GAHC010068202017

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

1. Criminal Appeal No.257 of 2017

Shri Jibangshu Paul,
Son of Late Nalini Paul,
Permanent resident of near Haflong Railway Field, Haflong under Haflong Police Station in the District of Dima Hasao, Assam.

.....Appellant

-Versus-

The National Investigation Agency (NIA), represented by its Retainer Counsel.

.....Respondent

2. Criminal Appeal No.305 of 2017

Shri Golon Daulagopu,
Son of Late Hamsring Daulagupu,
Resident of Council Colony, PO: Haflong, under Haflong Police Station in the District of Dima Hasao, Assam.

.....Appellant

-Versus-

The National Investigation Agency.

.....Respondent

– B E F O R E –
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE MITALI THAKURIA

For the Appellants : Mr. D. Talukdar, Advocate, Ms. P. Choudhury, Advocate and Ms. B. Goswami, Advocate in Crl. Appeal No.257/2017.

	: Mr. P. Kataki, Advocate, Ms. M. Devi, Advocate and Ms. R. Begum, Advocate in Crl. Appeal No.305/2017.
For the Respondents	**:** Mr. R.K.D. Choudhury, Deputy Solicitor General of India, assisted by Ms. B. Devi, Advocate.
	: Mr. Sathyanarayana, Senior Public Prosecutor, NIA. **:** Mr. D.K. Das, Special Public Prosecutor, NIA, assisted by Ms. G.D. Choudhury, Advocate.
Dates of Hearing	**:** 23.05.2023 and 06.06.2023.
Date of Judgment & Order	**: 11th August, 2023**.

JUDGMENT & ORDER

[Sandeep Mehta, C.J.]

These two appeals under Section 374(2) of the Cr.PC have been preferred by the appellants, namely, Jibangshu Paul and Golon Daulagopu, respectively, for assailing the judgment dated 22.05.2017 and the sentencing order dated 23.05.2017 passed by the learned Special Judge, NIA in Special NIA Case No.2/2009 *[National Investigation Agency (NIA) -Vs- Shri* Jibangshu Paul *& Anr.]*, whereby the appellants herein have been convicted and sentenced as below:-

Sl. No.	Name of the accused	Convicted under Section	Punishment
1.	Gulon Daulagapu	120-B IPC	R.I. for 8(eight) years and fine of Rs.25,000/-, in default S.I. for 6(six) months.
		17 UA (P) Act	R.I. for 8(eight) years and fine of Rs.25,000/-, in default S.I. for 6(six) months.

2.	Jibrangshu Paul	120-B IPC	R.I. for 10(ten) years and fine of Rs.25,000/-, in default S.I. for 6(six) months.
		17 UA (P) Act	R.I. for 10(ten) years and fine of Rs.25,000/-, in default S.I. for 6(six) months.

2. Brief facts relevant and essential for disposal of the present appeals are noted herein-below:-

On 11.02.2009, one Sub-Inspector of Police Ratneswar Das, PW-16 of Diyangmukh Police Station received a secret information that some persons/workers of N.C. Hills Autonomous Council were going to deliver a huge amount of money to Dima Halam Daogah (Jewel Garlosa) [in short, "DHD(J)"] extremists somewhere in between Haflong and Diyangmukh for the purpose of procuring arms and ammunition and for promoting organizational activities with a view to wage war against the State. Upon receipt of the said information, Sub-Inspector Ratneswar Das, PW-16 under the guidance of the DESP, Head Quarter, Haflong started checking the vehicles moving from Haflong to Diyangmukh and *vice versa*. At about 3:30 PM, a Scorpio vehicle bearing registration No.AS-08/5133 was checked at Thaijawari, which the accused/appellants herein were occupying and a sum of Rs.32,11,000/- was recovered from the possession of accused Jibangshu Paul. Both the appellants could not give any satisfactory explanation for carrying such a huge sum of money with them. Thus, it was presumed that the amount was being carried so that the same could be handed over to the DHD(J) extremist group and to facilitate it in its activities of waging war against the State. Sub-Inspector Ratneswar

Das, PW-16 then seized the amount alongwith a blue and ash colour bag; one Orpat mobile with SIM, one Nokia mobile set with SIM from the accused Jibangshu Paul and the Scorpio vehicle and two Nokia mobile handsets with SIMs from the possession of accused Golon Daulagopu.

3. On the basis of this recovery/seizure, Sub-Inspector Ratneswar Das, PW-16 lodged an *ejahar* with the Officer-in-Charge of Diyangmukh Police Station, who registered Diyangmukh Police Station Case No.3/2009, Ext-95 against the two accused/ appellants for the offences punishable under Sections 120B/121/121A of the IPC and started investigation.

4. The Investigating Officer visited the place of occurrence, examined the witnesses, prepared the sketch map of the place of occurrence, arrested the accused and forwarded them to the Court. The recovered Indian currency notes were deposited with the Haflong Treasury, vide Treasury Challan No.20/2. Two more persons, namely, Biraj Chakraborty and Karuna Sakia were also arrested in connection with this case.

5. Vide order dated 01.06.2009, the Government of India, Ministry of Home Affairs handed over investigation of the case to National Investigation Agency (NIA), which registered NIA Case No.2/2009 on the basis thereof. In the intervening period, another FIR of Basistha Police Station being Case No.170/2009 had already been assigned to NIA and had been registered as NIA Case No.1/2009.

6. After investigation, separate charge-sheets were filed in NIA Case No.1/2009 and NIA Case No.2/2009. The accused Phojendra Hojai; Babul Kemprai; Mohet Hojai; Redaul Hussain Khan; Jewel Garlosa; Ashringdao Warissa; Vanlalchanna; Malswamkimi; Niranjan Hojai; Joyanta Kr. Ghosh; Debasish Bhattacharjee; Sandip Ghosh and Karuna Saikia were charge-sheeted in connection with NIA Case No.1/2009. The appellants herein were charge-sheeted in connection with NIA Case No.2/2009. Charges were framed against the accused in both the cases. Vide the order dated 01.08.2013, the trials of both the cases were clubbed.

All the witnesses were examined commonly in the two NIA Cases. However, the numbers of both the NIA Cases were mentioned in each deposition.

7. The trial Court framed the following points for determination in the present case:-

> *"(I). Whether the accused Jibangshu Paul and Golon Daulagopu after formation of DHD(J) or black widow in 2004 particularly from 2008-2009 entered into an agreement with the other accused persons charge sheeted in this case, to do an illegal act or an act which is not illegal but by illegal means, i.e. raise fund for the terrorist gang by siphoning Govt. fund allotted for the development of N.C. Hills Autonomous Council and converted the same to US dollar to procure arms and ammunition to wage war, cause death of innocence persons, terrorizes the people and extorted money, kidnapped for ransom, disrupted work of gauze conversion and construction of East-West corridor or four lane National Highway?*
>
> *(II) Whether during the period from 2004 to 2009 accused Jibangshu Paul directly involved in raising and collecting funds or attempted to collect funds for DHD(J) by siphoning off an defalcation of Govt. fund allotted for development of N.C. Hills district and in doing so payments were made without supply or short supply of articles, making the rate of supplied articles more than*

double of market rate, by preparing false bills, vouchers, delivery challans, money receipts etc.?

(III) Whether Jibangshu Paul conspired, attempted to commit or abetted, advised, incited, directed the terrorist gang DHD(J) for commission of terrorist act or did preparatory act such as raising of fund, conversion of India currency to US Dollar to procure arms to the commission of such terrorist act?

(IV) Whether Golon Daulagopu, after forming terrorist gang DHD(J) or Black Widow in 2004 and particularly during the period of January to March 2009, entered into agreement with other accused persons to do illegal act or an act which is not illegal but by illegal means, i.e., to raise fund for the terrorist gang by siphoning Govt. fund convert Indian currency to US dollar, to procure arms and ammunition to wage war, cause death of innocent persons, terrorize the people and extorted money, kidnapped for ransom, disrupted works of gauge conversion and construction of East West corridor of four lane National Highway etc.?

(V) Whether Golon Daulagopu, after forming said terrorist gang in 2004, entered into conspiracy against its members to wage war against the Government or attempted to wage war or abets the waging of such war?

