

(2006) 07 JH CK 0019

Jharkhand High Court**Case No:** Criminal Appeal No"s. 94 and 95 of 1997 (R)

Diwesh Narayan Raizada

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: July 31, 2006**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 161
- Prevention of Corruption Act, 1947 - Section 5, 5(1), 5(2)

Citation: (2007) 1 CurCrIR 73 : (2007) CriLJ 453 : (2006) 4 JLR 360 : (2006) 4 JCR 393 : (2006) 3 AIRJharR 516**Hon'ble Judges:** Dhananjay Prasad Singh, J**Bench:** Single Bench**Advocate:** Jai Prakash, Amit Keshri and M.K. Roy, for the Appellant; Rajesh Kumar, A. Sarkar and M.K. Sinha, for the Respondent**Final Decision:** Allowed

Judgement

D.P. Singh, J.

Both these appeals, arising from separate judgments and orders dated 8th May, 1997 and 15th May, 1997, are directed against the judgment of conviction and order of sentence passed in R.C. Case Nos. 16/85(D) and 17/85(D), whereby and whereunder the learned Special Judge CBI, Dhanbad held the appellant guilty u/s 161 IPC and Section 5(2)(d) read with Section 5(1)(d) of the P.C. Act and sentenced him to undergo RI for one year u/s 161 IPC and one year u/s 5(i)(d) read with Section 5(2)(d) of the P.C. Act, however both sentences were directed to run concurrently in each case.

2. The factual matrix giving occasion for these appeals are as follows:

Cr. Appeal No. 94 of 1997: The appellant was serving in Jealgora Central Hospital of BCCL as Medical Superintendent on the fateful day of 5th September, 1985, According to the prosecution, one Badlu Harijan, a miner loader of Bhutan Barari

colliery of BCCL Area No. XI, has overstayed on leave in July, 1985 and when he reported back on duty, he was not allowed to resume the duty and asked to procure a fitness certificate required to be counter- signed by the Medical Superintendent, Jealgora Central Hospital. Badlu Harijan requested the appellant on 3.9.85 to counter sign the fitness certificate, on which appellant demanded Rs. 100/- and asked him to come again on 4th September, 85. Said Badlu Harijan approached SP, CBI, Dhanbad and filed a complaint before him alleging therein that the appellant was demanding illegal money for countersign in the medical fitness certificate, vide Ext.6. The CBI office, Dhanbad decided to lay a trap on the appellant. Accordingly a trap team was constituted including PW 2, Kali Shankar Singh and one Uday Shankar Mishra, independent witness, as well as CBI personnels Lakhi Prasad, A.K. Asthana, Ekka Bahadur etc. The raid was lead by R.C. Choudhary, inspector CBI, Dhabad. The trap team constituting all the witnesses was called for briefing on 4th September, 1985 in the office of the SP CBI, Dhanbad, where, as required under law, briefing was made showing how trap could be laid, using phenolphthalein powder on a piece of paper and currency notes and then washing the hands showing that how tainted finger would result in colouring of the wash by preserving it in a bottle and sealing it in presence of the witnesses. Thereafter, the raiding party reached the Central Hospital Jealgora on 4th September, 1985 in the afternoon. However, the appellant did not turn up in his office and the team has to return back without any success.

3. It is further asserted by the prosecution that on the next day the trap was again laid in which Uday Shankar Mishra could not be available. Therefore, another independent witness Sohrai Dodrai was included in the alleged team and the team again rehearsed the trap on 5.9.85, reached the Jealgora Central Hospital in the forenoon and waited for the appellant to come to his office till afternoon. According to the prosecution case, when Dr. Raizada reached his office, he was being waited by the complainant Badlu Harijan and Mangru Sonar, complainant in another R.C. Case No. 17/85(D) alongwith the compounder of the doctor. According to the witnesses, the appellant demanded Rs. 100/- from Badlu Harijan before countersigning the fitness certificate. Badlu Harijan gave Rs. 100/- in two currency notes of Rs. 50/- treated with phenolphthalein to the appellant and after obtaining his fitness certificate, he came out of the room. Immediately thereafter the CBI team constituted earlier entered in the office of the appellant and confronted him with the allegation that he has demanded and accepted Rs. 100/- illegally for countersigning the fitness certificate, The raiding party further recovered Rs. 100/- currency notes from papers kept at the table of the appellant, following the procedure and getting the hands of the appellant washed, preserving the residues in two bottles, getting it sealed and signed by witnesses and the accused as well as the currency notes secured in an envelop having obtained the signatures of the witnesses and the appellant. The memorandum of raid was also prepared. According to the prosecution, all formalities required under the rules were

