

INDERJIT SINGH AND ORS. ETC.

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v.

STATE OF PUNJAB AND ORS.

JULY 13, 1995

[G.N. RAY AND FAIZAN UDDIN, JJ.]

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Indian Penal Code, 1860—Sections 466, 468, 471, 477-A and 120B—Offence of Criminal misappropriation and conspiracy—Case of embezzlement by deliberately falsifying records by government officers—Circumstantial evidence—Mere over payment to workers on account of less work done—Not sufficient evidence to convict accused—Chain of circumstantial evidence not complete—Conviction based on surmise and conjecture—Not legally sustainable.

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The Government of India initiated a crash scheme of rural employment to give relief in the rural areas by executing some intensive projects to give employment on all the districts in the state of Punjab. Under the terms of the scheme, for each district, ten lacs of rupees were allocated and over and above, a sum of rupees two and a half lacs were also allowed for implementing the scheme. Six projects were started by the Public Works Department (drainage section) in the district of Amritsar. The projects were meant to desilt six drains and the amount allotted to each of the six projects were expected to be spent by the end of the financial year, March 31, 1972. A complaint was filed to the Chief Engineer (drainage) alleging that although huge amounts were reportedly spent on desilting a drain but actually nothing had been done at the spot. Superintending Engineer (Vigilance) was ordered to enquire into the allegations. Reports submitted indicated embezzlement of huge amount by the officials concerned in implementing the said projects. Investigations were conducted and six first information reports were registered pertaining to all the six projects. Amongst the accused, Executive Engineer was stated to be man-in-charge of all these projects and the other accused persons were sub-Divisional Officers, Sectional Officers, Sub-Divisional Clerks.

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According to the prosecution, the embezzlements were pursuant to criminal conspiracy of the accused persons and while perpetrating the offences, they had also forged and falsified the records as genuine. The

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A prosecution produced a number of witnesses to prove that although vouchers had been prepared in their names, they had neither worked on such projects nor did they receive any payment. The prosecution also prepared the list of the labourers whose names were mentioned in the vouchers and alleged that a number of such persons did not reside within a radius of four miles from the site of work. Some labourers were examined who admitted that they had worked in those projects and they had also signed out some of the vouchers but they stated that they were paid less amount than what was shown in the vouchers. According to the prosecution, the thumb impression taken by the police were compared with the thumb impressions on the vouchers said to have been affixed by the labourers but it was found that the thumb impressions of the officials tallied with some of the thumb impressions on the vouchers. The prosecution relied on the alleged confession made by Sub-Divisional Officer and Sectional Officer before Superintending Engineer, who had been deputed to conduct investigation on the spot. The Special Judge after considering the evidence adduced in the case convicted and sentenced all the accused u/s 5(1) (d) of the Prevention of Corruption Act and u/ss 466, 468, 471, 477-A and 120-B of the Indian Penal Code.

In appeal, the High Court while giving the benefit of doubt to the Executive Engineer and also to the Sub-Divisional Clerk, confirmed the convictions of the other accused. The High Court held that there was no direct evidence against the accused persons in support of the charges levelled against them; that the testimony of those witnesses produced by the prosecution to prove that they had neither worked on such projects nor did they receive any payment, had lost its value because it was not possible to come to a conclusion that they were the same persons in whose names the vouchers were prepared; that the list of labourers also suffered from the same disability; that it was difficult to rely upon the testimony of those witnesses who stated that they were paid less amount than what was shown in the vouchers as the said labourers were examined ten years thereafter; that regarding the Reports of the finger print experts that in some cases the vouchers prepared in the names of various persons bore thumb impressions of a single person, there were conflicting reports given by the experts regarding the same thumb impression; that the specimen thumb impressions of the appellants had not been taken under the order of the Magistrate in accordance with Sec. 3 of the Identification of Prisoners Act, so such thumb impression should not be accepted; that the