(VI) Whether, after forming the DHD(J) in 2004, accused GolonDaulagopu waged war against the Government by procuring illegal arms, killing innocent persons, disrupted developmental activities such as gauge conversion, construction of four lane Highway, captured administration of NC Hills District Autonomous Council by overawing elected CEM DipolalHojai under threat to life etc.?

(VII) Whether GolonGaulagopu, being a member of DHD(J), a terrorist gang did terrorist act by killing innocent people, CRPF and Assam Police personnel and disrupted developmental works such as gauge conversion, construction of East West corridor kidnapped and abducted persons for ransom, overawed elected CEM DipolalHojai of NC Hills District Autonomous Council?

(VIII) Whether, accused GolonDaulagopu, after forming terrorist gang DHD(J) in 2004, directly or indirectly involved raising and collecting funds illegally or attempted to collect funds of extortion, kidnapping, siphoning and defalcation of Govt. fund through MohitHojai and others by paying money without supply or short supply of articles, making the rate of supplied

articles more than double of market rate, by preparing false bills, vouchers, delivery challan, money receipt etc.?

(IX) Whether accused GolongDaulagopu after forming terrorist gang DHD(J) in 2004 conspired, attempted to commit or abetted, advised, incited, directed for commission of terrorist act or did preparatory act such as raising of fund, conversion of Indian currency to US dollar to procure arms to the commission of such terrorist act ?

(X) Whether accused GolonDaulagopu, being a member of DHD(J), involved in terrorist act as mentioned in the point no.?"

8. Out of the 150 witnesses commonly examined, only 130 were cited in the present case. 209 documents and 72 material exhibits were exhibited. It may be stated that the prosecution allegation of DHD(J) being a terrorist gang involved in terrorist activities, which is based on the same set of allegations, has been discarded by us after threadbare discussion of evidence vide the separate judgment pronounced today in NIA Case No.1/2009. In the present case, apart from the recovery of a sum of Rs.32,11,000/- effected on 11.02.2009, there is nothing on record to connect the accused/appellants with any of the so called prejudicial activities/terrorist activities.

9. From the 130 witnesses cited by the prosecution, the trial Court placed reliance only on the evidence of following witnesses, namely, Amitava Sinha, PW-4 (PW-24 in NIA Case No.1/2009), Dilip Nunisa, PW-108 (PW-129 in NIA Case No.1/2009), PW-51, Anurag Tankha (PW-72 in NIA Case No.1/2009), PW-26, Nairing Daulagopu (PW-46 in NIA Case No.1/2009), PW-3, Kulendra Daulagopu (PW-23 in NIA Case No.1/2009), PW-105, Depolal Hojai (PW-126 in NIA Case No.1/2009), PW-36, Harish Singh Karmyal (PW-56 in

NIA Case No.1/2009), PW-41, K.D. Marak (PW-62 in NIA Case No.1/2009) and PW-42, Lalrinawma Traite (PW-63 in NIA Case No.1/2009). It may reiterated that only the numbering of witness no. is assigned separately in the present case, i.e. NIA Case No.2/2009 but the evidence of the witnesses was commonly recorded in both the cases.

10. We have exhaustively discussed the evidence of all these witnesses in the judgment rendered today in relation to NIA Case No.1/2009 and have concluded that the prosecution miserably failed in its endeavour to establish the primary allegation regarding the DHD(J) being a terrorist gang involved in terrorist activities. As the trial Court consolidated the trials of both the cases, the judgment in NIA Case No.1/2009 can also be read in the present case. Nevertheless for the sake of ready reference, we would like to refer to some pertinent findings recorded in NIA Case No.1/2009 on these important issues, whereby we have discarded the evidence of the material prosecution witness referred to (supra) holding that the prosecution could neither prove its foundational allegation that DHD(J) was a terrorist Gang nor could it establish that the said organisation was involved in some kind of terrorist activities. The relevant findings so recorded in the said judgment are reproduced hereinbelow for the sake of ready reference:-

> ***"195.*** *Having appreciated the arguments advanced at bar and after threadbare sifting, wholesome deliberation and minute analysis of the evidence available on record and with due consideration of the findings recorded by the trial Court, we have no hesitation in holding that the entire case set up by the prosecution/Investigation Agency is full of loopholes, embellishments and is tainted by pre-determined efforts to somehow by hook or crook*

and even by unethical means, target and entangle the accused persons in the case without any sincere attempt being made to collect proper, substantive, wholesome and legally admissible evidence so as to bring home the charges. The fact that the Investigation Agency proceeded with pre-determined bent of mind to somehow the other entangle the accused for grave offences without any justification is borne out from the very inceptional sequence of the case. The FIR No.170/2009 was registered at Basistha Police Station merely on the basis of recovery of cash and two licensed weapons but without any basis, the offences of waging war against the country (Section 121/121A IPC) were applied even though the Officer-in-Charge of the Basistha Police Station did not have any material to apply these offences at that stage. Though a big projection was made by the Investigation Agency regarding existence of a deep-rooted conspiracy amongst the components of the DHD(J) for indulging in terrorist activities but, no sincere effort was made to collect proper evidence to establish the theory of conspiracy. Some Mobile phone SIM Cards were recovered but no effort was made to trace or link the subscriber details thereof with any of the accused. The Call Detail Records were brought on record without procuring the mandatory certificate under Section 65B of the Indian Evidence Act, 1872 which made the entire effort an exercise in futility. Inadmissible evidence in form of CDs prepared from news channel clippings were brought on record just in order to mislead the direction of the case and unnecessary addition was made to the bulk of the records. A substantial part of the prosecution case that the funds of N.C. Hills Autonomous Council were defalcated for the purpose of funding the terrorist/subversive activities of DHD(J) was given up in an absolutely perfunctory manner with a bald assertion in the charge-sheet that the investigation into these allegations had been assigned to the CBI. However, no effort was made to bring on record the details of the case/cases, if any, registered by the CBI on the basis of such assignment. This serious omission on the part of the Investigation Agency has badly hampered and adversely affected the prosecution case and has brought in a huge element of uncertainty in the proceedings. A most important loophole which we have observed in the trial is that neither the Public Prosecutor nor the trial Court made any effort to exhibit the arrest memos of any of the charge-sheeted accused thereby putting a big question mark on the subsequent process of recoveries/ discoveries of incriminating facts. A totally frivolous exercise was made of trying to get the photos of one set of accused identified by another contrary to all tenets of

criminal jurisprudence. These shortcomings and loopholes highlighted above have destroyed the very fabric of the prosecution case and have contributed to its downfall and are sufficient to discard the same in its entirety.

201. *The major thrust of prosecution allegations in this regard is that officials of the NCHA Council, Redaul Hussain Khan (Social Welfare Department) and Karuna Saikia (PHE), facilitated the illegal transfer of funds to the firms of the accused/appellants Jayanta Kumar Ghosh, Debashish Bhattacharjee and Sandip Kumar Ghosh by fraud and forgery and thereby the funds meant for the developmental activities of the N.C. Hills Council were siphoned off and were routed to the members of the DHD(J) for funding its terrorist activities. All these financial irregularities, fraud and misappropriation were done under the directions of the accused Mohet Hojai. All accused have been acquitted by the trial Court of the charge under Section 18 of the UA (P) Act which is the substantive offence of conspiracy under the UA (P) Act. The acquittal from this substantive offence was recorded on the premise that the accused persons were being convicted for a broader offence of conspiracy punishable under Sections 120B IPC. However, what is relevant to note here is that the conviction for the offence under Sections 120B IPC simpliciter has been done without recording specific findings that the accused conspired with each other and committed the offences of fraud, forgery and misappropriation under the Indian Penal Code and criminal misconduct as defined under the Prevention of Corruption Act so that the funds defalcated by these illegal means could be siphoned off to finance the terrorist activities of DHD(J). The accused Mohet Hojai, R.H. Khan, Karuna Saikia, Debashish Bhattacharjee, Jewel Garlosa and Sandip Kumar Ghosh have been convicted for the offence under Section 17 of the UA (P) Act on the allegation that the funds of the Council were illegally routed through them for being provided to the members of DHD(J) for financing its terrorist activities.*

202. *It is thus obvious that guilt of the two public servants, i.e. R.H. Khan and Karuna Saikia, and the contractors Jayanta Kumar Ghosh, Debashish Bhattacharjee and Sandip Kumar Ghosh has not been recorded for the actual substantive offences they allegedly committed but by branding them to be in conspiracy with the members of DHD(J). They were straight off convicted for the offence under Section 17 of the UA (P) Act without holding them guilty of the substantive offence which they allegedly committed for*

siphoning off the funds from the N.C. Hills Council. Thus, before evaluating the prosecution case against these accused, issue which is required to be assessed before hand is whether the prosecution has been barely able to prove beyond doubt that the DHD(J) was a terrorist gang indulged in terrorist activities which were to be funded by this illegally siphoned off money with the aid and assistance of these five appellants.

