Major Som Nath

Vs

Union of India and Another

Criminal Appeal No. 102 of 1969

(Reddy, J.)

25.05.1971.

JUDGMENT

REDDY, J. -

1. This appeal is by special leave against the judgment of the High Court of Punjab and Haryana confirming the conviction of the accused under Section 5(1)(c) of the Prevention of Corruption Act, 1947, as also the sentence awarded by the Sessions Judge of one year's rigorous imprisonment and a fine of Rs. 2,500/-, in default six months rigorous imprisonment.

2. The facts of the case in brief are that in view of the Chinese invasion Air Field at Sirsa required to be extended for which purpose the Ministry of Defence, Government of India took steps to acquire some lands of agriculturists pursuant to which a notification, dated November 27, 1962, was issued under Section 4 of the Land Acquisition Act, 1884, for acquiring 51.79 acres of land situated in the State of Ahmedpur. On the next day another notification was issued under Section 6 of the Land Acquisition Act on November 28, 1962, and in view of the emergency action under Section 17 was taken for obtaining possession of the land with a view to its development. The lands which were acquired belonged to several land holders including Moti Ram and P.W. 12 Kewal Chand. The Collector gave his award of February 26, 1963, (Ex.P. 26) in respect of these lands, which actually measured 49.47 acres, at Rs. 1,350/- per acre amounting to Rs. 66,784.50 nP. Apart from this amount compensation was also awarded for standing crop amounting to Rs. 11,073.13 nP.

3. Before the land was actually acquired the appellant who was a Major in the Military Engineering Service was working as a Garrison Engineer and was incharge of the extension. He had in anticipation of acquisition and execution of the work appointed A. B. Ranadive, P.W. 14 as assistant Garrison Engineer who was to be responsible for all the matters connect with the acquisition of land, demarcation of boundaries as an Engineer Incharge for execution of the contract and responsible for the maintenance of the Air Field. The work of the extension of Aerodrome was entrusted to one Telu Ram, P.W. 8 contractor, with whom the M.E.S. Department entered into an agreement on December 3, 1962. This agreement was signed both by the appellant and P.W. 14. The work according to that agreement was to be done in two phases-first phase was to commence on January 10, 1963, and was to be completed by October 9, 1963. After the completion of the first phase the second phase was a start on October 10, 1963 and completed by May 9, 1964. Pursuant to this agreement it is said that symbolic possession of the land which was acquired was taken over by the Tehsildar on February 1, 1963, after which at any rate it appears from Ex. P. 24 that actual possession of this land was handed over by the said Tehsildar on February 13, 1963, to the appellant. The receipt Ex. P. 24 bears the signature of N. L. Handa, the Tehsildar and of Sukhchain Lal Jain P.W. 11 on behalf of the Military Estate Officer and the appellant. From this receipt it is

evident that possession of 50.12 acres was handed over by the Tehsildar and taken over by the appellant and the Military Estate Officer Sukhchain Lal Jain.

4. The case of the prosecution initially was that after the land so acquired with the standing crop was taken possession of by the appellant he sold the crop to Moti Ram and Kewal Chand for Rs. 2,500/- and facilitated the cutting and taking away of the crop by postponing the handing over of the possession to the contractor till April 5, 1963, and misappropriated the money. In respect of this allegation the First Information Report (Ex. P. 29) was issued on January 14, 1964, in which the following statement is relevant :

"It is alleged that Major Som Nath accused who is a Garrison Engineer Sirsa Air Field subsequently sometime in the months of March and April, 1963, permitted the removal of the standing crop valued at Rs. 11,073.13 by Shri Moti Ram and Kewal Chand, etc., after accepting illegal gratification of Rs. 3,000/- from them. Major Som Nath did not account for this amount in the Government Revenues. He thus abused his position as a public servant and caused pecuniary advantage to said Shri Moti Ram and Kewal Chand by giving them standing corps worth Rs. 13,000/- for a consideration of Rs. 3,000/- only, which amount he accepted for his personal use and thereby also abused his official position and obtained pecuniary advantage for himself in a sum of Rs. 3,000/-.

