

High Court of Judicature at Allahabad
Sitting at Lucknow

Neutral Citation No. - 2024:AHC-LKO:7399

RESERVED

Judgment Pronounced on: 25.01.2024

Court No. - 27

1. Case :- CRIMINAL APPEAL No. - 2207 of 2023

Appellant :- Col. Kulwant Singh Saini And Another

Respondent :- Union Of India Thru. S.P./ C.B.I./Spe/Acu(7), New Delhi

Counsel for Appellant :- Pranjal Krishna

Counsel for Respondent :- Shiv P. Shukla

2. Case :- CRIMINAL APPEAL No. - 2210 of 2023

Appellant :- Yashpal Kumar Uppal

Respondent :- Union Of India Thru. S.P./C.B.I./Spe/Acu(7), New Delhi

Counsel for Appellant :- Pranjal Krishna

Counsel for Respondent :- Shiv P. Shukla

3. Case :- CRIMINAL APPEAL No. - 2214 of 2023

Appellant :- Col. (Rtd.) Satya Pal Sharma

Respondent :- Central Bureau Of Investigation Thru. Head Of The Branch Acb 7, Lucknow

Counsel for Appellant :- Shreesh Chandra

Counsel for Respondent :- Shiv P. Shukla

4. Case :- CRIMINAL APPEAL No. - 2232 of 2023

Appellant :- Major S.S. Thakar (Suhas Thakar)

Respondent :- Union Of India Thru. C.B.I. New Delhi

Counsel for Appellant :- Gopal Narain Misra, Ashhad Ali Siddiqui, Avadhesh Singh Yadav, Paresh

Mishra, Purnendu Chakravarty, Rajiv Kumar Bajpai

Counsel for Respondent :- Shiv P. Shukla

5. Case :- CRIMINAL APPEAL No. - 2240 of 2023

Appellant :- Pawan Kumar Deora

Respondent :- Central Bureau Of Investigation, Thru. Head Of The Branch Acb, Lucknow

Counsel for Appellant :- Shreesh Chandra

Counsel for Respondent :- Shiv P. Shukla

6. Case :- CRIMINAL APPEAL No. - 2251 of 2023

Appellant :- Ashok Kumar Deora

Respondent :- Central Bureau Of Investigation Thru. Head Of The Branch Acb, Lucknow

Counsel for Appellant :- Shreesh Chandra

Counsel for Respondent :- Shiv P. Shukla

Along with

7. Case :- CRIMINAL APPEAL No. - 2252 of 2023

Appellant :- Anil Kumar Deora

Respondent :- Central Bureau Of Investigation Acb, Lucknow

Counsel for Appellant :- Shreesh Chandra

Counsel for Respondent :- Shiv P. Shukla

Hon'ble Subhash Vidyarthi J.

1. All the aforesaid seven criminal appeals have been filed under Section 374 (2) Cr.P.C., by the accused persons challenging the validity of the judgment and order dated 21.07.2023 passed by the learned Special Judge CBI Court No.1 / Additional Session Judge, Lucknow in Criminal Case No. 1800002 of 1991 titled State versus Colonel Satyapal Sharma and Others, whereby Lt. Col. Satyapal Sharma (the appellant in Criminal Appeal No. 2214 of 2023), Y. K. Uppal (the appellant in Criminal Appeal No. 2210 of 2023), Kulwant Singh Saini and Virendra Kumar Jain (the appellants in Criminal Appeal No. 2207 of 2023) and Major S. S. Thakar (the appellant in Criminal Appeal No. 2232 of 2023) have been convicted for offences under Section 120 B read with Sections 420, 468 and 471 I.P.C. and Section 5 (2) read with Section 5 (1) (d) of the Prevention of Corruption Act, 1947, which is equivalent to Section 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988 and Anil Deora (the appellant in Criminal Appeal No. 2252 of 2023), Ashok Deora (the appellant in Criminal Appeal No. 2251 of 2023) and Pawan Deora (the appellant in Criminal Appeal No. 2240 of 2023) have been

convicted for offences under Section 120 B read with Sections 420, 468 and 471 I.P.C.

2. The trial Court has imposed the following sentences upon Lt. Col. Satyapal Sharma, Kulwant Singh Saini, Y. K. Uppal, Virendra Kumar Jain and Major S. S. Thakar: -

Sl	Section	Sentence
1	120 B I.P.C.	simple imprisonment for a period of 1 year and pay Rs.10,000/- as fine for the offence under Section 120B of IPC and to undergo simple imprisonment for additional 1 week in case of non-payment of fine
2	420 I.P.C.	simple imprisonment for a period of 3 years and to pay Rs.50,000/- and to undergo simple imprisonment for additional 1 month in case of non-payment of fine
3	468 I.P.C.	simple imprisonment for a period of 3 years and to pay Rs.50,000/- and to undergo simple imprisonment for additional 1 month in case of non-payment of fine
4	471 I.P.C.	simple imprisonment for a period of 3 years and to pay Rs.50,000/- and to undergo simple imprisonment for additional 1 month in case of non-payment of fine
5	Section 5 (2) read with Section 5 (1) (d) of the Prevention of Corruption Act, 1947	simple imprisonment for a period of 3 years and to pay Rs.25,000/- as fine and to undergo simple imprisonment for additional 2 weeks in case of non-payment of fine.

3. The following sentences have been imposed upon the appellants Anil Deora, Ashok Deora and Pawan Deora: -

Sl	Section	Sentence
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1	120 B I.P.C.	simple imprisonment for a period of 1 year and pay Rs.10,000/- as fine for the offence under Section 120B of IPC and to undergo simple imprisonment for additional 1 week in case of non-payment of fine
2	420 I.P.C.	simple imprisonment for a period of 3 years and to pay Rs.50,000/- and to undergo simple imprisonment for additional 1 month in case of non-payment of fine
3	468 I.P.C.	simple imprisonment for a period of 3 years and to pay Rs.50,000/- and to undergo simple imprisonment for additional 1 month in case of non-payment of fine
4	471 I.P.C.	simple imprisonment for a period of 3 years and to pay Rs.50,000/- and to undergo simple imprisonment for additional 1 month in case of non-payment of fine

4. Heard Sri. S. C. Mishra Senior Advocate assisted by Sri. Pranjali Krishna Advocate, the learned Counsel for the Appellant in Criminal Appeal No. 2210 of 2023, Sri. Nandit Srivastava Senior Advocate assisted by Sri. Pranjali Krishna Advocate, the learned Counsel for the Appellant in Criminal Appeal No. 2207 of 2023, Sri. Gopal Narain Mishra Advocate, the learned Counsel for the Appellant in Criminal Appeal No. 2232 of 2023, Sri. Shresh Chandra, the learned Counsel for the Appellant in Criminal Appeal Nos. 2214 of 2023, 2240 of 2023, 2251 of 2023 and 2252 of 2023, and Sri. Shiv P. Shukla Advocate, the learned Counsel for the respondent – Central Bureau of Investigation (CBI) in all the Criminal Appeals.

The Prosecution Case: -

5. Superintendent of Police- CBI, CIU (C), SPE, New Delhi had lodged a first information report dated 25.09.1986 at Crime No. RC-4/86-CIU (C) under Sections 120-B IPC, Section 5(2) read with 5 (1) (d) of Prevention of Corruption Act, 1947, against Lt. Col. S.P. Sharma, the then

Commander Works Engineer (CWE), MES, Allahabad, Officers of MES then working under CWE, MES, Allahabad and proprietors/partners of some private firms of Allahabad which were registered as suppliers with the office of CWE, MES, Allahabad alleging that during the period from November, 1983 to November 1985 Lt. Col. S.P. Sharma, while functioning as CWE, MES, Allahabad, entered into a criminal conspiracy with G.E. (East and West), Allahabad, G.E. (A/F) Bamrauli and Gorakhpur, A.G.W. (Independent), Faizabad, Senior Barrack Store Officer and other officers and staff working under him and with Proprietors/Partners of private firms M/s Deora Electrical Works (Sales), M/s Bhagwati Enterprises and M/s Saket Brothers of Allahabad, which were registered with the C.W.E. M.E.S., Allahabad, for gaining pecuniary advantage for himself and his co-conspirators by resorting to huge local purchases worth Rs.3.82 Crores in pursuance of the demands placed by the officers working under him, by calling quotations only, contrary to the prescribed procedure and at exorbitant rate and thereby caused loss to the tune of Rs.3.82 Crores to the government exchequer.

6. The investigation revealed that the public servants namely Col. S. P. Sharma, the then C.W.E., Allahabad, Sri. M. L. Rawat, the then S.B.S.O. working in the office of C.W.E. Allahabad, Sri. Y. K. Uppal, the then G.E. (West) Allahabad, Major K. S. Saini, the then G.E. (West) Allahabad, Sri. V. K. Jain, the then G.E. (West) Allahabad, Major Ranjan Ray, the then G.E. A/F Bamrauli, Major S. S. Thakar, the then G.E. A/F Bamrauli, Major N. S. R. C. Murthy, the then G.E. A/F Gorakhpur and Sri. Suresh Chandra, the then A.G.E. (Independent) Faizabad, entered into a criminal conspiracy with Sri. Ashok Kumar Deora, Proprietor of M/s Bhagwati Enterprises Allahabad, Sri. Anil Kumar Deora, Proprietor of M/s Deora Electric Works (Sales), Sri. Pawan Kumar Deora, Proprietor of Saket Brothers, Allahabad, Sri. Mahesh Kumar Deora, Proprietor of Deora Electric Works, Allahabad, Sri. Hanuman Prasad, Proprietor of M/s Hanuman Electric Words (Sales) and the Munim of M/s Deora Electric Works (Sales) and some other unknown persons, during the period 1984-86 with the object of cheating M.E.S., preparing forged documents, and misuse their official

position to gain undue advantage and cause undue loss to M.E.S. by purchasing electrical goods at exorbitant rates.

