

**IN THE COURT OF SPECIAL JUDGE (PC ACT), AIZAWL:MIZORAM**

**SR (PCA) No.2/2016 in A/o CrI. Tr. No. 185 OF 2016**

**ACB PS. C/No.3/2015 Dt. 25.5.2015**

**U/s 120-B/409/420/477A/34 IPC R/W Section 13(1) (c) (d)/ Section  
13(2) of P.C. Act, 1988.**

State of Mizoram

..... Complainant

-Vs-

1. Liansanga S/o Suakkunga(L), E-in-C. PWD(Rtd).  
R/o Khatla, Aizawl.
  2. Lalnunmawia Sailo S/o Ngurliana(L), Chief Engineer,  
P& E (Rtd), R/o Zonuam, Aizawl
  3. Laldawngliana S/o Hmelmawia(L) SDO, P&E,  
R/o Ramhlun North Biak In Mual, Aizawl.
  4. Swopan Kumar Roy @ SK Roy S/o D.M. Saha(L) R/o Chanmari, Aizawl.
- .....accused persons

**BEFORE**

SMT. LUCY LALRINTHARI

SPECIAL JUDGE, P.C ACT

**APPEARANCE**

For the Prosecution:	Mr. H.Lalmuankima P.P.
For Accused No 1.....	Mr. W.Sam Joseph, Advocate.
For Accused No 2.....	Mr. C.Lalramzauva, Advocate.
For Accused No 3.....	Mr. Francis Vanlalzuala, Advocate.
For Accused No 4.....	Mr. W.Sam Joseph, Advocate.

Date of hearing : ..... 25,26,27 of October 2016.

Date of Order : ..... 27 October 2016.

**Order**

1. As per Sec.226 Cr.Pc the Ld. Prosecutor Sh.Lalmuankima open the case and describe the charge brought against all the Accused and explain the material evidence accompanying the charge sheet to prove the guilt of all the Accused. Thus, pray to the Court to fix other date for framing of charges against all the Accused as there exist a prima facie under the aforesaid charge sections of law.

2. According to the learned Public Prosecutor Mr. H.Lalmuankima on 3.10.2008 Pu Vanlalruata and Pu R.L. Liantluanga, President & Gen. Secretary of The People's Right to Information and Development Society of Mizoram (PRISM) submitted a written complaint to the S.P. ACB that there were certain irregularities and mis-utilization of funds on the construction and Re-revised estimate 2001 of Kau-Tlabung and Tuipanglui Mini Hydel Project. Accordingly, S.P. ACB endorsed Inspector P.C. Lalrinmawia of ACB (now Asst. Commandant 3<sup>rd</sup> Bn. MAP) to conduct preliminary enquiry and to submit report.

3. As per the judgment and order of the Hon'ble Gauhati High Court dated 17.3.2015 in PIL 35/2013 and the Order of the Hon'ble Supreme Court dated 11.5.2015 in Petition(s) for Special Leave to Appeal (C) No. (s). 13791/2015 by which the Special Leave Petition is dismissed. Based upon the Enquiry reports on 25.5.2015 Pu Shershing Thapa, Addl. S.P. ACB, Mizoram, Aizawl, lodged a written FIR to the S.P. & OC ACB PS against 16 Engineers of P & E Department for committing the offences of criminal conspiracy, criminal misappropriation of public funds, abuse of official positions, cheating, common intention, falsification of accounts. Accordingly, SP, ACB registered ACB PS Case No. 3/2015 Dt. 25.5.2015 U/s 120B/420/409/477A/34 IPC R/W Section 13(1) (c) (d)/ Section 13(2) of P.C. Act, 1988 and endorsed the case to Jimmy L. Renthlei, Dy. S.P. ACB to investigate the case and to do the needful.

4. During the course of investigation of the case, both Kau-Tlabung and Tuipanglui Small Hydel Projects were visited along with local leaders and NGOs. **Permanent works such as Dam, Fore bay, Power channel, Retaining wall, Culverts, Buildings and fencing were verified** photos of available assets were taken and stored in a disc which is enclosed as **ANNEXURE 1** E. Available witnesses were examined and recorded their statements and enclosed. During

physical verification, it is noticed that some of these permanent works which were constructed during a decade or two back were found damaged which may be due to natural calamities or other reason. However, the remaining of the Assets indicates that constructions were actually done.

