

(1991) 04 BOM CK 0099
In the Bombay High Court
Case No : Criminal Appeal No. 500 of 1983

State of Maharashtra

APPELLANT

Vs

Chandraprakash Keshavdeo Shinghaniya and others

RESPONDENT

Date of Decision : 09-04-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 197, 34, 420

Citation : (1991) CriLJ 3187

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : K.H. Chopda, app, for the Appellant; Shirish Gupte, for the Respondent

Judgement

1. The State of Maharashtra, as a matter of propriety, has filed the present appeal which is directed against an order dated 31-5-1983, passed by Shri N. L. Telge, Judicial Magistrate, First Class, Nasik Road in Criminal Case No. 932 of 1977.

2. The five respondents, who are before the Court, stood charged with an offence punishable u/S. 420 read with 34 of the Indian Penal Code, in so far as it was alleged that in furtherance of their common intention, that they had cheated the Maharashtra State Electricity Board by obtaining a sum of Rs. 1.68 lacs being the 90% price of 4200 kgs. of Hydrazine Hydrate supplied by the accused Nos. 1 to 4 on 9-6-1976 and 11-6-1976. The accused Nos. 1 to 4 were the partners of M/s. Anil Dye-Chem Corporation, Bombay and had tendered for the supply of the chemical to the power station but there was a stipulation that the chemical was to be of 80% concentration of Hydrazine Hydrate. This chemical was an essential one for purposes of preserving the boilers and the tubes and consequently, it was crucial that the chemical of the requisite strength had to be used in the plant. It was found out, pursuant to a complaint and samples being drawn by the Security Officer, M.S.E.B., from the 21 drums of the chemical that has been supplied by

accused Nos. 1 to 4, that the chemical in question was only of a strength of 20% which was wholly inadequate for the purpose. The accused No. 5 who was the Chief Chemist of the Board stationed at Eklahara had issued a certificate which is at Exhibit 64 of the paper book in respect of the two consignments and in so far as it was found that the chemical was heavily diluted and not up to the specification, the issuance of the certificate by him was treated as an offence punishable u/S. 197 of the Indian Penal Code. The learned trial Magistrate has adopted a very curious reasoning while appreciating the evidence on record. The learned Magistrate has, in the first instance, taken up the contention that under the terms of the contract, the M.S.E.B. could have recovered damages from the accused if the chemical was not up to specifications and secondly, that it was open to the Board to demand replacement if the goods were defective and since neither of the two courses of action was adopted, that the accused cannot be charged with having committed the offence. Furthermore, the learned trial Magistrate has relied on one circumstance viz., that according to him, there were no distinctive identification marks on the drums from which the samples had been drawn and that consequently, it cannot be said that the prosecution had established the identity of those drums as being the one supplied by the accused. In this view of the matter, the learned Magistrate has acquitted all the accused, holding that no offence has been established against them.

3. Mr. Chopda, learned A.P.P. has taken me through the oral and voluminous documentary evidence on record. I have scrutinised carefully the evidence of P.W. 1 Patil who was the Security Officer at the relevant time. He has very clearly deposed about the fact that he was called to Bombay and informed by the Vigilance Department that the M.S.E.B. has received secret information to the effect that the accused Nos. 1 to 4 were supplying water instead of chemical in the drums against delivery of the consignment. Mr. Patil immediately returned to Nasik and in the presence of two panchas, went to the Chief Officer, in charge of the stores. The Chief Officer Deshmukh immediately showed Patil all the 21 drums which were still in an intact condition. It has come on record from the evidence of Patil and through the panchnama that these drums were in the same condition in which they had been received from the firm of the accused and furthermore, that they were intact. Patil thereupon opened four out of the 21 drums on a random basis and took out 8 samples, two from each drum which samples were in turn duly sealed in the presence of the panchas. One set of samples was thereafter sent to the Vigilance Department of the M.S.E.B. and the second set was sent to the V.J.T.I. for analysis. The analysis report showed that the percentage in all the four was 20.5, 20.5, 20.0 and 20.0. I would like to dispose of the evidence of P.W. 2 Mohan Kogelgo, who has very clearly deposed to the fact that the samples in question had reached him in an intact condition, that he had carried out the analysis properly and that he had forwarded his reports. In his cross-examination, a few questions were put to him with regard to the method of analysis adopted but the defence has not been able to show that the analysis was either incorrect or unsound. It is necessary for me to note that

the defence has virtually accepted the correctness of the analysis because, otherwise, it was open to them to have asked for the remaining samples as is often done in food adulteration cases and to have had the same analysed. It is quite clear from the evidence on record that there was little doubt about the fact that the strength of the chemical had been heavily watered down which gives this case a complexion of utmost seriousness. It has become the order of the day while dealing with public sector contracts and with public authorities that any form of substandard material is supplied with the hope of defrauding the public exchequer. Valuable equipment of the M.S.E.B. would have been seriously damaged had this chemical been used and it is quite clear that the entire fraud was perpetrated by the traders with the sole object of making easy money.