alleged extra judicial confession made before Superintending Engineer had lost its evidentiary value in view of the fact that the Superintending Engineer did not mention about this incident of confession in the report, since admitted in cross-examination. The High Court strongly relied on Rule 738 of the Departmental Financial Rules which contain that the wages of members of the work charged establishment should be drawn and paid according to Form D.F.R. (P.W.) 29 and indicated that payment to the labourers were not made by filling such forms; that in none of the vouchers for payment, the full home address of the labourers was incorporated so as to make it impossible to trace them and by such process, the direct evidence of embezzlement stood deliberately obliterated and such inference was further fortified from the impeccable testimony of the Superintending Engineer, a senior officer who deposed that his investigations at the spot revealed that much less work had been done than the details of work mentioned in the records prepared to indicate the actual performed in implementing the projects and as he had no reasons to falsely inculcate junior officers dealing with the disbursement of wages to the labourers, the testimony of the Superintending Engineer was not to be doubted; that from the said investigation and the enquiry held at the spot, a conclusion could be drawn that large amounts out of the government funds allocated to execute the six projects, were misappropriated and embezzled by the officers dealing with the disbursement of the wages; that the facts so established were consistent with the hypothesis of the perpetration of the crime of embezzlement; that the evidence of the Superintending Engineer, regarding lesser work done and the factum that the wages were alleged to have been paid to the labourers on the basis of vouchers from which it was impossible to trace them, had completed the chain of circumstances which did not leave any reasonable ground for the conclusion inconsistency with the innocence of the officers dealing with the disbursement of the wages and hence the prosecution case should be accepted.

On the question as to whether all the accused could be held guilty of committing the offence of criminal misappropriation and conspiracy, the High Court held that the Sub-Divisional Officers were empowered to make payments to the labourers and to maintain the records of the case; that each payment made by the Sub-Divisional Officers was required to be witnessed by another official who was required to certify the payments; that it had been conclusively proved that the Sub-Divisional Officers and the Sectional Officers dealing with the funds should be held guilty of con-

- A spiracy and embezzlement and also of criminal misconduct u/s 5(1)(d) of the Prevention of Corruption Act; that though the Executive Engineer was in over all charge of the products but it was manifest that he did not participate in the disbursement of wages to the labourers, so he should be given the benefit of doubt though the department might deal with him in suitable manner for failure in the charges of his duties efficiently. The High Court acquitted the Sub-Divisional Clerk of the charge u/s 466 and 477 A of the Indian Penal Code by giving him benefit of doubt in view of the fact that this thumb impression allegedly affixed on the vouchers could not be held to have been proved by admissible convincing evidence. Sentences of other accused who had been sentenced to undergo RI for more than one year by trial court were reduced to one year's imprisonment. These appeals had been filed against the judgment of the High Court.

- The appellants contended that despite the absence of intrinsic evidence from which irresistible conclusion about the guilt of the accused by eliminating any other hypothesis, could be drawn, the High Court had jumped on the conclusion that the accused must be held guilty simply by assuming that in order to cover up the crime of embezzlement improper vouchers were prepared and bills were drawn showing greater volume of the work when in fact lesser work as revealed in spot enquiry was executed; that simply on the basis of the report of the Superintending Engineer, it was not open to the Court to draw a conclusion that less work had actually been done; that even if less work had been done, the said fact did not constitute the offence of embezzlement and falsification of the records in perpetrating the crime of embezzlement until and unless it could be convincingly proved by leading unimpeachable evidence that payment had not been actually made to the labourers but in the name of work charged labourers, the bills were falsely drawn and money under the bill had been misappropriated. The respondents contended that the accused hatched the conspiracy to defraud the public exchequer and with such intention deliberately prepared some vouchers showing alleged payments to various labourers for the works done by them without giving particulars of such workers contrary to the instructions for maintaining vouchers in a particular manner, in order to make it impossible to verify the actual payment by examining the concerned labourers; that the Superintending Engineer made spot enquiries about the quantum of work done in respect of the six projects and he had deposed categorically that the work mentioned in the records on the basis of which the alleged payments had been made to the

workers was much less than what had actually been done and that if such evidence was accepted, the falsification of records was writ large and the case of embezzlement was also established beyond reasonable doubt and that the courts below, therefore, had no hesitation in holding the accused guilty and this court should not interfere with the concurrent findings made by the Courts below.