5. It is also ascertained that **two Notice Inviting Tenders specific terms and conditions was floated i.e. (1) No. 112/90-CE(PD)/100 Dated 12.9.94 for similar works and having adequate experience in the successful installation of plant and equipment for power house for the work of "design, manufacturing, supply, erection, testing, commissioning (etc), of generating units and other electro mechanical equipment for Tuipanglui power house (2x1.5 mw) & its subsequent operation and maintenance for 12 months for "Tuipanglui Hydel Project" (2) No. 112/90-CE(PD)/105 Dated 6.12.94 for similar works and having adequate experience in the successful installation of plant and equipment for power house for the work of "design, manufacturing, supply, erection, testing, commissioning (etc), of turbo generators of 1.5. mw or higher capacity, for the work of "Design, Manufacturing, Supply, Erection, Testing, Commissioning, and subsequent operation and maintenance for 12 months of 2x1.5 mw turbo generators for ' Kau-Tlabung Hydel Project".** During investigation the Tender with terms and conditions were seized which is enclosed as M/R No. 13/15. The Tender was bidden by **7 (seven) illegible Contractors**. Amongst these 7 bidders the **Fourth Lowest M/S Eastern Overseas Corporation, Bombay was accepted and selected. On careful scrutiny of all the seized documents, and the documents provided by the P&E Department sufficient evidence of criminal act was established against Pu Liansanga, while he was discharging his duties as Chief Engineer, P& E, Govt. of Mizoram, Aizawl.** It is ascertained that, **THE REASONS FOR PRICE ESCALATION IS THAT** Pu Liansanga, while he was discharging his duties as Chief Engineer, P&E, Govt. of Mizoram, Aizawl **DIDN'T RESPECT THE SANCTITY OF the TERMS & CONDITIONS** as desired by the Contractor EOC which **give undue advantage to the Contractor EOC.** Further, Modification of the Terms of tender was made after the bidder was selected **in another word he had made post tender modification, which violates CPWD Manual Section 20.1.16.3 (Photo copy enclosed as ANNEXURE 3 E.)**

**Leaving the Department helpless without any security to bind the Contractor, as follows:**

**1. Clause 5.2 Security Deposit of General Conditions of the Contract (GCC) at page 6 in the Tender was deleted i.e. initial security deposit for due performance of 8% (2% + 8%) necessary in the tender document was completely deleted in Contract Agreement at Clause 5.2 page 26.**

**2. Clause 13.1 PAYMENT TERMS (A.B.C) of GCC (at page 13) of Tender condition said that 90% of the price of each consignment for DELIVERY AT DESTINATION shall be paid and 10% of the price of each consignment should be retained to be released only after successful operation of the equipment. **This Clause was replaced in the Contract Agreement Clause 13 at page 27** by "Total CIF Bombay amount shall be paid to the contractor, 30 days before dispatch of equipments from Manufacturer's Works Overseas against Bank Guarantee (B.G...) which will be valid for 3 months and released immediate on receipt of all Materials at Docks, duly cleared from Customs".**

**3. Clause 13.2-** According to Tender terms and conditions page 14 of GCC

- (A) 80% of ETC and site storage price should be given after erection/installation of each equipment.
- (B) 10% payment on completion of ETC.
- (C) Balance 10% price after defect Liability Period i.e. after 18 months of successful operation of equipment.

**4. Clause 13.3 A & B –** As per the Tender terms & conditions, 90% total price of spares shall be paid after received at site, 10% balance would be paid after completion of Defect Liability Period i.e after 18 months of successful operation of equipment.

**All the above conditions in Clause 13.2 A, B, C and Clause 13.3 A & B which give security to the Department were changed in Contract Agreement Clause 13.2 & 13.3 at page 27** in which " Completion Balance Payment of total contract shall be paid, as soon as all equipments, duly cleared from Customs and ready for transport to reach the site (from Bombay) against

Bank Guarantee which is to be valid for 10 months only. Photo copy of the section mentioned above are hereby enclosed as ANNEXURE-2E.

**5.** It is, therefore, ascertained that Pu Liansanga, while he was discharging his duties as Chief Engineer, P& E, Govt. of Mizoram, Aizawl he had abused his official position by modifying some crucial terms and conditions in the Original Tender documents of Tuipanglui Hydel Project Tender for Power House Package vide Notice Inviting Tender No. 112/90-CE(PD)/100 Dated 12.9.94 (MR No. 13/15 Sl. No. 3) which were replaced to give undue favour to the Contractor M/S EOC. In the Acceptance of Contract EOC/2213/95/LF/46 Dated 27.12.95 (MR No. 13/15 Sl. No.2) Due to Post tender modification, as clearly pointed out above, full payment was made to the contractor, Eastern Overseas as follows:

1. Tuipanglui Small Hydel Project: EOC Proforma No. EOC/103/KT/97 Dt. 12.4.1997 amount of Rs. 2,72,98,490/-. Payment made vide EE, Serlui 'B' Electrical Division, Bilkhawthlir Voucher No.1 Dt. 28.5.1997.
2. Kau-Tlabung Small Hydel Project: EOC Proforma No. EOC/103/KT/97 Dt. 20.5.1997 Amount Rs. 43,54,888/-. Payment made vide EE, Serlui 'B' Electrical Division, Bilkhawthlir Voucher No.13 Dt. 27.6.1997.