4. P.W. 1 Patil has been cross-examined at great length and I have carefully gone through the entire cross-examination. Nothing of any significance has been brought out in the cross-examination except one small circumstance which the learned trial Magistrate has held in favour of the accused. On the documents indicating the receipt of the consignments, there is a mention to the effect that when the consignments were received, three of the drums were in a damaged condition and that some leakage was seen. Mr. Patil has, however, stated that when he accepted the drums, he found them to be intact. It is quite possible that in the course of transport of these 200 Kgs. drums, that some minor damage might have occurred and that some slight leakage might have been detected. This is not a case where the accused have been hauled up on the basis of supply of less quantity in which case, the defence regarding leakage might have come to their assistance. Secondly, it is not the prosecution case that the chemical in question had got contaminated by exposure to the elements, in which case, if it had been shown that the drums in question were seriously damaged, it might have, to some extent, helped the accused. To my mind, those circumstances are trivial and wholly irrelevant and the evidence of Patil, supported by the detailed documentary evidence adduced by the prosecution including the letters and telegrams from the accused relating to the supply, in invoices, contracts, transport documents, etc., will establish without doubt that the 21 drums which had been inspected by Patil shortly after their receipt at the power station were the very drums which had been supplied by the accused.

5. In substance, on the basis of the material adduced by the prosecution, what is canvassed by Mr. Chopda, learned A.P.P. in this case is that the view taken by the learned Magistrate in the judgment that is under appeal is not only erroneous but that the view is so faulty that it requires interference. In support of this argument, Mr. Chopda has essentially contended that the learned Magistrate has virtually ignored the greater part of the record, that the learned Magistrate has lost sight, more particularly, of the correct position in law and that consequently, it is not just a question of another view being possible, but it is a case whereby the judgment has resulted in a total miscarriage of justice and where it could be categorised as being not only incorrect or faulty, but coming within the definition of a perverse order. This position has been very vehemently contested by Mr.

Gupte, learned Counsel appearing on behalf of the respondents who are the original accused before the Court. To support that, Mr. Gupte has referred to the well settled position in law that where two views are possible, the one in favour of the accused must be accepted as of necessity. Mr. Gupte contents that he is neither asking for any special indulgence nor for that matter is he requesting the Court to accept the view of the trial Magistrate merely because it has resulted in an acquittal but because, the line of reasoning adopted by the trial Court is not only possible but quite plausible and, therefore, in keeping with the well settled principles that this Court must endorse that view. Mr. Gupte has carried this argument further by referring to a judgment of the Supreme Court, *K. Gopal Reddy Vs. State of Andhra Pradesh*, in the case of *K. Gopal Reddy v. State of Andhra Pradesh*. The Supreme Court had, in that case, reiterated the principle in slightly different words by pointing out that where two views of evidence were possible and the trial Court has taken one possible view, then the interference by the High Court merely for "substantial and compelling reasons" would not be justified. Mr. Gupte has relied on two other decisions of the Supreme Court, the first of them *Babu and Others Vs. State of Uttar Pradesh*, in the case of *Babu v. State of Uttar Pradesh*, wherein the Supreme Court has stated that where the finding reached by the trial court is not unreasonable, that the appellate Court should not disturb it merely because another view is possible. In the second decision, *Ramji Surjya Padvi and Another Vs. State of Maharashtra*, in the case of *Ramji Suriya v. State of Maharashtra*, while dealing with a situation where two views are possible, the Supreme Court had observed *Ramji Surjya Padvi and Another Vs. State of Maharashtra*,

"The reasons for reversing a judgment of acquittal should be cogent and if two views are reasonably possible, the appellate court should be slow in interfering with the judgment of the trial court, even if it is possible for it to take a different view after a process of laborious reasoning."