203. *If the answer is in negative, there would be no requirement to deal with the allegations against these five accused on the aspect of defalcation of funds of the N.C. Hills Council because the prosecution itself claims to have assigned this task to the CBI. In addition thereto, neither charges for the substantive offences reflected from such allegations were proposed by the prosecution nor were any such charges framed by the trial Court. Expression of opinion by this Court on the correctness of these allegations made against these five accused may prejudice the outcome of the CBI case(s) registered in relation to the very same allegations. However, a strong doubt lurks on the veracity of the prosecution allegation that these amounts were actually siphoned off in the precise manner as alleged by the prosecution. Amounts of Rs.1 Crore recovered on 01.04.2009 were found not connected with the defalcated funds as held by the trial Court at Paragraph 419 of the impugned judgment. It may be reiterated that charges for the substantive offences under the Indian Penal Code as disclosed from the language of the charges were not framed by the trial Court despite the power to do so being available by virtue of Section 216 Cr.PC. The prosecution has not given any details about the CBI case/cases, registered in relation to these very allegations of defalcation, fraud, forgery and criminal misconduct by public servants, as noted at Paragraph 378 of the impugned judgment. Thus, before appreciating and adjudicating upon the role assigned to these five accused, we would, first like to adjudicate the broader issue whether the prosecution has been able to prove that the DHD(J) was a terrorist gang involved in any kind of terrorist activity.*

204. *The conspiracy theory, as projected by the learned Special Public Prosecutor, was set out in Paragraph 12 of the impugned judgment, which is reproduced hereinbelow for the sake of ready reference:-*

> *"12. Here in this case the it is submitted by the Id. Special P.P. NIA that a conspiracy was hatched for waging war against the state and in furtherance of the said conspiracy it was also conspired to overawe the elected regime of North*

Cachar Hills Autonomous Council (NCHAC) led by Shri Depolal Hojai and, thereafter, to defalcate development funds meant for development of (NCHAC) and to provide the same to the DHD(J) cadres for procurements of arms for terrorist activities, so as to achieve the aforesaid goal."

205. *Now, we proceed to discuss and appreciate the evidence of the witnesses connected with the Executive Council of the N.C. Hills and ex-cadres of DHD/DHD(J). It may be stated here that almost all the witnesses from these categories did not support the prosecution case and turned hostile. The trial Court, discussed the evidence of eight witnesses, namely, Depolal Hojai (PW-126) former CEM, N.C. Hills Council; Ronsling Langthasa (PW-20) [allegedly the ex-cadre of DHD(J)]; Mohindra Ch. Nunisa (PW-79), Member of N.C. Hills Council; Mayanong Kemprai (PW-81), Member of N.C. Hills Council; Bijoy Sengyung (PW-82), Member of N.C. Hills Council; Subrata Hojai (PW-87), Member of N.C. Hills Council; Nipolal Hojai (PW-98), Member of N.C. Hills Council; Dilip Nunisa (PW-129), allegedly a Member of the erstwhile DHD group. All these witnesses did not support the prosecution case and were declared hostile. Upon being confronted with the previous statements recorded by the Investigating Officer, they denied the major parts thereof, wherein they had allegedly stated about the activities of DHD(J) and the connection of the accused, viz. Jewel Garlosa, Niranjan Hojai and Mohet Hojai with this organisation. Reproduction of testimonies of all these witnesses would make the judgment bulky but in order to illustrate and highlight the manner in which the trial Court verbatim allowed exhibiting and blindly relied upon the extracts from 161 Cr.PC statements of these witnesses, we herein below reproduce Paragraphs 282, 282(i), 282(ii) and 282(vi) of the impugned judgment wherein the trial Court dealt with the evidence of the most important witness viz. PW-126, Depolal Hojai, the CEM of the NCHAC who allegedly resigned on the pressure of Mohet Hojai.*

"282. PW-L26- Depolal Hojai testified that in 2007 he contested election and won the same, after the election there was an alliance between BJP and ASDC and members of both the parties were elected as MAC and he was elected as CEM on Jan 2008. Till 26-11-2008 he was the CEM, but he submitted resignation and Mohet Hojai became the CEM. On 27th November, 2008 he submitted resignation from the post of CEM on health ground because he and his wife were ill at that time. Ext. 96 is his resignation letter to the Governor of Assam dated 27.11.2008. As the council was in

session Mr. Mohet Hojai was elected as CEM immediately. After resignation from the post of CEM, he along with his wife came to Guwahati for treatment. At present the CEM of the Autonomous Council of Dima Hasao is Niranjan Hojai. In 2008, said Niranjan Hojai was in jungle. He knows Jewel Garlosa who is now an elected MAC. He also contested the election in the year 2013 and was elected. He do not know where Jewel Garlosa was in 2008, He has not come to the politics during that time. During the time when he was CEM, Kulendra Daulagapu (BJP), Debojit Thousen (BJP), Kalijoy Sengyung (ASDC), Prakanta Warisa (ASDC), Mayanong Kemprai (ASDC), Bijoyendra Sinha (ASDC), Mohendra Ch. Nunisa (ASDC), Mohet Hojai (ASDC), Golon Daulagapu (ASDC), Lalthangsang Hmar (ASDC), Phoudami Zemi (ASDC), Hamjanan Langthasa (BJP), Subrata Hojai(BJP), Nipolal Hojai (BJP), Bakul Bodo (BJP), Lalthangjuala Hmar (ASDC), Smti. Rani

Langthasa(BJP), Kur Rongpi (ASDC) were the members of the Council.

282.(i). His evidence also reveals that during that time when he was the CEM, the law and order situation of the council was bad. Thereafter, the prosecution side declared this witness hostile and drawn his attention to his previous statement made before the I/O to which he denied and then brought on record the statement given by him before the I/O and proved the same through the I/O -P.W.150 who proved that this witness stated before him that "On 26th November, I was in the Session of the Council. I went as a Chief Guest in a Medical programme. The EM of Medical Department Kulendra Daulagapu was also with me. At 5 PM, when I was reaching home Bijay Sengyung (EM) called me up and said that he had been trying to find me, When I asked him as to what was the matter, he replied that I have been asked to make you talk to Niranjan Hojai of the DHD(J). He also said that if I wait for some time, the phone of Niranjan Hojai will come. I then went to my bedroom and asked Bijoy to wait in the sitting room. The phone came after 15 minutes. He gave the phone to me. Niranjan was talking to me and he asked me to call for a meeting of all elected members to the council to discuss an urgent matter. I called everyone at 7 PM in my house and said that it was an emergency meeting. Most of the members of the ASDC and the BJP attended the

meeting. I thought that the meeting was probably to discuss the ceasefire. Probably Bijoy and Mohit Hojai already knew as to what was in store. After we had gathered a phone call again came on the phone of Bijoy Sengyung. Niranjan asked whether all had gathered or not. He asked me to put the speaker phone on the "ON'' mode. Bijoy said that his phone did not have a good speaker and gave the number to Kulendra Daulagapu. The call of Niranjan came on Kulendra's phone and the mobile speaker was put on full volume and kept at the centre of the table. Niranjan said "I am the C-IN-C of DHD (J). By tomorrow, 10 AM Dipolal Hojai has to resign and Mohet Hojai has to be made the CEM. If you did not listen you will have the same fate as Purnendu Langthasa." One Bebojit Thousen who was slightly drunk tried to argue' He asked him as to why this was being ordered. Niranjan replied that Dipolal did not do much for the Dimasas regarding nomenclature of NC Hills, making a Dimama SP, DC and Dimasa HODs of all departments. Debojit then said that even Mohet Hojai cannot get these things done. Niranjan then told him to shut up. I asked others for support after the call and tried to resist the pressure. But all others did not support due to fear. I had to resign."