On 7.1.2001 @ 3:30pm, meeting was held at State Guest House, Aizawl regarding commissioning of Kau-Tlabung & Tuipang Small Hydel Projects. The meeting was attended by 15 Engineers of P&E Department, 4 Engineers of E.O.C (Mumbai Contractor), two GILKES, UK representatives. The minutes of the meeting was issued by C.E. P & E, Mizoram, Aizawl vide Memo No. 420/95-CE(PD)/Vol-III/157 Dt. 8.1.2001.

Copy of the minutes is hereby enclosed in M/R No.15/15. It was decided and recorded in the meeting resolution 3 and 5 to complete the work (ETC) in February, 2001. But, the Engineers and representatives of Eastern Overseas Corporation and GILKES, UK did not return as committed and decided in the meeting. Since the original **General Conditions of the Contract (G.C.C)** for Erection, Testing & Commissioning (ETC) of both the Small Hydel Projects was modified and Post Tender was made. The P & E Department was helpless to insist and give orders to the EOC to complete the works on Small Hydel Projects. **They**

**turned up much later, and completed the Tuipanglui and Kau Tlabung Small Hydel Projects on 17.12.2004 and 5.5.2006 respectively.**

6. During investigation it is also ascertained that normal calculation (formula) for power generation is  $Mw (1000) \times 24 \text{ hrs (daily)} \times 365 (1 \text{ yr}) \times 35\% \text{ Efficiency} = ??? \times \text{cost of unit (Rs.2.50p)}$ . Therefore, the delay in ETC had **caused wrongful loss in Power Generation (3 Mw @ each SHP) to Government of Mizoram viz. from 1.3.2001 to 17.12.2004 ( 3 yrs 9 months) in respect of Tuipanglui Small Hydel Projects and 1.3.2001 to 5.5.2006 ( 4.3 yrs) in respect of Kau Tlabung Small Hydel Projects which amounts to Rs. 1839.10 lakhs (Rs. 8,61,81,250 and Rs. 9,77,28,750 Tuipanglui Small Hydel Projects and Kau Tlabung Small Hydel Projects respectively).** Hence, Pu Liansanga, E-in-C, PWD (Rtd) S/o Suakkunga(L) of Khatla, Aizawl, Aizawl had committed the offence U/s 120B/420/409/477A/34 R/w 13(1) (c ) (d) & 13(2) P.C. Act, 1988.

7. Further, on scrutinizing all the available documents and witnesses regarding "purchase of 66 Rolls of Chain Link Wire-mesh "5 feet X 100" feet from R.P. Processing Unit, Chanmari, Aizawl, it is found that there is a Challan of R.P. Processing Unit, Chanmari Dated 12.7.1999 address to SDO, Kau Electrical Sub-Division, Thenhlum to receive 66 Rolls of 4 SWG Chain Link Wire-mesh "5 feet X 100" feet **(Photo copy of Challan is enclosed by Vanlaiduhsaka Statement at S-27 and in Swopan Kumar Roy Statement at A-S 1).** During investigation, Chiranjit Dey, working under Pu SK Roy of Chanmari (husband of Proprietor R.P. Processing Unit, Chanmari), admitted that he had written the challan on the direction of his Employer. And the challan was referred to verbal order of SE (Hydel). On examining the author **(his statement enclosed as Annexure S-55)** he stated that SE (Hydel) did not place any verbal order to him. He further stated that he did not issue the materials. He further stated that he did not go to Kau Tlabung to pursue for formal supply order. On conducting examination of Pu SK Roy H/o Pi Rinpui (L), Proprietor, R.P. Processing Unit, Chanmari he stated that in his statement enclosed as annexure-S-44 that verbal order was placed to his employee Chiranjit Dey, by SE (Hydel). He only came to know about supply of Chain Link Wire-mesh, after it was explained to him by his

employee Chiranjit Dey with the challan only. He further stated that the materials was issued by Chiranjit Dey from his Godown at Chanmari.