Mr. Gupte also placed strong reliance on another judgment of the Supreme Court, which, according to him was directly on the point that is at issue in the present case. That judgment is *State of Kerala Vs. A. Pareed Pillai and Another*, in the case of *State of Kerala v. A. Pareed Pillai*. Dealing with an appeal filed by the State of Kerala to the Supreme Court against an order of acquittal, the Supreme Court had on the facts of that case observed that : "To hold a person guilty of the offence of cheating, it is to be shown that his intention was dishonest at the time of making the promise. Such a dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfil the promise." That case, which was decided essentially on facts, is distinguishable because the main reason for the Supreme Court not having interfered with the order of acquittal in that case was because it was demonstrated that the bank which had alleged the wrongful loss having occurred to it was shown to have been in the practice of giving credit before the receipt of the relevant documents from the railway authorities and, therefore, the Supreme Court took the view that the submission by the accused of empty tins to the railway authorities would not

have made any difference on facts.

6. Mr. Gupte further submitted that on a totality of the facts that have come on record, what clearly emerges is that the accused persons were supplying the same chemical not only to this unit of the MSEB but also to three other units. He has referred to the evidence of witness Patil, who has admitted in his cross-examination that he did not have anything on record to show that the material supplied to the other units was in any manner defective. On the contrary, that the chemical supplied to those units was found to be perfectly in order. Mr. Gupte, therefore, submits that if for any reason, the strength of the chemical that was supplied in this case was lesser than the requisite specifications, that it was open under the terms of the contract for the authorities who hold a substantial security deposit and who are empowered to insist on replacement of the material to have straightway taken up the matter with the accused and to have forced them to replace the material. What Mr. Gupte essentially submits is that if the terms of the contract have been breached, even taking the prosecution case at its highest, according to him, that the remedy lay in taking corrective steps and assuming that the accused could not or did not comply with what the authorities asked them to do, that it was still open to the M.S.E.B. to take action for breach of contract. In other words, what Mr. Gupte submits is that even if the material turned out to be defective or if it was substandard, that the M.S.E.B. could never have prosecuted his clients for an offence of cheating but could have only recovered damages from them after establishing the breaches in question. He, therefore, submits, that the reasoning adopted by the learned Magistrate is perfectly in order and that it does not require any interference. He has even submitted that in the light of the observations of the Supreme Court, that this Court should not interfere with the trial Court's order because it is certainly a possible view.

7. Unfortunately, the matter is not as simple as is made out. The fact that the earlier supplies made by the accused to this very unit were not found to be defective or for that matter, the fact that the supplies made by them to the other units of the M.S.E.B. were found to be in order is an issue that is irrelevant. The accused were bound by the terms of the contract and apart from the implicit conditions under the Sale of Goods Act, as is typical with all government contracts, cl. 11 of the present contract very clearly, in terms enjoined on the accused that they must conform to the specifications that the purchasing authority viz., the M.S.E.B. had stipulated. The accused cannot be heard to take up any specious contentions, including the possible argument that they are not the manufacturers of the chemical and that they got it from another source. In the first instance, at the appellate stage, one will have to go strictly by record and by the defence that was pleaded before the trial Court. The only defence that was taken up before the trial court wherein the accused admitted that they had entered into the contract and wherein they have also admitted that they did make the supply of the 21 barrels of chemical was that the identity of the barrels from which the samples were drawn is in dispute. As regards this limited aspect

of the case, I shall deal with that part of Mr. Gupte's contention presently. It, therefore, emerges that the test report which conclusively indicates that there was no minor variation between the quality of the material that was contracted for and what was ultimately supplied but that it was not only appreciable but substantial in so far as the chemical which had to be of 80% strength was found to be only of 20% strength and in normal parlance, one would arrive at the inevitable conclusion that the chemical in question was either heavily diluted or heavily adulterated. In this view of the matter, the submission that the any remedy of the M.S.E.B. lay in taking action along the lines as indicated by Mr. Gupte cannot be accepted. Undoubtedly, the M.S.E.B. did have that course of action open to it but, to my mind, where a public authority is defrauded to the extent that had happened in the present case, the authority was fully justified in launching a prosecution against the accused on the ground that they had committed an offence of cheating.

