

ALLAHABAD HIGH COURT

N.G. Chatterji

Vs

Emperor

(Sinha, J.)

17.01.1946

ORDER

Sinha, J.

1. This is an application in revision against an order of the learned Sessions Judge of Meerut by which he, in substance, affirmed the judgment of the learned Additional District Magistrate of Meerut. The facts in this case are highly complicated, but they have been presented before me with great lucidity by the learned Counsel for the parties. The story briefly is this : Dr. N.G. Chatterji and Mr. S.R. Chatterji are brothers. Mr. B. Mukerji is a cousin of theirs. Dr. N.G. Chatterji is the principal actor and for a proper and true appreciation of the case, it will be desirable to follow his career a little earlier than the stage which might be considered strictly necessary for following the prosecution story. He is a Doctor of Science of the Allahabad University and joined the Muir Central College in November 1919, as a Demonstrator. On 16th March 1921, he was taken over by the Department of Industries and appointed a Lecturer in the Cawnpore Harcourt Butler Technological Institute. In 1924 he was sent to Europe by the Government for some technical study, in which capacity he visited a number of places and made a special study of Power Alcohol Technology. He visited, among other places, England Holland, Germany, Czechoslovakia and Italy. In 1938 he was appointed by the Government, Member and Secretary of a Committee of Inquiry for finding out the possibility of producing alcohol in these Provinces. On the outbreak of the war, with the increase of pressure on petrol it was necessary to find some substitute for it and the Government requisitioned the services of Dr. Chatterji to explore the possibility of Power Alcohol as a substitute. His report was that it was possible to substitute Power Alcohol for petrol and the Government accepted his report, with the result that it passed an Act called the Power Alcohol Act, (Act 18 [XVIII] of 1940). In July 1941, he was appointed Technical Adviser to the Excise Commissioner. It might be mentioned that Mr. Bhadkamkar, I.C.S., held that office at that time. Power Alcohol was then a matter of private enterprise, but Dr. Chatterji thought that effective increase in the commodity could be secured only by its effective control and the Government was the only proper agency for it. It appears that the only firm which had the necessary plant for the manufacture of this commodity was the

Central Distillery and Chemical Works, Ltd. at Meerut. On the report, mentioned above, Mr. Waugh, the War Production Commissioner, visited the Distillery. He agreed with Dr. Chatterji and decided that the control of that concern should be taken over by the Government. A notification, dated 27th March 1942, to this effect appeared in the U.P. Gazette. Dr. Chatterji was appointed its manager with a direction to see that the object of the Government, was fully carried out. The replacement of private enterprise by Government control was not received well by the vested interests. It appears, however, that there was no effective interference with the actual management which to all intents and purposes, remained unaffected. Things, however, took a more serious turn when on 10th April 1942 the Secretary of the Company had to leave and, on 29th April 1942, there was another notification in the Government Gazette authorising the Controller to remove the Managing Agents and Directors. On 5th May 1942 the Government granted a loan of Rs. 25,000 to the Distillery. On 7th May 1942 the Managing Agents were removed. These Managing Agents, who were three in number, were being paid RS. 500 a month and it is only natural that this order should have been the cause of deep resentment. But something happened later, which dealt even a more serious blow to the vested interests, with the result that, on 22nd June 1942 one of the Directors Sam Earnest Deva Lal submitted a complaint to His Excellency the Governor with serious allegations against Dr. Chatterji. The Governor, after enquiry replied to Mr. Deva Lal that the conduct of Dr. Chatterji was unexceptionable and he had in no way abused his position. Some retrenchments followed and one Mr. G.C. Mitra, an employee in the Distillery, was discharged from service.