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Allowing the appeals, this Court

HELD : Simply on the basis of the reports of the Superintending Engineer that less work than what was stated in the records was done, the case of embezzlement by deliberately falsifying the records was not established. Until and unless by cogent and unimpeachable evidence about the factum of non payment to labourers of the amount drawn in their names could be established, the case of embezzlement by the government officers and misappropriation of government fund could not be sustained. The Superintending Engineer might be a responsible officer but it would not be safe to simply rely on his assessment of the work done and for basing the conviction, other convincing corroborative evidences about the quantum of work done was necessary. In the facts of the case, it will not be just and proper to accept the said report and deposition of Superintending Engineer (Vigilance) to be conclusive about the quantum of work done. That apart, unless and until the factum of non payment to the workers was established, over payment to the workers on account of less work done could not be held to be sufficient evidence to convict the accused for the offences alleged against them. Even if the local officers who were entrusted with the task of payment to the labourers were careless and did not actually ascertain the quantum of work executed by the labourers but made payments to the labourer on the basis of work as indicated in the bills, such local officers might be held guilty of dereliction of duty but cannot be held guilty for the offences alleged against them. In the instant case, the chain of circumstantial evidence was far from being complete and the conviction had been based more on surmise and conjecture than on the basis of convincing and unimpeachable evidences. [73-F-H; 74-A-C]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 12-21 of 1986 Etc.

From the Judgment and Order dated 15.5.85 of the Punjab & Haryana High Court in Crl. A. Nos. 153-SB-156-SB, 161-SB & 174-SB-178-

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A SB of 1983.

Ram Jethmalani, D.V. Sehgal, Kamini Jaiswal, Arivind Nigam, Abani Kumar Sahu, Rekha Palli and Monica Goswamy for the appellants.

R.S. Suri for the Appellants in Crl. A. Nos. -22-28/86.

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Ujagar Singh, Amita Gupta, R.S. Suri, Naresh Bakshi and Ranjit Kumar for the Respondents.

The Judgment of the Court was delivered by

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G.N. RAY, J. These twenty eight criminal appeals are directed against a common judgment dated May 15, 1985 passed by the High Court of Punjab and Haryana in Criminal Appeal Nos. 153-SB to 156-SB, 161-SB, 174-SB to 178-SB, 185-SB to 189-SB, 193-SB, 199- SB to 202-SB and 205-SB to 207-SB of 1983 and two Criminal Revisions Nos. 773 and 774 of

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1983 since treated as appeals by the Punjab and Haryana High Court. All the said appeals arose out of the judgment passed by the learned Additional Sessions Judge exercising the powers of Special Judge, convicting and sentencing the appellants. As the facts and circumstances were similar in all the said 28 appeals, they were disposed of by the High Court of Punjab and Haryana by a common judgment. Before this Court also all the

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above 28 appeals have been heard analogously and they are being disposed of by a common judgment.

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The prosecution case in short is that the Government of India initiated a crash scheme of rural employment to give relief in the rural areas by executing some intensive projects to give employment in all the districts in the State of Punjab, Under the instruction of Government of India, the Development Commissioner and Secretary to the Government of Punjab apprised all the Deputy Commissioners in the State of Punjab about such Scheme. Under the terms of the said crash scheme. for each district, ten lacs of rupees were allocated. Over and above, a sum of rupees

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two and a half lacs were also allowed for implementing the said scheme. The said scheme was centrally controlled scheme in the shape of grant-in-aid. For implementing the said crash scheme, six projects were started by the Public Works Department (drainage Section) in the district of Amritsar. Shri Kailash Chand was the Superintending Engineer and Shri Kuldip

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Singh Sidhu was the Executive Engineer concerning the said projects.