7. The prosecution claims that it was further revealed during investigation that in furtherance of the criminal conspiracy, the accused public servants **negligently** did the following acts for obtaining benefits for themselves of their co-conspirators -Major Ranjan Ray, Major K. S. Saini, Major V.K. Jain and Major B. S. R. C. Murthy raised demands for Sodium Vapour fittings complete with choke, igniter and bulb on various dates. Upon receipt of the demands, Sri. M. L. Rawat made enquiries for quotations after obtaining approval of Lt. Col. S. P. Sharma, to the firms selected by himself arbitrarily. The quotation enquiries were sent under certificate of posting and not through registered post and he left a possibility of misuse of the names of actual firms by fake parties. Lt. Col. S. P. Sharma and M. L. Rawat approved exorbitant rates without ascertaining the prevalent market rates, whereas the goods were available in the market at significantly lower rates. Lt. Col. S. P. Sharma and M. L. Rawat issued supply orders in furtherance of the demands raised by the G.Es. and A.G.Es. Lt. Col. S. P. Sharma and M. L. Rawat issued supply orders on carbon copies of demands after endorsing that the articles originally demanded had been utilized. Some of the goods purchased were not consumed promptly, which indicated that there was no urgent need of the goods justifying their local purchase.
8. A charge sheet dated 19.12.1990 for commission of offences U/s 120B r/w Section 420, 417, 465, 468 and 471 IPC and U/s 5(2) r/w Section 5(1) (d) of PC Act 1947 was submitted against the following persons: -
 - i. Lt. Col. S.P. Sharma, the then Commander Works Engineer, Allahabad.
 - ii. Sri Maiku Lal Rawat, the then Senior Barrack Store Officer, CWE, MES, Allahabad.
 - iii. Sri. Y. K. Uppal, the then Garrison Engineer (West), Allahabad (the appellant).

- iv. Lt. Col. K. S. Saini, the then GE (West), Allahabad.
 - v. Sri. Virendra Kumar Jain, the then GE (MES)(East), Allahabad.
 - vi. Maj. Ranjan Ray, the then GE, Air Force, Bamrauli (Allahabad).
 - vii Maj. S.S. Thakar, the then GE A/F, Bamrauli (Allahabad).
 - viii. Maj. N.S.R.C. Murthy, the then GE A/F, Gorakhpur.
 - ix. Sri. Suresh Chandra, the then AGE (Independent), Faizabad.
 - x. Sri. Ashok Kumar Deora, Proprietor, M/S Bhagwaati Enterprises, Allahabad.
 - xi. Sri. Anil Kumar Deora, Proprietor, M/S Deora Electric Works (Sales), Allahabad.
 - xii. Sri. Pawan Kumar Deora, Proprietor, M/S Saket Brothers, Allahabad.
9. Prior to submitting the charge-sheet, sanction was obtained for prosecution of the public servants.
10. The trial Court framed charges on 29.04.2002 against Ashok Kumar Deora, Anil Kumar Deora and Pawan Kumar Deora U/s 120B r/w Section 420, 468 & 471 IPC and against Col S. P. Sharma, M. L. Rawat, Y. K. Uppal, Col. S. K. Saini, Sri Virender Kumar Jain, Major Ranjan Ray, Major S. S. Thakker and Major N. S. R. C. Murthy U/s 120B r/w 420,468,471 IPC and Section 5(2) r/w Section 5(1)(d) of Prevention of Corruption Act, 1947.
11. One of the accused persons namely Suresh Chandra was discharged by the trial Court on 22.02.2002 and the discharge order was confirmed by this Court on 24.04.2019. Three accused persons namely M. L. Rawat, Major Ranjan Ray and Major N.S.R.C. Murthy expired during the trial period.

The Evidence: -

12. The prosecution examined 44 witnesses, but the witness Hanuman Prasad, who had given a confessional statement under Section 164 Cr.P.C. and who was granted conditional pardon, was not produced as a prosecution witness.
13. The prosecution adduced numerous documents in evidence, which were marked as Exhibits No. 1 to 375 and it produced 9 material exhibits.
14. All the accused persons denied the charges in their statements recorded under Section 313 and 313 (5) Cr.P.C.
15. Sri. Y. K. Uppal had stated in his statement under Section 313 (5) Cr.P.C. that in the order dated 24.04.2019 passed by this Court, it was provided that the trial Court shall decide the question of validity of the prosecution sanction order also while finally deciding the matter and he stated that the prosecution was granted without application of an independent mind and it was vitiated. He further stated that Garrison Engineer is the head of the office and several persons working under him had played their respective roles in raising the demand, receiving & checking the stores and recommending payment and G.E. alone cannot hatch any conspiracy. Y. K. Uppal had issued only one order for supply of 8 Sodium Vapour lamps, which were received on 10.09.1984 and were utilized by 15.12.1984. The goods were checked by the Assistant Garrison Engineer and he had entered the same in the ledger only after finding everything in order. After the bills were verified by all the concerned officials and after certification by the Assistant Garrison Engineer that 'Cheque is with the agreement/quotation & supply order and cross linked with R.V.' (Receipt Voucher), the account officer prepared the cheques and sent it to the Garrison Engineer, who signed the same.
16. Sri. Kulwant Singh Saini also challenged validity of prosecution sanction order and he further stated that he was posted as G.E. (West) Allahabad from 29.04.1985 to 16.07.1986; that there were three

cantonments under him which were about 20-25 k.ms. away from each other; that a high-level security is required for the cantonments; that there were about 5,500 to 6,000 security lights in the three cantonments which were to be maintained in working order. Sri. K. S. Saini had numerous high level responsibilities and he had a team of responsible Assistant Garrison Engineers, Electrical and Mechanical Engineers, Barrack Store Officer (B.S.O.) to assist him. As per Para 45 of the M.E.S. Regulations, the B.S.O. is responsible for raising demand for A.G.E. store. He has acted as per the Regulations and the lights procured had been utilized.

17. Sri. Virendra Kumar Jain also gave a similar statement and he further stated that the role of Garrison Engineer was only to forward the demand raised by the B.S.O. after making a through enquiry and no conspiracy can be hatched without involvement of the B.S.O.
18. The learned Trial Court found that Col. S. P. Sharma, K. S. Saini, Y. K. Uppal, S. K. Thakker and V. K. Jain, in connivance with their co-conspirator namely Anil Deora, Ashok Deora and Pawan Deora without any need and justification and with dishonest intention, caused undue pecuniary gain to themselves and their co-conspirators, continued to send demands in huge quantities and approved exorbitant rates and placed supply orders on M/s Jai Durga Trading Company, Ghaziabad, M/s Electromac Industrial Corporation, M/s Deora Electrical Works(Sales), M/s Saket Brothers, M/s Hanuman Corporation, M/s Shivam Traders which all belong to Deora family, by making false documents and using false documents as genuine knowing them to be forged, thereby causing loss to the government/MES and are proved guilty U/s 120B r/w 420,468 & 471 IPC and Section 5(2) r/w 5(1)(d) PC Act, 1947.
19. Although the charge sheet mentions names of 229 prosecution witnesses, out of those 229 witnesses, only 1 witness namely S. S. Bedi, Desk Officer, Ministry Of Defence (Vigilance), Government of India, was examined as PW-1 to prove the Prosecution Sanction

Order. 228 other prosecution witnesses named in the charge-sheet were not examined before the trial Court. Out of the total of 44 witnesses examined by the Prosecution, 43 were not named in the charge-sheet.

20. PW-4-Ram Nihore used to work as a postman and he stated that the shop of Deora brothers on SP Marg did not fall within his beat. Ashok Kumar Deora, Anil Kumar Deora etc used to sit on the shop. There were two signboards 'Saket Brothers' and 'Bhagwati Enterprises' affixed on the shop and upon making enquiries he came to know that those belonged to Deora and their house were located at Lowther Road. Whenever the firm was found locked, he used to deliver the letters etc. on the shop of Deora brothers on S.P. Marg. A shop where signboards of Saket Brothers and Bhagwati Enterprises were affixed was often kept locked.
21. When the aforesaid witness himself stated that the place where Deora Brothers' shop was situated at S.P. Marg, did not fall within his beat, the statement of PW-4 Ram Nihore that the shop of Saket Brothers and Bhagwati Enterprises was found locked often and, therefore, he used to deliver its letters to the shop of Deora Brothers at S.P. Marg, appears to be doubtful as a postman normally performs duties in respect of the beat appointed to him.
22. PW-4 stated in his cross examination that a postman can deliver letters in the beat appointed to him only and not on any other place. PW-5 Shiv Prasad Gupta was also a postman in response to a question put by the court, he told that he did not remember as to whether any Investigating Officer has recorded his statement.
23. PW 6 - S. K. Jain stated in his examination-in-chief that he had been appointed as Assistant Director (Supply), DGS&D on 09.06.1966. He retired from the post of Deputy Director on 30.06.2004. In June 1988, he had taken over the responsibility of electrical director where he was responsible for inviting tenders and finalizing contracts mainly for electrical fans and decorative electrical fittings. These items were

purchased for government offices as per general specifications. Rate contracts were awarded for these items and thereafter direct demands were raised by various departments. In this manner, all Drawing and Disbursing Officers could place orders as per their requirements directly and could take the goods also. Rate contracts were awarded only to established suppliers and copies thereof were sent to all the DDOs. In case of defence, it was communicated through Liaison Officer. There used to be a special condition in the rate contracts that the suppliers will not sale the goods at lower rates to any other buyers. There was no rate contract in respect of Mercury Vapour Lamp fittings during the period 1983-1985 and approximately 22-23 companies had been awarded contract for this item in the year 1985-86.