2. Dr. Chatterji was, no doubt, a distinguished student of the University, but was not familiar with the particular trade or business. The storm of opposition consequent upon the steps taken by the Government, not unnaturally added to his troubles, as appears from his letters to the Excise Commissioner technically called the Authorised controller. The first is of 10th July 1942, which is unfortunately not exhibited, but which is amply proved by the materials on the record and the other of 20th June 1942, Ex. D-2. He consulted one Mr. Grant, belonging to one of the well-known commercial firms in these Provinces viz., Mrs. Begg Sutherland & Co. as to the steps he should take not merely to secure his own position, but also to see that the business entrusted to him, did not suffer. Mr. Grant suggested it to him that, for the efficient prosecution of the business, particularly when he was being thwarted at every step by people, who thought they had a grievance against him, it was necessary that he should appoint to the key positions in the concern men, who enjoyed his implicit confidence. Not unnaturally Dr. Chatterji thought of his own relations on whom he could rely and from, whom he could expect real assistance. One such relation was his own brother, S.R. Chatterji, who was running a distillery in Rawalpindi. The other person he thought of was his cousin, Mr. B. Mukerji who was also engaged as a technical assistant. Mukerji was appointed on 8th May and Chatterji on 25th May 1942. It might be mentioned here that Dr. Chatterji introduced his brother and cousin not surreptitiously, but with the knowledge and consent of the then Excise Commissioner, Mr. Bhadkamkar. Indeed, Mr. Bhadkamkar passed an express order sanctioning the appointment of these relations.

3. On 25th May 1942, Mr. Bhadkamkar was succeeded by Mr. Shankar Prasad, I.C.S. Some correspondence followed between Mr. Shankar Prasad and his Personal Assistant, Mr. Sharif ullah Khan, on the one side, and Dr. Chatterji, on the other. One such is Ex. D-1. I have mentioned it because it bears out the case for the defiance that Dr. Chatterji had taken this step with the knowledge and consent of the previous Excise Commissioner or the Authorized Controller. Mr. Shankar Prasad also approved the appointment as will appear from the exhibit to which I have just referred, viz., Ex. D-1, dated 14th June 1942. Curiously, however, on 8th July 1942 the Government sent a telegram, Ex. P-14, to Messrs. S.R. Chatterji and B. Mukerji terminating their services on a month's notice. The former, after the termination of his connexion with the Meerut Distillery, started business as a chemist and carried on miscellaneous business of a large variety, the principal of which were those of solidified fuel, spiced liquor, flavoured gin etc. etc. Mukerji had a manufacturing concern, Chemical Engineering Service Co., Meerut, and he resumed that business of his. Dr. Chatterji was directed to push up the Power Alcohol production and keep an eye on the finances of the Distillery, but this is important, not to embark upon new ventures.

4. On 2nd October 1942, the Meerut Distillery received a tender from the Supply Department of the Government of India, calling for tenders from various other people, including the Distillery itself, for gathering 246290 tommy cookers, each containing 4 oz. of solidified fuel for replacement. These tenders were to be submitted by 12th October 1942. Dr. Chatterji, however, did not submit any tender within the prescribed time. "There was, however, a firm in Meerut called the Delhi Machinery Mart, which did submit one. The failure on the part of Dr. Chatterji to submit a tender and the tender by the Delhi Machinery Mart, the prosecution has treated as two of its main planks and I shall have to advert to these two in some detail as I proceed further. But it is necessary to mention one thing at this stage. It has come in evidence indeed, in his report the Authorized Controller, Mr. Shankar Prasad has said that the Delhi Machinery Mart and two other Companies, Arjun Deo & Co. and Sahdeo & Co., were practically one and the same concern. Arjun Deo and Sahdeo are brothers. Arjun Deo is the younger of the two. Mr. Chatterji was associated with Arjun Deo. The Delhi Machinery Mart, which had secured the contract from the Government, required solidified fuel. For this they entered into an arrangement with Sahdeo, the individual, as distinguished from Sahdeo & Co. Sahdeo supplied it in the name of Arjun Deo & Co. The fuel manufacture required spirit. Permit for the purchase of spirit from the Meerut Distillery was issued in favour of Sahdeo & Co. The Authorised Controller is right when he says that, even though all these three companies, viz., the Delhi Machinery Mart, Arjun Deo & Co., and Sahdeo & Co., were, for all practical purposes, one, they had assumed three different names only to dodge the Income-tax Department. Be that as it may, it is enough for the purposes of this case to say that these three companies were alter egos.

