that he had informed about the same, vide his letters, dated 1-6-1965 and 14-7-1965. According to him, in the circumstances, referred to above, no claim for extra transport cost incurred in transportation by road, was admissible. In response to it supporting the claim of extra cost incurred over carriage of the chips and the

sand by road, the accused M.S. Ramaiah wrote a letter dated 7-8-1965(Ext. 7/19) wherein he quoted the following :

No. 7 Bases of tender : Our Tender has been based on the following rates of materials:-

Bricks - Rs. 39/- per 1000 nos. at Kiln site. M.S. Bars - Rs. 822/- per Tonne at Departmental stores. Cement - Rs. 8/- per bag. Coarse Aggregate from Gaya or Pakur quarry Rs. 187.00 per 1000 Cft. Coarse Aggregate from Bhaisalotan or Bhikha Stores Quarry Rs. 95/-. Sand from local quarry Rs. 15/- per 100 cft. H.T. Wire - Rs. 2,000/- per M. Ton at work-site.

Any increase or decrease in prices of these materials during the period of execution of work as per stipulation in the contract was to go to the account of the Department.

7. Through this letter the accused M.S. Ramaiah wanted to convince the Superintending Engineer that he was not putting any extra claim against the Department in question and further contended that variation in the charges were due to escalation clause in the agreement. The accused by then had collected a good quantity of Gaya Chips and Sone sand and also boulders during the period from May, 1965 to October, 1965. But as per case of the prosecution no prior permission of the Engineer in-charge or the concerned Engineer for procuring and carriage of the materials at a higher rate had been obtained, nor Engineer in-charge was informed of it before procuring the same.

8. The prosecution further stated that the Department had discharged its commitments by informing the accused M.S. Ramaiah in letter dated 1-9-1965(Ext. 7/20) regarding allotment of 30 wagons directing him to submit forwarding notes to the concerned station masters for the registration of the demands, which the accused did not avail of. Accused Ramaiah had not made a regular claim with regard- to extra costs incurred in transporting the materials till 18-11-1966 and even when he preferred the claim, he did not mention therein that he had obtained prior permission either from the Engineer in charge or from any other authority of the R.V.P.D. for procuring the materials at extra costs as required in the conditions incorporated in the letter of indent dated 26th April, 1965(Ext. 22) in submitting the claim.

9. B.L. Singh (P.W. 3) gave a note on 27-12-1966(Ext. 6/10) that the accused had not utilized those thirty wagons made available to him for carriage of sand and chips. At that very time M.P. Sinha (late) the then Minister in charge irrigation gave a note that all the notes and correspondences relating to the contractor's claim (i.e. the claim of Ramaiah regarding carriage charges of Manpur chips and Sone sand) should be put up to him in a separate file.

10. On 9-1-1967 late B.N. Sinha wanted the advice of late S.S. Shrivastava on the claim of accused M.S. Ramaiah for additional payment on account of carriage charges. S.S. Shrivastava, vide his notes dated 27-1-1967(Ext. 6/20) opined that

the extra expenditure incurred by the contractor was reimbursable. It was only then that late B.N. Sinha in his note said that he was submitting the file to the Minister for consideration and, for the payment as there was conflicting opinion between him and the Financial Adviser on the one hand and the Chief Engineer on the other hand, on the question of reimbursement of extra costs. On 3-2-1967 late M.P. Sinha gave his note that he had studied the file and had examined the notes and the correspondences on the subject concerning the issue and he was satisfied that the claim of accused M.S. Ramaiah for payment for carriage of Sone sand and Manpur chips by trucks was justified and requested the Chief Administrator to ensure that the extra expenditure incurred by the contractor on that account be reimbursed. B.N. Sinha (late) in his return referred it, to the Chief Engineer for compliance of the order passed by the Minister.

11. The prosecution now took the stand and alleged that in order to support the claim for extra costs a plea was taken that P.R. Guha, the then Chief Engineer had given oral permission for transport of the materials by road, in course of some discussion which had taken place in which the accused Ramaiah was also present. M.S. Ramaiah, on the other hand, contended that the fact that he had prior permission demolishes the evidence of the prosecution case built up on non-existent fact, inasmuch as there was never any absolute bar nor any such embargo was put in carriage of materials by road and, no such condition was shown either while inviting tenders or in the agreement in the tendered document submitted to the Department.