24. PW-6 did not say anything about the existence of any rate contract in respect of Sodium Vapour lamps at the relevant time. Moreover, he did not refer to any rule/regulation/notification prescribing the procedure for local purchase.
25. However, PW-7 Kamleshwari Dayal Srivastava stated that he had joined M.E.S. Allahabad as Superintendent Grade II on 23.06.1978 and on 23,06,1978 he was posted in the office of A.G.E., M.E.S. Chhevaki, Allahabad and he had worked there till 1990. During this period **he was responsible to look after the entire electrification system and whenever there was any shortage of goods in the store, he used to prepare a demand note, get the same signed by the A.G.E. and send the same to the office of the G.E. When the goods were received, he used to tally the same with the supply order and take charge of the goods and make entry relating to taking charge in the relevant ledger and he used the goods as per the requirement. In his cross-examination, he stated that he was having the charge of maintenance of electricity and he used to conduct field surveys and to prepare demands for the goods needed, get the same signed by the A.G.E. and to send the same to the G.E. The G.E. used to process the demand and sent the same**

to the office of C.W.E. All the goods received in furtherance of the demands referred in the statement of the witness had been received and the entire goods had been utilized. He and the A.G.E. used to verify and check all the goods received against the demands and there after ass the bill and send the same to G.E. office for making payment.

26. PW-24 K. L. Khanna stated that he was working as Store Keeper Grade I in the office of Garrison Engineer, Allahabad during the period 1984-85. His duty was to receive the supply, tally the same with the supply orders, enter the same in the ledger and take their charge and thereafter issue the same to the concerned officials. He stated that the Receipt Voucher No. 63/EM dated 10.09.84 was prepared by him in his own hand writing and was signed by him, Superintendent Sri. Vansh and A.G.E. Sri. M. M. Kathuria. Similarly, Receipt Voucher No. 81 E&M dated 15.07.85 had signatures of K. L. Khanna, R. C. Arora, Sri. Vansh and M. M. Kathuria. The witnesses stated that he had verified Bill No. JD-209 regarding RV-81. Similarly, several other supply orders and bills had signatures of the witnesses and other persons, none of whom was an accused in the case. He stated that he had made entries in the ledger regarding receipt of sodium vapour lamps and those had been consumed. He stated that demands were raised by M. M. Kathuria, who was Superintendent Electrical & Mechanical or R. C. Arora, In-charge Electrical. In his cross-examination, PW-24 K. L. Khanna stated that he used to verify the quantity and amount of the bills and he used to make entries in the ledger if everything was found to be in order. He further stated that he used to verify the quantity of goods only and the goods were inspected by his Supervisor and higher officer Sri. R. C. Arora, Sri. Vansh and Sr. M. M. Kathuria. The demands were sent by Sri. R. C. Arora and Sr. M. M. Kathuria.
27. PW-28 Sri Prem Shankar Dwivedi stated that he used to collect electrical goods of flexible nature for example bulbs, fans, tube-lights

and other electrical items and their fittings as per day to day requirements and to supply those as per needs. He used to send demand to GE on the basis of requirement of four months and the demands were consolidated by the office of the GE and were sent to the CWE. The goods were delivered to the Central Divisional Stock and upon receipt of information from there, the goods were collected, were checked by the Assistant General Managers and receipt vouchers were prepared and entries were given on the ledger, thereafter audit of the case were carried out.

28. In his cross examination, PW-28 stated that the Unit Accountant acts as the financial adviser of GE. Assistant GE works to assist the GE. Assistant GE has other electrical staff working under him. Whenever a need for any electrical item arises, the concerned staff prepares a demand and hands over the same to Assistant Garrison Engineer. Normally requirements are sent to the store officer. AGE hands over the demand to the GE. Procurement of stores of technical nature depends on Senior Electrical Engineer. Demands in respect of all such articles are placed by the Senior Store Officer before the Commander. When supplies are received, the same are kept in transit cell and are inspected by a team of three officers. He further stated that normally requirements are dealt by Barrack Store Officers and emergency requirements are dealt by concerned AGE. The demands are then placed before the GE, who forwards the same to the CWE.
29. PW-37 Sushil Agarwal stated that he was partner in two firms. One of the firms, viz. National Electrical and Construction Company, had been established in the year 1977 by his elder brother Sri. Rajendra Prasad. In the year 1984, it was converted to a partnership firm. His elder brother died in the year 1995. The other firm M/s Jai Durga Trading Co. was established in the year 1981-82 in partnership with Mr. Ravindra. None of the two firms had made any supplies to Deora Electrical Works, although both the firms used to supply mainly pipes, wires, switches, gears and related accessories to private suppliers. His firms were registered with the Sales Tax department but those were not registered with M.E.S. Allahabad. In case Deora Brothers has used the firm's name

without his knowledge, then they would have done by doing forgery. He denied his signatures on two forms dated 31.08.1985 and 02.09.1985 (Exhibit A-162) and he stated that the signatures had been forged.

30. PW-41 – Investigating Officer Y. S. Rathi, Deputy Superintendent of Police, C.B.I. stated that at the time of lodging of the F.I.R., he was working as an Inspector in C.B.I. and the F.I.R. was lodged by his superior authority V. K. Pawar S.P. The case was investigated by D.S.P. K.S. Nair, Saumitr Kumar Sharma, U. C. Upreti, Inspector Rajesh Kumar, Parth Mukherjee, B. C. Bhatnagar etc. He inter alia stated that **most of the supplier firms were bogus as no shop or firm existed on the registered address; that the premises were locked and those were raided by breaking open the locks. He had seized numerous documents** during investigation and had recorded statements of various persons. PW-41 further stated that inflated quantities of supplies were procured, supply orders were issued without any demand and supplies were made unnecessarily due to which reason articles were purchased without any requirement and at exorbitant rates. PW-41 stated that he had submitted the charge-sheet dated 19.12.1990 after investigation, where it had been submitted by V. C. Bhatnagar and Y. S. Rathi and the witnesses had identified their signatures on the charge-sheet.
31. In his cross-examination, PW-41 stated that he did not make any investigation regarding the procedure prescribed for raising a demand or issuing a supply order. This was investigated by the Chief Investigating Officer and he could tell the facts in this regard only after perusing the case-diary, which was not available before him. He stated that he did not remember the place where the locks were broken and raids were carried out. Nothing was found in search. Search memos were prepared but he could not tell the reason for not including the search memos in the relied upon documents. Normally, the documentary and oral evidences which support the prosecution case, are produces before the Court as relied upon documents and relied upon witnesses and the evidence which does support the prosecution case is not included in relied upon documents and witnesses. He did not make any investigation regarding the role of

D.G.S.M.D. and he did not remember whether any audit of the supplies was made.

32. PW-41 also stated in his cross examination that as he had not filed the charge-sheet, he could not tell how many demands are original and how many of those are photo-copies or office copies. He did not know as to how many copies of supply orders were sent. He could not tell which of the Rules were made in making the local purchases. He could tell the supply orders issued without any demand only after examining the record, but a correct reply in this regard can only be given by the Chief Investigating Officer.
33. PW-42-Narendra Chandra Sood was the handwriting expert, who was working in the laboratory of SP CBI ACU-VII and he stated that 29 documents have been received in the laboratory for being examined and Sri B. Lal, the then Government Examiner had prepared examination report and he approved the signatures of Sri B. Lal. PW-44-Parth Mukherjee stated that he had worked as an Assistant Investigating Officer with the Chief Investigating Officer Sri K.S. Nayer, Deputy Superintendent of Police. Thereafter he had worked as Assistant Investigating Officer in this case with Sri B.C. Bhatnagar, the then Deputy Superintendent of Police. Late S.R. Gupta was the first Chief Investigating Officer. Thereafter Sri K.S. Nayer and after him Sri B.C. Bhatnagar was the Chief Investigating Officer and the charge sheet was submitted by Sri B.C. Bhatnagar.
34. None of the Chief Investigating Officers was produced as a prosecution witness and besides PW-41 Y.K. Rathi and PW-44 Parth Mukherjee no other Assistant Investigating Officer was examined.

Trial Court's Findings: -

35. The trial court proceeded to decide the case after noting that all the allegations were interconnected and, therefore, the same will be decided together, without framing any point for determination.