8. Mr. Gupte has submitted that this court should not accept the submission made by the learned A.P.P. that if the goods did not conform to the specification that ipso facto the case of cheating is made out. It was Mr. Gupte's contention that there are certain ingredients, that are requisite before a charge of cheating can be said to have been established and the first of them is that the accused must be said to have made a dishonest misrepresentation. Mr. Gupte submits that there is nothing on record from the facts of the present case that the representation made to the authorities was a dishonest representation. The aspect of dishonesty or honesty can only be inferred from the facts that form part of the transaction in question. In the present case, we have the typical example of a contract being entered into with the M.S.E.B. and the accused had, undisputably, in that contract, represented that they would supply the chemical of 80% strength. The fact that the accused did not supply the chemical that conformed to that specification very clearly indicates that the representation made by them to the M.S.E.B., was not an honest representation because the court will have to infer honesty from the conduct of the accused in relation to the transaction itself. Where the accused represent that they will supply the chemical of a particular strength and in that very transaction, it is demonstrated that the entire consignment does not conform to the specification, it would be impossible to submit that the accused have acted honestly or that they are not guilty of a dishonest misrepresentation. Secondly, it will also have to be demonstrated in an offence of cheating that wrongful loss or wrongful gains have occurred. As far as the ingredient of wrongful loss is concerned, there is not much difficulty in concluding, on the facts of the present case, that the entire consignment, which did not conform to the requisite specifications and which was valued at close to Rs. 2 lacs could not be used by the M.S.E.B. even though Rs. 1.68 lacs had been paid in advance for that consignment. The M.S.E.B. had parted with the money in good faith and the loss has in fact occurred to the M.S.E.B. Whereas, on the other hand, the accused who had induced M.S.E.B. to part with the money on the representation that they would supply chemical of the requisite quality and

standard have benefited to the extent of much more than Rs. 1.68 lacs, which amount has been wrongfully retained by them. Under these circumstances, to my mind, the second ingredient which is a prerequisite for an offence of cheating is also established in the present case.

9. Mr. Gupte advanced another submission, which, it is necessary to be dealt with. He has pointed out that in the statements recorded u/S. 313 of the Code of Criminal Procedure, that the accused Nos. 1, 2 and 4 have stated that the day-to-day operations and business of the firm M/s Anil Dye-Chem Industries were being exclusively handled by accused No. 3. The learned Magistrate had accepted the position that accused Nos. 1, 2 and 4 were, what he terms "sleeping partners" and that accused No. 3 was the person who has signed various documents relating to this transaction. Mr. Gupte, therefore, submits that assuming without admitting, that if any charge is sustainable against the firm, that only accused No. 3 could be fastened with the liability and that the liability under those circumstances cannot be attributed to accused Nos. 1, 2 and 4. As against this, Mr. Chopda, learned A.P.P. has strongly contested the position because, he has pointed out a number of factors, the first of them being that in the 313 statement, the accused Nos. 1, 2 and 4 did not take up the contention that they were unaware of the contract or the delivery of material, etc. Secondly, Mr. Chopda had pointed out that in a transaction of the present type, where admittedly, a large amount of money has been paid to the firm, that the wrongful gain has accrued to all the persons in whatever proportion they shared the profits and loss and, therefore, merely because something has gone wrong in the present case, they cannot be permitted to wash their hands of their liability. Lastly, Mr. Chopda has submitted that under the provisions of the Partnership Act, the liability of all the partners for the acts of the firm is joint and several and that consequently, this Court cannot make any distinctions between one partner and the other.

10. I am also required to deal with Mr. Gupte's basic submission viz., that the provisions of the Partnership Act which fasten joint and several liability to the partners of a firm for the acts of transactions of the firm, according to Mr. Gupte is confined to the realm of civil law. Mr. Gupte submits that even if a partner has nothing to do with a particular transaction through a process of legal fiction, the civil liability in respect of debts etc., is still executable against even a dormant partner in so far as he is bound by the provisions of the Partnership Act. As far as the criminal law is concerned, Mr. Gupta submits that it is a basic principle of criminal jurisprudence that any accused before a Court who is charged with a criminal liability cannot be punished until an overt act is attributable to him. In the absence of specific proof that a particular partner has taken part in the transaction, according to Mr. Gupte, it would be unsafe and improper to attribute criminal liability. Mr. Gupte is right in submitting, that a criminal court cannot proceed on the basis of a deemed liability. However, in a case of the present type, where the knowledge of the transaction is admitted by the four partners and they are beneficiaries of the wrongful gain merely because of the contention

that some documents have been signed by one of them, to my mind, would not be sufficient to absolve the remaining partners of the liability that arises where the offence is held to be established. It is true that there may be cases where a particular partner is able to demonstrate to a court that he had no knowledge of a transaction or for that matter, that he was opposed to a particular course of action but that will have to be brought on record by the defence and cannot merely be canvassed on the basis of a vague statement made u/S. 313 of the Code of Criminal Procedure to the effect that a particular partner was looking after the transaction. To my mind, therefore, on the facts of the present case, if the offence is held proved, then, the accused Nos. 1 to 4 would be equally liable.