In this regard, the Engineers, who were posted during July 1999 ( i.e. Challan of R.P. Processing Unit, Chanmari Dated 12.7.99) as SE, Hydel, EE, Kau Tlabung Mini Hydel Project and SDO, Kau Electrical Sub. Division, Thenhlum, under Kau Tlabung Mini Hydel Project were examined (their names are included amongst the witnesses). None of them have seen or received the WIRE MESH. Further, the driver and handiman of P & E Department Truck No. MZ01-4871 mentioned in the challan were examined and they stated that they did not carry Wire Mesh from Aizawl (their statement enclosed at S-39 & S 40).

Later, Pu Laldawngliana, who was posted as SDO, Kau Electrical Sub Division from 27<sup>th</sup> March, 2001 wrote two letters Dated 19.3.2001 and 23.3.2001 addressed to SE(T) (both letters are enclosed in his statement at Annexure AS-3 and in Pu Swopan Kumar Roy's statement at Annexure AS-4) which he clearly admitted in his statement enclosed as Annexure S-40 (by passed E.E. Kau Tlabung Division/E.E. Electrical Division Serchhip) regarding delivery report and utilization report on 66 Rolls of Chain Wire-mesh at site from R.P. Processing Unit, Chanmari, Aizawl. Pu Lalnunmawia Sailo, the then SE Hydel without enquiring to ascertain the facts from the previous SE (Hydel) and based upon the two letters wrote by Pu Dawnga (which by passed the concerned Executive Engineer), Pu Lalnunmawia, SE Transmission, P&E Department, Govt. of Mizoram issued Supply Order No.T/35/2/2000/81 & 82 Dt. 29.3.2001 for 66 rolls of Chain Link to M/S R.P. Processing Unit, Chanmari, Aizawl by signing in the Supply Orders. During investigation, the concerned file No.T/35/2/2 K was seized which is enclosed as MR No. 18/15.

On scrutinizing the seized file, it is ascertained that there was no correspondence in the file on the two letters Dt. 19.3.2001 and 23.3.2001 written by Pu Laldawngliana, SDO, Kau Electrical Sub Division. However, the two Supply Orders in respect of M/S R.P. Processing Unit, Chanmari, Aizawl was found issued in a doubtful manner at Note sheet page 22 bottom and note sheet page 23, which doubled the P.U.C. No. 81 and 82. Based upon these Supply Orders R.P. Processing Unit, Chanmari submitted two Bills Dt. 2.4.2001 amounting to **Rs. 3,63,000/-** each. Bills were drawn and paid vide Voucher No. 80 & 82 Dt. 17.3.2001 enclosed in Voucher Vol-I vide M.R. No.21/15 and entered in Serchhip Power Division Cash Book No. 27 at page 159 enclosed in MR No. 21/15. It is, therefore, ascertained

that (1) Pu Lalnunmawia Sailo, CE, P&E (Rtd) H/No. D-6 Zonuam, Aizawl, (2) Pu Laldawngliana SDO, P&E, Biak In Mual Ramhlun North, Aizawl had committed an offence u/s 120-B/420/409/477A/34 IPC R/w Section 13(1) (c ) (d) & 13(2) P.C. Act, 1988 and (3) Pu Swopan Kumar Roy, S/o DM Saha(L), H/No. A-51, Chanmari, Aizawl had committed the offence u/s 120-B/420/409/477A/34 IPC R/w R/w Section 13(1) (c ) (d) & 13(2) P.C. Act, 1988.

**8.** Further, after collecting documents and examination of witnesses, sufficient evidences of criminal act was found well established against the accused mentioned in Sl. No. 12 of the Integrated form of this charge sheet, accordingly, prayer for prosecution sanction was made to the competent authority vide ACB/PS/C/No.3/2015/116 Dated 7.10.2015.

**9.** On the consent of His Excellency the Governor of Mizoram, Prosecution sanction accorded by the Chief Vigilance Officer & Chief Secretary, Govt. of Mizoram, Aizawl vide No. C.16011/8/2013-P&AR (CSW) Dt. 16.12.2015 against Pu Liansanga, Engineer-in-Chief, PWD Mizoram (Rtd) S/o Suakkunga (L), Khatla Chawnga Road, Aizawl and Pu Lalnunmawia Sailo, Chief Engineer, P&E, Mizoram (Rtd) S/o Ngurliana (L), Zonuam, Aizawl, Mizoram and Commissioner & Secretary, Govt. of Mizoram, Power & Electricity Department accorded prosecution sanction against Er. Laldawngliana, Sub Divisional Officer-II, Aizawl North vide C.14015/1/2012-P&E Dated 23<sup>rd</sup> November, 2015.

