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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: April 25, 2019

Pronounced on: May 07, 2019

(i) + **CRL. A. 18/2013**

NIHAL CHAND & ORS.

(ii)+ **CRL.A. 21/2013**

GULSHAN KUMAR

.....Appellants

Through: Mr. Roopansh Purohit,
Advocate

Versus

CBI

.....Respondent

Through: Mr. Anil Grover, Special Public
Prosecutor with Ms. Noopur
Singhal, Advocate with Inspector
Vinod Gandhi, EOW

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. Impugned judgment of 19th December, 2012 holds appellants- *Nihal Chand (Executive Engineer Civil), RC Bansal AE (Civil), Anil Kumar(Jr. Engineer) and Gulshan Kumar (Contractor)* guilty for the offences under Sections under Sections 420/468/471 IPC r/w 120B IPC; Section 13(2) r/w Section 13(1) (d) of *Prevention of Corruption Act, 1988 (henceforth referred to as the 'PC Act')* and Section 120B IPC r/w Section 420/468/471 IPC and Section 13(2) r/w Section 13(1) (d) of PC

Act in RC No. 69(A)/03. Vide impugned order of 20th December, 2012, the aforesaid appellants have been sentenced as under:-

“CC 31/11

Convict Nihal Chand

<i>u/S 120B IPC:</i>	<i>Rigorous Imprisonment for 02 years and fine of Rs.10,000/- in default SI for 06 months</i>
<i>u/S 420 IPC:</i>	<i>Rigorous Imprisonment for 02 years and fine of Rs.10,000/- in default SI for 06 months</i>
<i>u/S 468 IPC:</i>	<i>Rigorous Imprisonment for 02 years and fine of Rs.10,000/- in default SI for 06 months</i>
<i>u/S 471 IPC:</i>	<i>Rigorous Imprisonment for 02 years and fine of Rs.10,000/- in default SI for 06 months</i>
<i>u/S 13(1) (d) r/w 13 (2) PC Act :</i>	<i>Rigorous Imprisonment for 03 years and fine of Rs.20,000/- in default SI for 06 months</i>

Convict RC Bansal

<i>u/S 120B IPC:</i>	<i>Rigorous Imprisonment for 02 years and fine of Rs.10,000/- in default SI for 06 months</i>
<i>u/S 420 IPC:</i>	<i>Rigorous Imprisonment for 02 years and fine of Rs.10,000/- in default SI for 06 months</i>
<i>u/S 468 IPC:</i>	<i>Rigorous Imprisonment for 02 years and fine of Rs.10,000/- in default SI for 06 months</i>
<i>u/S 471 IPC:</i>	<i>Rigorous Imprisonment for 02 years and fine of Rs.10,000/- in default SI for 06 months</i>
<i>u/S 13(1) (d)</i>	

r/w 13 (2) PC Act : Rigorous Imprisonment for 03 years and fine of Rs.20,000/- in default SI for 06 months

Convict Anil Kumar

u/S 120B IPC: Rigorous Imprisonment for 02 years and fine of Rs.10,000/- in default SI for 06 months

u/S 420 IPC: Rigorous Imprisonment for 02 years and fine of Rs.10,000/- in default SI for 06 months

u/S 468 IPC: Rigorous Imprisonment for 02 years and fine of Rs.10,000/- in default SI for 06 months

u/S 471 IPC: Rigorous Imprisonment for 02 years and fine of Rs.10,000/- in default SI for 06 months

u/S 13(1) (d)

r/w 13 (2) PC Act : Rigorous Imprisonment for 03 years and fine of Rs.20,000/- in default SI for 06 months

Convict Gulshan Kumar

u/S 120B IPC: Rigorous Imprisonment for 02 years and fine of Rs.10,000/- in default SI for 06 months

u/S 420 IPC: Rigorous Imprisonment for 02 years and fine of Rs.10,000/- in default SI for 06 months

u/S 468 IPC: Rigorous Imprisonment for 02 years and fine of Rs.10,000/- in default SI for 06 months

u/S 471 IPC: Rigorous Imprisonment for 02 years and fine of Rs.10,000/- in default SI for 06 months

All the sentences shall run concurrently.”