performed and the appellant was arrested, who denied the allegations.

4. Cr. Appeal No. 95 of 1997(R) The complainant Mangru Sonar, a miner loader of Bhulan Barari Colliery of BCCL has gone on leave and overstayed, for which he has sent a certificate of Dr. R.C. Prasad regarding his treatment. It is further stated that when he reported for joining the duties, the outside medical certificate was required to be countersigned by the medical superintendent of Jealgora Central Hospital. It is also alleged that the appellant serving as Medical Superintendent of said Central Hospital, demanded Rs. 200/- to countersign the medical certificate. Ultimately the appellant agreed to countersign the said medical certificate after receiving Rs. 150/-. The appellant has called him on 4th September, 1985 in the afternoon for issuing the medical certificate. Thereafter the complainant Mangru Sonar approached SP, CBI, Dhanbad and filed a complaint before him on 4.9.85 alleging therein that the appellant was demanding illegal money for countersign in the medical fitness certificate. The CBI office, Dhanbad decided to lay trap on the appellant. Accordingly a trap team was constituted including PW 2, Kali Shankar Singh and one Uday Shankar Mishra, independent witness, as well as CBI personnel Lakhi Prasad, A.K. Asthana, Ekka Bahadur etc. The raid was laid by R.C. Choudhary, inspector CBI, Dhabad. The trap team constituting all the witnesses was called for briefing on 4th September, 1985 in the office of the SP CBI, Dhanbad, where, as required under law, briefing was made showing how trap could be laid, using phenolphthalein powder on a piece of paper and currency notes and then washing the hands showing that how tainted finger would result in colouring of the wash by preserving it in a bottle and sealing it in presence of the witnesses. Thereafter, the raiding party reached the Central Hospital Jealgora on 4th September, 1985 in the afternoon. However, the appellant did not turn up in his office and the team has to return back without any success.

5. It is further asserted by the prosecution that on the next day the trap was again laid in which Uday Shankar could not be available and, therefore, another independent witness Sohrai Dodrai was included in the raid team and the team again rehearsed the trap on 5.9.85, reached the Jealgora Central Hospital in the forenoon and waited for the appellant to come to his office till afternoon. According to the prosecution case, when Dr. Raizada reached his office, he was being waited by the complainant Magru Sonar and Badlu Harijan, complainant in R.C. Case No. 16/85(D) alongwith the compounder of the doctor. According to the witnesses, the appellant demanded Rs. 150/- from Mangru Sonar before countersigning the fitness certificate. Mangru Sonar gave Rs. 150/- in currency notes treated with phenolphthalein to the appellant and after obtaining his fitness certificate, he came out of the room. Immediately thereafter the CBI team constituted earlier entered in the office of the appellant and confronted him with the allegation that he has demanded and accepted Rs. 150/- illegally for countersigning the fitness certificate. The raiding party further recovered Rs. 150/- currency notes in presence of the witnesses and numbers of denomination of currency notes so recovered, were

compared with the number of denomination of currency notes mentioned in the preliminary memorandum following the procedure and getting the hands of the appellant washed, preserving the residues in two bottles, getting it sealed and signed by witnesses and the accused as well as the currency notes secured in an envelop having obtained the signatures of the witnesses and the appellant. The memorandum of raid was also prepared. According to the prosecution, all formalities required under the rules were performed and the appellant was arrested, who denied the allegations.