5. It appears that, although for some reason the real reason may be the financial reason. Dr. Chatterji did not on behalf of the Distillery, submit a tender within the stipulated time, nevertheless shortly after, on 25th November 1942, he did write to the Supply Department

offering to supply solidified fuel at the rate of Re. 1-4-0 a pound although the prevailing rate in the market was Re. 1-8-0 a pound. Not only that, with-out waiting for a reply within three days, he sent on 28th November 1942, another letter to the Supply Department reducing his rate from Re. 1-4-0 to Re. 1 a pound. The Supply Department wrote back to say that it had not received his first letter of 25th November 1942. Dr. Chatterji on 3rd December 1942, sent a reply and enclosed a copy of his letter of 25th November 1942. There is some controversy between the prosecution and the defence as regards the letter of 25th November 1942. To this controversy, I shall come later when, I deal with the points specifically. It appears that the Delhi Machinery Mart, who had, as I have already said, secured the contract from the Supply Department wanted some land and building for their business. They were able to secure, under a lease, dated 23rd December 1942, a small strip of land for some buildings or constructions at Ks. 50 per month from the Meerut Distillery. This transaction has come in for strong criticism at the hands of the Authorised Controller in his final report and also at the hands of the prosecution. But curiously enough he made no grievance of it when he visited the spot on 5th February 1943. The occasion furnished by the visit of the Authorised Controller was seized by the mal-contents, headed by Deva Lal, who saw the official concerned and on 6th February 1943, presented to him a long catalogue of grievances against Dr. Chatterji. Whether those grievances were real or fancied, it is difficult to say. But it is important to bear in mind that no mention was made even about them by the Authorised Controller to Dr. Chatterji not only on 6th February, but even later on 12th February 1943, when Dr. Chatterji visited the Authorised Controller at Allahabad.

6. We now come to the most important date in the entire episode. On 31st March 1943, there was the annual meeting of the share-holders of the Distillery. This meeting was attended by Mr. Shankar Prasad. There were several resolutions, the principal of them being that the Distillery should take up subsidiary business in the line of solidified fuel, etc. etc. There was in effect, a resolution that the old management should be restored and that Dr. Chatterji should go out. It is on this occasion that something happened on which in the events which have happened, rests the prosecution case, almost in its entirety. Mr. Shankar Prasad is alleged to have told Dr. Chatterji to take up the manufacture of solidified fuel. Whether he said this in so many words or whether it was only within contemplation but no definite directions were given by him to Dr. Chatterji is a point to which I shall advert later. According to the prosecution, however, Mr. Shankar Prasad's instructions were definite but because Dr. Chatterji was interested in the advance of the Delhi Machinery Mart with which was associated his brother he did not take any steps for the solidified fuel business. This is, in brief, the story for the prosecution and it was for this that the accused were placed on their trial.

7. On 12th December 1943, the investigating officer Mr. Mahmud Ali Khan, sent his first information report and on 27th January 1944 he drew up the charge sheet. On the basis of this report, the learned Additional District Magistrate drew up his charge. These two documents, by reason of their importance and because a great deal of argument rests upon their legal effect might be quoted in full:

Dr. Chatterji and S.R. Chatterji caused loss of about Rs. 80,000 to the Distillery which is a public concern in connection with the manufacture of solidified fuel. The Doctor, S.R Chatterji and B. Mukerji also caused a heavy loss of lacs in allowing drawings and pressing mill owners to enter into agreements with his cousin, B. Mukerji, Instead of executing agreements himself and on behalf of the Distillery. Out of the above amounts, which could have been earned by the Distillery 93J per cent, as an excess profit tax could not go to the Government and thus the accused are guilty of a prejudicial act to the interest of the public as well as under R. 34 (paper torn) it prejudiced the success of financial measures with a view to the efficient prosecution of War. They are, therefore, challaned under Rule 38, Defence of India Rules.

Sd. Mahmud Ali Khan.