11. Coming to the second broad head, where the learned trial judge has recorded the finding that there is some doubt with regard to the identity of the barrels from which the samples were drawn by witness Patil, Mr. Gupte very strongly submits that a very high degree of proof is required in a criminal trial and that a Court will have to insist on such records of proof before recording an adverse verdict. He submits, that the learned trial Judge has taken into account two important factors viz., that four of the barrels were found to have been damaged and furthermore, that some leakage was also detected and that witness Patil has not made a note of these factors. The matter, unfortunately, does not rest there. We have the evidence of Patil wherein he has stated that the vigilance department of the M.S.E.B. had received specific information in respect of the very supplies which were being effected by the accused to this particular unit and not in respect of any other supplied. It was for this reason that Patil was called to Bombay and given instructions to carefully check the consignment that had just been received in the month of June 1976. There is nothing brought on record to indicate that any authority at any level in the M.S.E.B. held any animus against this particular firm or against any of its partners, nor was it even suggested of Patil that for any reason, he was out to fasten a false liability on the present accused. The evidence of Patil, which is to the effect, that he ascertained from the Store Supervisor Deshmukh as to which exactly were the drums which had been supplied by the accused and that after ascertaining the 21 drums of which he had given an inventory in the panchnama, drawn up by him on 2-7-1976, that he had thereafter ascertained as to whether the drums in question were in an open condition. His evidence is to the effect that he had opened the drums for purposes of drawing the samples after which all the 21 drums were resealed by him. There is virtually no challenge to this part of the evidence and consequently, I see no justification whatsoever for the reasoning of the learned trial Judge who has discarded the material evidence on record which is supported by the panchnama of the same date and virtually gone into the realm of conjecture by recording the finding that perhaps some of the old material supplied by some other party was lying there and perhaps it is that material which Patil had inspected and drawn the samples from. This finding, to my mind, is not only incorrect but in the light of the cogent and convincing evidence on record, will have to be categorised as being rightly perverse. Again

the learned Magistrate has totally ignored the fact that the defence taken was not that the accused had not supplied any material or for that matter, no specific case was put to Patil that he had drawn the samples from the drums supplied by some other parties. In this view of the matter, the basic finding recorded by the trial Court that the material which was inspected by Patil was not the material supplied by the accused will have to be set aside.

12. With regard to the panchnama, Exhibit 65, drawn up by Patil on the 2nd of July 1976, Mr. Gupta made two submissions before me, the first of them being that the material had been supplied through a transporter M/s. Swastik Transport and that it had reached Nasik in two consignments on the 9th of June and on the 11th of June that year. He submitted that a good three weeks had passed since the date when the consignments had reached Nasik and that the Court should take into account the lapse of time. He further submitted that the trial court was right in pointing out that the storekeeper should have been examined for purposes of settling any doubt regarding the identity of the material and he also made a specific grievance of the fact that the panchnama drawn by Patil was not in the presence of the accused, who could have easily been called to Nasik for this purpose and that the panchas were persons working in the M.S.E.B. As regards the last submission, it is material to note that no serious grievance of any type was made before the trial Court. If it were a substantial point of law, which went to the root of the matter, Mr. Gupte would have been justified in raising that point even for the first time before this Court because, essentially, it is the interests of justice that have to be taken into account and not mere procedural technicalities. However, even on merits, in the absence of anything being attributed either to Patil or to the panchas, I do not see what material difference it would make to an overall view of the matter. As indicated by me earlier, at no point, even during the trial, the accused had raised any challenge because the drums were still available in a sealed condition and if there was any dispute regarding either the identity of the drums being other than those recorded in the panchnama, the court would have been in a position to look into that grievance. Secondly, as in the case of samples drawn in similar situation under the Food Adulteration Act, in this case, one set of the sealed samples had been sent to the Vigilance Department of the M.S.E.B. and those samples could have been sent for reexamination if at all the accused had any dispute with regard to any of the aspects that are now canvassed.