The facts disclose the commission of the offence of criminal misconduct as defined in Section 5(1)(d), read with Section 5(2) of the Prevention of Corruption Act, 1947, by Major Som Nath accused. A regular case is therefore registered and entrusted to Inspector Baldev Raj Handa for investigation."

After this F.I.R., certain statements were recorded by the Military authorities being DA to DE, DM, DM/1, DN and DL of Mani Ram, Mulkh Raj, Ganpat Ram, Telu Ram, Kewal Chand and Sukhchain Lal Jain. A charge-sheet was filed against the appellant under Section 5(1)(c) and 5(1)(d), read with Section 5(2) of the Prevention of Corruption Act on August 5, 1966, after obtaining sanction from the Government of India, Ministry of Home Affairs on April 11, 1966, as per Ex. P. 23. The Special judge acquitted the appellant of the second charge namely that being a public servant he had by corrupt or illegal means or by otherwise abusing his position as a public servant obtained for himself a sum of Rs. 2,500/- from Moti Ram of Sirsa for cutting the crops and thereby committed offence under Section 5(1)(d) punishable under Section 5(2). The accused was however convicted under the first charge for an offence under Section 5(1)(c) in that he being a Garrison Engineer incharge of the Air Field Sirsa and in that capacity entrusted with standing crops of Sarson, Gram and Lusan on 30 acres of land a part of 49 acres of land acquired by the Government and which had been valued at Rs. 11,073.13, by the Revenue authorities, dishonestly or fraudulently allowed Moti Ram of Sirsa to misappropriate the said standing crop and thereby contravened Section 5(1)(c) of the Prevention of Corruption Act punishable with Section 5(2) of that Act. Against that conviction and sentence he appealed to the High Court which maintained the conviction and sentence.

5. The learned advocate for the appellant has meticulously taken us through the entire documentary and oral evidence and commented at length upon the various contradictions and incongruities in the case of the prosecution with a view to establishing that when the appellant took possession of the land there was no from standing on it - that the possession of the land was in fact delivered to Telu Ram, contractor on January 10, 1963; that the said contractor had admitted that possession of the entire land was received by him; that he carried on the construction work in extending the Aerodrome; that 200/250 donkeys were also used of doing the work by reason of which the crop

was damaged before Tehsildar had put the appellant in possession of the land and as a matter of fact there was no crop thereon when he got the possession of the land. It was also contended that the High Court had not considered the contradictions in the earlier statement made by some of the witnesses to the Military authorities and that it relied on many of the documents for affirming the conviction of the appellant without their actually being put to him under Section 342.

6. Before we consider these contentions it is necessary to determine another submission of the learned advocate for the appellant which goes to the root of the jurisdiction of the court to try the offence, under Section 5(1)(c). If this contention is valid then the conviction of the accused cannot stand and therefore it is necessary to deal with this matter first. It may be mentioned that though a complaint was made in the application for a certificate for leave to appeal to this Court that the learned Single Judge of the High Court should have acquitted the appellant on the sole ground that there was no proper sanction for the prosecution of the appellant under Section 5(1)(c) of the Prevention of Corruption Act, this question does not seem to have been urged before the High Court. In any case we do not think that there is any validity in the submission that the sanction given by the Government of India does not cover the trial of the charge under Section 5(1)(c) of the Prevention of Corruption Act. For a sanction to be valid it must be established that the sanction was given in respect of the facts constituting the offence with which the accused is proposed to be charged. Though it is desirable that he facts should be referred to in the sanction itself, nonetheless if they do not appear on the face of it, the prosecution must establish aliunde by evidence that those facts were placed before the sanctioning authorities. It is therefore, necessary to first examine the order of sanction to ascertain on what facts it has been accorded.