'During my term as CEM of 11 months from June, 2008 to November, 2008, I have faced lots of threats by DHD (J) or Black Widow extremisB. Some tome they asked me directly or in directly for huge money but many times I refused to meet their demand. They even asked some 1st class contractors of PWD (Road) for huge money. I also instructed all the contractors not to pay any amount to the DHD (J) but I cannot say, some contractors might have paid to the DHD (J) due to fear of life. Once I fought with the DHD lbcal commander Mindao after some Power Grid people approached me and said that the DHD (J) was demanding Rs.10 lakhs. I am hundred per sure that Shri Mohet Hojai had a role in my resignation from the CEM post and his becoming the new CEM because he has close relatives in DHD (J). His name is Maorung Dimasa who is a dreaded DHD (J) Commander and everybody is afraid of him".

"Regarding the role of RH Khan, I have to say that RH Khan is like the king of NC Hills. When I came to power, I said that we should get rid of this person. But Mohet Hojai said that since he was the EM of Social Welfare, he wants to try him out for three months. I did not agree. Then the

Governor Sri Ajay Singh called me and said that RH Khan was an efficient officer and it is only he who can get funds from the State and the Centre. I still resisted and made an AEE of Agriculture department by the name of Hazarika as the Nodal Officer. Hazarika could not get any funds at all. In a desperate move, I made RH Khan as the Liaison Officer after discussing with senior members Prakanta Warisa and Mohet Hojai. They also said that only he can mange funds for the council. RH Khan was the favourite of the Governor and as the Nodal Officer he used to move in a Helicopter to NC Hills".

"Regarding Phojendra Hojai, I have to say that he is a rogue type of element and forced me to give him work. He has a relation with Daniel of the DHD(J). Sometimes when I refused to meet him, he threatened and fought with my guards. I think he takes most of the money from the contractors and the engineers to be paid to the extremists."

"Regarding Dhruba Ghosh, I have to say that he is a big contractor and has taken a lot of works of the PWD. Once when I was travelling from Dihangi to Thaijuwarii, I called him up and told him that he had not done any work on that stretch. I also took that engineer to task for not getting the work done although they had claimed that the work Was completed."

(Emphasis supplied)

282.(ii). It is worth mentioning here in this context that this witness during cross-examination by the prosecution has admitted some facts which are:- that on 26th November, there was Medical departmental programme and he was the Chief Guest. He also remembers that the EM in-Charge, Medical was Kulendra Daulagapu. He also remembers that after conducting the programme, he reached home at around 5 PM. He remembers that Bijoy Sengyung, Kulendra Daulagapu came and met me for holding the Session of the Council. And he remembers that he had fixed the Session at round 7 PM on that day. The meeting lasted for about 1 ½ to 2 hours. In the said meeting he decided to resign. The decision to take to elect the next CEM Mohet Hojai was taken on the next day. He know Purnendu Langthasa, he was the CEM till 2006. He was killed by extremists in the year 2006. He remembers he was killed during election campaign by extremists. It may be DHD (J) but he cannot say exactly. He does not know why he was

killed. He remained as CEM for 11 months from January, 2008 till November, 2008. He was never threatened by anybody from the any quarter. He also admitted that he has heard of Maorung Dimasa who belongs to DHD (J) and that he has been killed and his dead body was recovered about 2-3 years back. He was in the Ceasefire Camp. He heard that there was demand for money but nobody complained to him during his tenure as CEM and nobody demanded money from him. He know R.H. Khan, he was the Deputy Director, Social Welfare. He heard that during the time of Governor's rule before he became CEM, he was also working as Liaison Officer. He knows Assistant Executive Engineer of Agriculture Sh. Dipak Hazarika. He made him Nodal officer of the Council as he used to procure funds from Government of Assam as he know that unless somebody pushes the funds are not released. He was there as Nodal Officer for about 3 months and they found him he was not in a position to bring funds. He do not remember exactly whether RH Khan was made Nodal officer after him. He knows Phojendra Hojai, who was a contractor, He know Deniel who was member of DHD(J). At present he is an elected member of the Council as an independent candidate. Now he has joined BJP and now he is Executive member of the Council. He do not know Dhruba Ghosh but he has heard his name.

282.(vi). The ld. counsel for accused Niranjan Hojai has submitted that though the prosecution side has declared P.W. 126 hostile, yet it has not declared P.W. 23 shri Kulendru Daulagapu as hostile, in whose mobile hand set, the alleged phone call of Niranjan Hojai has came, and who deposed in his evidence before the court that Depolal Hojai has resigned citing health ground and, therefore, it is binding upon the prosecution. There is no doubt about the legal proposition so pointed out by the ld. Counsel. But the thing needs to be analysed to a little depth to find out the actual cause of resignation of Depolal Hojai."

206. *On perusal of the text quoted above, we find that the witness Depolal Hojai (PW-126) did not utter a single word in his examination-in-chief that he was pressurized to resign from his post and rather, he made an emphatic statement that he resigned because of ill health of himself and his wife. The trial Court verbatim reproduced the parts of previous police statement of this*

witness with which he was confronted by the prosecution after declaring him hostile and then, based on the fact that the CIO Mukesh Singh had proved the 161 Cr.PC statement of the witness, the entire previous statement of the witness was accepted as substantive evidence. This finding was recorded by the trial Court at Paragraph 292 of the impugned judgment, which is reproduced herein below;

> *"292. It would be apposite to mention here that what would amounts omission and what would amounts to contradiction and how a contradiction has to be proved and the true import of section 16l and 162Cr.P.C.and of section l45, l53 and l57 of the Evidence has been settled by the Hon'ble Supreme Court long back in the year 1959 in the case of Tahsildar Singh & Another vs. State of U.P. AIR 1959 SC 1012. The position of law in this regard is again reiterated by Hon'ble Supreme Court in the case of V.K. Mishra v. State of Uttarakhand (2015) 9 SCC 58. Where it has been held that:-*
>
> *"16. Section 162 CrPC bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated there. The statement made by a witness before the police under Section 161(1) CrPC can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162(1) CrPC. The statements under Section 161 CrPC recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose:*
>
> > *(i) of contradicting such witness by an accused under Section 145 of the Evidence Act;*
> >
> > *(ii) the contradiction of such witness also by the prosecution but with the leave of the Court; and*
> >
> > *(iii) the re-examination of the witness if necessary.*
>
> *17. The court cannot suo motu make use of statements to police not proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words in Section 162 CrPC "if duly proved" clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway nor*

can be looked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the investigating officer. The statement before the investigating officer can be used for contradiction but only after strict compliance with Section 145 of the Evidence Act that is by drawing attention to the parts intended for contradiction.

18. Section 145 of the Evidence Act reads as under:

> *"145.Cross-examination as to previous statements in writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.*

19. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination.

The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the

police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted.

If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act that is, by drawing attention to the parts intended for contradiction."

292.(i). In the instant case, having gone through the procedure of declaring the aforesaid 7 witnesses and also the other witness as discussed in forgoing paragraphs, hostile, and the manner of proving the contradictions, as discussed the aforesaid case laws, it cannot be said that the prosecution side has done anything wrong or prejudicial to the interest of the defence side. Despite, an attempt has been made by the defence side to find fault with the same. It is pointed out that, the prosecution side, in the case of aforesaid witnesses, having brought on record their statement u/s 161 Cr.P.C. cannot use them to prove the charge. Referring a case law Vijender vs. State of Delhi, (1997) 6 SCC 171, it is further submitted that statement made before the police officer during investigation cannot be used for any purpose, except when it attract section 27 or 32(1) of the evidence Act. There is no scope of taking another view of the point of law so enunciated in the case law referred by the defence side. At the same time, other provisions of law, relating to same also should not eschew consideration of the court, else it would cause prejudice to the other side.

(Emphasis supplied)

292.(ii). As discussed earlier and in view of the ratio laid down by the Hon'ble Supreme Court in Haradhan Das Vs. State of West Bengal, (supra), the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. There is materials on record to lends corroboration to the evidence of the

aforesaid hostile witnesses, that support the prosecution version in respect of the cause of resignation of Depolal Hojai and in respect of the DHD(J) and its activities and its objectives. Therefore, the evidence of aforementioned witnesses cannot be treated as washed off the records."