2. The facts as noted in the impugned judgment are as under:-

“1.0 RC No. 69(A)/03/ACB/CBI was registered on 30/12/03 on the basis of an information that accused persons namely Nihal Chand Executive Engineer (Civil), RC Bansal, AE (Civil), Anil Kumar Jr. Engineer had entered into a criminal conspiracy with Gulshan Kumar Contractor (co accused proprietor of M/s Sarvodaya Constructions Pvt. Ltd.) during the year 2003-04 to defraud MTNL by way of making bogus payments to M/s Sarvodaya Constructions Company to the tune of Rs,3,92,131/- against agreement No. 64/EE(CM)N/MTNL/03-04. The payment related to the repair of damaged flooring at Sanchar Haat, Telephone Exchange, Shakti Nagar, Delhi, wherein no such work was carried out. The accused persons in conspiracy with each other forged the record and the bill was passed by Executive Engineer Nihal Chand in conspiracy with co-accused and payment was made to the M/s Sarvodaya Construction company vide cheque No.7319555 dated 12/9/03. The physical inspection revealed that infact no such work was carried out during last one year. RC No. 69(A)/03 was registered u/S 120B IPC r/w 420/468/471 IPC r/w 13(2) r/w 13(1) (d) of PC Act against the accused persons.

1.1 Investigation revealed that accused Anil Kumar in pursuance to the conspiracy, made fake entries at page No.25-29 of Measurement Book 373 regarding execution of the work and the same was countersigned by RC Bansal, AE and Nihal Chand Executive Engineer. CBI also came across another bill of Rs.1.09 Lacs duly paid on 21/1/03 to M/s Sarvodaya Constructions Pvt. Ltd. in respect of the repair to damaged tiles at Sanchar Haat, Shakti Nagar, whereas no such work was carried out. This bill was not supported by entries in the measurement book nor was accompanied by the original technical sanction letter order. The photocopy of the sanction order attached was

also found to be forged by tampering with the dates on signatures of Sh. Kashmira Singh.

1.2 The premises of Sanchaar Haat at Shakti Nagar was commissioned on 30/03/2001. During site inspection, Sh. PR Charan Babu, AE, Representative of CPWD in his report after examining the measurement book opined that the work of the dismantling of the originally fixed tiles, which were damaged in refixing of the new tiles as recorded by Sh. Anil Kumar, JE, in the Measurement Book was highly improbable to be done on the same day i.e. 8.8.03. During inspection, videography of the premises was carried out and the same was recorded in a video cassette.

The investigation revealed that the documents essentially required to be prepared and maintained in connection with the execution of any civil work, was neither prepared nor maintained by the Division Head. Sh. Rajinder Pal, Executive Engineer i.e. successor of Nihal Chand confirmed that no such records are available in his office nor were handed over to him by his predecessor. Sh. SPS Grewal, SEM also made a corroborative statement. Investigation revealed that photocopy of Technical Sanction, dated 11/12/2002 was attached with the bill and was sent for pre-check before payment. It purportedly bears signature of Sh. Kashmira Singh, AGM dated 12/12/2002 whereas, Sh. Kashmira Singh, had handed over the charge to his successor on 24/1/2001. Sh. Kashmira Singh, informed that photocopy of the technical sanction attached with the bill was a forged and tampered document and has been forged on the strength of the sanction executed by him on 11/12/2000, when he held his office as AGM (MM). The original sanction order issued by Sh. Kashmira Singh had memo No.NZ/AA/C-19/2000-01 dated 11/12/2000 which was changed to NZ/AA/C-19/2002-03. GEQD Simla have a positive opinion regarding alterations of the dates and has stated it to be "Intended Manipulations", and also gave positive opinion

regarding the writings and signatures of the accused public servants as well as the private parties on the said bills and the documents.

1.3 CBI filed the chargesheet u/Ss 120B r/w 420/468/471 IPC and Sec. 13(2) r/w 13(1) (d) of PC Act, 1988 concluding inter alia that all the rules regarding the tendering procedure were grossly and blatantly flouted by the officers of Civil Wing, Rohini including Nihal Chand, PK Bhalla, RC Bansal and Sh. Anil Kumar alongwith Sh. Gulshan Kumar, proprietor M/s Sarvodaya Constructions Pvt. Ltd., which resulted in unauthorized payment of Rs.3,98,936 for two works to the contractor whereas no such work was actually carried out.”