These six projects were meant to desilt six drains, namely, Sakki Nullah, Kasur Nullah, Sohal Drain, Jhabal Drain, Kairon Drain and Devi Dass Pura Drain. The amounts allotted to each of the six projects were expected to be spent by the end of the financial year. March 31, 19972. One Chanchal Singh of village Jhabai filed a complaint to the Chief Engineer (drainage) alleging that although huge amounts were reportedly spent on desilting Jhabal Drain but actually nothing had been done at the spot. Such complaint was processed and in due course in April, 1972, the Minister concerned ordered Superintending Engineer (Vigilance) Shri B.R. Saini, or Public Works Department to enquire into the allegations. Shri Saini thereafter visited the sites to all the six projects and submitted his reports indicating that embezzlement of huge amount by the officials concerned had taken place in implementing the said projects. On the basis of such report, investigations were conducted by the Vigilance Bureau and after the completion of investigations, six first information reports were registered in July, 1973, pertaining to all the six projects. Amongst the accused in the Criminal cases instituted on the basis of the said F.I.Rs. Shri K.S. Sidhu, Executive Engineers, was stated to be the man-in-charge of all these projects. The other accused person were Sub-Divisional Officers, Sectional Officers, Sub-Divisional Clerks. They were divided into six groups to execute the work under Shri K.S. Sidhu. According to the prosecution, during the police investigation it was detected that a sum of Rs. 4,35,832 was embezzled in connection with implementation of Sakki Nullah Project, Rs. 7,74,000 was embezzled relating to Kasur Nullah Project, Rs. 1,46,803 was embezzled in respect of Sohal Drain Project, Rs. 1,62,291 was embezzled in relation to Jhabal Drain Project, Rs. 78,638 was embezzled relating to Kairon Drain Project and Rs. 1,02,413 was embezzled in respect of Devi Dass Pura Drain Project, It was further found on the basis of the investigation that the embezzlements were pursuant to criminal conspiracy of the accused persons and while perpetrating the offences, they had also forged and falsified the records and used such false and fabricated records as genuine. The accused were eventually tried in six separate trials relating to each of the said projects by a Special Judge appointed by the State Government under Section 6 of the Criminal Law (Amendment) Act, 1952. The accused however, in their statements made under section 313, Code of Criminal Procedure, denied the charges and pleaded innocence. The Special Judge after considering the evidence adduced in the case convicted and sentenced all the accused under Section

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A 5(1) (d) of the Prevention of Corruption Act and under Sections 466, 468, 471, 477-A and 120-B of the Indian Penal Code and passed various sentences for the said offences as referred to in the judgment of the learned trial Judge.

B The High Court in the impugned judgment has held that there was no direct evidence against the accused persons who were appellants before the High Court in support of the charges levelled against the accused and the prosecution has relied only upon circumstantial evidence. Coming to the circumstantial evidences sought to be relied on by the prosecution, the High Court has held that the prosecution, in all the said cases, produced a number of witnesses to prove that although vouchers had been prepared in the name of the said witnesses, they had neither worked on such projects nor did they receive any payment. The High Court has, however, held that the testimony of those witnesses had lost its value because it was not possible to come to a conclusion that they were the same persons in whose names the vouchers were prepared. It has been categorically held by the High Court that the witnesses did not prove one way or the other whether the payments were actually made on the vouchers which contained their names.

E The prosecution also prepared the list of the labourers whose names were mentioned in the vouchers but according to the prosecution a number of such persons did not reside within a radius of five miles from the site of work. The High Court has commented upon the said evidence by indicating that the said evidence suffered from the same disability, and the evidence did not positively pinpoint that the persons named in the list were the same who were named in the vouchers. It has been indicated by the High Court that it is not possible to infer from the evidence that the persons named in the lists were in fact those labourers in whose names the vouchers had been prepared. It was not unlikely that the labourers who were actually engaged were residing more than 7 miles away from the site of work. The High Court has therefore held that upon evidence of that nature, the guilty of the accused could not be held to have been proved.