6. The raiding party returned to the office of SP CBI, Dhanbad and lodged two separate FIRs as R.C. Case No. 16A/85(D) and 17A/85(D) for the alleged offences. Thereafter investigation was completed charging the appellant separately for the two offences u/s 5(i)(d) read with Section 5(2)(d) of the P.C. Act, 1947 and also u/s 161 IPC. The sanction for prosecution of the appellant was obtained from CMD, CIL in usual course and he was put on trial. The trial court framed separate charges against the appellant on 30.4.1992. The appellant has denied all the allegations claiming that he was being victimized by the CBI because he has refused to oblige Sri R.C. Choudhary, Inspector, CBI, Dhanbad, who led the raiding party and invited the annoyance of CBI. According to the defence, he was further victimized by lodging a case of disproportionate assets, which was ultimately found not proved. The learned trial court having examined witnesses, came to the conclusion that the appellant was guilty for accepting illegal money for issuing fitness certificate from Mangru Sonar and Badlu Harijan on 5.9.85 and sentenced him to serve RI for one year on each count in both the trials.

7. Both the appeals have been preferred on the ground that the CBI has acted out of vengeance because the appellant has refused to oblige the raiding team leader Sri R.C. Choudhary by not providing medicine free of cost to some of his relatives being treated in the Central Hospital, Jealgora earlier. It further mentions that the independent witnesses PWs 1 and 2 have turned hostile and the case hinges on the statements of only three interested witnesses, R.C. Choudhary as PW 7, Lakkhi Prasad as PW 10 and Ashok Kumar Asthana as PW 15, who had grudge against the appellant. It is further asserted that DWs examined on behalf of the appellant have been ignored and the trial court overlooked the fact that the departmental proceedings in connection with D.A. Case against the appellant and his wife were later on dropped. It is also asserted that so called recovered money were planted in the papers kept on the table of the appellant and the raiding team forcibly put the same in the hands of the appellant and thereafter all the formalities of washing hands, seizing currency notes etc., were completed just to fabricate evidence. According to the memo of appeals, PW 7 forced the appellant to count the money by putting the same in his hand, as a result of which his fingers became tainted with the phenolphthalein. It is also asserted that PW 8, Ram Murti Mutu Krishnan admitted in cross examination that CMD CIL was not provided with all papers required for sanction of the prosecution. It has also been asserted that Badlu

Harijan as PW 12 was confined by CBI right from 21.3.1996 till 2.4.96 and forced to give evidence against the appellant. It is also asserted that another complainant Mangru Sonar has not been examined nor the complaint petition dated 4.9.85 have been proved properly as the writer of it has not been examined and protracted trial for nearly 12 years has caused infringement of constitutional guaranteed right of speedy trial to the appellant. Further the trial court has not considered the written argument filed before it properly.

8. The learned Counsel for CBI, supporting the judgment of conviction, submitted that once the tainted currency notes were recovered from the possession of the appellant, the onus shifts on the defence to prove that he has not accepted the illegal money for issuing fitness certificate. In this context reliance was placed on the evidence of witnesses discussed by the trial court in paragraphs 14, 15 and 19 of the judgment.

9. Having considered the points raised by the learned Counsel for the appellant and CBI, I find that the appellant Dr. D.N. Raizada was admittedly serving as Acting Medical Superintendent, Jealgora Central Hospital on 5.9.85. It is also undisputed fact on record that complainants Mangru Sonar and Badlu Harijan having overstayed on leave, required fitness certificates to be counter signed by the Medical Superintendent. The prosecution version consistently is that when the appellant was approached by these two complainants on 3rd September, 85 for countersigning the fitness certificates, he allegedly demanded money for performing his official duty. The complainants thereafter approached SP CBI, Dhanbad. According to the prosecution case, SP CBI Mr. Kanungo, on receipt of these two complaints, directed the informant Sri R.C. Choudhary, Inspector, CBI, Dhanbad to lodge FIR and investigate the claims. It is further case of the prosecution that after this direction and entrustment of the case, Sri Choudhary got the complaints recorded, on the basis of which R.C. Case No. 16A/85(D) and 17A/85(D) were registered by him. The said FIRs have been proved as Ext.5 in both the cases and the said complaint petitions have been marked as Ext.6 in both the cases. Both the complaint petitions appear to be written by same person and signed by complainants Badlu Harijan and Mangru Sonar on 4.9.85. In both these complaints complainants have alleged that they contacted the appellant Yesterday i.e. on 3rd September, 1985 for issuance of fitness certificates on which he demanded money. As per complainant Badlu Harijan, he was asked for Rs. 100/- and as per Mangru Sonar, he was asked for Rs. 200/-. However, the amount was settled at Rs. 150/-. These two complaint petitions are said to have been written by one Kapildeo Singh, as stated by informant Sri R.C. Choudhary, vide paragraph-1. According to Sri Choudhary, said Kapildeo Singh was the head constable on that day and he is now dead. It has been asserted by him that he took up the investigation on the direction of SP CBI, Dhanbad, but no such endorsement was made on the complaint petition. He has been cross examined at length in this respect, vide para 12. It is further asserted that he started investigation on the direction given on the