(Emphasis supplied)

207. *We are compelled to state that the approach of the trial Court in accepting the previous statements of these witnesses to be admissible in evidence is absolutely perverse and against all tenets of appreciation of evidence in criminal cases.*

208. *The trial Court placed reliance on the ratio of the Hon'ble Supreme Court in the case of* ***Haradhan Das - Vs- State of West Bengal,*** *reported in* ***(2013) 2 SCC 297*** *for holding that the previous statements of the witnesses from which they had resiled constituting substantive evidence. However, at Paragraphs 14 and 15 of the said judgment, the Hon'ble Supreme Court clearly held that no doubt, the witnesses were declared hostile by the prosecution but still one fact remains that the examination-in-chief and particularly the above recorded portion of their statements in so far as it supports the case of the prosecution is admissible and can be relied upon by the Court.*

209. *There cannot be two views on this principle. However, the trial Court contorted the ratio of the judgment and rather than reading relevant and admissible parts from the examination-in-chief of the witnesses, those parts of the previous statements from which they expressly resiled were allowed to be brought on record in the evidence of the CIO Mukesh Singh and were then read as substantive evidence. The approach of the trial Court in this regard is absolutely perverse and contrary to law and thus, cannot be upheld.*

210. *Keeping in mind the ratio of the precedents cited at Bar and applying them to the material available on record, we are of the firm view that since the witnesses referred to (supra), were declared hostile and upon being confronted with their previous statements, they denied to have given such statements to the police, the parts of the previous statements, which the witnesses emphatically denied, could not have been accepted as substantive evidence. It is only the parts of the previous statement recorded under Section 161 Cr.PC, which the witness admits to have given upon being confronted in cross-*

examination, such part of the previous statement can constitute admissible/relevant evidence.

The fact that the CIO Mukesh Singh (PW-150), in his evidence stated that the witnesses had given such statements to him during investigation would not make the previous version admissible as the concerned witnesses made emphatic denial of having made any such statements before the police. The part of the previous statements with the witness denies to have given to the police, upon being confronted in cross-examination would then be relegated to the category of a statement under Section 161 Cr.PC and could not have been relied upon for any purpose whatsoever.

211. *If the approach of the trial Court is to be accepted, the direct implication thereof would virtually lead to a situation where a previous statement (recorded under Section 161 Cr.PC) would be accepted as substantive evidence only at the instance of the Investigating Officer even though the concerned witness/witnesses denied to have given such version.*

212. *The Hon'ble Supreme Court in Paragraph 17 of its judgment in the case of* ***Tahsildar Singh & Anr. -Vs- State of U.P.****, reported in* ***AIR 1959 SC 1012****, clearly explained this concept and laid down the words in Section 162 Cr.PC "if duly proved" clearly show that the record of the statement of witnesses cannot be admitted in evidence straightway nor can be looked into but the same must be duly proved for the purpose of contradiction* ***by eliciting admission*** *from the witness during cross-examination and also during the examination of the Investigating Officer.*

(Emphasis supplied)

213. *Hence, it is clear as daylight that record of the previous statement of the witness can be relied upon only if the witness upon being confronted in cross-examination, admits to have given such version. Resultantly, we have no hesitation in holding that the trial Court committed gross illegality in accepting the confronted portions of the 161 Cr.PC statements which the witnesses denied upon being cross-examined as substantive admissible evidence and those parts have to be eschewed from consideration.*

Once this exercise is undertaken, it is apparent that there is no witness of prosecution who gave tangible evidence to support the prosecution theory regarding Depolal Hojai having been forced to resign from the post of CEM of N.C. Hills Autonomous Council by the accused Mohet Hojai and/or other members of DHD(J).

214. *We have thus discussed the evidence of the material witnesses and would like to reiterate some of the important findings recorded by the trial Court in the impugned judgment based on the points of determination:-*

> *(i) That the accused Phojendra Hojai, Babul Kemprai, Mohet Hojai, Jewel Garlosa @ Mihir Barman @ Debojit Singha, Ahshringdaw Warisa @ Partho Warisa @ Anandra Singha, Vanlalchhanna @ Vantea @ Joseph Mizo, Malswamkimi, George Lam Thang and Niranjan Hojai @ Nirmal Rai formed a terrorist gang DHD(J) or Black Widow in the year 2004.*
>
> *(ii) During the period from January to March, 2009, the accused Mohet Hojai entered into an agreement with Redaul Hussain Khan, Jayanta Kumar Ghosh, Karuna Saikia, Debasish Bhattacharjee and Sandip Kumar Ghosh to do illegal act or an act which is not illegal but by illegal means, i.e. to raise fund for the terrorist gang by siphoning off Government fund, convert Indian currency to US Dollar, to procure arms and ammunition to wage war, cause death of innocent persons, terrorize the people and extort money, kidnap for ransom, disrupt works of gauge conversion and construction of East West corridor of four lane National Highway, etc.*

215. *The prosecution story can thus be broadly divided in two parts: the first being that the nine accused persons, named above, formed a terrorist gang DHD(J) or Black Widow in the year 2004 and that they were all involved in a deep-rooted conspiracy. Jayshree Khersa (PW-132) testified that she transcribed the conversation recorded in the call made by Niranjan Hojai and Mohet Hojai on the mobile phone of Phojendra Hojai after he had been apprehended by the Police Officials of Basistha Police Station on 01.04.2009. The said conversation was sought to be proved in order to establish the connection and conspiracy between Phojendra Hojai, Niranjan Hojai and Mohet Hojai. The conversation allegedly recorded in this mobile instrument was in Dimasa language and was translated to English by Jayshree Khersa (PW-132). Suffice is to say that the audio clip was downloaded from the mobile instrument into a CD. However, there is total lack of evidence on record to prove who prepared the CD. Furthermore, the trial Court admitted the said conversation as primary evidence by findings recorded at Paragraph 36 of the impugned judgment holding that the original Sony Ericsson mobile had been produced in the*

Court and exhibited as Mat. Exhibit-7, which was primary evidence. However, it is clear that the mobile instrument was never operated during the trial and the conversation recorded therein was never played in the Court and hence, the conversation as recorded in the CD was unquestionably secondary evidence, which could not have been accepted without the mandatory certificate under Section 65B of the Evidence Act.

216. *Otherwise also, while discussing the evidence of the seizure Officers, i.e. Maijuddin Ahmed and Sudhakar Singh (PW-10 and PW-26, respectively) at* ***Paragraphs 39, 40, 41, 154, 155 and 156*** *of the judgment, we have already concluded that there was no possibility whatsoever that any conversation could have taken place by using the mobile phone seized from the possession of Phojendra Hojai because the said instrument had already been taken into custody by the seizure Officer Maijuddin Ahmed (PW-10) and hence, the accused Phojendra Hojai could not have had any access thereto so as to indulge in a conversion with Mohet Hojai and Niranjan Hojai thereafter. Maijuddin Ahmed (PW-10) himself did not utter a single word that any call was received on the mobile phone seized from Phojendra Hojai after he had started the proceedings. Thus, it is apparent that the prosecution theory that Niranjan Hojai and Mohet Hojai made calls to Phojendra Hojai after the seizure and that the conversation was allegedly recorded in the mobile instrument is again a piece of fabrication. In addition thereto, we find that for comparison of the voices allegedly recorded in the mobile instrument, the specimen samples of voices of Mohet Hojai and Niranjan Hojai were collected from the clippings downloaded in CDs from reports telecast on TV news channels, which have been discarded at* ***Paragraph 150*** *of this judgment. Thus, no sanctity can be attached to the report (Exhibit-170) of the forensic science expert, namely, S.R. Mahadeva Prasanna (PW-60). The report of the scientific expert regarding comparison of voice of Phojendra Hojai, Mohet Hojai and Niranjan Hojai allegedly stored in the mobile instrument of Phojendra Hojai does not constitute legal evidence so as to corroborate the conspiracy theory.*

217. *Now, we proceed to reiterate our finding on the evidentiary worth of the star prosecution witness, i.e. George Lam Thang (PW-29), who though initially charge-sheeted, was later on granted pardon and was examined as an approver. We may note that the prosecution examined him with the objective of establishing that he was the medium through whom Malswamkimi, Phojendra Hojai and Vanlalchanna got the illegally derived funds siphoned off from the N.C. Hills Council converted into US*

Dollars for the purpose of procuring arms and ammunitions from Bangladesh and Myanmar to support the activities of DHD(J). The approver George Lam Thang himself did not utter a single word as to how the US Dollars were to be used. He gave pertinent answer in cross-examination conducted on behalf of the accused Malswamkimi that he did not know for what purpose the aforesaid US Dollars were to be used and by whom.