36. Regarding the validity of prosecution sanction order, the trial court held that the prosecution sanction order runs into 11 pages and it indicates that the sanctioning authority has applied his independent mind and has come to a conclusion that there was sufficient material which established a prima facie case for prosecution of the accused persons and, accordingly, prosecution sanction was granted. The prosecution sanction order had been issued by the Desk Officer S.S. Bedi (PW-1) on behalf of the President of India and there was no illegality in it.
37. The trial court held that PW-6 S. K. Jain had mentioned numerous companies, with which there was a rate contract for supply of decorative fittings but the supply orders were issued to Deora Electrical, Bhagwati Enterprises and Saket Brothers, with whom there was no rate contract.
38. The trial court has given a table mentioning rates of some items purchased by MES and market rates of those items of some other standard companies but the judgment does not mention the source of information of the rates of standard companies and whether the items in question were actually available in the market in those rates. Without recording any finding to this effect, the trial court concluded that the items in question had been purchased at higher rates under a conspiracy, with object of causing wrongful loss to MES.
39. After referring to the statement of prosecution witness, the trial court came to a conclusion that the firms, to which supply orders were placed, belonged to the members of one family and the firms were not in existence actually and merely signboards of the firm were affixed on closed shops. Numerous supply orders were issued to Deora Electric Works, Saket Brothers and Bhagwati Enterprises whereas none of the aforesaid three firms were included in the rate contract list issued by MES. The payment for the supplies were obtained in the bank accounts which had been opened specifically for that purpose

and, it is evident from the fact that the account remained functional for a period less than three years.

40. The trial court observed that the prosecution has stated that the accused persons Col. Kulwant Singh Saini, Yashpal Kumar Uppal, Maj. S. S. Thakar, Col. Satya Pal Sharma and V. K. Jain were involved in the criminal conspiracy and they had prepared demand letters without any requirement and issued supply orders in furtherance thereof and had obtained supplies and thereby caused undue benefits to themselves and undue loss to MES. However at the same time, the trial court recorded that PW 24 - Store keeper K.L. Khanna had stated that he had himself prepared a receipt voucher dated 10.09.1984 and Superintendent Sri Vansh and ASE M M.M. Kathuria had also signed on it.
41. The trial court concluded that the accused C.W.E. M.E.S., acting under a conspiracy with other co-accused persons, issued supply orders without any genuine requirement for article purchase of sodium vapour lamps and Mercury vapour lamps, on exorbitant rates and purchased the same from firms of accused persons Anil Kumar Deora, Ashok Kumar Deora and Pawan Kumar Deora and issued more than one supply orders on a single demand. The matter relates to the period 1984-1986 when a loss of Rs 3.82 Crores was caused to the government, which was not an ordinary amount and it cannot be ignored. Wrongful loss to such a huge extent could not have been caused without the connivance of all the accused persons.
42. The accused persons Anil Deora, Pawan Deora and Ashok Deora have been held to be guilty as the bank accounts in which they had received payments, remained in existence only between 05.09.1985 and 28.07.1987.
43. The trial court has referred to the statement of PW-24 that a cheque was issued in the name of Jay Durga Trading Co., which was a firm based at Ghaziabad and it had no branch at Allahabad. However, the trial court has recorded in the judgment that as the prosecution has not

led any evidence to prove the cheques in question, the cheques had not been marked as exhibit.

Submissions made on behalf of the Appellants: -

44. Sri. S. C. Mishra Senior Advocate, the learned Counsel for the appellant in Criminal Appeal No.2210 of 2013 Yashpal Kumar Uppal has submitted that there is absolutely no evidence to prove the following facts, which would be essential to prove the charges for commission of the aforesaid offences: -
- a) With which person or persons the appellants had entered into a conspiracy for cheating and in which manner, where and how there was the meeting of minds between the appellants and other co-conspirators and who are the other conspirators.
 - b) How much money came into the hands of which of the appellants and how much money came in the hands of the alleged other conspirators, for which the alleged cheating, forgery and conspiracy was committed.
 - c) When the total cost of one sodium vapour lamp complete with fittings etc. was Rs.4,995/- and the appellant Yashpal Kumar Uppal had raised a demand for total 8 Lamps, how much money per Lamp came to the hands of Appellant by cheating.
45. Sri. Mishra has submitted that no demand for purchase was initiated or raised by Yashpal Kumar Uppal. There was no evidence to prove that he had placed any purchase order. The purchase order was issued by the CWE, MES, Allahabad in the name of M/s Jai Durga Trading Company, Ghaziabad and no purchase order was issued in the name of M/s Jai Durga Trading Company, Allahabad and the cheques were also issued in the name of M/s Jai Durga Trading Company, Ghaziabad and not Allahabad. The cheques were not prepared by Yashpal Kumar Uppal. Those were prepared by the subordinate staff and were thereafter placed before the Appellant. Moreover, the prosecution did not prove the cheques.

46. Sri. S. C. Mishra has submitted that while Yashpal Kumar Uppal was posted as the Garrison Engineer (West), Allahabad, he had placed a Demand Order No. 3182/2028/E3 D-3 dated 06.08.1984. In furtherance of the demand order, Lt. Col. S.P. Sharma, the then Garrison Engineer (West), Allahabad had issued a supply order dated 09.08.1984 for 8 Sodium Vapour lights complete with choke igniter lamp etc 250 watt for Rs.39,960/- to M/s Jai Durga Trading Company and those were supplied to GE (West) Allahabad.
47. Sri Gopal Narain Misra, the learned counsel for Major S.S. Thakar - the appellant in Criminal Appeal No. 2232 of 2023, has submitted that Major S.S. Thakar was posted as G.E. A.F.S.S. Bamrauli between the period 24.08.1985 to 16.08.1986 and he had not raised any demand. The charge-sheet mentions the names of P. S. Misra, S. A. Ali (storekeeper), K. K. Gupta (storekeeper) Ram Khiladi (storekeeper), Ram Ashish and Khagesh Jha, Assistant Garrison Engineer as the prosecution witnesses who were related to A.F.S.S. Bamrauli, but none of them has been examined by the prosecution before the trial court.
48. In his statement recorded under Section 313 Cr.P.C., Suhas Sitaram Thakar denied the charges and he stated that the order sanctioning his prosecution was wrongly passed; that he had no concern with the process of local purchase, listing of firms for local purchase, fixing the rate of articles, raising demand, issuing supply order or receiving the articles; that he was responsible for several air force stations and he was not responsible for the day to day monitoring of maintenance of electrical goods and this responsibility had been assigned to several other persons. This appellant had been given a certificate for excellent work and thereafter he had taken premature retirement because of heart ailment. There is absolutely no evidence against the appellant S. S. Thakar.
49. Sri Gopal Narain Misra has submitted that the Investigating Officer Y.S. Rathi (PW-41) has merely proved the seizure memos and he has not proved any other documents mentioned in the seizure memos, namely demand letters, supply orders, indents, inspection reports and payment note sheets. In the cross examination made on behalf of the appellant S.S. Thakar, PW-41 stated that he had recorded the statement of R.K.

Srivastava, E & M Grade-I Bamrauli during the investigation, who had stated that there was requirement from the user side for installation of S. B. Fittings and, therefore, he had sent the demand through AGE Bamrauli for procurement of complete fittings. The I.O. had also recorded the statement of P.S. Misra, store keeper Grade-II Bamrauli. At that time Ajay Kumar AGE was posted at Darbhanga Air Force Station, which falls under Bamrauli and it was situated 65 kilometre away from Allahabad. As in the statements of R.K. Srivastava and P.S. Misra, the place of recording statement is not mentioned, it appears that it was recorded in the office itself as in case the statement had been recorded at some other place, the place must have been mentioned while recording the statement.

50. PW-41 had further stated in his cross-examination that during investigation, he had come to know that after the goods were received in the store, the same were inspected by a inspection board and receipt voucher was prepared only after clearance by the board and the same was signed by Supervisor, AGE and BSO. It has further come to light during investigation that the Unit Accountant inspects all the documents and upon finding everything in order, he makes an endorsement of 'cancelled' and thereafter prepares the cheques and sends the same for being signed by the GE. During the year 1985-86, the appellant S.S. Thakar was posted as GE air force station Bamrauli and he was also having the charge of Air Force Station, Darbhanga Equipment Depot, Manauri.
51. The Unit Accountant had stated during investigation that he was the in-charge adviser to GE for the purpose of electrical stores and he used to originate the demands and put up the same for signature of the GE. PW-41 further stated that it is correct that the stores received against the supply orders were inspected by the board of officers and thereafter receipt vouchers were prepared by the storekeeper and entries were made in the relevant records and thereafter signatures of superintendent, barrack store officer and AGE were obtained in the receipt voucher and thereafter cheques were prepared by Unit Accountant, which were seized by the Investigating Officer during investigation.