G The prosecution examined some labourers who admitted that they had worked in those projects and they had also signed out some of the vouchers but they stated that they were paid less amount than what was shown in the vouchers. It has been held by the High Court that it was difficult to rely upon the testimony of such witnesses for the purpose of

holding the accused guilty of recording inflated payments in the vouchers. A
 It has been indicated by the High Court that the said witnesses had
 received payments and executed the voucher in 1972 but the said labourers
 were examined ten years thereafter and it is difficult to believe that even
 though the said witnesses received less payment, they would keep quiet and
 sleep over the matter for such a long period and would not make any B
 complaint to the higher authorities. The Reports of the finger print experts
 that in some cases the vouchers prepared in the names of various persons
 bore thumb impressions of a single person, were taken into consideration
 by the High Court. The High Court has noted that there are conflicting
 reports given by the experts regarding the same thumb impression. The C
 High Court has also indicated that even if it is accepted, despite the
 conflicting reports of the experts, that one person had received the pay-
 ment on behalf of others, such fact could not establish that the payments
 were not made at all. It has been indicated by the High Court that such a
 possibility cannot be ruled out that a member of the same family might
 have out his thumb impression on various vouchers relating to the other D
 members of the family. The High Court has held that this evidence is highly
 unsatisfactory and is quite inadequate to come to a conclusion that the
 appellants had committed embezzlement.

During the investigation of the cases thumb impressions of Vijay E
 Kumar, Special Officer, Surjit Singh, Sub-Divisional Clerk, who were con-
 nected with the Kasur Nullah Project and thumb impression of Inderjit
 Singh Sectional Officer, connected with the Kairon Drain Project were
 obtained. According to the prosecution, the thumb impression taken by the
 police were compared with the impression on the vouchers said to have
 been affixed by the labourers but it was found that the thumb impressions F
 of the said officials tallied with some of the thumb impressions on the
 vouchers. On the basis of such evidence, the prosecution contended that
 the said evidence established that the said accused fabricated certain
 vouchers pursuant to the conspiracy to commit embezzlement of the
 Government funds. The High Court has not accepted the said evidence. It G
 has been indicated by the High Court that if the specimen thumb impres-
 sions of the appellants had not been taken under the orders of the
 Magistrate in accordance with Section 5 of the Identification of Prisoners
 Act, such thumb impressions should not be accepted. It has been held by
 the High Court that there is no guarantee that the thumb impressions which
 were compared with the thumb impressions on the vouchers were in fact H

- A of the appellants. Referring to a decision of this Court in *Mahmood v. State of U.P.*, AIR (1976) SC 69 wherein this Court has held that the specimen finger print of the appellants not having been taken under the orders of a Magistrate in accordance with Section 5 of the Identification of Prisoners Act, would raise suspicion about the conduct of investigation and in view
- B of possibility of fabrication of the evidence furnished by the finger print expert, it would not be proper to sustain the conviction of the accused on the basis of such expert evidence. The High Court has also indicated that before the trial Court the accused had applied to get their thumb impressions compared with those on the disputed vouchers but such prayer was declined by the trial court. The prosecution relied on the alleged confession
- C made by Shri J.N. Sood, Sub-Divisional Officer and Shri Hukam Chand, Sectional Officer, before Shri B.R. Saini, Superintending Engineer, who had been deputed to conduct investigation on the spot. According to Shri Saini, the said persons threw themselves before him and confessed that no work had actually been done at the spot and they had pleaded for mercy.
- D The said Shri Saini also stated that the Executive Engineer (Civil) Shri Sidhu was also present at the time and he felt thoroughly ashamed. The High Court, however, has not accepted the case of extra Judicial confession and it has been held by the High Court that the alleged extra judicial confession has lost its evidentiary value in view of the fact that Shri B.R. Saini did not mention about this incident of confession in his report, since
- E admitted in cross-examination. The High Court is of the view that no reliance should be placed on such extra judicial confession said to have been made before Shri Saini.