12. Prosecution further alleges that S.S. Srivastava gave twist and turn to the whole case, vide his note dated 27-1-1967 referred to above on the assumed ground that it was within the knowledge, of all the officials of the Department concerned, that the contractor had. been transporting the materials by road for early execution of the construction work and completion of the construction undertaken and that none desisted him from doing so. It is now said that accused S.S. Srivastava went to the length of inviting a formula after working out the claim of M.S. Ramaiah on the basis of a notional equation and took into consideration the rates of payments made to many other placed in such a situation, as per schedule of the Gandak project. It is stated by the prosecution that S.S. Srivastava made a noting in such a manner that he made the order in this respect as an absolute one, leaving no scope for the Executive Engineer/ Superintending Engineer to raise any objection to delay the payments of the claim.

13. Since the Minister had approved it, the file was forwarded to the Chief Engineer, who issued a letter dated 8-2-1967(Ext. 8) to the Superintending Engineer for making payment to the contractor. The letter was delivered to the Superintending Engineer, Tirhut Canal Circle on the same night at 8 P. M, through special messenger.

14. B.L. Singh (P.W. 3) by that time had become Chief Engineer of the Gandak project. He, at that stage wanted further clarification from the Financial Adviser

whether he had studied the file carefully. S.S. Srivastava confirmed having done so and said that he recorded his notes after studying pros and cons of the case which, according to the prosecution was not a fact.

15. Prosecution further alleged that the matter regarding payment of extra costs was processed in a top speed and it was taken upon on a war-footing. The Executive Engineer Tirhut Canal Division was, therefore, asked to go to Muzaffarpur and he, in his turn, on 9-2-1967 called the entire staff to Muzaffarpur and got the provisional bill of Rupees 2,15,103/- prepared and passed, for making payment to M.S. Ramaiah and on the same night a cheque was prepared and handed over to M.S. Ramaiah. The prosecution states that this hasty action was at the behest of the Minister M.P. Sinha (late), who had pressed the Superintending Engineer on phone to make payment. Accused M.S. Ramaiah, himself being eager to receive payment contracted a local contractor at Muzaffarpur for getting the cheque encashed. The accused Ramaiah through the help of the local contractor opened an account in the Punjab National Bank at Muzaffarpur on the date following, i.e. on 10-2-1967 and on the same day, he withdrew a sum of Rs. 1,50,000/- from the newly opened account and then prosecution story is that it was at about 3 P.M. that the accused M.S. Ramaiah paid Rupees 75,000/- to the Minister late M.P. Sinha as a gratification other than legal remuneration as consideration for sanctioning the payment of his bill submitted for the cost incurred in transportation. The prosecution claims that the Minister, late M.P. Sinha accepted the bribe-money from the accused M.S. Ramaiah in presence of one C.M. Sharma (P.W. 10) an ex employee of M.S. Ramaiah at the Dak Bungalow at Muzaffarpur.

16. On the above set of facts, the prosecution alleged that the accused persons had entered into a criminal conspiracy and thus caused to be paid a sum of Rs. 2,15,103/- to which payment M.S. Ramaiah was not legally entitled to and that the official accused persons, by abusing their official position, facilitated obtaining Rs. 75,000/- by the co-conspirator late M.P. Sinha and that in pursuance of the said criminal conspiracy the offence was committed.

17. The accused, in their defence, denied the charges. The two accused, M. S. Ramaiah and S.S. Srivastava submitted separate written statements supporting their plea of innocence. Both of them have challenged, rather the legality in the prosecution case itself. According to the defence, no criminal offence is made out and accused M.S. Ramaiah emphatically denied to have paid, any bribe to the Minister, inasmuch as, there was no illegality in submitting the bills for the work done and also in sanctioning the claim of extra costs which expenses he had actually incurred in the transport by road. Points raised by late S.S. Srivastava included the plea that being on deputation to the State of Bihar, the sanction granted for prosecution in the court of law was bad. Although several points were put by the accused persons in their written statements and also raised in these two appeals, I am concerned with the main question whether the accused persons entered into a criminal conspiracy for pecuniary advantage by abusing

their official position and got undue payment made to M.S. Ramaiah, besides a bribe to the Minister late M.P. Sinha which are directly the subject-matters of the charges and which have been seriously canvassed before this Court on behalf of the appellants.