**10.** In view of the above facts prima facie case U/s 120-B/420/409/477A/34 IPC R/W Section 13(1) (c) (d)/ Section 13(2) of P.C. Act, 1988 is found well established against accused mentioned below, their particulars are clearly mentioned in Sl. No. 12 of the form. As per the order conveyed by the Chief Vigilance Officer & Chief Secretary, Govt. of Mizoram, Aizawl vide No. C.16011/11/2013-P&AR(CSW) Dt. 16.12.2015 and the Commissioner & Secretary, Govt. of Mizoram, P&E Department, vide No. C.14015/1/2012-P&E Dt. 23<sup>rd</sup> Nov. 2015.

Name of accused persons:

1. Liansanga S/o Suakkunga(L), E-in-C. PWD(Rtd). Khatla, Aizawl.
2. Lalnunmawia Sailo S/o Ngurliana(L), Chief Engineer, P& E (Rtd), Zonuam, Aizawl..
3. Laldawngliana S/o Hmelmawia(L) SDO, P&E, Ramhlun North Biak In Mual, Aizawl.



4. Swopan Kumar Roy @ SK Roy S/o D.M. Saha(L), Chanmari, Aizawl

**11.** Further, the investigation could not find concrete evidence to establish the involvement of the remaining alleged accused persons mentioned below. It is therefore, prayed that they may kindly be discharged from the charge made against them. It is further prayed that they may kindly be cited as witnesses.

1. Pu B.Lalrinliana, the then CE, P&E(now retired)
2. Pu C.L.THangliana, the then Engineer-in-Chief(Rtd)
3. Pu Vanlaldusaka, the then CE, PWD
4. Pu Vulmawia, SE, ADA, the then E.E.
5. Pu Laldela, S.E. PWD `W; Circle, the then E.E.
6. Pu R.Lalhira, the then E.E., Sr. Electrical Inspectorate, Zuangtui.
7. Pu Lalzawmthanga, the then SDO/AE, PWD.
8. Pu R.Lalthlanthanga, the then SDO P&E.
9. Pu Vanlalhruaia, the then J.E., PWD, Project-II, Laipuitlang.
10. Pu K.Guite, CE, the then E.E./SE, P&E.
11. Pu Ranjit Singh, S.E. P&E, the then E.E. Tuipanglui SHP.
12. Pu Thomas Zacharia, the then E.E., P&E, Saiha.
13. Pu K.Lahlunthanga, AE, P&E, the then SDO, P&E, Tuipanglui SHP.
14. Pu K.Lallawmsanga, the then J.E., Tuipanglui SHP.
15. Pu Z.D. Lalrotluanga, the then J.E. Tuipanglui SHP.

From the above facts and circumstances a prima facie case u/s 120B/420/409/477A/34 IPC R/w Section 13(1) (c)/13(1) (d)/13(2) P.C. Act. 1988 was found established against Pu Liansanga, S/o Suakkunga(L), E-in-C, PWD, Mizoram (Rtd), Khatla Chawnga Road, Lalnunmawia Sailo, the then CE, P&E (Rtd), presently, and Laldawngliana, SDO, P&E, and U/s 120B/420/409/477A/34 IPC R/w Section 13(1) (c)/13(2) P.C. Act. 1988 against Swapan Kumar Roy, Chanmari, Aizawl.

Hence, from the documents and materials available in the Charge Sheet/case record collected during investigation and from the statements of 58 prosecution witnesses, the prosecution had sufficient evidences to prove the allegation of the charge sections under P.C. Act and IPC against the accused

persons. And hence, the Prosecution pray this Id. Special Judge to pass an order for framing of charge against the accused persons, and he prayed accordingly.

**12.** On the other hand, I heard the learned Counsels namely Sh, W.Sam Joseph, Sh, C.Lalramzauva, Sh, Francis Vanlalzuala, Advocates appearing for Accused 1,2,3 & 4 respectively. who objects the existence of prima facie on the materials on record and further submits as follows:

**13.** Mr. W.Sam Joseph for accused No 1 submits that the main and only allegation against Pu Liansanga by the prosecution as above is that Pu Liansanga, while he was discharging his duties as Chief Engineer, P&E Dept. G.O.M., Aizawl, didn't respect the sanctity of the terms and conditions of the tender documents **and changed the conditions as desired by the contractor EOC which** give undue advantage to the contractor EOC. The allegation further described in more detail at page 13 of the charge sheet. On scrutiny of the allegation it may be seen that the terms and conditions in the Tender Document were compared with the terms and conditions of the Contract Agreement and it was simply concluded that the terms and conditions in the Tender Document were changed. This allegation is completely wrong.