8. The material charge is in these terms:

That you between October 1942 and July 1943 unauthoritatively and without the permission of Government or the Authorised Controller allowed S.R. Chatterji and B. Mukerji to manufacture solidified fuel in the premises of the factory gave them all facilities at the expense of the property of the Distillery and supplied to them material from the Distillery at cheap rate thus causing loss to the Distillery and illegal gain to yourself and S.R. Chatterji and B. Mukerji and that you between October 1942 and July 1943 were a party to a criminal conspiracy to commit the offences punishable under Rule 81(4), Defence of India Rules, as detailed below : 'of solidified fuel being manufactured in the Distillery by unauthorised private persons with the help of the Distillery material and building, thus causing loss to the Distillery of a large sum of money although solidified fuel could be manufactured by the Distillery which would have meant gain of a considerable amount of money,' and thereby committed an offence punishable under Section 120B, Penal Code, and within my cognizance.

9. On these facts, the prosecution started in all eight cases. Five of them were under Section 161, Penal Code, and in the alternative, for abetment under Section 164. These were directed against Dr. Chatterji alone. The sixth case was under Rule 81(4), Defence of India Rules, and in the alternative under Section 409 read with Section 120B, Penal Code. These were directed against Dr. Chatterji and S.R. Chatterji and B. Mukerji. The seventh case directed against Dr. Chatterji and Mr. B. Mukerji under Section 409, Penal Code. The eighth case under the Excise Act was also directed against all the three. The first five cases under Section 161 and, in the alternative, under Section 164 directed against Dr. Chatterji alone ended in his conviction. In the sixth case under Rule 81(4), Defence of India Rules, and in the alternative, under Section 409, Penal Code, and Section 120B, Penal Code, the learned Magistrate acquitted Mukerji, but convicted the remaining two. In the seventh case under Section 409, Penal Code, the learned Magistrate acquitted Mukerji, but convicted the remaining two. The case under the Excise Act ended in the acquittal of all the three at the hands of the learned Magistrate. It might be mentioned that in the

first five cases there were three charges each. On appeal, the learned Sessions Judge recorded a finding of not guilty with regard to one of the charges and affirmed the conviction and sentence with regard to the remaining Charges. In case No. II the learned Sessions Judge acquitted Dr. Chatterji of all the three charges; in case No. III the learned Sessions Judge acquitted Dr. Chatterji of two out of the three charges; in Case No. IV Dr. Chatterji was acquitted by the learned Sessions Judge of all the three charges. In case No. V the learned Sessions Judge acquitted Dr. Chatterji in one out of the three charges, while in case No. VI in which case Dr, Chatterji was charged along with his brother and cousin, he and also his brother were acquitted of one out of the two charges.

10. Coming now to criminal Revision No. 681 of 1945, which arises out of criminal' Trial No. 6 and Criminal Appeal No. 49 of 1945, the learned Additional District Magistrate had sentenced Dr. Chatterji under Rule 81(4), Defence of India Rules, read with Section 120B, Penal Code, or, in the alternative, under S.409, Penal Code, read with Section 120B, Penal Code, and sentenced him to rigorous imprisonment for two years and a fine of Rs. 1000, or, in default of payment of fine, to a further term of rigorous imprisonment for six months. S.R. Chatterji also, he convicted, of the offence under Rule 81(4), Defence of India Rules, and of abetment of the contravention of this rule, read with Section 120B, Penal Code, or in the alternative, for abetment of criminal breach of trust under Section 409, Penal Code, read with Section 120B, Penal Code, for criminal conspiracy and sentenced him to rigorous imprisonment for one year and a fine of Rs. 1000 or, in default of payment of fine to a further term of rigorous imprisonment for three months. Mr. Mukerji was acquitted by him. On appeal, the learned Sessions Judge has held that the offence under the Penal Code had not been made out. It was only for the contravention of Rule 81(4), Defence of India Rules, that he has affirmed the conviction and sentence passed by the learned Magistrate.

11. I have already said that the case is very complicated and it is not surprising that there are a few misstatements of facts in the judgment of the learned Sessions Judge or that he has not noticed at all, or in sufficient detail, a number of facts. It is, however, open to me to go into facts. It was held by Bajpai J., who had, as Crown counsel, considerable experience of the administration of criminal justice in Emperor v. Dwarka Nath Cri. Reve. No. 921 of 1942 that it was in case of this kind the practice of this Court to go into facts. I shall, therefore, be within my rights if I were to go into facts and ascertain the truth for myself. Indeed, the importance of the case and the absence of any reference to a number of facts in the judgment of the learned Sessions Judge makes it not only desirable, but casts an obligation upon me to go into the whole case and try to find out the truth.