18. The trial court has no doubt dealt with several matters and has admitted in the evidence a series of documents wholly unconnected with the charges and on that account infirmities have crept in the judgment under appeal resulting in wrong findings, which could not have been there but for consideration of all such irrelevant facts. When the terms of charges are pointed to the specific act of an accused, branding as illegal and motivated, the court must confine itself to those specific allegations and should consider the facts which are relevant, connected and concerned with the allegation and should admit in evidence only those connected facts which are otherwise relevant or required to be introduced for a decision on the charge brought against the accused. In the instant case the main question involved in the charge against the accused person is whether S.S. Srivastava and M.S. Ramaiah and other officials including the Minister conspired for pecuniary benefit and more specifically for making payment to M.S. Ramaiah which he was not entitled to by way of extra claim in connection with the contract.

19. First I like to deal with the actions of S.S. Srivastava, in this regard, which culminated in his prosecution and conviction. From a long series of facts both oral and documentary, all of which do not require to be referred to, nor they were placed by the Counsel for the parties before this Court, in course of argument, one thing is quite clear that the prosecution does not dispute that the transportation of Sonesand and Manpur chips were, in fact, done by road and the only charge levelled by the prosecution is that though the materials were carried by trucks, the contractor was not entitled to extra costs and charges on that account and that he could claim reasonably only that much of costs which were permissible for transportation by railway wagons. To my mind the trial of strength by the parties to indicate the illegality or otherwise of the claim in a criminal court was a futile exercise. The defence of M.S. Ramaiah had been and it was contended that the use of the truck for carriage was not only to the knowledge of the then Chief Engineer P.R. Guha and also other Engineers concerned, but at the same time, he had prior permission of P.R. Guha. The appellant drew my attention towards Exts. 7/65 and 7/66 which are the letters of late B.N. Sinha and Chief Engineer, P.R. Guha. The appellant S.S. Srivastava, in support of claim of M.S. Ramaiah regarding his being entitled to payment of such extra costs for the work done depended on Ext. 7/66, which is a reply of P.R. Guha to the letter of B.N. Sinha extract whereof reads as follows:-

As a matter of policy where allowing road transport to a limited extent for carriage of materials to expedite urgent project-works when it is found that the rail-transport would entail undue delay in executing such urgent works.

In pursuance of that policy I remember to have instructed M.S. Ramaiah in

course of a discussion, held in your room to transport by his own trucks, Sone-sand from Pahlezaghat and granite stone chips from Manpur (Gaya) for manufacturing pre-stressed concrete beams for Tirhut Canal Bridge at the Central Casting Yard located at Bettiah. This instruction, however, authorised the contractor to carry those two items by road for manufacturing the pre-stressed concrete beams to be cast during such time in the next working season till adequate numbers of railway wagons become available with best of efforts on the part of the contractor and with the departmental assistance.