7. The sanction that has been accorded is in the following term :

#April 11, 1966.##

Whereas it is alleged that Major Som Nath ........... while functioning as Garrison Engineer, MES, Air Field at Sirsa from February 13, 1963 to April 5, 1963, by corrupt or illegal means or by otherwise abusing his position as such public servant, obtained pecuniary advantage of Rs. 2,500/- for allowing the standing crops to the cut from the land acquired for the extension of Air Field Sirs; and/or he dishonestly or fraudulently realised and misappropriated Rs. 2,500/- during the aforesaid period as the value of the crops cut from the land acquired for the extension of Air Field Sirsa, which corps had been entrusted to him as a public servant and he instead of depositing the said sale price into the Government Treasury converted it to his own use;

And whereas the said acts of Major Som Nath ......... constituted offences punishable under Section 5(2) of the Prevention of Corruption Act, read with Section 5(2)(c) and (d) (Act No. II of 1947) of the said Act and Section 409 of the I.P.C.

And whereas the Central Government after fully and carefully examining the materials before it in regard to the said allegations and circumstances of the case, consider that major Som Nath ...... should be prosecuted in a Court of Law for the said offences.

Now therefore, the Central Government doth hereby accord sanction under Section 197, Code of Criminal Procedure (Act No. 5 of 1898) and Section 6(1)(a) of the Prevention of Corruption Act, 1947(Act II of 1947) for the prosecution of Maj. Som Nath for the said offences and for any other offences punishable under the provision of law in respect to the aforesaid acts by the Court of competent jurisdiction.

By order and in the name of the President.

#Sd./- (A. P. Veeta Raghavan)Deputy Secretary to theGovernment ofIndia."Deputy Secretary to theGovernment of India."##

8. From the above order it is apparent that the facts which the Central Government considered for the purposes of according sanction were : (a) that the appellant as a public servant was entrusted with crops situated on the land acquired for the extension of Air Field, Sirsa; (b) that by abusing his position as a public servant he allowed the standing crops to be cut from the said land; (c) that by corrupt or illegal means and by abusing his position as a public servant he obtained pecuniary advantage of Rs. 2,500/- as the value of the crops to be cut from the land and/or he dishonestly or fraudulently misappropriated that sum by converting it into his own use instead of depositing the said sale price in the Government Treasury.

9. On these facts and after applying its mind as spoken to by P.W. 10 Kalra the Government accorded its sanction for prosecution of the offences punishable under Section 5(2), read with Section 5(1)(c) and 5(1)(d). The question therefore would be whether these facts were sufficient to sustain the sanction under Section 5(1)(c) even if the charge under Section 5(1)(d) had failed. This question in turn will depend upon what are the ingredients of the offences under Section 5(1)(c) and (d), read with Section 5(2). Under Section 5(1)(c) - A public servant is said to commit the offence of misconduct in the discharge of his duty if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do, and under Section 5(1)(d) if he by corrupt or illegal means or by otherwise abusing his position as a public servant, obtains for himself of for any other person any valuable thing or pecuniary advantage.

10. It would be seen therefore that under Section 5(1)(c) a public servant will be said to commit the offence of misconduct in his duties if he dishonestly allows any other persons to convert to his won us property which is entrusted to the said public servant. The facts which have been set out in the order granting the sanction certainly are sufficient to indicate that the authorities granting the sanction had the offence under Section 5(1) (c) also in their contemplation. In fact the order specifically mentions this provision while granting sanction.