- It, however, appears that the High Court has strongly relied on Rule
- F 7.38 of the Departmental Financial Rules which contain that the wages of members of the work charged establishment should be drawn and paid according to form D.F.R. (P.W.) 29 which is a combined pay bill and acquittance roll form. Under this rule, it is necessary that a consolidated bill in the said form should be prepared monthly where in full details of the work charged establishment indicating the name, father's name, caste,
- G full home address of the work charged employees and work charged labourers are to be mentioned. The High Court has indicated that payment to the labourers were not made by filling such form. In none of the vouchers for payment, the full home address of the labourers was incorporated. For want of such detailed particulars, it was impossible to trace
- H the labourers who allegedly received payments on the basis of vouchers,

during the investigation of these cases. Although it was contended on behalf of the accused that the said form was not being used anywhere in the State of Punjab and that the prevalent practice all over the State was that the wages to the work charged labourers would be paid on the basis of vouchers without mentioning their addresses, the High Court did not accept such contention of the accused as the same was not supported by any evidence and such suggestion was not even put to Shri B.R. Saini when he came in the witness box to prove his reports. It has been held by the High Court that it cannot be believed that the officers dealing with the disbursement of wages to labourers were not aware of the said rules. Hence, it could be safely concluded that the addresses of the labourers were not mentioned in the vouchers so as to make it impossible to trace them and by such process, the direct evidence of embezzlement stood deliberately obliterated. The High Court has also held that the contention of the accused was that under para 1.3 of the Irrigation Manual of Orders, it was the duty of the Divisional Accountant to check every voucher and to return the incomplete and defective vouchers to the Sub-Divisional Officers for completion and correction but in no case, the vouchers on the basis of which payments were made had been returned by Divisional Accountant for correction and presentation according to the said Form No. 29. Such submission on behalf of the accused, however, has not been accepted by the High Court by indicating that if the Divisional Accountant did not return the defective vouchers, it was a case of remiss on his part but for such dereliction of duties committed by the Divisional Accountant, the disbursing officers could not derive any benefit. In view of not maintaining the vouchers in accordance with the said form containing the detailed particulars of the work charged labourers, it has been held by the High Court that the inference was inevitable that the disbursing officers had omitted to mention the addresses of the labourers on the payment vouchers with intent to embezzle the government funds. According to the High Court, such inference is further fortified from the impeccable testimony of Shri B.R. Saini, Superintending Engineer, who deposed that his investigations at the spot revealed that much less work had been done than the details of work mentioned in the records prepared to indicate the actual work performed in implementing the projects. The High Court has held that Shri Saini deposed in all the cases and Shri Saini was a responsible senior officer of the department and he had no reason to falsely inculcate junior officers dealing with the disbursement of wages to the

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A labourers. According to the High Court, the testimony of Shri Saini was not to be doubted. The High Court has held that from the said investigations and the enquiry held at the spot, a conclusion can be drawn the large amounts out of the government funds allocated to execute the six projects, were misappropriated and embezzled by the officers dealing with the disbursement of the wages. The High Court has further held that the facts so established are consistent with the hypothesis of the perpetration of the crime of embezzlement. The High Court has further held that the evidence of Shri B.R. Saini, Superintending Engineer, regarding lesser work done and the factum that the wages were alleged to have been paid to the labourers on the basis of vouchers from which it was impossible to trace them, have completed the chain of circumstances which do not leave any reasonable ground for the conclusion inconsistent with the innocence of the officers dealing with the disbursement of the wages. Hence, the High Court has held that from the aforesaid facts, the prosecution case should be accepted.