notesheet of the SP but that notesheet has not been produced before the trial court. He further admitted, vide para 13 that the FIR was drawn immediately thereafter at 10.45 AM on 4.9.85 and raid team was constituted including the independent witnesses from the outside. He further admitted that both the independent witnesses arrived at the CBI office after 12 noon and remained with him till 6 PM and during this period the raiding party has gone to Central Hospital Jealgora on the same day after performing all the formalities of briefing the members of the raiding party, demonstrating the process by which trap could be laid according to rules. He has admitted in para 15 that SP CBI would ask for verification of the complaint on receiving any such complaint but in the present case the verification was not done rather FIR was lodged and action taken. It is specifically stated in para 15 that since verification was not possible in the particular case, action was taken by lodging FIR and trap laid. He could not name, vide para 16, who has participated in demonstration for using phenolphthalein on 4.9.85. Para 16 further mentions that the witnesses present on 4.9.85 were not shown how phenolphthalein was used and in its absence finger wash could not turn pink. He further admitted vide para 18 that on 5.9.85 one witnesses included in the trap party did not report to CBI office then Sri dodrai was included in the party by contacting the controlling officer. However he admits that Sri Dodrai and K.S. Singh reached CBI office at 8.30 AM. Thereafter preliminary memorandum was completed, demonstrating the procedure to be followed and they left for Jealgora Central Hospital at 8.30 AM. All these activities if considered in normal circumstances, appear to be completed in haste. The complaints filed on behalf of Badlu Harjan and Mangru Sonar admittedly on 4th September,85 were taken up for lodging FIR and further investigation with decision to lay a trap without the direction of SP CBI, as any direction is not available on the complaints nor any notesheet or file has been produced by the prosecution. Further if complaint petition was received at 10.45 AM, FIR was lodged immediately and decision was taken to lay a trap, SP CBI, who was available in the office itself, must have been consulted for directions in writing. No such written direction is admittedly issued by CBI Dhanbad. The inclusion of witnesses, K.S. Sing and U.N. Mishra in first demonstration party in the noon of 4.9.85 could not materialize and next day in the morning independent witness Dodrai was included but the inclusion of this witness Mr. Dodrai, after contact of controlling officer by 8.30 AM in the morning of 5.9.85 could not be proved. The above mentioned facts have not been explained by the prosecution.

10. PW 1 Sohrai Dodrai and PW 2 K.S. Singh have partly supported the prosecution case and were declared hostile by the prosecution. According to Sri Dodrai he reached CBI office at 7.15 AM on 5.9.85 whereas PW 2 mentioned vide para 12 that he along with the raiding party reached Jealgora Central Hospital at bout 11 12 forenoon on 5.9.85. They have given different version of the raid. Mr. Dodrai is said to be present in the chamber of Dr. Raizada when the exchange of money took place. However, this witness, vide para 7, has stated that when he reached the