11. We should have thought this was an obvious conclusion but he learned advocate for the appellant strenuously contended that the charge against the appellant was of a motiveless offence and in any case the facts as disclosed show that not only at the time when the First Information Report was given but even at the time when sanction was accorded that the prosecution was merely concerned with the charge that the appellant had allowed the crops to be cut on the condition that Rs. 2,500/- will be paid and received the money and misappropriated or converted it to his own use by not paying it into the Government Treasury. There is, therefore, no basis for sanction for a charge under Section 5(1)(c). It is further contended that the stand taken by the prosecution was that the person who were permitted to cut the crops had not committed any offence. In so a change under Section 5(1)(c) would implicate those persons also in the commission of an offence which certainly would not have been in the contemplation of the authorities granting the sanction. In support of this contention three decisions have been cited before us namely Bhagat Ram v. State of Punjab, (AIR 1954 SC 621 : 1954 Cri LJ 1645) Madan Mohan Singh v. State of U. P. (AIR 1954 SC 637 : 1954 Cri LJ 1656) and Gokulchand Dwarkadas Morarka v. The King. (AIR 1948 PC 82 : ILR 1948 Bom 316 : 50 Bom LR 399 : 49 Cr LJ 261) Bhagat Ram's case (supra), was not concerned with the sanction but only with the question, whether the offence could be altered to one of abetment of an

offence of Section 409, I.P.C., from one under Section 409 simpliciter. It was held that an alteration of the appellant's conviction under Section 409, I.P.C., into one of abetment thereof would imply a definite finding against subordinate Judge who is not before the court and as such it would be unfair to make such an alternation. We do not see how this case can assist the appellant because in the first place there is no question of an alternation of the charge and secondly the circumstances that someone who is not a public servant abetted the appellant is hardly relevant. But even so the offence with which the appellant is charged under Section 5(1)(c) does not necessarily involve an abetment with the person whom he had dishonestly allowed to cut and take away the crop. For instance it is quite possible that the person whom he allowed to cut the crop may be his own relation or friend in whom he may be interested and who may, however, not know that the accused was doing something dishonest in permitting him to cut the crop. In any case the facts which have been stated in the sanction clearly indicate that the appellant has dishonestly allowed the crops to be cut so that there is no question of any inference or implication that the persons cutting the crops were abetting him in the offence. Even if it were so the sanction cannot be held to be bad on that account.

12. Gokulchand Dwarkadas's case (supra), also is of no assistance to the appellant because in the case the sanction did not disclose the facts on which it was given but merely sanctioned the prosecution for a breach of certain provisions. Sir John Beamont delivering the Judgment of the Judicial Committee observed at page 84 :

"But if the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority ............ Nor, in their Lordships' view, is a sanction given without reference to the facts constituting the offence a compliance with the actual terms of Clause 23. Under that clause sanction has to be given to a prosecution for the contravention of any of the provisions of the Order. A person could not be charged merely with the breach of a particular provisions of the Order; he must be charge with the commission of certain acts which constitute a breach, and it is to that prosecution - that is, for having done acts which constitute a breach of the Order - that the sanction is required. In the present case there is nothing on the face of the sanction, and no extraneous evidence, to show that the sanctioning authority knew the facts alleged to constitute a breach of the Order, and the sanction is invalid."

13. The case of Jaswant Singh v. The State of Punjab (1958) SCR 762 : AIR 1958 SC 124 : (1958) SCJ 355), was also cited by the respondent's advocate in support of the contention that the trial of two offences requiring sanction was not valid. In that case sanction was given under Section 6 of the Prevention of Corruption Act, 1947 for the prosecution of the appellant for having received illegal gratification from one Pal Singh. He was charged with and tried for two offence under Section 5(1)(a) of the Act for habitually accepting or obtaining illegal gratification and under Section 5(1)(d) for receiving illegal gratification from Pal Singh. The Sessions Judge had found that both charges were proved. While in appeal the High Court held that the appellant could neither be tried nor convicted of the offence under Section 5(1)(a) as no sanction had been given in respect of it but upheld the conviction under Section 5 (1)(d) for which sanction had been given. A perusal of the sanction would show that the sanctioning authority had applied their mind to only one instance but the prosecution were seeking to make the sanction cover the offence of a habitual bribe-taken which clearly implies that the sanctioning authorities must consider the number of instances when the accused took bribes and on what occasions as would justify a charge of his being a habitual bribe-taker. Sinha, J., as he then was while dismissing the appeal observed at page 766 :