20. The trial court while dealing with the issue formulated a dozen of questions for consideration. The points have been so formulated that it gives an impression that the learned. Judges, while deciding the charge made against the accused, is embarking upon the determination of State's claim against M.S. Ramaiah on the basis of his having drawn some such amount which was not due to him and in dealing with those facts, held the officers concerned responsible. Curious enough the court started with the question of fitness of B.N. Sinha to be appointed as a Chief Administration and M.S. Ramaiah being accepted, as a contractor. Sri Braj Kishore Prasad, learned Counsel for the C.B.I. rightly pointed out that it was wastage of energy on the part of the prosecution to bring all such materials on the record and wastage of time by the court in deciding those issues. On perusal of the impugned judgment, I feel and I would like to say that the only thing that the Special Judge has left out for consideration in the impugned, judgment is whether M.P. Sinha was fit to be a Minister and that too, to be in charge of such an important portfolio like R.V.P.D. The court below seems to be functioning like a second Commission of enquiry (the first one being the Aiyar Commission) which made the court to unveil some shortcomings of the State in making appointment of B.R. Sinha as Chief Administrator of R.V.P.D. The lengthy judgment dealing with all those questions and also the facts relating to the education of the children of B.N. Sinha and deputation of S.S. Srivastava are so abominating that one gets bored to go through the judgment and, Counsel Sri B.K. Prasad here again did not address this Court on these facts. At this very stage I must express my appreciation for the fair submission of Sri Braj kishore Prasad, Senior Advocate, specially engaged for the C.B.I., who, in his argument, referred to and submitted only those points, that are really relevant for examination by this Court. The defence Counsel also urged, and in my opinion, rightly that in view of the admitted position of carriage by road, no question, of illegality arises on the part of M. S, Ramaiah in making a claim for extra costs over transportation, specially when the Engineers concerned were in full know of the things, which is quite apparent from the letter of P.R. Guha, who, in clear terms, not only accepted the factum of prior permission, but also gave his justification of such urgent project which necessitated transportation of such materials by trucks and there was no irregularity much less any illegality in it. It is relevant to add here that the prosecution has left out P.R. Guha from being prosecuted. He was not even sent up for trial as an accused and this is enough to indicate that the State has no grievance against his action. Even the State Counsel Sri Uma Shankar

Singh, who very meekly submitted that he has been asked only to toe the line of the C.B.I. did, not raise his finger against the non-prosecution of P.R. Guha. Even during the course of argument Sri Braj Kishore Prasad made no comment on the action of the C.B.I. nor did he comment upon the conduct of P.R. Guha. The defence obviously has a right to bank upon each and every piece of evidence brought on the record by prosecution and in that view of the matter the action of late S.S. Srivastava in recommending for payment of extra costs cannot be held to be unjustified. S.S. Srivastava, as a Financial Adviser-cum-Chief Accounts Officer did nothing, except acting on facts that the transportation of the materials on trucks was with the consent of the Engineer concerned. A long series of correspondence at several levels in the Department including more than half a dozen of the top officials and the Minister giving notes, for and against the payment of extra costs are facts, which rule out any criminal conspiracy wrongful loss or gain. The position regarding these correspondences being admitted, it is not necessary to refer to each one of the documents which would be like unwarranted repetition of the case. Perusal of those documents put in evidence, rather each one of them on the question involved, does not indicate that each one of the officials was applying himself to the question and was giving independent notes. This demolishes the charge of conspiracy. There is no evidence of payment of any bribe-money either to S.S. Srivastava or late B.N. Sinha. The only evidence (which too has not been found to be satisfactory) of payment of bribe to M.P. Sinha (late) of an amount of Rs. 75,000/- and that too after the accused has been paid the claim for extra costs does not inspire confidence to hold the accused guilty of the charge. The deponent to this fact is C.M. Sharma (P.W. 10), who is a dismissed employee of the concern of M.S. Ramaiah, to whom the prosecution could find out and pick up for the job and that too his evidence does not get any corroboration. Sri Braj Kishore Prasad while addressing this Court has himself maintained, the view and submitted that it was difficult to rely on the sole testimony of C.M. Sharma, had he been the only witness. But to overcome this difficulty, the learned Counsel further added that the material part of his evidence stands corroborated. He has said that C.M. Sharma is neither an accomplice nor an approver and his evidence needs no corroboration as conviction can be based on the solitary evidence of a witness if he is found to be trustworthy. While enunciating the principle of law, and in my opinion correctly, Sri Brij Kishore Prasad contended that the statement of C. M, Sharma has been fully corroborated. In support of this contention it has been argued that the hasty action in passing of the bill and opening of the new account in the bank are the circumstances which very much corroborate C.M. Sharma. Counsel for the defence, on the other hand, has stated that it would, be far stretching an imagination that such circumstances of early payment of bill and opening of account for withdrawal of money which are on account of different causes and capable of difference interpretation, can be construed as corroborative piece of evidence. In fact, there is no such evidence either oral or documentary, nor there is any such circumstance, which may lend colour of truth and trustworthiness to P.W. 10 C.M. Sharma. His evidence on the point of