12. Before going into further detail, I think it necessary to clear the ground by reference to certain accepted principles of law. It was held in Pearey Lal v. Emperor (44) 31 A.I.R. 1944 All. 168, that It is one of the axioms of law that first things come first. There can be nothing more important than the safety of the realm. It follows that anything which has a subversive tendency

or has the effect of disrupting or endangering society, must be severely dealt with by Courts of law. But making every allowance for these fundamental principles, the fact still remains that the rule is a special piece of legislation and enacts a penal provision. While it is true that it, in one sense, aims at the protection and preservation of society it is equally true that it makes a serious inroad upon individual liberty. I have emphasised the above in order that the equally important principle that a law which aims at the curtailment of human liberty must be strictly construed, may not be lost sight of.

13. These observations were made by his Lordship the Chief Justice in a case under the Defence of India Rules. I could not do better than quote them and accept them as a guide in the determination of this case. There is another aspect of the case which should not also be lost sight of. Even though the case was of a highly complicated nature, nevertheless, if any link or links in the chain of the prosecution story are missing, the benefit of the absence of those links must go to the defence and not to the prosecution. With this preface, I propose to come to closer quarters with the case. The learned Counsel for the applicants has contended that, on a true interpretation of the Defence of India Rules, the prosecution must fail as a matter of law. The applicants have, as I have already mentioned, been convicted under Rule 81(4), Defence of India Rules, which runs thus:

If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term....

14. The expression "any order made under this rule" has been substituted for "any of the provisions of this rule." This argument I shall deal with a little later. Rule 180(1) says:

No Court or tribunal shall take cognizance of any alleged contravention of these rules..., except on a report in writing of the facts constituting such contravention made by a public servant.

15. It is also contended by the learned Counsel for the applicants that the prosecution has failed to comply with the terms of Rule 81(4). Nowhere have the accused been told in this case, the rule for the contravention of which they are sought to be punished but this they should have been told, because the rule says "If any person contravenes any order -made under this rule...." The learned Crown counsel was alive to this lacuna, but he tried to invoke the aid of Sections 225 and 537, Criminal P.C. Section 225 says:

No error in stating either the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

16. Section 537 is in these terms:

Subject to the provisions hereinbefore contained no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Ch. 27 or on appeal or revision on account : (a) of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or....

Explanation - In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

17. I think the lacuna in this case is of a more serious character. It is not merely an irregularity but an illegality. To take up the latter argument first founded on the failure to comply with the provisions of Rule 81(4) it brings the case within the rule of law laid down by their Lordships in *Subrahmanya Iyer v. Emperor* ('02) 25 Mad. 61. The facts were these: One Subramania Iyer was tried on an indictment in which he was charged with no less than forty-one acts, these acts extending over a period of two years. Section 234, Criminal P.C. permitted trial of offences, extending over a period of twelve months only. This mistake was treated by the High Court as one amounting merely to an irregularity. Not so by their Lordships of Judicial Committee. Delivering the judgment of the Board, the Earl of Halsbury, Lord Chancellor, observed as below:

The policy of such a provision is manifest, and the necessity of a system of written accusation specifying a definite criminal offence is of the essence of criminal procedure. Their Lordships think that the course pursued which was plainly illegal, cannot be amended by arranging afterwards what might or might not have been properly submitted to the jury. Upon the assumption that the trial was illegally conducted, it is idle to suggest that there is enough left upon the indictment upon which a conviction might have been supported if the accused had been properly tried. The mischief sought to be avoided by the statute has been done. The effect of the multitude of charges before the jury has not been averted by dissecting the verdict afterwards and appropriating the finding of guilty only to such parts of the written accusation as ought to have been submitted to the jury. It would in the first place leave to the Court the functions of the jury, and the accused would never have really been tried at all upon the charge arranged afterwards by the Court. Their Lordships cannot regard this as cured by Section 537. Their Lordships are unable to regard the disobedience to an express provision as to a mode of trial as a mere irregularity. Such a phrase as irregularity is not appropriate to the illegality of trying an accused person for many different offences at the same time and those offences being spread over a longer period than by law could have been joined together in one indictment. The illustration of the section itself sufficiently shows what was meant. The remedying of mere irregularities is familiar in most systems of jurisprudence, but it would be an extraordinary extension of such a branch of administering the criminal law to say that when the Code positively enacts that such a trial as that which has taken place here shall not be permitted that this contravention of the Code