52. Interestingly, the aforesaid witnesses R.K. Srivastava and P.S. Mishra, who had given statements during investigation regarding procedure of raising demand, receiving supplies and making payments, had not been produced by the prosecution before the trial court. The learned counsel for the appellant has submitted that the inspection board consists of the store keepers, supervisor, barrack store officer and the assistant garrison engineer and further action was taken by the GE. Upon the recommendation of the board consisting of the aforesaid officers, none of whom has been made an accused in the present case.
53. PW-24 has himself stated that the receipt voucher was prepared by him and was signed by the Superintendent Sri Vansh.
54. Sri. Gopal Narain Mishra has further submitted that Except for PW-41- Investigating Officer, no other witness has mentioned even the name of the appellant S.S. Thakar. As per the provisions contained in Section 35 of the Evidence Act, the public records relating to the supplies were relevant pieces of evidence but the same were withheld by the prosecution. Hence it gives rise to a presumption that had this evidence been produced by the prosecution, it would have been favourable to the accused persons.
55. Sri Nandit Srivastava, Senior Advocate assisted by Sri Pranjal Krishna, Advocate for Col. Kulwant Singh Saini and Virendra Kumar Jain - the appellants in Criminal Appeal No. 2207 of 2023, submitted that the prosecution sanction could only be granted by the President of India whereas in the present case, the prosecution sanction has been granted by the Desk Officer Vigilance. The contents of the prosecution sanction order are the same as the draft sanction order, which indicates a non application of mind by the authority granting sanction. PW-2 Arvind Kaul had stated that he was working as a Joint Secretary in the Ministry of Defence and he was having the charge of Chief Vigilance Officer also. The CBI had sought sanction for prosecution of Col. S.P. Sharma, Sri M.L. Ravi, Y.K. Uppal, Major K.S. Saini, Sri V.K. Jain, Major Ranjan Ray, Major S.S. Thakar, Major NSRC Murthy and Sri Sreesh Chandra. Initially the matter was processed in the Army Headquarter by the Adjutant General Branch and Engineer-in-Chief Branch and their recommendations as well as the recommendations of Chief Vigilance

Officer were placed before the aforesaid witnesses. The Adjutant General had recommended against grant of prosecution sanction whereas the engineer-in-chief and chief Vigilance Officer had recommended grant of prosecution sanction. PW-2 had recommended for grant of prosecution sanction and the Minister of State for Defence Dr. Raja Ramanna, who was competent to take a decision in the matter, had granted prosecution sanction on 13.10.1990.

56. Sri Nandit Srivastava has relied upon the decision of **R.S. Nayak v. A.R. Antulay**, (1984) 2 SCC 183, in which Hon'ble Supreme Court has observed as under:-

“the authority entitled to grant sanction must apply its mind to the facts of the case, evidence collected and other incidental facts before according sanction. A grant of sanction is not an idle formality but a solemn and sacrosanct act which removes the umbrella of protection of Government servants against frivolous prosecutions and the aforesaid requirements must therefore, be strictly complied with before any prosecution could be launched against public servants.”

57. Sri Srivastava has further submitted that the office copies of the demands are available on the office file (document D-18) but the original demand letters were not proved. The word urgent/emergent is not there on exhibit A-2 whereas it is there on D-39 demand letter. He has further submitted that during recording of the appellants' statement under Section 313 Cr.P.C., no question was put to them which may point towards their guilt. The appellants had proved their innocence in their statements recorded under Section 313(5) Cr.P.C.
58. Sri Shreesh Chandra, the learned counsel for Col. (Rtd.) Satya Pal Sharma, the appellant in Criminal Appeal No. 2214 of 2023, has submitted that the evidence on record (statements of PW-7, Kamleshwari Dayal Srivastava, PW-24, K.L. Khanna and PW-28, Prem Shankar Diwedi) clearly establish that the subordinate staff under the respective Garrison Engineers had assessed the requirement after field survey and they had put it before the G.Es., and on that basis Demands were sent by GE to the CWE for supply of required goods.
59. The prosecution has examined total 44 witnesses out of which only 2 witness viz. PW-26, Rambali Tripathi and PW-40, Prem Narain Sharma

are from the CWE office and that too from its dispatch department. They have stated nothing about the procedure of issuing of supply order. Even the Investigating Officer, PW 41 - Y. S. Rathi, stated that he did not enquire about the same. The prosecution has not adduced any evidence to prove the allegation that rules and procedures were violated while issuing supply orders to the firms.

60. The appellant Col. (Rtd.) Satya Pal Sharma has stated the following procedure regarding issuance of supply order in his statement under section 313 (5) Cr.P.C.: -

(i) The demand for stores is received by CWE from its GE's and AGE's (INDPT) for both normal and emergency stores.

(ii) Demands so received are sent by CWE to its Senior Barracks and Store Officer (SBSO) who heads the E-3 section, which deals with the procurement of stores, who in turn float enquiries to the approved firms as per the list of approved suppliers.⁵

(iii) Every year, a Board of Officers (BOO) is convened by the CWE Allahabad to check the authenticity of the firms from whom the quotations have been sought.

(iv) After receiving the quotations from the firms, a board is ordered by CWE to scrutinize the quotations. The CWE also nominates officers from the GE's office for that period to assess and give rate reasonability of the lowest quotation.

(v) Once quotations are received and scrutinised by the board and the rate reasonability given by the nominated officer, the quotations are entered in the CST (comparative statement register).

(vi) The Unit Accountant - an "independent body" attached to the CWE'S office, checks these demands, quotations, CST register and then it is forwarded to the SBSO for his recommendations and for preparing the Supply Order.

(vii) The Supply Order, along with the CST register, quotations, etc. are again sent to UA for verification with the firms' quoted price.

(viii) The UA puts his initial on the supply order for having verified the same. Thereafter the Supply Order is sent to the CWE for his approval.

(ix) Once signed by the CWE, Supply Order goes to SBSO in the E-3 section for further dispatch action.

61. Sri. Shreesh Srivastava submitted that the Prosecution has alleged that in order to cheat MES, Allahabad, supply orders were issued in violation of laid down procedure, to the selected firms owned by Ashok Kumar Deora, Anil Kumar Deora and Pawan Kumar Deora, who had quoted exorbitant rates, but the evidence on record proves the contrary. The rate enquiries were also sent to firms, other than those owned by the Deoras, and supply orders were also issued to firms other than those owned by the Deoras. This is proved by the Statement of PW 14 - Ashok Kumar Gupta of M/s New Era Sales Corporation, PW 29 – Chandra Mohan Anand of M/s Om Shiv Electricals and PW 30 – Raman Kumar Sahni of M/s Raman Tradings and documents no. D-108, D-109A to D-109G, D-111, D-114, D-151, D-151A to D-151H, D-165, D-358, D-358A to D-358E, D-365, D-409, D-423, D-426A to D-426H, D-470, D-470A to D-470H, D-578, D-578A to D-578G, D-584, D-584A to D-584G, D-597, D-597A to D-597F, D-627, D-632, D-640, D-640A to D-640F, D-801, D-801A to D-801E, D-803, D-807, D-811, D-815, D-819, D-819A to D-819E.
62. Sri. Shreesh Chandra has submitted that the Supply Orders were issued after the verification of rate reasonability by independent officer and it is evident from Supply Orders Ext. A-3, Ext. A-4, Ext. A-5, Ext. A-6, Ext. A-13, Ext. A-14, Ext. A-219 and Ext. A-222, and those independent officers have not been made accused.
63. To prove his defence, Col. (Rtd.) Satya Pal Sharma had given an application under Section 243 CrPC dated 23.05.2023 (Paper no. B-853) seeking production of Comparative Statement Register regarding rate reasonability of quoted rates and Convening Orders in respect of Board of Officers which were seized vide seizure memo Ext. Ka-178, Ext. Ka-230 and Ext. Ka-241 respectively. These documents were however, not filed along with the charge-sheet as relied upon documents as they did

not support the prosecution case, as is evident by the statement of IO (PW-41). Furthermore, the reply of the CBI to the application (paper no. B-853) says that these documents are neither relied upon documents nor are they now traceable.

64. On behalf of Pawan Kumar Deora, the appellant in Criminal Appeal No. 2240 of 2023, Sri. Shreesh Chandra has submitted that:

A. Till August 1985, M/s Saket brothers was a partnership firm with Ashok Deora and Mahesh Deora as its partners, as is evident from Ext. A-17. All the Supply Orders in question in the present case were issued to M/s Saket Brothers as partnership firm prior to August 1985. The appellant was not a partner in the firm during time period the supply orders were to it. None of the 44 prosecution witnesses, including the I.O., has stated that Pawan Kumar Deora was a partner of the firm during the relevant period. M/s Saket Brothers became a proprietorship firm with Pawan Kumar Deora as proprietor, on 11/09/1985 (Document no. D-1186 & D-1187).

B. All the evidences seized by the CBI during investigation, which supported the defence case, were not placed before the Court even after application under section 243(2) CrPC.

C. There is no evidence to prove that the Pawan Kumar Deora used the name of other genuine firms, viz., M/s Jai Durga Trading Corporation, etc., to obtain Supply Orders. There is no evidence to establish that Pawan Kumar Deora had forged any document for the purpose of cheating MES, Allahabad.

65. On behalf of Ashok Kumar Deora - the appellant in Criminal Appeal No. 2251 of 2023, Sri. Shreesh Chandra has reiterated the aforesaid submissions and he has further submitted that there is no evidence to prove that Ashok Kumar Deora used the name of other genuine firms, viz., M/s Jai Durga Trading Corporation etc., to obtain Supply Orders, or that he had supplied goods on exorbitant rates. There is no evidence to prove that he had forged any document for cheating MES, Allahabad.
66. On behalf of Anil Kumar Deora, the appellant in Criminal Appeal No. 2252 of 2023, Sri. Shreesh Chandra has reiterated the aforesaid

submission and he has also submitted that the charges against Anil Kumar Deora are not sustainable because there is no evidence to prove that he had supplied goods at exorbitant rates. The supply orders were issued to the firm of Anil Kumar Deora because he had quoted the lowest rates and after its rate reasonability was verified by the GES/AGEs, who were specially deputed for the said purpose, and who were not made accused in the case. He has further submitted that the trial court's finding that M/s Deora Electric Works (Sales) was a non existing firm, is against the evidence on record. The finding that that Anil Kumar Deora had opened current account no. 476 in the name of M/s Jai Durga Trading Company in Andhra Bank, by signing as Sushil Kumar, is also not supported by any evidence. There is no evidence to prove that Anil Kumar Deora had used the name of other genuine firms, viz., M/s Jai Durga Trading Corporation etc. to obtain Supply Orders.