**14.** Tender document and Contract agreement were two different Documents and the terms and conditions in the two documents are not supposed to be same. It appears that the I.O. is not well conversant with matter of Work Contract, particularly in Works Tendering and Acceptance. He does not seem to know that in most major work contracts many of the terms and conditions set forth by the tendering authority in the 'Tender Document' were not upheld in the 'Contract Agreement'. The terms and Conditions in the tender document are the ones proposed by the tendering authority at the time of inviting tender. The renderers/contractors have their own terms and conditions in their tender without following all the terms set forth by the tendering authority.

**15.** In support of his argument he refers to the minutes of the Works Advisory Board meeting chaired by the Chief Secretary held on 12.10.95. (Copy of the minutes is submitted to this Court). 3<sup>rd</sup> para of the minutes of WAB is reproduced:

"Techno-Commercial bids (cover I) submitted by the above mentioned seven Firms were examined from the technical and commercial considerations. It was observed that all the firms had some deviations in technical and commercial conditions from tender documents prepared by the Dept. Letters were issued to the seven firms to make clarifications/confirmations on various technical and commercial aspects submitted by them. ...\_\_ " It is clearly mentioned in the minutes of the Work Advisory Board meeting, without any ambiguity, stated that the tenderers made some deviations in technical and commercial conditions from the 'Tender Document' prepared by the Dept.

**16.** Now, the terms and conditions finally agreed between the authority and the selected tenderer are those that appear in the contract agreement and these are not supposed to be same as that in the tender document. If there is any change in the Tender Document there have to be the original (the unchanged) and the changed Document. He even asked the prosecutions where the changed documents are if it is changed s alleged. The Tender documents available now, the terms and conditions of which are quoted in the allegation and also the Contract agreement, the terms and conditions of which are also quoted, are both original copies.

**17.** The learned counsel further stated that both the original tender document and the contract agreement remain unchanged. The changed tender document or the changed contract agreement, if there is any, it should be available with the Charge sheet but it is not available to be seen as there is no change in the terms and conditions of the tender document nor in the contract agreement.

**18.** The learned counsel further stated that each of the value of the tenders in Tuipanglui project and Kau project is beyond the power of Chief Engineer (Pu Liansanga...accused no 1) for acceptance. **It was accepted by the Government on the recommendation of the Works Advisory Board chaired by Chief Secretary. The WAB made a recommendation which was approved by the Council of Ministers.**

**19.** Approval of the Govt. to the Minutes of WAB Meeting held on 12.10.95 was conveyed to the CE, P&E Dept., vide Joint Secy., P&E letter dated 14.Nov. '95. Copy of the minute of the Work Advisory Board has been submitted and copy of the Govt. letter dated 14. Nov.'95 this is submitted to this Court. The tenders in both Tuipanglui and kau Projects were accepted and approved by the Council of ministers as recommended by the Work Advisory Board and the Contract agreement was then signed by the Chief Engineer, Pu Liansanga, as directed and as approved. As such Pu Liansanga cannot be held responsible for acceptance of the tenders and there is no change in the terms and conditions of the tender document and in the contract agreement as alleged.

**20.** *The allegations if accepted fully does not show the accused person has committed any offence. In this connection the learned Counsel pointed out the cases decided by the Apex Court and it runs thus: State of Bihar V.Ramesh Singh, (1977) 4SCC 39 it was decided by the Supreme Court that **"If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial."***

**21.** *He prayed the court to discharge the accused from the liabilities of the charges brought against him. He further submitted that the allegations were so baseless and ill-founded that had the ACB been more carefull and more exhaustive in their investigation and in their inquiry the whole case against Mr. Liansanga could have been avoided. However, serious mental agony and humiliation have been wrongly caused to the accused person.*

**22.** Sh Francis Vanlalzuala, counsel for accused No 3 & 4 submitted that they had actually supply the wire-mesh to the Department and in support of his contention produced the photo to the court. The photo shows the wire-mesh used for fencing the said Kau- Tlabung project. It is the case of the Id. Counsels that had the wire-mesh not been supplied by them there can be no fencing. It is not the prosecution case that the fencing in the photo by wire-mesh were earlier procured by the Department concerned. Nowhere in their case the prosecution stated that

the fencing were made earlier and the accused did not supplied the wire-mesh. As the photo genuinely established that wire-mesh fencing was made in the said project, and the defence stand is that this proved the supplied of the wire-mesh and the concerned Department using it for fencing. The prosecution did not rebutted the stand taken by the defence.