218. *Law is well settled that evidence of an approver should normally not be accepted without independent corroboration. Reference in this regard may be made to the Supreme Court judgment in the case of* ***Somasundaram @ Somu -Vs- State****, reported in* ***AIR 2020 (SC) 3327****. In the present case, it was all the more essential because the approver gave a totally exculpatory version while trying to save his own skin. Thus, the version of George Lam Thang that he managed to get huge sum of more than Rs.5 Crores Rupees converted into US Dollars, without being corroborated by any other evidence, cannot be accepted ipso facto more particularly as the person who actually converted the said money into US Dollars, i.e. Tapan, though apprehended in this case, was neither charge-sheeted nor he was made an witness. Rather, the CIO Mukesh Singh admitted that no investigation was made in this case regarding the role of Tapan. PW-29 George Lam Thang admitted in his cross-examination that he did not have any licence for doing the business of exchange of money which was for him an illegal business. It is impossible to believe that a huge sum of money, nearly to the tune of Rs.5 Crores, could be converted to US Dollars by a person in Kolkata city without leaving any trace. Thus, failure of the Investigation Agency to make any effort whatsoever for collecting evidence regarding the role of Tapan and rather, letting him go scot free despite having been apprehended (as per statement of George Lam Thang) creates a genuine doubt on the bona fides of the Investigation Agency. In addition, as George Lam Thang, being an approver, gave totally exculpatory version, his evidence is otherwise also, not acceptable. Hence, we are of the firm view that the trial Court fell in grave error while placing reliance on the evidence of the approver, George Lam Thang. Once his evidence is excluded, there remains nothing on record so as to substantiate the prosecution case regarding the alleged conversion of money from Indian currency into US Dollars and hence, the very foundation of the prosecution case is breached.*

219. *The trial Court drew a very strange assumption at Paragraph 466 of the impugned judgment that there*

was no direct evidence to link the recovered arms with the DHD(J) except for the version of the accused that the arms were meant for DHD(J). However, as there was evidence to show that Vanlalchanna received US Dollars from Malswamkimi, it could be presumed that the aforesaid US Dollars were used to purchase arms for the DHD(J). The trial Court frowned upon the efforts of the Investigation Agency because no attempt was made by the Investigating Officer to collect evidence regarding the role of Tapan, the money changer, who ultimately was responsible for conversion of the Indian Currency into US Dollars. The finding so recorded by the trial Court at Paragraph 227(vi) of the judgment, is reproduced herein below for the sake of ready reference:-

> *"227.(vi). While the submission of the ld. Defence counsel is considered In the light of the facts and circumstances on the record it has been found that there is no substance in the same. It is, however, true that one Tapan, who converted money to US Dollars has not been made an accused nor a witness here in this case in spite of his arrest by Kolkata Police. But, there are many corroborating materials on the record to support the conversion of money. Recovery of Rs.5,00,000/ from the rented house of P.W. 29 on the strength of disclosure statement Ext.78 made by him to NIA officer is one of the corroborating fact. The said sum was given to him by accused Malswamkimi on 07.08.2009. Besides, Ext.79- the disclosure statement made by him disclosing that he along with Malsawmkiml went to Hotel Madhumilan & Hotel Shalimar at Kolkata for the purpose of money collection and Ext.52 by which he pointed out Madhumilan Guest House to the NIA officer where he visited Room No.810 with Malsawmkimi and collected cash from Phojendra Hojai, and Ext.80, another pointing put memo where he pointed out Hotel Shalimar to the NIA officer from where he along with Malsawmkimi collected money from Phojendra Hojal and recovery of a sum of Rs. Ext-257 disclosure statement made by which you disclosed about Rs 10 lakh. Ext-258, by which you disclosed the visit to Shalimar Hotel and Madhumilan Hotel along with George Lam Thang. Ext.76 - the confessional statement of P.W.29, which has already been discussed earlier, also lends unstinted support to the evidence of P.W.29."*

220. *The theory that Depolal Hojai, the duly elected CEM of the N.C. Hills Autonomous Council, was overawed and was forced to step down from his post*

could not be proved by reliable evidence. In this regard, the best evidence could have been of Depolal Hojai himself, who did not support the prosecution case and turned hostile. Thus, as discussed (supra) this theory could not be proved by the prosecution by cogent admissible evidence. The allegation of defalcation of Government funds of the N.C. Hills Council would become relevant and require detailed adjudication only in the situation that prosecution could succeed in proving that DHD(J) was a terrorist gang involved in terrorist activity as defined in Section 15 of the UA (P) Act and then only, the aspect of this money being used for terror funding punishable under Section 217 of the UA (P) Act would have to be examined.

221. *The most material witness on whose testimony the prosecution banked upon to substantiate this allegation is Amitava Sinha (PW-24). Only this witness from amongst the 150 examined by the prosecution, tried to depose about the alleged violent/subversive activities of DHD(J). However, we have extensively discussed the testimony of this witness at* ***Paragraphs 43, 45 and 163*** *and found the same to be irrelevant and unconvincing because the entire version of the witness regarding the alleged violent activities of the DHD(J) was by way of sheer improvement from his previous statement to NIA. Furthermore, even if the version in examination-in-chief of this witness is seen, it clearly seems that he has just given a story like narrative about the so called violent activities of DHD(J). The witness never claimed to have personally perceived any of the alleged subversive/terrorist activities of DHD(J) or its members. Hence, the testimony of this witness is also flimsy, unbelievable and fit to be discarded.*

It may be reiterated that no prosecution witnesses gave even a bald reference regarding the five so called terrorist activities of DHD(J), which we have discussed extensively at ***Paragraph 148*** *of this judgment.*

222. *At this stage, we would like to refer to the evidence of a very important official witness, who was examined by the prosecution, namely, Mr. Mukut Kemprai, the Principal Secretary of N.C. Hills Autonomous Council, who deposed at the trial as PW-128. He stated that in the year 2009, he was working as Secretary in-charge, Finance Taxation of N.C. Hills Autonomous Council. In the entire evidence of this witness, not even a remote suggestion was given by the prosecution that the funds meant for the development of the N.C. Hills Autonomous Council were defalcated or were siphoned off to finance the activities of the DHD(J).*

The witness though holding an important position in the administration of N.C. Hills, did not state anything about the alleged terrorist activities of DHD(J) in the hill areas. Likewise, even during the evidence of the other official witnesses, who were working in the N.C. Hills Autonomous Council in one capacity or the other, the prosecution did not give any such suggestion that the DHD(J) was involved in any kind of terrorist activities or that the funds of the N.C. Hills Autonomous Council were siphoned off for financing its activities. It is thus clear that failure on part of the prosecution to give any suggestion to these important witnesses being the officials working in the N.C. Hills Council that DHD(J) was involved in some kind of terrorist activities in the N.C. Hills, gives a strong indication that the prosecution itself was not sure about the substance of these allegations.

223. *Pertinent questions were put to the Chief Investigating Officer, namely, Shri Mukesh Singh (PW-150), seeking his explanation regarding the conclusions of investigation on the basis whereof the allegations of terrorist activities were attributed to the DHD(J) and the charge-sheeted accused. Some of the material answers elicited during cross-examination of Shri Mukesh Singh need to be highlighted and are reproduced herein below for ready reference:-*

> ***"…….. I enquired about the status of accused Mohet Hojai who was at that time CEM of NCHAC. He was an elected member of NCHAC. He was a political person.***
>
> ***…….. Regarding seizure of Rs.1 crore, on the first of April, 2009, I learnt from the statement of Sonam Lama, video footage provided by Hitesh Medhi from NE TV, and Kaushik Bezbaruah, NEWS LIVE and from conversation retrieved from mobile phone of Phojendra Hojai retrieved through forensic lab that the money was given by Mohet Hojai to Phojendra Hojai. …….. It is true that DHD(J) was declared as an unlawful association on 9.7.2009 and the Hon'ble Tribunal had confirmed it on 8.1.2010. …….. At the time of registration of NIA case, DHD(J) was not a terrorist organization declared under the Schedule.***
>
> ***…….. I have not written to the Govt. of Assam to give the list of the members of the DHD(J). In order to ascertain the membership of DHD(J) I took the assistance of statements of witnesses, contents of the FIR lodged against members of the DHD(J). Since accused Babul Kemprai was the close associate of Phojendra Hojai & Mohet Hojai and he was found in possession of Rs.1 crore and letter head of DHD(J)***

on 01.04.2009 so, I cited Babul Kemprai as a member of DHD(J).