"In the present case the sanction strictly constructed indicates the consideration by the sanctioning

authority of the facts relating to the receiving of the illegal gratification from Pal Singh and relating to the receiving of the illegal gratification from Pal Sing and therefore the appellant could only be validly tried for the offence. The contention that a trial for two offences requiring sanction is wholly void, where the sanction is granted for one offence and not for the other, is in our opinion unsustainable. Section 6(1) of the Act bars the jurisdiction of the Court to take cognizance of an offence for which previous sanction is required and has not been given. The prosecution for offence under Section 5(1)(d) therefore is not barred because the proceedings are not without previous sanctions which was validly given for the offence of receiving a bribe from Pal Singh, but the offence of habitually receiving illegal gratification could not be taken cognizance of and the prosecution and trial for that offence was void for want of sanction which is a condition precedent of the Courts taking cognizance of the offence alleged to be committed and therefore the High Court has rightly set aside the conviction for that offence."

14. These cases instead of supporting the contention of the learned advocate amply demonstrate that the facts which formed the basis of the sanction and which was accorded after the sanctioning authority had fully applied its mind to them, should be co-related to the particular offence or offences with which the accused is charge or convicted.

15. In our view there is no justification for holding that the conviction under Section 5(1)(c), read with Section 5(2) is bad for want of the requisite sanction.

16. Now on the merits of the case as we said earlier the learned advocate for the appellant has referred to evidence in meticulous detail and has commented thereon at length but this Court ordinarily does not reappreciate the evidence with a view to arriving at its own finding as if it was a Court of fact and does not ordinarily upset the findings of the High Court which has on an evaluation of the evidence affirmed the Trial Court's conviction and sentence. It has been contended firstly that the High Court was in error in relying on certain evidence for convicting the accused which was not put to him. Secondly the evidence that was necessary to unfold the story of the prosecution has not been produced by the prosecution but the Trial Court and the High Court ignored this lacuna in the prosecution case. Thirdly the Judgments show that there was utter confusion in respect of the date on which possession of the acquired land was given to the appellant and the date on which it was given to the contractor for carrying on the work, as also in respect of the fact whether there was any crop standing when the appellant took possession of the land and at what period of time the crop was cut and the work commenced.

17. Before we deal with the contentions urged on behalf of the appellant it is necessary to have a clear picture of certain broad features of the case. The Air strip which was being extended is in one straight line with Taxi-ways. P.W. 14, Ranadive tells us that if one were to go from the entrance of Airfield to the acquired land one would have to pass through RD 4500 to 1200. The acquired land extended from RD 1200 to RD 00. According to P.W. 8, Telu Ram, he acquired possession of the land of the length from RD 4500 to RD 1200 on January 10, 1963 and that the possession of the acquired land was not delivered to him as it had no been acquired by that time. Ex. DQ review report which is headed Technical Administration Contract shows that the date of review was February 9, 1963. In this document the date of the conclusion of the contract is given as December 3, 1962 and date of commencement of work as January 10, 1963, date of completion of first phase October 9, 1963, and second phase May 9, 1964. To the question "have all sites been handed over on due date" the answer shown was an affirmative 'yes'. There is however nothing in this document to show what is the site of which possession was handed over to and taken by Telu Ram on January 10, 1963. It is not the case of the appellant that acquisition of the land on which the crop was

standing had taken place nor could possession of it been handed over to him because be denies that there was any crop on the land when the possession of the land was handed over to him. That there was crop on the land is amply borne out by a letter of the appellant, dated February 12, 1963, addressed to Mr. G. L. Nagpal, Sub-Divisional Magistrate, Sirsa. In this letter he say :

#"February 12, 1963.##

My Dear Mr. Nagpal,

I am writing to you with regard to acquisition of land for Sirsa Airfield. As you know, the Additional Deputy Commissioner Hissar will be visiting this location on February 13, 1963. The Military Estates Officer, Delhi, Mr. K. K. Gamkhar will also be here on 13th morning. It is desirable that entire proceedings with regard to acquisition of land and determining compensation for standing crops for the total area of 39.58 acres in Mirpur and Ahmadpur villages are finalised on this date. As I have told you personally, we are keen to finalise the proceedings for the total area to be acquired by us and not by phases. This is in the interest of the project. I therefore request you to issue suitable instructions to your staff so that all the relevant papers may be suitably prepared."