comes within the description of error, omission, or irregularity. Some pertinent observations are made upon the subject by Lord Herschell and Lord Russell of Killowen in *Smurthwaite v. Hannay* (1894) A.C. 494. Where in a civil case several causes of action were joined, Lord Herschell says that 'if unwarranted by any enactment or rule it is much more than an irregularity'; and Lord Russell of Killowen in the same case says: 'Such a joinder of plaintiffs is more than an irregularity : it is the constitution of a suit in a way not authorised by law and the rules applicable to procedure'.

18. The accused are, on the strength of this case, entitled to say that the failure of the prosecution to specify the rule or the order for the contravention of which they are being punished is an illegality and not a mere irregularity. It is a defect in the constitution of the "suit in a way not authorized by law and the rules applicable to procedure" more particularly when as told in *Pearey Lal v. Emperor* ('44) 31 A.I.R. 1944 All. 168 the law in question must be strictly construed. As regards the contention based upon the failure to comply with Rule 130(1) accused are, to my mind, on even surer ground. The report in this case must be the report of Mr. Mahmud Ali Khan. This report does not, on the face of it, comply with the requisite condition. It does not mention the facts which constituted the contravention of the rule. It is obvious that this is a much more serious matter. The failure in the charge to quote the rule or order is a failure to do something in the course of the trial. The failure to mention the facts constituting such contravention means the absence in the report, the very first of the numerous steps in the course of the trial, of something which is vital and goes to the very root of the case. An error in the report means that there was no proper report on which the machinery of the law could be set in motion and the case could proceed. In other words, the very foundations of the prosecution are defective and the entire super structure must fail. It is conceded before me that the only offence committed by the accused is that he disregarded the directions given by Mr. Shankar Prasad, the Authorised Controller, verbally on 31st March 1943. If this is so, it should have been put in the forefront of the indictment. It is clear to my mind that the prosecution does suffer from these infirmities. But I do not propose to rest my decision on legal technicalities. Having regard to the importance of the case, not merely to the accused themselves, but also the public at large, I propose to go into the facts myself in order to find out whether the prosecution has made out any case against the applicants.

19. In order to appreciate the full significance of the incidents of 31st March 1948, it is necessary to go into some events which preceded that day. And this is necessary because the motive suggested against Dr. Chatterji, who is treated by the prosecution as the villain of the piece, is that because he wanted to do a good turn to the Delhi Machinery Mart and, through it to his brother, he refrained from doing the business of solidified fuel himself on behalf of the Distillery and did not submit any tender by 12th October 1942. Not only that, he granted a lease of some land, in the premises of the Distillery to the Delhi Machinery Mart on 23rd December 1942. It is true that Dr. Chatterji did not submit any tender within the scheduled time, but one of the instructions which he had received from the Government at the time of his appointment was to