Submissions Made on behalf of C.B.I.

67. Sri. Shiv P. Shukla, the learned Counsel for the respondent – CBI has submitted that the powers of MES officers for local and direct purchase of stores on emergent demand are mentioned in Defence Service Regulations for the Military Engineering Services in paras 742-745. D-1315 is the delegation of financial powers to MES officers for direct purchase against normal requirement instead of obtaining them through DGS&D (Directorate General of Supplies & Disposals)
68. D-1350 is the policy letter containing instructions regarding direct/local purchase for strict and meticulous compliance by all concerned dealing with the purchase of stores. It states that local purchase of stores will be resorted to under following conditions: -
 - a) When the stores are not available Engr/Ord/Other Govt sources, a 'Non-Availability' certificate is issued by the normal supplying agency.
 - b) Where DGS&D Rate Running Contract is in existence and when the stores are urgently required or can be more conveniently

obtained locally from a nearer station and the cost does not exceed Rs. 15,000/- in aggregate in any one year.

- c) Local purchase can only be made in emergent case when delay in obtaining stores from the normal sources of supply/rate running contract is detrimental to public interest.
- d) In all the cases, it will be ensured that the purchase is effected at a reasonable price and is based on competitive and normally on lowest quotations. The requirement of stores to be procured through local purchase had to be properly assessed by the Engineer-in-Charge and minimum inescapable requirement for direct incorporation in Works should only be demanded. There is no provision for making local purchase for stocking. The Engineer-in-Charge has to give the specifications and other relevant details and check authorization before initiation of demand.
- e) A register of suppliers under various categories had to be maintained in E-3 section by CWE and each GE at the Head Quarter office competent to issue quotations. The selection of firms for issue of quotations had to be done judiciously and personally by the officer concerned and quotations issued to the firms who actually trade in the items or to authorized agent/dealer. In case of suitability of an offer against quotation which is higher than the lowest, reason for its acceptability will be recorded on the quotation.
- f) The stores received would be immediately inspected by the competent officers as detailed in supply order. The cases would be opened in his presence. All bills of the suppliers of stores would be received in the office of GE/independent AGE as applicable, entered in the bill register against the specific date of receipt and promptly verified and sent to the section/sub-division receiving and accounting the stores. This would be promptly verified with reference to the receipt vouchers and certificate of inspection duly endorsed thereon by the GE.

- g) Under no circumstances material purchased locally was to be kept in the stores for more than three months in case of normal purchase and one month in case of emergency purchase.

Analysis: -

69. All the appellants have been convicted and sentenced for offences under Sections 12B, 420, 468 and 471 I.P.C. and the appellants in Criminal Appeal Nos. 2207 of 2023, 2210 of 2013, 2214 of 2013 and 2232 of 2023 have been convicted and sentenced for offence under Section 5 (2) read with 5 (1) (d) of the Prevention of Corruption Act, 1946.
70. The offence of criminal conspiracy, which is punishable under Section 120-B IPC, is defined in Section 120-A I.P.C., which is as follows: -

***“120-A. Definition of criminal conspiracy.**—When two or more persons agree to do, or cause to be done,—*

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.”

71. In the case of **Parveen v. State of Haryana**, 2021 SCC OnLine SC 1184, the Hon’ble Supreme Court held that: -

“12. It is fairly well settled, to prove the charge of conspiracy, within the ambit of Section 120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. At the same time, it is to be noted that it is difficult to establish conspiracy by direct evidence at all, but at the same time, in absence of any evidence to show meeting of minds between the conspirators for the intended object of committing an illegal act, it is not safe to hold a person guilty for offences under Section 120-B of IPC. A few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy. Even the alleged confessional statements of the co-

accused, in absence of other acceptable corroborative evidence, is not safe to convict the accused.”

72. The above legal position has further reiterated in the case reported in **Maghavendra Pratap Singh v. State of Chhattisgarh**, 2023 SCC OnLine SC 486

“32. For the charge of criminal conspiracy under Section 120B of the Penal Code, 1860, to be established, an agreement between the parties to do an unlawful act must exist. In some cases, direct evidence to establish conspiracy may be absent, but when the lack of evidence is apparent, it is not safe to hold a person guilty under this section. To prove the offence of criminal conspiracy, it is imperative to show a meeting of the minds between the conspirators for the intended common object. It was observed by a two-judge bench of this Court in Parveen v. State of Haryana, 2021 SCC OnLine SC 1184, that “A few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy.”

73. PW-7 Kamleshwari Dayal Srivastava stated that **he was responsible to look after the entire electrification system and whenever there was any shortage of goods in the store, he used to prepare a demand note, get the same signed by the A.G.E. and send the same to the office of the G.E. When the goods were received, he used to tally the same with the supply order and take charge of the goods and make entry relating to taking charge in the relevant ledger and he used the goods as per the requirement. In his cross-examination, he stated that he was having the charge of maintenance of electricity and he used to conduct field surveys and to prepare demands for the goods needed, get the same signed by the A.G.E. and to send the same to the G.E. The G.E. used to process the demand and send the same to the office of C.W.E. All the goods received in furtherance of the demands referred in the statement of the witness had been received and the entire goods had been utilized. He and the A.G.E. used to verify and check all the goods received against the demands and there after pass the bill and send the same to G.E. office for making payment.**

74. PW-24 K. L. Khanna stated that he was working as Store Keeper Grade I in the office of Garrison Engineer, Allahabad. His duty was to receive the supply, tally the same with the supply orders, enter the same in the ledger and take their charge and thereafter issue the same to the concerned officials. Receipt Vouchers were prepared by him and were signed by him, Superintendent and A.G.E. He further stated that he used to verify the quantity of goods and the goods were inspected by his Supervisor and higher officer Sri. R. C. Arora, Sri. Vansh and Sr. M. M. Kathuria. The demands were sent by Sri. R. C. Arora and Sr. M. M. Kathuria.
75. PW-28 Sri Prem Shankar Dwivedi stated that he used to send demand to GE on the basis of requirement of four months and the demands were consolidated by the office of the GE and were sent to the CWE. The goods were delivered to the Central Divisional Stock and upon receipt of information from there, the goods were collected, were checked by the Assistant General Managers and receipt vouchers were prepared and entries were given on the ledger, thereafter audit of the case were carried out. In his cross examination, PW-28 stated that the Unit Accountant acts as the financial adviser of GE. Assistant GE works to assist the GE. Assistant GE has other electrical staff working under him. Whenever a need for any electrical item arises, the concerned staff prepares a demand and hands over the same to Assistant Garrison Engineer. Normally requirements are sent to the store officer. AGE hands over the demand to the GE. Procurement of stores of technical nature depends on Senior Electrical Engineer. Demands in respect of all such articles are placed by the Senior Store Officer before the Commander. When supplies are received, the same are kept in transit cell and are inspected by a team of three officers. He further stated that normally requirements are dealt by Barrack Store Officers and emergency requirements are dealt by concerned AGE. The demands are then placed before the GE, who forwards the same to the CWE.
76. The Garrison Engineers or the independent Assistant Garrison Engineer made accused in the present case had no concern with each other as they

were not posted at the same time at the same place. There is no proof of the meeting of minds of the accused persons for committing conspiracy. PW 7, PW 24, PW 28 or any of the numerous officials named by them who were involved in raising the demand have been made accused in the present case and there is no allegation that they were also part of the conspiracy. No conspiracy could be hatched without involvement of the persons who actually initiated the demand, who certified the rate reasonability, who received the stores, inspected and certified the same and recommended payment of the bills and who utilized the goods. The prosecution has failed to make out the charge that the accused persons had hatched a criminal conspiracy and, therefore, none of the appellants could have been convicted and sentenced under Section 120-B I.P.C.

77. Section 420 I.P.C. provides punishment for cheating and dishonestly inducing delivery of property and cheating is defined in Section 415 I.P.C. and both the aforesaid Sections are being reproduced below: -

***“415. Cheating.**—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.*

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

***420. Cheating and dishonestly inducing delivery of property.**—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”*

78. The words ‘dishonestly’ and ‘fraudulently’ are defined in Sections 24 and 25 I.P.C. as follows: -

***“24. “Dishonestly”**.—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”.*

***25. “Fraudulently”**.—A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.”*

79. The words ‘dishonestly’ and ‘wrongful gain’ and defined in Sections 22 and 23 I.P.C. as follows: -

***“24. “Dishonestly”**.—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”.*

***23. “Wrongful gain”**.—“Wrongful gain” is gain by unlawful means of property to which the person gaining is not legally entitled.”*

80. Thus it is clear from a bare reading of the aforesaid statutory provisions that the intention of the person committing the act to cause a gain by unlawful means, is essential for making out an offence punishable under section 420 I.P.C. PW-7, PW-24 and PW-28 have proved that the goods were demanded, ordered to be supplied, and were supplied, received, inspected, payment was recommended and goods were utilized with the involvement of numerous persons, apart from the accused persons and those numerous other persons are not alleged to have committed any wrong in the process. The prosecution has not led any evidence to prove the intention of the appellants to cause a wrongful gain to themselves. Moreover, there is no allegation that how much amount was wrongfully gained by which of the appellant. No person can be convicted for any offence on the basis of vague allegations and no conviction based on vague allegations can sustain the scrutiny of an appellate Court.
81. It is recorded in the judgment of the trial Court that the prosecution claims that it was revealed during investigation that the accused public servants had raised the demands **negligently**. When the prosecution itself claimed that the accused persons had acted negligently, it cannot be said that the accused persons had acted with intention to cause wrongful loss to themselves.