…….. During the relevant point of time, accused Mohet Hojai was the CEM, NCHAC. The executive power is with the Principal Secretary, NCHAC but the CEM makes policy decisions with regard to the affairs of the NC Hills.

…….. I submitted investigation report to the MHA, Govt. of India on 11.11.2009 for grant of sanction. The investigation report is accompanied by statement of witnesses and other documents and list of material evidences. In prosecution sanction Ext.301 it has not been reflected as to on which date the competent authority received the investigation report along with enclosures for grant of prosecution sanction. It is not a fact that on 11.11.2009, I did not submit investigation report along with enclosures for grant of sanction. I have sent the investigation report along with enclosures to the MHA, Govt. of India through messenger.

…….. It is a fact that the CDs given by media houses (NEWS LIVE & NE TV) were not accompanied by Sec. 65(B) of the Indian Evidence Act, I have not seized the source from where the CDs were made nor I have sent them for forensic examination, It is a fact that the source from where the CDs were made were not verified by me.

……. It is true that from the last paragraph of the Final report of the present case filed under Sec. 173 of Cr.P.C. I have requested the Central Govt. for investigation of the allegation of misappropriation of Govt. funds, criminal misconducts, forgery etc. by the CBI after obtaining necessary consent from the State of Assam or investigation by the ACB of Assam Police. I am aware that the CBI has investigated the cases of misappropriation of Govt. funds, criminal misconducts, forgery etc. in various Deptts. of the NCHAC. It is true that there is no Law by which two investigating agencies could investigate the same offence against the same accused persons twice.

…….. It is true that Sec.17 & 18 of the UA (P) Act, 1967 falls under Chapter IV of the said Act. It is true that under Sec. 43(c) of the UA (P) Act, 1967 only police officers of the rank of Deputy Superintendent of Police (DSP) or a police officer of an equivalent rank shall investigate any offence punishable under Chapter IV & VI of the UA (P) Act, 1967. It is true that the officers named above i.e., Mr. S.K. Malviya, Sh. H.S. Karmyal, Sh. Santosh

Kumar, Sh. Heman Das, Sh. Bularam Terang do not fall under the category of officers authorized to investigate U/S 43(c) of the UA(P) Act, 1967.

It is true that there is no record of any statement of Accused persons except Golon Daulagopu in the present case.

…….. My statement in my examination in chief that there was a huge short supply of materials at different divisions of NCHAC to the tune of approximately 40% of the total supply order may not be correct and it is only an approximation. I am not aware of the details of the actual supply of GI pipes in the Maibong division of NCHAC. It is true that I cannot show from the record of the present case what was the actual supply of GI pipes in the Maibong division of NCHAC.

It is true that I have not personally investigated whether Maa Trading of Lower Haflong, Borail Enterprise of Lower Haflong, Jeet Enterprise of Lower Haflong, Loknath Trading of Lower Haflong & M/S Debasish Bhattacharjee of Lower Haflong were paying the Assam Value Added tax under the Assam Value Added tax Rules, 2005 regularly. It is also true that I have not personally investigated about the existence of the firms Maa Trading of Lower Haflong, Borail Enterprise of Lower Haflong, Jeet Enterprise of Lower Haflong, Loknath Trading of Lower Haflong & M/S Debasish Bhattacharjee of Lower Haflong.

…….. I have not personally visited Haflong for the purpose of investigation of the present case. I have not personally investigated the correctness of the firms - Maa Trading of Lower Haflong; Borail Enterprise of Lower Haflong; Jeet Enterprise of Lower Haflong; Loknath Trading of Lower Haflong & M/S Debasish Bhattacharjee of Lower Haflong. I volunteer to state that this aspect has been investigated by DSP, K.S.Thakur.

…….. It is true that I have stated in my examination in chief that, 'In furtherance to the conspiracy to wage war against the State Niranjan Hojai (C-In-C) DHD(J) sitting abroad directed the then CEM Depolal Hojai to resign and make way for Mohet Hojai to be made the CEM'. It is also a fact that my deposition in my examination in chief to the effect that, 'As a result, on 26.11.2008, Depolal Hojai called for a meeting of all Executive members at his residence. During the meeting, Niranjan Hojai made a telephone call to the mobile of Executive Member Sh. Bijoy Sengyung. Since the audio of mobile of Executive Member Sh. Bijoy Sengyung was not

clear, he again made a call at the mobile phone of Sh.Kulendra Daulagopu. The speaker phone was kept on. Niranjan Hojai directed Depolal Hojai to resign as the CEM and make way for Mohet Hojai. He also threatened Depolal Hojai that if he does not comply he will face the same fate as Purnendu Langthasa (CEM who was killed earlier by the DHD(J).' was on the basis of statements of witnesses recorded U/S 161 Cr.P.C.

It is also a fact that my deposition in my examination in chief to the effect that, 'A number of times, cash of huge quantity was sent to the DHD(J) through Hundi operators from Guwahati to Kolkata where it was received by Jayanta Kumar Ghosh and his associates Sandip Ghosh and Debashish Bhattacharjee.' was on the basis of statements of witnesses recorded U/S 161 Cr.P.C. who has been examined as PW-35.

I do not remember whether I recorded the statement of Didar Ahmed Choudhury U/S 161 Cr.P.C. My statement in chief to the effect that, 'On the first of April, 2009 Mohet Hojai asked Phojendra Hojai to deliver Rs.1 crore to the person of Niranjan Hojai at Shillong,' is on the basis of statements of witnesses recorded U/S 161 Cr.P.C. It is also correct that my statement in examination in chief to the effect that, 'Accused Mohet Hojai called accused Phojendra Hojai at his residence on 30.03.09 and asked him to deliver Rs.1 crore in cash to the person of accused Niranjan Hojai of DHD(J) at Shillong,' is also on the basis of statements of witnesses recorded U/S 161 Cr.P.C.

…….. It is also a fact that my statement to the effect that investigation also revealed that many times cash was sent to the DHD(J) by Mohet Hojai through Kolkata is on the basis of statements recorded U/S 161 Cr.P.C. …….. It is also a fact that my statement in examination in chief to the effect that, 'Investigations were also conducted regarding terrorist activities of DHD(J). It was revealed that the prime aim of DHD(J) was to establish a separate Dimasa State through arms struggle. In order to achieve this aim they targeted developmental projects in NCHAC. Two of the main Projects which were targeted by them included the Broad Gauge Conversion Project and East West Corridor Project. DHD(J) also indulged in attack on security forces notable one among them were attack on CRPF personnel in which 6 persons were killed and attack on Assam Police personnel and 7 persons were killed. They also carried out abductions for ransom. It has been found during investigation that some of the

weapons obtained from DHD(J) were the same weapons which were looted from the security forces after killing by DHD(J).' is also on the basis of statements of witnesses recorded U/S 161 Cr.P.C. I did not carry out investigation into individual terrorist actions carried out by DHD(J). *I collected voice sample of Niranjan Hojai during investigation from TV channel where he had given an interview. I did not collect the voice sample of Niranjan Hojai after his arrest."*

(Emphasis supplied)