keep an eye on the finances. He had, therefore, to keep an effective control on them and it might be that he did not think that the finances of the Distillery were sound enough. But the fact still remains that, within less than a month and a half of the due date, he wrote a letter to the Government of India on 25th November 1942, offering the supply of solidified fuel at the rate of Re. 1-4-0 per pound, when the prevailing rate in the market was Re. 1-8-0 per pound. Not only that, he reiterated his offer by a still further reduction of the price, viz., at the rate, of Re. 1 per pound. It is contended on behalf of the prosecution that the letter of 25th November 1942, was, according to the statement of Mr. D.R.J. Naidu, never received through proper channel. It is impossible to follow the prosecution in this criticism. The means by, or the agency through, which the letter was received was not in question. The question was whether the Government of India had received an offer from Dr. Chatterji. That they did receive the information is manifest from their own letter, dated 1st December 1942 received in reply to the letter of 28th November 1942. The matter is clinched by the subsequent letter sent by Dr. Chatterji on 3rd December 1942 enclosing a copy of the previous letter of 25th November 1942. It is suggested, in reply by the learned Crown counsel that these letters were after the expiry of the scheduled time sent to serve as a sort of a smokescreen. I can only say that this criticism merely rests on suspicion or surmise. We have the high authority of their Lordships of the Privy Council that "suspicion though a ground of scrutiny cannot be made the foundation of a decision": Mahomed Mehdi Hasan Khan v. Mandir Das ('12) 34 All. 511 at p. 517. I do not, however, attach any value to the criticism of the learned Crown counsel that, if the letters of 25th November and 28th November 1942, had been received by the Government, they must have taken some steps. Let alone Dr. Chatterji, even Mr. Shankar Prasad, the Authorised Controller, had to concede in his evidence that:

When Dr. Chatterji told me at Allahabad that his tender was not accepted I wrote to the War Production Commissioner T.J. P., complaining against the refusal.

20. Evidently no heed was paid even to this. Solidified fuel was one of the necessary commodities for the efficient prosecution of the war. This is the prosecution case itself. It was the duty of the Supply Department, to seek for this commodity from all quarters and to welcome it at any stage. The period of time provided for the submission of a tender is not a period such as we find in the Limitation Act, after which the rights of the parties are extinguished. It is only a measure of convenience and cannot be put at a higher level. If the Supply Department had received the information by 3rd December 1942, at the latest, and if it was such an essential commodity, they should have accepted the offer. It is not surprising if the mind of Dr. Chatterji worked along these lines. He may not have felt sure about his financial position by 12th October 1942, or even later, and might have thought that such a good offer, below the prevailing rate in the market would be accepted by the Supply Department even though it was made beyond the scheduled time. If we could credit Dr. Chatterji with such a mental condition, we must come to the conclusion that dishonesty was very far from his mind and he must be credited with an intention of having made an honest offer in the honest belief that it will be accepted by the Supply Department.

21. There is yet another reason why I have come to the conclusion that the charge of mala fides against Dr. Chatterji must be rejected. His brother, S.R. Chatterji, it has come in his written statement, joined the Arjun Deo and Co. on 23rd December 1942. There could, therefore, be no intention on the part of Dr. Chatterji on 12th October 1942, to help his brother when the latter came upon the scene only on 23rd December 1942. The conduct of Dr. Chatterji has, however, been assailed with reference to another transaction. It is the lease by the Distillery in favour of the Delhi Machinery Mart. This lease and the whole of this transaction has been severely criticised by the Authorised Controller in his final report. But it is curious that, when Mr. Shankar Prasad visited the Distillery on 5th February 1943, he passed no adverse criticism on the conduct of Dr. Chatterji. It is contended by the learned Crown counsel that it was not the duty of the Authorised Controller to visit every nook and corner and inspect every minute detail connected with every distillery in the province. I am relieved of the necessity of noticing this criticism, inasmuch as I find that the learned Judge has distinctly found that the Authorised Controller during his visit acquainted himself with the true state of affairs. I have already dwelt upon the subsequent visit of Dr. Chatterji to Allahabad on 12th February and his interview with the Authorised Controller and the fact that the latter did not make any grievance of his conduct. It appears to me that the real reason why no exception was taken to the conduct of Dr. Chatterji, when he granted the lease on behalf of the Distillery to the Delhi Machinery Mart, was that this transaction brought it a gain of about thirty thousand rupees per year for doing practically nothing. The Authorised Controller, as I have already mentioned in an earlier portion of my judgment, himself says that the Delhi Machinery Mart, Arjun Deo and Sahdeo are really one concern. It has come in evidence, as appears from a letter, Ex. P-7, sent on 14th June 1943, by Dr. Chatterji to the Authorised Controller, that the process adopted was this : Arjun Deo supplied the solidified fuel to the Distillery at a certain rate. The Distillery supplied it to the Delhi Machinery Mart with a profit of one anna per pound. If Arjun Deo, Sahdeo and the Delhi Machinery Mart were all really one concern, there was no point in going through the fiction of Arjun Deo making a supply to the Distillery and the Distillery making a supply, in its turn, to the Delhi Machinery Mart and in this process cause a gain of one anna to the Distillery and a corresponding loss of one anna per pound to Arjun Deo or the Delhi Machinery Mart. The only basis on which it could be explained is that this was the consideration paid by these three concerns to the Distillery for the lease granted by the latter to the former on 23rd December 1912. It is, therefore, obvious that, while it may be - I express no opinion about it - that Dr. Chatterji was slightly indiscreet in granting the Delhi Machinery Mart, with which was associated his brother, S.R. Chatterji, a lease and allowing the Mart to function on its premises, he did something "which ensured considerable profit to the Distillery without incurring any risk or obligation whatsoever. This transaction analysed carefully shakes the very foundations of the prosecution theory.