Even if Exhibit DQ, gave a correct picture, it could be in relation to the airstrip already in existence, as this would be necessary for a contractor who is charged with duty to carry out extension work to go on the site collect material and get everything ready to execute his contract. In fact as we have noticed earlier this is what Telu Ram says in his evidence, namely that on January 10, 1963, no delivery of possession of the remaining land other than RD 4500 to 1200 (the land in which there is the existing run-way) was given. It was then that he wrote on January 23, 1963, as per Ex. 8 to the Assistant Garrison Engineer Complaining that the possession of the whole of the land had not been delivered to him. A copy of this letter was sent to the Garrison Engineer - the appellant. This letter shows two things (a) that complete site 4500 to 0 ft. has not yet been handed over "as it was presumed that the possession of the land could not be had so far" and (b) that as levels have not been given, the final excavation of the foundation cannot be done and all subsequent operations are therefore withheld.

18. This letter clearly indicates that some excavation was being done as otherwise there is no meaning in saying that final excavation cannot be done. This is also consistent with the other evidence that some work was in progress which again is in accord with the evidence of Telu Ram, P.W. 8, that he got the possession of RD 4500 to RD 1200. The extension of the Airstrip would mean that the existing Airstrip is being extended, so that the initial work can be started and continued on the existing Airstrip. It is not as if the existing Airstrip ends at the boundary of RD 4500 to RD 1200, so that the work of extension can go on in the existing Airstrip even before possession of the acquired land was given. This is further confirmed by a perusal of the letter written by the appellant to Telu Ram, P.W. 8, in reply to his letter, dated February 28, 1963 (not produced) that "Necessary possession of the runway and taxi-track has already been given to you. You are therefore requested to set out the work and get the same approved by the Engineer incharge before starting the work." This shows that no work hand in fact been undertaken on the land acquired and also that possession of the existing runway and track had already been given. nothing is specifically mentioned about possession of the acquired land being given to him on that date. The work on that land is only at the stage of getting approval.

19. Now the next question is when was the possession of the acquired land obtained by the appellant and when did he deliver it to P.W. 8. P.W. 14 says that symbolic possession was delivered to him in

respect of the acquired land on February 1, 1963. It would however appear from Ex. P. 34 that actual possession was delivered to the appellant on February 13, 1963, as per the delivery receipt executed by him, the Tehsildar and P.W. 11, a representative of the Military Estate Office and that even according to his letter already referred to Ex. P. 13, there was standing crop on the land as otherwise there is no meaning in the appellant saying therein that it is desirable that entire proceedings with regard to acquisition of land and determining compensation for standing crops for the total area of 39.58 acres are finalised on February 13.

20. There is also credible evidence that possession of the acquired land was not handed over to the contractor till late in March, 1963, though it was handed over to and taken over by the appellant on February 13, 1963. The Khasra Girdawari Ex. P. 3, would show that there was a crop of Sarson (Mustard) Gram and Lusan, at any rate on March 20, 1963, at a time when the land has been shown therein to have been in possession of the Military authorities. Ex. P. 2 is a certified copy by the Tehsildar, dated September 18, 1963, which shows that as per the Girdawari on March 20, 1963, crops were standing on the lands in the village Ahmedpur acquired by the Military authorities for Sirsa Airfield construction, the details of which were that the total land acquired for Airfield 49 acres, the land on which crops were standing in good condition 23 acres and the land on which crops were standing in damaged condition 7 acres and uncultivated land 19 acres.