**23.** The Id. Counsel for accused No 2 Sh C.Lalramzauva, Senior Advocate submitted that his client is only ordering payment to the supplied wire-mesh already utilized by the department in fencing the said project and had submitted the photo where the said wire-mesh was used. They even produced two persons labourers who actually work making fencing in the said project. It is the case of both learned counsels that the said wire-mesh was supplied more than a decade ago, as such the fencing using the said wire-mesh cannot be a new one now almost two decades after. It is their submission that their clients committed no wrong and they are implicated falsely. At a mere three lakhs false accusation their clients suffered so much, and accused No 3 had been denied promotion in his service. Since there is no prima-facie evidence against their clients they may be discharge from the charge sections.

**24.** Having heard both parties arguments on the stage of Opening of the case as per section 226 of the Cr.P.C, the main allegation of the prosecution against accused No 1 is that accused No 1 Pu Liansanga, while he was discharging his duties as Chief Engineer, P& E, Govt. of Mizoram, Aizawl, while he was discharging his duties as Chief Engineer, P&E, Govt. of Mizoram, Aizawl DIDN'T RESPECT THE SANCTITY OF the TERMS & CONDITIONS\_as desired by the Contractor EOC which give undue advantage to the Contractor EOC.

**25.** The prosecution have compared the two Notice Inviting Tenders specific terms and conditions floated by the P & E department i.e. (1) No. 112/90-CE(PD)/100 Dated 12.9.94 and (2) No. 112/90-CE(PD)/105 Dated 6.12.94 with that of the seized tendered terms and conditions of M/R No. 13/15. And allegation was made against accused no 1 that the modifications and deviations in the terms and conditions were caused by accused no 1 thereby causing more than one thousand lakhs to the Government of Mizoram.

**26.** However, the accused No 1 through his learned counsel fully describes how he was not responsible for the allegation, but it was the Works Advisory Board (WAB) meeting chaired by the Chief secretary held on 12.10.95 who observed in the said meeting that "*Techno-Commercial bids (cover I) submitted by the above mentioned seven Firms were examined from the technical and commercial considerations. It was observed that all the firms had some deviations in technical and commercial conditions from tender documents prepared by the Dept. Letters were issued to the seven firms to make clarifications/confirmations on various technical and commercial aspects submitted by them.*"

**27.** From the submission of the Id. Counsel for accused No 1 that it was the Work Advisory Board meeting, who accepted the tenders with the deviation made in the terms and conditions and not at the level o accused No 1. The accused No 1 was only taking followed up actions of the WAB meeting which is higher authority to him. Hence, the allegation made by the prosecution against the accused no 1 is unfounded. The WAB meeting without any ambiguity, stated that the tenderers made some deviations in technical and commercial conditions from the 'Tender Document' prepared by the Dept.

**28.** Had the investigation been peeping further deep and found that it was not the accused no1 who had accepted the terms and conditions deviated from the floated tender by the Department, but the Works Advisory Board (WAB) chaired by the Chief Secretary which is higher authority than the accused No 1 and accused No 1 is only following the meeting minutes of the WAB, al the allegations made against the accused and the toilsome investigation can be nib in the bud.

**29.** And further against the allegation of prosecution to Accused No 4 that the wire-mesh of 66 rolls were not supplied to the Department, the accused No 4 can produced his supplied Bill and the receipt of the said supplied to the court. The Id. Counsels for accused No 2 and 3, they can show to the court the photo of how the wire-mesh was really utilized by the department for fencing the Kau-Tlabung Project at the work-site. Hence all the allegations against the four accused persons were unfounded.

**30.** As rightly pointed out by Id. Counsel for the accused No 1 in the State of Bihar V.Ramesh Singh, (1977) 4SCC 39 the Apex Court /Supreme Court that decided that *"If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial."*