22. I now come to the crucial question, namely, the happenings of 31st March 1948. Did Mr. Shankar Prasad give any direction to Dr. Chatterji? Did Mr. Chatterji disregard that direction?

These are the two questions on the answers to which must rest the fate of the prosecution as also of the applicants. Before going to the evidence on this point it might be mentioned that one of the resolutions passed in the meeting was to make the fate of Dr. Chatterji himself uncertain. When the previous attempts to remove Dr. Chatterji had failed, there was a more concerted attempt in the shape of a resolution that he should go out. Mr. Shankar Prasad has been examined in this case and his own evidence is, to my mind without meaning the slightest disparagement, inconclusive. Says he in his statement before the learned Magistrate : "Before I left Meerut I instructed Dr. Chatterji to take necessary steps towards the possibility of taking up his business." This is very far from giving a definite instruction that the solidified fuel business must be undertaken. This only means that the possibilities for such a business must be explored. We have to see whether Dr. Chatterji did take any steps.

23. On 13th April 1943 he submitted a report to the Authorised Controller. He said that sufficient time and money could not be devoted either to the securing of the contract or to get the product accepted. He, therefore, thought that the proper agency to work it was some sort of a subsidiary company. Whether Dr. Chatterji was right in his view or otherwise was for the Authorised Controller to decide. It does, however, demolish the theory of the prosecution that there was a deliberate attempt on the part of Dr. Chatterji to sidetrack the issue or still worse, to disobey the instructions of the Authorised Controller. We are not left merely to speculate, but the interpretation which I have placed upon the terms of this letter, is supported by the language of the letter written by the Authorised Controller himself to Mr. Walley, the Deputy Secretary to the Government, United Provinces. He expressed his agreement with Dr. Chatterji in his views as expressed in the letter of 13th April 1943. It clearly says that Dr. Chatterji was merely asked to discuss the matter with the Directors. And this he certainly did. We hear nothing after this till we come to 8th June 1943. On this day Mr. Shankar Prasad writes another letter to Mr. Walley after returning from leave. I feel that there is internal evidence that the letter of 8th June 1943, was written by Mr. Shankar Prasad without being acquainted with the situation as it had grown from day to day, during his absence on leave or without his memory being refreshed with the incidents which had happened even before. There is a reply of Dr. Chatterji on 14th June 1943, which reinforces this impression of mine.

24. I have, therefore, come to the conclusion that it is impossible to say, that on 8th March 1943, Mr. Shankar Prasad gave any definite directions to Dr. Chatterji or that Dr. Chatterji was guilty of any disobedience. Indeed, the entire evidence clearly shows that no definite instructions were given to Dr. Chatterji and he is not guilty of any disobedience. The charge against Dr. Chatterji must, therefore, fail. With the failure of the charge against him must also fail the charge under Section 120B against Mr. S.R. Chatterji. I, therefore, hold that they are not guilty. I allow this application in revision, set aside the conviction and sentence of the applicants and direct that, unless they are found guilty in respect of some other offence, they need not surrender to their bail and the bail bonds are cancelled. The fine, if paid, shall be refunded.