chamber of Dr. Raizada along with Badlu Harijan, he found Sarju Thakur, dresser, sitting in the chamber. He further stated that after 10-15 minutes he came out of the chamber leaving Badlu Harijan inside. He asserted that after 10 minutes, the appellant came in his chamber and he remained outside to see that Badlu produced the paper for signature of the doctor. He specifically denied that he saw anything else. He has admitted further in para 8 that when Badlu was sitting inside the chamber, Mangru Sonar was also present and both of them came out of the chamber getting their papers signed. Thereafter the raiding team entered and action was taken. According to this witness, when the appellant denied receiving the money, Mr. Asthana, another Inspector, CBI and member of raiding team, brought out the notes kept beneath the file on the table. This witness further admitted, vide para 21 that when the raiding team reached in the office of the appellant, he was not present and a number of files were kept on the table. According to this witness, in absence of the appellant complaints Badlu, Mangru and dresser Sarju were sitting. He further asserted that the dresser Sarju was looking into the files kept on the table. He does not support the story of prosecution that the currency notes were handed over to the appellant by Badlu and Mangru in his presence. He specifically admitted, vide para 20 that when he was standing outside the room, it was not possible to see any exchange of money, neither any talk could be heard by him. The evidence of PW 2, in this regard is that when he reached the P.O., he remained sitting outside at a tea shop and the raid was conducted at about 3-4 PM after which he was called inside the chamber, vide para 13 of his cross examination. He further asserted that currency notes were taken out from the papers kept at the table by inspector Asthana and thereafter notes were kept and sealed inside the envelop, vide Ext.1. He admitted, vide para 17 that he was not directed to cooperate with the raiding team in writing. This witness admitted in para 19 that on 5.9.85 the raiding team was present in CBI office till 10 AM and vide para 12 they left for Jealgora Central Hospital of about 11 AM, reaching there after 11.30 AM. According to him, the appellant was not present in the chamber, therefore, the complaint stayed inside the chamber and some paper were kept on the table being searched by the dresser Sarju. He specifically asserted in para 24 that actually raid was conducted after 2-3 hours and he has not seen any exchange of money. He has also been declared hostile by the prosecution.

11. As such the independent witnesses have totally differed on material aspects from the prosecution story. The presence of independent witnesses is most important factor in such trap cases as their veracity gives strength to the prosecution case, The fact remains that after having declared these two independent witnesses hostile, the prosecution case depend only on the evidence of the member of the raiding team Sri R.C. Choudhary, PW 5, Lakhi Prasad, PW 7 , Ashok Kumar Asthana, PW 13 in R.C. Case No. 17A/85(D) and the same witnesses examined as PW 7, Ram Chandra Choudhary, PW 10 Lakhi Prasad, PW 15 A.K. Asthana in R.C. Case No. 16A/85(D) and further more, the evidence of PW 12, Badlu

Harijan in R.C. Case No. 16A/85(D) along with evidence of Lal mohan Manjhi, I.O. of the Case in R.C. Case No. 16A/85(D) and PW 14 in R.C. Case No. 17A/85(D). It is pertinent to mention here that complainant Mangru Sonar has not been examined in R.C. Case No. 17A/85(D) and reported to be dead,

12. Badlu Harijan, PW 12 in R.C. Case No. 16A/85(D) has supported the prosecution case and admitted that he reached at 8 AM on 4.9.85 in CBI office, Dhanbad and got his complaint recorded by Kapildeo Singh, who further produced him before SP, CBI, vide Ext.6. He further asserted that all the raiding team party assembled at CBI office at bout 12.30 noon on the same day, where demonstration was made in his presence and he was briefed how to cooperate in the raid. According to him on next day at about 7.30 AM he reached CBI office on 5.9.85 and same procedure was followed. This witness has asserted that they reached in the hospital at about 10 AM in the morning at that time the appellant was present in the chamber alone and he got his fitness certificate signed after handing over Rs. 100/- in his hand. He further asserted that the appellant kept the money beneath the register after which Mangru Sonar also came and he also got his fitness certificate countersigned after paying Rs. 150/-. According to this witness, when both of them come out of the chamber, Sohrai Dodrai was hearing all the talks. Thereafter CBI team was signaled, which came inside the chamber of the appellant and caught him alongwith money kept beneath the register. He admitted in para 10 that when he reached CBI office on 4.9.85, he met Kapildeo Singh at about 8 AM but he could not say when he met SP, CBI. He admitted in same breath that he could not met SP, CBI rather Kapildeo Singh had met him at bout 8 AM, who called him at 12.30 noon and on his direction Kapildeo Singh wrote the complaint petition. He further admitted that said complaint petition was written at 12.30 Noon and he did not go through the contents because he only known to sign anyhow. According to him, the number of currency notes were also given on this complaint petition. He specifically stated that he has not signed over the notes rather CBI people has signed over the notes, vide para 11.