D Coming to the question as to whether all the accused can be held guilty of committing the offence of criminal misappropriation and conspiracy, the High Court has held that it was not disputed that Shri Sidhu had empowered the Sub-Divisional Officers to make payments to the labourers. The Sub-Divisional Officers were required to maintain the records of the cash. Each payment made by the Sub-Divisional Officers was required to be witnessed by another official who was required to certify the payments. The High Court has held that in the present cases, the disbursement of wages was made by the Sub-Divisional Officers which was witnessed by the Section Officers who certified payment on each voucher. In that view of the matter, the High Court has held that it has been conclusively proved that the Sub-Divisional Officers and the Sectional Officers dealing with funds should be held guilty of conspiracy and embezzlement. Accordingly, they should also be held guilty of criminal misconduct under Section 5 (1) (d) of the Prevention of Corruption Act. The High Court has held that though the Executive Engineer, Shri Sidhu was in over all charge of the projects but it is manifest that he did not participate in the disbursement of wages to the labourers. Hence, it becomes evident that though he was responsible for the execution of the work to the Superintending Engineers, he was not directly involved in payment of wages to the labourers. The High Court, therefore, has given him the benefit of doubt by indicating that the department may, however, deal with him in a suitable manner for failure in the discharge of his duties efficiently.

Coming to the question of conviction of the Sub-Divisional Clerk, Shri Surjit Singh, under Section 466 and 477A of the Indian Penal Code, the High Court has indicated that the said Shri Surjit Singh was convicted as his thumb impressions were found affixed on the vouchers containing alleged thumb impressions of Subeg Singh, Mohinder Singh and Hans Raj. The High Court has acquitted him by giving benefit of doubt in view of the fact that the thumb impression of the said Shri Surjit Singh could not be held to have been proved by admissible convincing evidence. Accordingly, the High Court has acquitted the Executive Engineer Shri Sidhu and the said Sub-Divisional Clerk by giving them benefit of doubt but the convictions of the other accused were upheld by the High Court. The High Court, however, reduced the sentences to one year's rigorous imprisonment if any of the accused had been sentenced to undergo rigorous imprisonment for more than one year by the trial Court.

Mr. Ram Jethmalani, Senior Advocate, appearing for Inderjit Singh and others in the group of these Criminal appeals, has very strongly contended that the High Court has not accepted most of the circumstantial evidences sought to be relied upon by the prosecution by giving cogent reasons. He has submitted that it is only unfortunate that ultimately on surmise and conjecture, the convictions have been upheld by the High Court on the ground that the Superintending Engineering Shri Saini was a responsible officer and since he made enquiry at the spot and found that the work in respect of the said six projects was less than what was mentioned in the records, the case of conspiracy and embezzlement have been conclusively proved. Mr. Jethmalani has submitted that simply on the basis of the report of the Superintending Engineer, it was not open for the Court to draw a conclusion that less work had actually been done. The quantum of work actually done had not been proved by leading any other convincing evidence or examining independent witnesses for that purpose. The Court has not accepted any other evidence for the purpose of holding that less work had been done in respect of the said six projects. The Reports of Shri Saini is based on the personal assessment of the said Superintending Engineer and it is not unlikely that the said Reports are erroneous. Mr. Jethmalani has also submitted that even if it is assumed that less work had been done, the said fact does not constitute the offence of embezzlement and falsification of the records in perpetrating the said crime of embezzlement until and unless it can be convincingly proved by leading unimpeachable evidence that payment had not been actually made