payment of bribe-money is not worth acceptable. Many material contradictions have been found, in his evidence. At one place he stated that he made a claim of his being well qualified having passed intermediate examination to get a job and that he was employed as a Work Manager in the concern of M.S. Ramaiah. On further cross-examination the witness admitted that he had given a false statement and he further admitted that to earn his bread he could speak any blatant lie (para 27 of his deposition). Even on the question of passing of the tainted money, he has not only faltered with regard to the denominations of the cash money alleged to have been paid, but has also faltered with regard to the place, where the amount was said to have been passed on to the Minister. Needless to say that any hasty action in passing the claim or opening the new account by the accused, as contended by the prosecution do not in the least, corroborate P.W. 10. Apart from being a dismissed employee he had further grievance against M.S. Ramaiah as he had accused him (C.M. Sharma) of committing theft of a vehicle belonging to M.S. Ramaiah. The prosecution has, therefore, miserably failed to substantiate the allegation and to prove the charge.

21. Passing of the bills, depositing the same in the bank for opening new account or withdrawal thereof are not the corroborative piece of evidence and the statement made by P.W. 10 for the purpose of holding the appellant guilty of the charge of payment of bribe-money to the Minister. Taking the worse view of the matter, the payment, according to this witness was made after M.S. Ramaiah had received the extra cost spent over the transport and this obviously rules out complicity of S, S, Srivastava, B.N. Sinha and, M.S. Ramaiah.

22. Under payment or over payment is a matter, which can form a subject-matter of claim or counter claim but can never be a basis of a criminal charge and/or for taking the issue to a criminal court as a short circuit for set off for the amount paid when the entire procedure for scrutinising such claim has been adopted at all levels of the concern machineries. Different interpretations put by the different officials at different, stages of the agreement arrived at and correspondences entered into cannot form the basis of a criminal charge. There is no evidence either that the railway wagons were placed at the station siding and were actually made available for transportation so as to transport those materials to ensure the availability at the Central Casting Yards before the advent of Monsoon. On the contrary, the writing of B.N. Sinha on Ext. 6/12 was that P.R. Guha had given oral permission and that to on account of non-availability of wagons. This was a sufficient and reasonable cause for late S.S. Srivastava to accord his approval for such payment. Therefore, one cannot but hold that late S.S. Srivastava had not done anything, which would justify a charge of corruption against him, much less a charge of conspiracy, The letter intimating allotment of wagons (Ext. 7/20) has been denied by M.S. Ramaiah. It may casually be mentioned here that the said letter speaks about priority and allotment of wagons at Manpur and, other station, but not at Pahlezaghat or any station in the North-eastern Railway and the case is that the sand was transported from Pahlezaghat to the Central Casting Yard by trucks. The

prosecution attempted to bank on the aforesaid letter of intimation (Ext. 7/20) and it was stated that M.S. Ramaiah suppressed it and did not take advantage in registering his demand at different loading stations for getting the wagons, P.W. 4 A.K. Sinha has said in his evidence that it was sometime in the month of September, 1965 that an enquiry was made from accused M.S. Ramaiah as to whether he had made use of the railway wagons for which the Director of purchase and transport had obtained priority from the railway authorities. Ext. 7/24 would show that in reply thereto M.S. Ramaiah stated categorically that the letter in question referred to above had not been received by him.

23. There is another paper (Ext. A-3/8) written by accused M.S. Ramaiah to the Station Master at Gaya making reference of some earlier letter of the Asst. Transport Officer, dated 6-8-1965, in which he requested for indent for railway wagons for transportation of stone-chips from Gaya, Manpur to Bettiah. So, it is significant that the accused Ramaiah accepted receipt of subsequent letters and it is not conceivable why should he suppress the receipt of earlier letter (Ext. 7/20) which is in fact a document of later date. Likewise in the circumstances referred to above M S. Ramaiah too does not appear to be guilty of any criminal conspiracy for any act of commission or omission in making his claim for the work actually done by him.

24. The prosecution, I must say in fact disputed nothing except that it has describe the payment as infirm and tainted since according to the prosecution the state was under no such obligation, but the facts and materials, as discussed above completely belie the stand of the prosecution.

25. In the result, both the appeals succeed and the conviction and sentence inflicted, upon the accused persons are set aside. Accused M.S. Ramaiah may be discharged from the bail bond, if any.