224. *Upon appreciation of the above quoted extracts from the evidence of the Chief Investigating Officer Shri Mukesh Singh (PW-150), it can be perceived that the entire thrust of the prosecution case in the charge-sheet that DHD(J) was involved in terrorist activities, was purely based on the 161 Cr.PC statements of the witnesses examined by the CIO during investigation. No actual investigation was made to find out the truth about these allegations which are nothing but castles built in thin air. We have discussed in extenso that no witness, who could give direct evidence regarding the alleged terrorist activities of DHD(J), was examined during trial. The witness Amitava Sinha (PW-24) just narrated a fictional story about the activities of DHD(J) and his statement has already been discussed and discarded. The only witness, who remotely mentioned about the so called violent activities of DHD(J), was Nairing Daulaguphu (PW-46). The major part of his examination-in-chief is relating to the activities of DHD and not DHD(J), which was allegedly a militant organisation led by Jewel Garlosa, operating in Karbi Anglong and N.C. Hills. The witness categorically stated that in January, 2003, ceasefire was declared between the militants and the Government and 300 cadres including Nairing Daulaguphu himself were shifted to the designated camp. He further stated that in October, 2003, the organisation was separated and Jewel Garlosa formed another militant organisation by the name of DHD(J). However, what precisely was the nature of activities of DHD(J), the witness did not state.*

225. *The witness Anurag Tankha (PW-72) was another Police Officer being posted as Superintendent of Police, N.C. Hills in June, 2009, who was examined to project and prove the alleged criminal and violent activities of DHD(J). However, the witness simply stated that he got a query from the DIG, NIA on 16.06.2009 regarding some ongoing investigation. He conveyed the requisite information as per the available*

records vide forwarding letter Exhibit-271, annexing therewith a list of cases where Jewel Garlosa @ Mihir Barman and Partho Warisa @ Ahshringdaw Warisa were charge-sheeted. This also included an incident, which occurred on 14.06.2009 at N.C. Hills Autonomous Council. He also submitted a list of weapons surrendered by the DHD(J) cadres.

226. *We have discussed the evidence of Anurag Tankha (PW-72) in detail at* ***Paragraphs 49, 50 and 172*** *of the judgment and have held that he simply assimilated the information and forwarded the same to the NIA Headquarters. He admitted that he was not present in the surrender ceremony. That apart, the list which this witness forwarded has also been examined minutely and we have already concluded that this document also does not provide any insight into the alleged terrorist activities of DHD(J). In addition thereto, no evidence was given regarding the source.*

227. *As an upshot of the above discussion, we have no hesitation in holding that the prosecution has miserably failed to lead reliable admissible and legally acceptable evidence in order to establish its primary allegation that DHD(J) was a terrorist gang involved in any kind of violent activities or that the funds allegedly siphoned off from the N.C. Hills Autonomous Council were routed to the cadres of DHD(J) for the purpose of procuring arms and ammunitions so as to facilitate the so called terrorist activities of DHD(J). Consequently, the findings recorded by the trial Court holding that DHD(J) was a terrorist gang and that the funds allegedly defalcated and siphoned off from the N.C. Hills Autonomous Council were routed to the members of the DHD(J) for the purpose of funding the procurement of arms and ammunitions to facilitate the militant activities of this organisation, are not based on legally admissible and reliable evidence.*

We have noticed and highlighted grave lapses on part of the Investigation Agency during investigation and the prosecution and, to some extent, the trial Court during the trial. The most material witness, who could have thrown significant light on the aspect of defalcation of funds, would have been the Principal Secretary to the N.C. Hills Autonomous Council, who though cited as a witness in the list of witnesses, was not examined in support of the prosecution case for reasons beyond comprehension. The person named Tapan, who was actually responsible for conversion of Indian currency to US Dollars, was not examined as a witness.

228. *As the entire theory of the prosecution regarding the DHD(J) being a terrorist gang and that it was involved in terrorist and subversive activities has been discarded by us after minute re-appreciation and exhaustive analysis of evidence led by the prosecution and hence, there remains no scope to maintain the conclusion of the trial Court that the funds allegedly siphoned off from the N.C. Hills Autonomous Council were used to finance the same. Hence, the charge for the offence under Section 17 of the UA (P) Act has to fail as an automatic consequence of the above conclusions. We have already discarded the prosecution case regarding the accused being involved in a conspiracy and thus, the charge under Section 120B of the IPC can also not be sustained.*

229. *The evidence led by the prosecution so as to connect the two important characters in the case with the DHD(J), namely, Vanlalchhanna and Ahshringdaw Warisa, is fabricated and cooked up. The inception of the prosecution case with the alleged recovery of Rs.1 Crore on 01.04.2009, is also tainted with grave discrepancies and contradictions, because the two star prosecution witnesses, namely, Bunu Sonar (PW-64) and Dipankar Deka (PW-113), categorically stated that the seizure was made in Barapani area of Meghalaya, whereas the Police Officials of Basistha Police Station projected that the seizure was made within the jurisdiction of the said Police Station. There are grave contradictions regarding the actual manner and place of seizure of the currency notes to the tune of Rs.1 Crore as is evident from the testimony of Maijuddin Ahmed (PW-10) and Sudhakar Singh (PW-26) when we have discussed in extenso and the entire seizure has been discarded.*

230. *That apart, the Investigation Agency very conveniently washed its hands off the most important facet of the case, i.e. misappropriation of Government funds, criminal misconduct and forgery, etc., by claiming that request was made to the Central Government to get these allegations investigated into either by the CBI after seeking necessary consent from the State of Assam, or by the ACB of Assam Police. The Chief Investigating Officer Shri Mukesh Singh stated that the CBI has made investigation into these allegations. Thus, the incriminating findings recorded by the trial Court on these very allegations virtually encroaches into the territory of the proceeding contemplated upon the result of investigation filed by the CBI/ACB, if any. The exact status of the said investigations was not brought on record of the present case, which is yet another*

loophole in the prosecution case. The findings recorded by the trial Court holding that these allegations stand proved without framing formal charges leads a situation of grave anomaly. The possibility of these findings having an adverse prejudicial effect on the right to fair trial of the accused who may have been charge-sheeted by the CBI/ACB on these very allegations cannot be ruled out.

231. *We may reiterate that we have already held that conviction of the accused Ahshringdaw Warisa and Vanlalchhanna @ Vantea in this case has been recorded on totally fabricated and cooked up evidence. Consequently, we have no hesitation in holding that the prosecution has miserably failed to bring home reliable, legal and admissible evidence so as to prove the charges against the accused appellants beyond all manner of doubt. Since, we have concluded that the prosecution failed to prove commission of any terrorist act by the DHD(J) or any of its members, the charge for the offences under Section 16 and 20 of the UA(P) Act, which have been found proved against the accused Jewel Garlosa and Niranjan Hojai can also not be sustained. No weapon of any kind was recovered from accused Jewel Garlosa, Vanlalchhana and Niranjan Hojai and thus, their conviction for the offence punishable under Section 25(1)(d) of the Arms Act is also unsustainable in the eyes of law.*

232. *As a consequence, the impugned judgment 22.05.2017 passed by the learned Special Judge, NIA in Special NIA Case No.1/2009 does not stand to scrutiny and is hereby quashed and set aside. The accused appellants and the accused Malswamkimi, who did not prefer any appeal, are all acquitted of the charges. However, we make it clear that the findings recorded in this judgment shall not prejudice the other criminal case/cases, if any, registered against any of the accused in relation to the allegations of defalcation of Government funds, criminal misconduct, fraud and forgery, etc.*

11. In view of the affirmative findings recorded by us after appreciating the evidence jointly recorded in the analogous case, i.e. NIA Case No.1/2009 that the prosecution failed to prove that the DHD(J) was a terrorist Gang involved in terrorist activities and since, in the present case, the only additional fact which was alleged by the prosecution was regarding recovery of money made from the Scorpio vehicle

in which the two appellants were present on 11.02.2009 and since, mere recovery of the Indian currency, in our opinion, cannot give rise to any such inference that the said amount was meant to be used for any terrorist activities, the charges leveled against the appellants cannot be sustained and they deserve to be acquitted. Consequently, the impugned judgment dated 22.05.2017 passed by the learned Special Judge, NIA in Special NIA Case No.2/2009 does not stand to scrutiny and is hereby quashed and set aside. The accused appellants, namely, Shri Jibangshu Paul and Shri Golon Daulagopu are acquitted of the charges. The appellants are on bail and they need not surrender. Their bail bonds are discharged.

The appeals are allowed accordingly.

JUDGE **CHIEF JUSTICE**

Mukut/gunajit

Comparing Assistant