13. Coming to the last submission of Mr. Gupta, regarding the case of accused No. 5, Mr. Gupte has contended that a clear view of the provisions of S. 197, IPC would indicate that there has been total misapplication of that section as far as the framing of the charge against accused No. 5 is concerned. Mr. Gupte has also pointed out that the learned Magistrate has recorded the conclusion that there was nothing on record whatsoever for the court to convict the accused No. 5 who is alleged to have acted in furtherance of any pre-set plan or conspiracy with the partners of the firm, Mr. Chopda, on the other hand, submitted, that accused No. 5 who was the chemist was enjoined under the terms of his employment to have

verified the contents of the drums and that the certificate, Exhibit 64, issued by him, was a false certificate which would make him liable, for a conviction under S. 197, I.P.C. He has further submitted that once it is demonstrated that accused No. 5 has issued a false certificate, that it necessarily follows that the accused No. 5 was most certainly acting in collusion with the other four accused and that he shared the common intention to defraud the M.S.E.B. and cheat the organisation for which he was working. Unfortunately, I am unable to accept this submission canvassed by Mr. Chopda, in so far as the accused No. 5 is concerned, there is virtually nothing on record against him as pointed out by the learned trial Magistrate and the submission of Mr. Gupte on a point of law that S. 197 would not, on the facts of this case, apply to the certificate, Exhibit 64, is also wholly correct. In this view of the matter, the submission of Mr. Gupte deserves to be upheld as far as accused No. 5 is concerned and the acquittal of accused No. 5 as far as all the charges with which he was faced are concerned will have to be confined.

14. Lastly, Mr. Gupte has advanced a submission that if for any reason, this Court were to hold that his clients are held guilty of an offence, that the Court must take into account two factors, the first of them being that this was a solitary fault that was detected. he contents that the court must take judicial notice of the fact that there may be so many other reasons for this particular consignment to have been defective, including the fact that they were only the dealers and that they used to procure the chemical from ITPL and supply it to the M.S.E.B. Mr. Gupte has also pointed out that the incident has taken place in, June 1976 and that we are now virtually 15 years away from that date and that, consequently, at this point of time, the court ought not, under any circumstances, impose any sentence against the accused. Mr. Chopda, on the other hand, has pointed out that the incident is a serious one in so far as there is a substantial amount of money involved and it was a clear case of an attempt to defraud a public body. Under these circumstances, Mr. Chopda insists that this Court must impose a deterrent sentence on the accused.

15. Taking an overall view of the case, I am inclined to uphold the submissions advanced by Mr. Gupte because even the Supreme Court has pointed out as long back as in AIR 1954 SC 154 that it is an essential necessity of public policy that accused who have committed crimes must be punished when facts are fresh in the public mind. If for whatever reasons, the judicial process had dragged on for an abnormal point of time and if the accused at that stage is faced with an adverse verdict, it would not be in the interest of justice to impose at this point of time jail sentence on the accused however serious the facts of the case are. Moreover, to my mind, what is ultimately alleged in this case is that the accused by committing the fraud with which they have been charged, did make a realistic attempt to make substantial gain to themselves and to this extent, to my mind, the interest of justice would be served by imposing on the accused a substantial fine and not a jail sentence.

16. As regards the quantum of fine, I am guided by only one principle which, to my mind, would be the only correct and proper principle which this Court can adopt in dealing with an offence of the present type. Admittedly, the value of the goods in this case was close to Rs. 2 lacs and admittedly, the M.S.E.B. has paid out this money as long back as in 1976. It is equally true that at this point of time, the M.S.E.B. will not be able to take any steps to recover that amount and neither would it be possible after the lapse of about 15 years to salvage the substandard material which was supplied. In this view of the matter, to my mind, the original accused Nos. 1 to 4 who are the respondents Nos. 1 to 4 to this appeal are ordered to pay a fine in the sum of Rs. 50,000/- (Rupees fifty thousand only) each in default to suffer rigorous imprisonment for one year. Out of the fine, if recovered, an amount of Rs. 1.75 lacs to be paid over to the M.S.E.B. In the facts and circumstances of the case, the accused are granted a period of three months to pay the fine. The appeal is accordingly allowed.

17. Mr. Gupte points out that the M.S.E.B. in relation to this transaction has been holding on to a bank guarantee which has been executed in the year 1976 in the sum of Rs. 50,000/-. He points out that as a result of this bank guarantee being kept alive for the last 15 years, that the accused have had to spend a substantial amount of money and that the continuance of this bank guarantee is unnecessary. It is directed, that the bank guarantee in question to stand revoked.

18. Order accordingly.