82. While dealing with the statements made on behalf of the accused persons that the security of military establishment is important and it should be maintained in well lit condition and the officers are required to ensure that there is no disruption of illumination for want of material, the trial court observed that it would not justify procurement of electrical goods in respect of the same company available in the store and purchasing the articles from firms which are not registered CMES. The aforesaid observation is not supported by any evidence adduced by the prosecution. There is absolutely no evidence to the effect that the items purchased were available in the stores. There is no evidence that there was any rate contract for supply of sodium vapour lamps. Therefore, the aforesaid observation of the trial court is against the material available on record.
83. Therefore, I am of the considered view that the prosecution has failed to prove that the appellants have committed the offence of cheating and dishonestly inducing delivery of property and their conviction under Section 420 I.P.C. cannot sustain.
84. The appellants have also been convicted under Section 468 I.P.C., i.e. forgery for the purpose of cheating. Forgery is defined in Section 463 I.P.C. Both the aforesaid sections read as follows: -

*“**463. Forgery.**—Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.*

***464. Making a false document.**—A person is said to make a false document or false electronic record—*

First.—Who dishonestly or fraudulently—

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of a document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1.—A man's signature of his own name may amount to forgery.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Explanation 3.—For the purposes of this section, the expression “affixing electronic signature” shall have the meaning assigned to it in clause (d) of sub-section (1) of Section 2 of the Information Technology Act, 2000.

468. Forgery for purpose of cheating.—*Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”*

85. The prosecution case is that the accused G.Es. and A.G.E. had raised demands without any requirement whereas PW-7 Kamleshwari Dayal Srivastava had stated that **he was responsible to look after the entire electrification system and whenever there was any shortage of goods in the store, he used to prepare a demand note, get the same**

signed by the A.G.E. and send the same to the office of the G.E. When the goods were received, he used to tally the same with the supply order and take charge of the goods and make entry relating to taking charge in the relevant ledger and he used the goods as per the requirement. In his cross-examination, he stated that he was having the charge of maintenance of electricity and he used to conduct field surveys and to prepare demands for the goods needed, get the same signed by the A.G.E. and to send the same to the G.E. The G.E. used to process the demand and send the same to the office of C.W.E. He and the A.G.E. used to verify and check all the goods received against the demands and thereafter pass the bill and send the same to G.E. office for making payment.

86. PW-28 Sri Prem Shankar Dwivedi stated that he used to send demand to GE on the basis of requirement of four months and the demands were consolidated by the office of the GE and were sent to the CWE. The goods were delivered to the Central Divisional Stock and upon receipt of information from there, the goods were collected, were checked by the Assistant General Managers and receipt vouchers were prepared and entries were given on the ledger, thereafter audit of the case were carried out. In his cross examination, PW-28 stated that the Unit Accountant acts as the financial adviser of GE. Assistant GE works to assist the GE. Assistant GE has other electrical staff working under him. **Whenever a need for any electrical item arises, the concerned staff prepares a demand and hands over the same to Assistant Garrison Engineer.** Normally requirements are sent to the store officer. AGE hands over the demand to the GE. Procurement of stores of technical nature depends on Senior Electrical Engineer. Demands in respect of all such articles are placed by the Senior Store Officer before the Commander. When supplies are received, the same are kept in transit cell and are inspected by a team of three officers. He further stated that normally requirements are dealt by Barrack Store Officers and emergency requirements are dealt by concerned AGE. The demands are then placed before the GE, who forwards the same to the CWE.

87. None of the prosecution witnesses has stated that any of the appellants had made any false document.
88. The trial court ignored the fact that in the statement of PW-6, there is no mention that there was any rate contract for supply of Sodium Vapour lamps. Apparently, Sodium Vapour lamps do not fall within the category of decorative fittings and PW-6 did not state that there was any rate contract with any supplier for supply of sodium vapour lamps, therefore, making of local purchase of sodium vapour lamps cannot be faulted for the reason that the purchases were made from firms with whom there was no rate contract.
89. In **Sheila Sebastian v. R. Jawaharaj**, (2018) 7 SCC 581, the Hon'ble Supreme Court held that: -

“25. Keeping in view the strict interpretation of penal statute i.e. referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.

26. The definition of “false document” is a part of the definition of “forgery”. Both must be read together. “Forgery” and “fraud” are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts.”

90. The persons who had made the documents, i.e. the demand notes, have not been made accused in the present case. The persons who had prepared the cheques have also not been made accused. Although the G.Es. and A.G.E. had also signed the demand notes as forwarding officers and as per Section 464 I.P.C. they may also be included amongst the maker of the documents, but when the persons who had made the documents have not been made accused, the persons who had merely forwarded the documents, cannot be held guilty of offence under Section 468 I.P.C. Exhibit - D3 shows that the word ‘emergency’

was inserted by someone later on and it has not been authenticated by any person. There is no evidence as to who had made this interpolation. Therefore, the mention of ‘emergency’ on the demand cannot be attributed to any of the appellants.

91. The appellants have also been convicted under Section 471 I.P.C., which reads thus: -

“471. Using as genuine a forged document or electronic record.
—Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.”

92. When the allegation of committing forgery for the purpose of cheating is not made out against the appellants and no other person is an accused in the case, the allegation of using a forged document as genuine also fails in absence of proof of any document having been forged.

93. It is also very significant to notice that the confessional statement of Sri. Hanuman Prasad was recorded on 23.11.1990 under Section 164 Cr.P.C. by the Metropolitan Magistrate, New Delhi and the Chief Judicial Magistrate, Allahabad had granted conditional pardon to him under Section 306 Cr.P.C., which provides as follows: -

306. Tender of pardon to accomplice.—(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) This section applies to—

(a) any offence triable exclusively by the Court of Session or by the Court of a Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952);

(b) any offence punishable with imprisonment which may extend to seven years or with a more severe sentence.

(3) Every Magistrate who tenders a pardon under sub-section (1) shall record—

(a) his reasons for so doing;

(b) whether the tender was or was not accepted by the person to whom it was made,

and shall, on application made by the accused, furnish him with a copy of such record free of cost.

(4) Every person accepting a tender of pardon made under sub-section (1)—

(a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;

(b) shall, unless he is already on bail, be detained in custody until the termination of the trial.

(5) Where a person has accepted a tender of pardon made under sub-section (1) and has been examined under sub-section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case,—

(a) commit it for trial—

(i) to the Court of Session if the offence is triable exclusively by that Court or if the Magistrate taking cognizance is the Chief Judicial Magistrate;

(ii) to a Court of Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952), if the offence is triable exclusively by that Court;

(b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself.

94. Although Section 306 Cr.P.C. makes the examination of the person who has been granted pardon mandatory, Sri. Hanuman Prasad was not examined as a Prosecution witness by the Magistrate who took cognizance of the offence or by the Special Judge during the trial.
95. Section 114 of the Evidence Act provides that ‘The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.’ Illustrations (e) appended to Section 114

provides that The Court may presume that judicial and official acts have been regularly performed; and illustration (g) provides that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.

96. As the appellants in Criminal Appeal Nos. 2207 of 2023, 2210 of 2023, 2214 of 2023 and 2232 of 2023 were performing their official acts, there is a presumption in favour that they had performed their official acts in a regular manner and the prosecution has to rebut this presumption, but the prosecution has failed to rebut the presumption. Moreover, as the prosecution did not produce Sri. Hanuman Prasad, who had been granted pardon, as a witness in spite of the same being mandatory under Section 306 Cr.P.C., it shall be presumed that the testimony of Hanuman Prasad would have been unfavourable to the prosecution and favourable to the appellants. Although the charge sheet mentions names of 229 prosecution witnesses, out of those 229 witnesses, only 1 witness namely S. S. Bedi, Desk Officer, Ministry Of Defence (Vigilance), Government of India, was examined as PW-1 who proved the Prosecution Sanction Order. None of the 228 other prosecution witnesses, who were witnesses of the allegations, were examined by the prosecution before the trial Court. It also weighs heavily against the prosecution.
97. Col. (Rtd.) Satya Pal Sharma (The appellant in Criminal Appeal No. 2214 of 2023) had given an application under Section 243 CrPC dated 23.05.2023 (Paper no. B-853) seeking production of Comparative Statement Register regarding rate reasonability of quoted rates and Convening Orders in respect of Board of Officers which were seized vide seizure memo Ext. Ka-178, Ext. Ka-230 and Ext. Ka-241 respectively, but were not filed along with the charge-sheet as relied upon documents. CBI stated in reply that these documents are neither relied upon documents nor are they now traceable.
98. PW-41 stated that he had recorded the statement of R.K. Srivastava, E & M Grade-I Bamrauli during the investigation, who had stated that there was requirement from the user side for installation of S. B. Fittings and,

therefore, he had sent the demand through AGE Bamauli for procurement of complete fittings. The I.O. had also recorded the statement of P.S. Misra, store keeper Grade-II Bamrauli. PW-41 had stated in his cross-examination that during investigation, he had come to know that after the goods were received in the store, the same were inspected by a inspection board and receipt voucher was prepared only after clearance by the board and the same was signed by Supervisor, AGE and BSO. It has further come to light during investigation that the Unit Accountant inspects all the documents and upon finding everything in order, he makes an endorsement of 'cancelled' and thereafter prepares the cheques and sends the same for being signed by the GE. The Unit Accountant had stated during investigation that he was the in-charge adviser to GE for the purpose of electrical stores and he used to originate the demands and put up the same for signature of the GE. PW-41 had further stated that it is correct that the stores received against the supply orders were inspected by the board of officers and thereafter receipt vouchers were prepared by the storekeeper and entries were made in the relevant records and thereafter signatures of superintendent, barrack store officer and AGE were obtained in the receipt voucher and thereafter cheques were prepared by Unit Accountant, which were seized by the Investigating Officer during investigation. This evidence of PW-41 indicates that the appellants had not committed the offences alleged and the trial Court has ignored this important evidence of the Investigating Officer of the case.