**31.** The submission of the Id counsel for accused No 1 of the case of 1977 AIR(SC) 1489 : 1977 CrLJ(SC) 1125 : 1977 Legal Eagle 117 : 1977 (2) SCC 699 : 1977 SCC(Cri) 404 : 1977 (3) SCR 113 State of Karnataka Versus L.Muniswamy is also based on truth. While it was held that **Section 227--Discharge--Power of Sessions court--**The Sessions Court has power to discharge the accused if there is no sufficient grounds for proceedings against the accused. *Where in para 10 of the Judgment it was held that On the other hand, the decisions cited by learned counsel for the respondents in Vadilal Panchal v. D. D. Ghadigaonkar, AIR 1960 SC 1113 and Century Spinning & Manufacturing Co. v. State of Maharashtra, AIR 1972 SC 545 show that it is wrong to say that at the stage of framing charges the court cannot apply its judicial mind to the consideration whether or not there is any ground for presuming the commission of the offence by the accused. As observed in the latter case, the order framing a charge affects a persons' liberty substantially and therefore it is the duty of the court to consider judicially whether the material warrants the framing of the charge. It cannot blindly accept the decision of the prosecution that the accused be asked to face a trial. In Vadilal Panchal's case Section 203 of the old Code was under consideration, which provided that the Magistrate could dismiss a complaint if after considering certain matters mentioned in the section there was in his judgment no sufficient grounds for proceedings with the case. To an extent S. 227 of the new Code contains an analogous power which is conferred on the Sessions Court. It was held by this Court, while considering the true scope of S. 203 of the old Code that the Magistrate was not bound to accept the result of an enquiry or investigation and that he must apply his judicial mind to the material on which he had to form his judgment. These decisions show that for the purpose of determining whether there is sufficient ground for proceeding against an accused the court possesses a comparatively wider discretion in the exercise of which it can determine the question whether the material on the record,*

*if unrebutted, is such on the basis of which a conviction can be said reasonably to be possible."*

**32.** In the instant case when the Id. Counsel for accused No 1 produced before the court the meeting minutes of WAB in which they accepted the terms and conditions deviated from the original terms and conditions as floated in the tendered of P& E department, and not from the level of accused No 1, the prosecution had no material to rebut it and hence this court is convinced that the allegation made by the prosecution is unfounded, and baseless and the allegations made by the prosecution had no legs to stand.

**33.** Under the circumstances when this facts as mentioned before the court at the time of argument are not disputed by the prosecution it is difficult to find a prima facie against the accused persons. Therefore, in view of the above facts and circumstances I am convinced to draw that all the evidence/materials available in the record at present did not constitute a prima facie against the charge section of law in respect of all the four accused persons.

**34.** The settled law has been reiterate in Union of India-Vs- Prafulla Kumar ( 1979 AIR SC-366) that it two view are possible and the evidence produce before the judge give rise to some suspicious but not grave suspicion, it will be right to discharge the Accused. Again the Hon'ble Supreme Court has settled 'when there are two possible views or there is a mere suspicious and not a grave suspicious the Accused has to be discharge.' And the law has also been settled that when the judge is fairly certain that there is no prospect of the case ending in conviction the valuable time of the court should not be wasted for holding a trial only for the purpose of formally completing the procedure. Para-15 Satish Mehra Vs Delhi Administration- 1996(9) Scc 766.

**35.** Therefore, the Accused Namely, **Liansanga**, S/o. Suakkunga(L), E-in-C. PWD(Rtd). R/o Khatla, Aizawl. **Lalnunmawia Sailo** S/o Ngurliana(L), Chief Engineer, P& E (Rtd), R/o Zonuam, Aizawl, **Laldawngliana** S/o Hmelmawia(L) SDO, P&E, R/o Ramhlun North Biak In Mual, Aizawl, **Swopan Kumar Roy** @ SK Roy S/o D.MSaha(L), R/o Chanmari, Aizawl are **discharged** from the charges



brought against them as provided by sec.227 of Cr.P.C 1973 since there are no sufficient grounds to proceed against them.

**36.** Given under my hand and seal of this court today the 27<sup>th</sup> of October 2016.

Give this copy of order to all concerned.

**Sd/-LUCY LALRINTHARI**  
**Special Judge, PC Act,**  
**Aizawl**

Memo No. \_\_\_\_\_SJ(PCA)/A

Dated Aizawl, the 27<sup>th</sup> October, 2016.

Copy to :-

1. Liansanga S/o Suakkunga(L), E-in-C. PWD(Rtd) R/o Khatla, Aizawl through his Ld. Counsel Mr. W. Sam Joseph.
2. Lalnunmawia Sailo S/o Ngurliana(L), Chief Engineer, P& E (Rtd), R/o Zonuam, Aizawl through his Ld. Counsel Mr. C. Lalramzauva.
3. Laldawngliana S/o Hmelmwia(L) SDO, P&E, R/o Ramhlun North Biak In Mual, Aizawl through his Ld. Counsel Mr. Francis Vanlalzuala.
4. Swopan Kumar Roy @ SK Roy S/o D.M. Saha(L) R/o Chanmari, Aizawl through his Ld. Counsel Mr. W. Sam Joseph.
5. Mr. H. Lalmuankima, Ld. Spl. PP.
6. S.P., ACB, Aizawl.
7. i/c Judicial Section.
8. Case record.
9. Guard file.

PESHKAR