- A to the Labourers but in the name of work charged labourers, the bills were falsely drawn and money under the bill had been misappropriated, no order of conviction against the accused for the charges levelled against them can be passed simply on a finding that less work had been done. He has submitted that even if it is assumed that the local officers neglected in discharging their responsibilities and duties, such officers may be held guilty in departmental proceedings for the dereliction of duties but certainly cannot be convicted for the offence for which they were charged. Mr. Jethmalani has also contended that the Divisional Accountant admittedly did not return any of the vouchers for making payment on the score that such voucher was incomplete and lacking in material particulars. Such fact really supports the case of the accused that for payment of work charged labourers, the maintenance of form P.W. 29 had been insisted upon. Mr. Jethmalani has also submitted that the High Court has given benefit of doubt to the two accused but unfortunately has upheld the conviction against the other appellants without appreciating that the circumstantial evidence was miserably lacking to establish the complicity of the accused in the offence alleged against them. Mr. Jethmalani has submitted that it is unfortunate that despite the absence of intrinsic evidence from which irresistible conclusion about the guilty of the accused by eliminating any other hypothesis, can be drawn, the High Court has jumped on the conclusion that the accused must be held guilty simply by assuming that in order to cover up the crime of embezzlement improper vouchers were prepared and bills were drawn showing greater volume of the work when in fact lesser work, as revealed in spot enquiry, was executed. As from both the said facts, namely, execution of lesser work than mentioned in the records and payment to labourers on the basis of improper vouchers lacking in detailed particulars, the prosecution case is not established even if correctness of assumed facts is accepted, the conviction of the appellants must be held to be illegal. He has, therefore, submitted that grave injustice has been done to the accused and the appeals should be allowed by setting aside convictions and sentences.
- G The other learned counsel appearing for the appellants in the connected appeals have adopted the arguments of Mr. Jethmalani and have submitted that the convictions and sentences of the accused should be set aside.
- H Learned counsel appearing for the State of these appeals has, how-

ever, disputed the contentions made by Mr. Jethamalani and has contended that in the instant case, the concerned accused hatched the conspiracy to defraud the public exchequer and with such intention deliberately prepared some vouchers showing alleged payments to various labourers for the works done by them without giving particulars of such workers contrary to the instructions for maintaining vouchers in a particular manner, in order to make it impossible to verify the actual payment by examining the concerned labourers. The learned counsel has also submitted that the Superintending Engineer made spot enquiries about the quantum of work done in respect of the six projects and he has deposed categorically that the work mentioned in the records on the basis of which the alleged payments had been made to the workers was much less than what had actually been done. The High Court has rightly pointed out that the said Superintending Engineer was a responsible senior officer who had no animus against any of the accused who were his subordinate officers and his deposition should be accepted. The learned counsel for the respondent has submitted that if such evidence is accepted, the falsification of records is writ large and the case of embezzlement is also established beyond reasonable doubt. He has submitted that the Court below, therefore, had no hesitation in holding the accused guilty and this Court should not interfere with the concurrent finding made by the courts below and the appeals should be dismissed.

After giving our anxious consideration to the facts and circumstances of the case and the evidence adduced in the trials, it appears to us that simply on the basis of the reports of the Superintending Engineer that less work than what was stated in the records was done, the case of embezzlement by deliberately falsifying the records is not established. Until and unless by cogent and unimpeachable evidence about the factum of non payment to labourers of the amount drawn in their names can be established, the case of embezzlement by the government officers and misappropriation of government fund cannot be sustained. The Superintending Engineer may be a responsible officer but it would not be safe to simply rely on his assessment of the work done and in our view, for basing the conviction, other convicting corroborative evidences about the quantum of work done is necessary. In the facts of the case, it will not be just and proper to accept the said report and deposition of Shri Saini to be conclusive about the quantum of work done. That apart, Mr. Jethamalani is justified in his contention that unless and until the factum of non payment

A to the workers is established, over payment to the workers on account of less work done cannot be held to be sufficient evidence to convict the accused for the offences alleged against them. Even if it is assumed that the local officers who were entrusted with the task of payment to the labourers were careless and did not actually ascertain the quantum of work executed by the labourers but made payments to the labourers on the basis of work as indicated in the bills, such local officers may be held guilty of dereliction of duty but they cannot be held to be guilty for the offences alleged against them. In the instant case, the chain of circumstantial evidence is far from being complete and the conviction, in our view, has been based more on surmise and conjecture than on the basis of convicting and unimpeachable evidences. We, therefore, have no hesitation in dismissing criminal Appeals Nos. 22-28 of 1986 and allowing all the other appeals preferred by the accused appellants and setting aside the conviction and sentences passed against the said appellants.

RA

Appeals allowed.