99. Interestingly, the witnesses R.K. Srivastava and P.S. Mishra, who had given statements during investigation regarding procedure of raising demand, receiving supplies and making payments, had not been produced by the prosecution before the trial court.
100. In **Neeraj Dutta v. State (NCT of Delhi)**, (2023) 4 SCC 731, it was held that: -

“60. Section 61 deals with proof of contents of documents which is by either primary or by secondary evidence. When a document is produced as primary evidence, it will have to be proved in the manner laid down in Sections 67 to 73 of the Evidence Act. Mere production and marking of a document as an exhibit by the court cannot be held to be due proof of its contents. Its execution has

to be proved by admissible evidence. On the other hand, when a document is produced and admitted by the opposite party and is marked as an exhibit by the court, the contents of the document must be proved either by the production of the original document i.e. primary evidence or by copies of the same as per Section 65 as secondary evidence. So long as an original document is in existence and is available, its contents must be proved by primary evidence. It is only when the primary evidence is lost, in the interest of justice, the secondary evidence must be allowed. Primary evidence is the best evidence and it affords the greatest certainty of the fact in question. Thus, when a particular fact is to be established by production of documentary evidence, there is no scope for leading oral evidence. What is to be produced is the primary evidence i.e. document itself. It is only when the absence of the primary source has been satisfactorily explained that secondary evidence is permissible to prove the contents of documents. Secondary evidence, therefore, should not be accepted without a sufficient reason being given for non-production of the original.”

101. PW-41 Sri Y.S. Rathi, DSP CBI, who was one of the Investigating Officers, was examined and in his statement in chief he has only proved the Seizure memos. No other document has been proved by him.
102. The prosecution alleged that tax clearance certificate of a company is mandatorily required for registering that company with MES, but M/s Deora Electric Works and M/s Hanuman Corporation were registered without the tax clearance certificate being provided by those firms. However, there is no evidence to the effect that the registration of these firms had been cancelled on this ground. There is no evidence to the effect that any disciplinary action was taken against any officer / employee for the alleged irregularities. The fact that MES did not treat the alleged irregularity to be actionable under the relevant rules also weighs heavily in favour of the appellants G.Es and A.G.E.
103. So far as the private appellants Anil Deora, Pawan Deora and Ashok Deora are concerned, there is no denial of the fact that the supply orders were issued after a rate reasonability certificate was given by an officer, who has not been made an accused. There is no evidence that the goods demanded were already available in the stores. There is no denial that the goods supplied were actually consumed.

104. There is no denial of the fact that Pawan Kumar Deora, the appellant in Criminal Appeal No. 2240 of 2023, was not a partner in the firm during time period the supply orders were issued to it. None of the 44 prosecution witnesses, including the I.O., has stated that Pawan Kumar Deora was a partner of the firm during the relevant period. Therefore, there is absolutely no material on record justifying his conviction.
105. So far as the other two private appellants Ashok Kumar Deora and Anil Kumar Deora are concerned, there is no evidence that they had supplied the goods at exorbitant rates. Their quotations were found to be the lowest and the concerned officers had issued rate reasonability certificates, the propriety, reasonableness or genuineness whereof is not disputed by the prosecution. Even otherwise, mere selling of goods at higher rates is not an offence unless the rates exceed the Maximum Retail Price of the goods and there is no such allegations against the aforesaid appellants.
106. The finding that that Anil Kumar Deora had opened current account no. 476 in the name of M/s Jai Durga Trading Company in Andhra Bank, by signing as Sushil Kumar, is also not supported by any evidence. There is no evidence to prove that Anil Kumar Deora had used the name of other genuine firms, viz., M/s Jai Durga Trading Corporation etc. to obtain Supply Orders.
107. The accused persons Anil Deora, Pawan Deora and Ashok Deora have been held to be guilty as the bank accounts in which they had received payments, remained in existence only between 05.09.1985 and 28.07.1987. In this regard, suffice it to say, that the mere closure of a bank account after about three years, cannot be a ground for conviction and sentence of the bank account holder as it would not give rise to a presumption that the bank account was closed because it had been opened for the purpose of receiving money as a result of commission of some offence.
108. The trial court has referred to the statement of PW-24 that a cheque was issued in the name of Jay Durga Trading Co., which was a firm based at Ghaziabad and it had no branch at Allahabad. However, the trial court has recorded in the judgment that as the prosecution has not

led any evidence to prove the cheques in question, the cheques had not been marked as exhibit. Therefore, no finding can be based on the basis of the cheques, which have not been proved by the prosecution.

109. The trial court concluded that the accused C.W.E. M.E.S., acting under a conspiracy with other co-accused persons, issued supply orders without any genuine requirement for article purchase of sodium vapour lamps and Mercury vapour lamps, on exorbitant rates and purchased the same from firms of accused persons Anil Kumar Deora, Ashok Kumar Deora and Pawan Kumar Deora and issued more than one supply orders on a single demand. The matter relates to the period 1984-1986 when a loss of Rs 3.82 Crores was caused to the government, which was not an ordinary amount and it cannot be ignored and wrongful loss to such a huge extent could not have been caused without connivance of all the accused persons. While recording the aforesaid finding, the trial court ignored the fact that Rs. 3.82 Crores was the amount of total material actually supplied and there is no dispute that the material had been supplied and utilized. Therefore, it is wrong that loss to the tune of Rs. 3.82 Crores had been caused to MES. The prosecution has not stated and proved the exact amount of loss allegedly caused by commission of the alleged offences. From the narration made in the impugned judgment, it appears that the trial court has been influenced by a presumption that as a huge loss amounting to Rs. 3.82 Crores has been caused to the government, the accused persons must have been involved in the controversy. This approach of the trial court cannot be appreciated as criminal trials are to be tested on the basis of proof beyond reasonable doubt, and not on the basis of mere presumptions.
110. In view of the aforesaid discussion, I am of the view that the demand orders had been initiated by store keeper and before being placed before the accused persons, the same had been processed and forwarded by some intermediate officers also. The store keepers and those intermediate officers have not been made accused in the present case and there is no allegation that they had committed any offence by

raising the demand. The supplies have been made in furtherance of those demands and the store keepers PW-24 has categorically stated that the demanded articles had been received, verified and tested and thereafter entries were made in the relevant ledgers and the items have actually been utilized. There is no allegation that there was any rate contract for supply of Sodium vapour lamps.

111. There is no documentary evidence regarding the prescribed procedure for procurement of supplies. If any illegality was committed by any official by violating any relevant rules/ regulations prescribing the procedure for making purchase, it was open to initiate a disciplinary proceeding against the persons who had violated the prescribed procedure for procuring supplies, but no such proceedings were instituted. This also supports the accused persons, as it establishes that the superior authorities of MES did not find any illegality having been committed in issuance of demand and supply orders and in making the payments.
112. In view of the aforesaid discussions, I am of the view that the prosecution has failed to establish all the charges levelled against the accused persons. The impugned judgment convicting and sentencing the accused persons is unsustainable in law.
113. Accordingly, all the aforesaid seven appeals are hereby allowed and the judgment and order dated 21.07.2023 passed by Special Judge, CBI, Court No. 1, Lucknow in Criminal Case No. 1800002 of 1991 (State v. Col. S.P. Sharma & Ors.) arisen out of Crime No. RC 04/1986, Police Station CBI/SPE/ACU(7), New Delhi whereby he appellants Satya Pal Sharma, Yashpal Kumar Uppal, Kulwant Singh Saini, Virendra Kumar Jain and S.S. Thakar have been convicted under Sections 120-B read with 420, 468, 471 Indian Penal Code, 1860 and Section 5(2) read with 5(1)(d) Prevention of Corruption Act, 1988 and the appellants Anil Dora, Ashok Deora and Pawan Deora under Sections under Sections 120-B read with 420, 468, 471 Indian Penal Code, 1860 and sentencing them under the aforesaid sections,

is set aside. The appellants are acquitted of all the charges levelled against them.

(Subhash Vidyarthi, J.)

Order Date : 25.01.2024
Pradeep/-