13. The supporting evidence of PW 10 in R.C. Case No. 16A/85(D) and PW 7 in R.C. Case No. 17A/85(D), Lakhi Prasad alongwith evidence of A.K. Asthana, PW 15 and 13 in both the cases, differs on material aspects. According to Lakkhi Prasad at 12 noon on 4.9.85 he along with other witnesses assembled in the office of CBI where the complaint filed by Badlu Harijan was brought to his knowledge. He further asserted that on 5.9.85 Badlu Harijan was given treated currency notes of Rs. 50/- when he was going inside the chamber of Dr. Raizada. According to this witness after 4-5 minutes Badlu Harijan came out of the chamber and thereafter Mangru Sonar came to the chamber, who also came out after few minutes and thereafter Sri Dodrai signaled to them, on which they entered into the chamber of the appellant. This witness has further stated that the appellant after accepting and receiving money disclosed to them that the money was kept beneath the paper on the table. As against this, Ashok Kumar Asthana stated that when Badlu went inside the chamber

Sri Dodrai also followed him and similarly when Mangru went inside the chamber Sri Dodrai again went inside the chamber. This witness has also asserted that when Sri Dodrai signaled to them they went inside the chamber. This witness has specifically mentioned that Badlu has entered into the chamber at 10.30 AM and came out after 10 minutes. Thereafter Mangru went into the chamber and came out after 10 minutes and the raid was made thereafter at about 11 AM. He further stated that the money was taken out by witness Sri Dodrai and the numbers of the notes were checked with the memorandum of tarp.

14. We have already discussed the evidence of witness Ram Chandra Choudhary, PW 6 that when the appellant was caught hold by CBI personnel, he has nothing in his hand. He further admitted that on personal search the tainted notes were not found on his person.

15. According to CBI witnesses, Badlu and Mangru went inside the chamber one after another at 10.30 AM and when both of them came out, Sri Dodrai signaled the raiding team, after which they entered into the chamber and caught hold the appellant. It is further admitted fact on record that the tainted money was not recovered from the person of the appellant rather from the papers kept on the table. There are different versions regarding recovery of the notes from the papers kept on the table. If the money was accepted by the appellant before signing the fitness certificate, it appears improbable why the same was kept beneath the papers along with other papers. Normally if the appellant was greedy and asking for petty amount before signing the fitness certificates, he should have kept it in his pocket or purse. Ordinarily a person of such greedy nature normally would not have kept the money beneath the paper on the table. The evidence of Badlu Harijan in this context contradicts the CBI witnesses. He asserted that when he paid the money, appellant accepted it in his hand and thereafter kept the money beneath the paper on the table. He further accepted that Mangru immediately came after him while he was present in chamber and he also got his fitness certificate countersigned after paying Rs. 150/-. This witness has asserted that when both of them came out of the chamber, Sri Dodrai waiting outside and signaled the CBI team to come. As against this, Sri Dodrai has gave a different version. According to him, the appellant was not present in the chamber when he reached along with Budlu Harijan. He further asserted that he came out of the chamber after waiting 10-15 minutes and Badlu remained inside along with one Srju Thakur, the dresser. This witness has asserted that after 10 minutes when doctor came inside the chamber, he remained outside. He denied to see handing over money by Badlu and Mangru. The prosecution version, therefore, suffers from contradictions regarding presence of the appellant inside the chamber at 10 AM and handing over the money to the appellant by Badlu and Mangru in presence of independent witness Sri Dodrai as well as recovery of the tainted currency notes from the possession of the appellant. The recovery of tainted currency notes from the papers kept on the table and the statement of Sri Dodrai that those tainted notes not were handed over to the appellant by the

complainants in his presence creates a reasonable doubt that tainted notes were accepted by the appellant before countersigning the fitness certificates.