21. Mani Ram Patwari had stated that by March 20, 1963, some ground had been cleared. Sukhchain Lal Jain, P.W. 11, who had also come to obtain possession on behalf of the Military Estate Officer had said that he had seen some part of the crops had been cut by February 13, 1963, but was not aware who had cut them. This evidence, however, does not assist the accused. At the most it shows that a small portion of the crops were cut but it is apparent that that has not been taken into account by the Collector in assessing the value of the crop because it is on that day that crops were inspected for that purpose and subsequently the Agricultural Officer also had in his letter, dated February 18, 1963, which has been cited in the award Ex. P. 26 intimated that on inspection the crops were found to be very good. He had also given the approximate yield and the rate at which the crop can be valued with which the Collector agreed and awarded compensation. It is therefore clear that in estimating the crop, the small portion of the land where crops were stated to have been cut by February 13, 1963, even if true could not have been taken into account. It may also be stated that the contractor had written to the Garrison Engineer on February 28, 1963, requesting him to hand over immediately the possession of the remaining portion of the land so that excavation work is not held up. He also informs in that letter that the excavation in all available portions of the taxi-track and runway has been completed. This again does not specifically refer to the land which is being acquired. At any rate on March 23, 1963, P.W. 8, has again written to the Garrison Engineer namely the appellant that the excavation of the taxi-track could not be proceeded with for want of alignment to be given which was pending for want (because) of standing crops, in the land, the possession of which has not been given so far. Thereafter the following pertinent statement appears namely :

"Now, today I find that the crops have been completely cut and as such it is requested that further necessary action in the matter of giving the alignment and possession of land may please be taken at your end."

On April 6, 1963, he has again written to the Garrison Engineer saying as follows :

"You have verbally asked me now to taken the site after the crop is cut and the necessary working of the alignment has been taken in hand but this handing over had not been shown on the site order

book by the A.G.E. (B/R) despite my request.

He may please be asked to complete this formality without any loss of time."

In reply the appellant states in his letter Ex. P. 12, dated 10th April "The matter has already been discussed with you and finalised. No further action is required to be taken."

22. It can be seen from the above that the appellant is reluctant to reply in writing as to what he is asking the contractor to do under verbal orders while the contractor for safeguarding his position is instating on having it in writing.

23. The Trial Court as well as the High Court are in our view, justified in holding that crops of Sarson, Gram and Lusan were standing on the land acquired by the Military for extension of the Aerodrome. It will also justify the conclusion that they were there at any rate till March 20, 1963 and according to the letter of the contractor (P.W. 8) on March 23, 1963, they were completely cut. In so far as handing over of the possession of the land to the contractor (P.W. 8) is concerned, the Trial Court and the High Court are equally justified in coming to the conclusion that the accused had not delivered the possession of the land so the contractor till quite late as would appear from the letter of P.W. 8, dated April 5, 1963.

24. We are aware of the argument addressed before us that some of the witnesses had said that the water channels had been closed in February, 1963, and therefore no crop could thereafter have been standing on the land and must have been destroyed. There is also the further argument that some of the statements records by the Military authorities were not taken into account, as the High Court had thought that since the deponents denied the contents the officers who recorded the statement might have been called to show that they were properly recorded. The learned advocate for the respondent also tried to support the stand taken by the High Court. It is true that when a witness has admitted having signed this previous statements that is enough to prove that some statement of his was recorded and he had appended his signature thereto. The only question is, what use can be made of such statements even where the witness admits having signed the statements made before the Military Authorities. They can at best be used to contradict in the cross-examination of such a witness when he gives evidence at the Trial Court of the accused in the manner provided under Section 145 of the Evidence Act. If it is intended to contradict the witness by the writing, the attention of the witness should be called before the writing can be proved to those parts of it which are to be used for the purpose of contradicting him. If their is not done, the evidence of the witnesses cannot be assailed in respect of those statements by merely proving that the witness had signed the document. There the witnesses are contradicted by their previous statements in the manner aforesaid, then that part of the statements which has been put to the witness will be considered along with the evidence to assess the worth of the witness in determining his veracity. The whole of the previous statement however cannot be treated as substantive evidence.

25. We do not find that the assessment of the evidence by the Trial Court and the High Court even in the light of such of those previous statement that have been put to the witnesses in the manner stated above is in any way unjustified. It is said that some of the documents, i.e., Exs. 8, 10 and 11 have not been put to the witnesses even though the Court relied upon them. Ex. P. 8 as already noticed is the letter of Telu Ram Jain to the Assistant Garrison Engineer and P. 10 is the letter to Telu Ram Jain to the Garrison Engineer. Both these relate to possession of the acquired land not being given to him. In the examination of the accused under Section 342 the Special Judge in our view did put all the circumstances against the accused which formed the basis of the conviction. He

was asked about the symbolic delivery of possession, the handing over of the actual possession of the land on February 13, 1963 and the existence of crop on the date when possession was delivered on February 16, 1963. He was asked about Telu Ram's evidence and also that he had given possession of the land RD 1200 to Rd 00 to the contractor after the crop had been cut. The letter Ex. P. 13 was also put to him and he was asked about the existence of the crops. It cannot, therefore be said that circumstances appearing against the accused which have formed the basis of the conviction had not been put to him. The appellant has denied that there was any standing crop on the land acquired on any dated after February 13, 1963.

On the other hand, he emphatically asserted that at the time when the possession was delivered to him on February 13, 1963, there was also no crops standing on the acquired land. This statement is clearly false as it is against credible documentary evidence at a time when there was no possibility of any charge being levied against the appellant. It is also incorrect because the contractor did not work on the acquired land since February 1, 1963, that position is reflected in the review report initiated by the A.G.E. on February 9, 1963 (vide Ex. DQ). The appellant's statement is therefore belied by the documentary evidence which shows unmistakably that there was on February 13, 1963, bumper crops of different varieties standing on the land which was valued thereafter and compensation assessed. We do not, therefore, think that there is any justification in the criticism that the circumstances appearing in the several documents have not been put to him.

26. It is lastly contended that certain witnesses who would be necessary to unfold the prosecution story have not been called and in spite of the Court directing the production of the usufruct register it was not produced. These omissions it is submitted by the learned advocate has prejudiced the accused. As the learned advocate for the respondent rightly pointed out with reference to each one of the persons who, it was claimed, should have been called, that there was already evidence relating to the particular matter about which the person specified was sought to be called. For instance, it is said that Gamkhar, Military Estate Officer was not produced to prove the receipt Ex. P. 24. But this was not necessary because Gamkhar was not present nor did he sign the receipt. The person who had signed the receipt is Sukhchain Lal Jain and he was examined as P.W. 11. Similarly, it is said that the Tehsildar N. L. Handa has not been produced. But when the prosecution relies upon the proof of Ex. P. 24 as also to establish that there was standing crops on the land when the possession was delivered on February 13, 1963, on certain witnesses who were present on the respective occasions, the non-examination of other witnesses without anything more cannot be treated as defeat in the prosecution. Before the High Court also this grievance was aired but that Court has also likewise found no justification in it. We are therefore no impressed with this argument. On a careful consideration of the evidence both oral and documentary it is established that the appellant who was incharge of the expansion work on the Airstrip was given possession of the land acquired for the purpose on February 13, 1963, that there was standing thereon, a bumper crop of Sarson, Gram and Lusan on that day, that he was therefore entrusted with this crop, that he postponed giving delivery of the land to the contractor till, at any rate after March 23, 1963, and before April 6, 1963, and that he allowed the crop to be cut and taken away without in any way accounting for it which shows that it was done dishonestly and fraudulently. The fact that notwithstanding over whelming evidence particularly of his own admission at the time he denies that there were ever any crops when delivery of possession of the land acquired was taken by him, further reinforces the conclusion that he allowed the crops to be cut away with dishonest or fraudulent motive. We do not think in these circumstances there is any justification whatever for interfering with the concurrent findings of the Trial court and the High Court that the appellant is guilty of an offence under Section 5(1)(c) read with Section 5(1) of the Prevention of Corruption act and consequently the appeal is dismissed.

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