16. It is also admitted case on record that both the decoys Badlu and Mangru approached CBI people coincidentally or, 4th September, 85 having filed two complaint petitions addressed to SP CBI, which are said to have been written by one Kapildeo Singh, head constable, posted in the CBI office on that day. This writer of the complaint petitions is said to be dead now. However, these complaint petitions, marked as Ext.6 in both the cases, are said to have been placed before the SP, CBI for necessary directions. It is also admitted fact that the SP, CBI Mr. Kanungo had not made any endorsement on the complaint petitions. The writer of the complaint petition, late Kapildeo Singh though posted in CBI office, has not been examined by the I.O. It is also admitted fact on record that registration of a case of such nature could not be made without any direction or instruction from SP, CBI. Witness Ramchandra Choudhary has admitted that he can not produce the direction of SP, CBI either on the notesheet or file by which he was entrusted to register the FIR immediately on receipt of the complaint petitions. The FIR lodged by him and marked Ext.5 mentions the time of lodging of the FIR at 11 AM on 4.9.85 for the alleged occurrence of 3.9.85 u/s 161 IPC. From perusal of FIR, it has not been mentioned that the case was registered on the direction of SP, CBI rather it mentions that since the facts given in details in the complaint petitions, prima facie disclose commission of cognizable offence u/s 161 IPC, the FIR was lodged. He further failed to bring on record any direction issued by SP, CBI to lay a trap without verification of the complaint petitions, It is admitted case of the prosecution that immediately after lodging the FIR, a trap was decided to be laid and a team was constituted including independent witnesses. The independent witnesses, as already discussed in para 10 of the judgment, have contradicted the acceptance of tainted money by the appellant in their presence. PW 2 Kali Shankar Singn was admittedly not present in the room and he has given a different timing of the occurrence making it in the afternoon of 5.9.85, whereas PW 1 Sohrai Dodrai asserted that he has remained outside of the chamber, when exchange of money took place. The recovery of the tainted notes from the papers kept on the table, as already discussed in the forgoing paragraphs, further creates a doubt on the prosecution version that actually the appellant received the money in his hand before countersigning the fitness certificates.

17. Having regard to the above mentioned facts and circumstances, I find and hold that the prosecution has not been able to prove beyond all reasonable doubts that the appellant actually received the tainted currency notes by way of illegal demands before countersigning the fitness certificates in favour of complainants Badlu Harijan and Mangru Sonar.

18. The learned Counsel for CBI asserted that in the present case when the appellant's hands were washed, the residue wash became pink, therefore,

presumption may be held that actually the appellant has accepted the illegal money before countersigning the fitness certificates.

19. In the facts stated above, even if the prosecution version is accepted that the appellant's hands were washed by the raiding party and residue wash became pink, it is difficult to presume that his fingers were tainted only because he had received the money in his hand. Witnesses including CBI officials have accepted in cross-examination that the raiding party caught hold the hands of the appellant and he denied having acceptance of the money. It was further admitted by witnesses Lakhi Prasad, Ashok Kumar Asthana and Ramchandra Choudhary that the appellant's hands were caught by them. In such circumstances the presumption suggested by the prosecution is not attracted. It is also come on record that the appellant was arrested on 5.9.85 after which he was personally searched and his house was also searched but nothing incriminating materials has been recovered from his person or from his house. The CBI has also started proceeding against the appellant and his wife for having disproportionate assets, which was later on dropped. The appellant has already been removed from services and at the moment he is above 60 years. Keeping in view the facts and circumstances, I find and hold that the prosecution has not been able to prove the charges against the appellant beyond all reasonable doubts in both the cases.

20. In the result, both these appeals having merit in them, are allowed. The appellant is acquitted of the charges levelled against him under Sections 161 IPC and Section 5(1)(d) read with Section 5(2)(d) of the P.C. Act and stands released from the liability of his bail bonds.