3. The aforesaid appellants were put on trial for the offences under Sections 420/468/471 IPC r/w Sec.120B IPC; Section 13(2) r/w Section 13(1) (d) of PC Act, 1988 and Section 120B r/w Sections 420/468/471 IPC and Section 13(2) r/w Sec.13(1) (d) of the PC Act, 1988. Trial court has relied upon evidence of thirty witnesses and has discarded the stand of aforesaid appellants-accused persons and has thereafter convicted the aforesaid appellants, as noticed hereinabove, while holding as under-

“7.2 The members of the inspection team have made a consistent and corroborative statement on oath. The defence has made an attempt to discard these testimonies on the ground that all the witnesses were the officials. I consider that such arguments cannot be accepted. PW3 Sh. Bal Kishan Kaushik, PW4 Smt. Ganga Kumari, PW6 Sh. HR Tohan, PW9 Smt. Chandra Kanta Khera, PW10 Ms. Anju Harikishan, PW11 Sh. Sanjeev Kumar Sharma, PW18 Smt. Madhu Gaur and PW26 Sh. Satish Kumar have made consistent and corroborative statement on oath. The inspection reports Ex. PW5/A and Ex. PW7/A have also been proved beyond any shadow of doubt. The accused persons were the senior officials of MTNL. They were entrusted with

the job of executing civil work from public exchequer. The prosecution has successfully proved that they entered into conspiracy and raised the false bill Ex. PW2/B regarding repair to damaged floor at Sanchar Haar TE Building, Shakti Nagar. The bill Ex. PW2/B was duly prepared by AE RC Bansal and passed by XEN Nihal Chand. Accused Anil Kumar JE was the concerned JE at that time. The work in question was awarded to A5 Gulshan Kumar, proprietor M/s Sarvodaya Constructions.”

4. The challenge to the impugned conviction and sentence awarded to appellants *Nihal Chand (EE Civil), R.C.Bansal (AE Civil), Anil Kumar (JE) and Gulshan Kumar (Contractor)* is on the ground that the two bills Ex.PW2/A and Ex.PW2/B relating to repair of the damaged flooring at *Sanchar Haat*, TE Building, Shakti Nagar, Delhi are justified in the light of MB No.373 as from perusal of inspection report of MBs, it stands established that tiles in 25 sqm area at *Sanchaar Haat*; 25 sqm area in toilet at *Sanchaar Haat* and 50.74 sqm at passage of battery room in *Sanchaar Haat* were laid and painting work of ₹42,000/- was carried out at *Sanchaar Haat*. It was pointed out that prosecution has relied upon evidence of P.R.Charan Babu (PW7) to assert non execution of work at battery room and in toilet of *Sanchaar Haat*, as in his chief examination, he has stated that all the work was done on 8th August, 2003. It was submitted that when Niranjana Singh (PW-1) was confronted with MB No. 373, he admitted that the work had started in *Sanchaar Haat* on 18th July, 2003 and it was completed on 8th August, 2003 and to this effect is the deposition of Mukesh Kapoor (PW-16).

5. It was submitted by appellants' counsel that the videography of 31st December, 2003 has revealed that R.K.Rishi, Investigating Officer (PW-

29) was scolding the employees of MTNL when the said employee had informed him that the new tiles in the passage and battery room in *Sanchaar Haat* were fixed three to four months back. It was pointed out that G.B.Singh (PW-5) in cross-examination has admitted that the repair work was done at the *Sanchaar Haat*. It was submitted that prosecution case of fake bills being prepared is without any basis as D.S.Negi (PW-2), H.S.Sharma (PW-20), Mukesh Kapoor (PW-16), Swaran Lata (PW-23) from the accounts wing of MTNL have duly proved the bills Ex. PW-2/A and Ex. PW-2/B after the verification of work done was obtained. It was submitted that execution of remaining tile work was duly carried out in *Sanchaar Haat* and toilet and this stands proved from the evidence of H.R. Tohan (PW-6), Bal Kishan Kaushik (PW-3), Ganga Kumari (PW-4) and Satish Kumar (PW-26). It was further pointed out that evidence of P.R.Charan Babu (PW-7) and Rakesh Dutt (PW-8) stands contradicted by the measurement book and the bill Ex.PW-2/B. Attention of this Court was drawn to the evidence of R.K.Rishi, Investigating Officer (PW-29) to point out that he had found the tiles in place in the hall of *Sanchaar Haat*.

6. It was pointed out by learned counsel for appellants that there was no audit objection and as per evidence of G.B.Singh (PW-5), no inspection of the battery room was carried out before 31st December, 2003 which belies the prosecution case of physical verification and so, the report of no work being done stands falsified. It was further submitted that the charge of incomplete work being done stands falsified from the evidence of G.B.Singh (PW-5), who has proved the Inspection Report (Ex. PW-5/A), which reveals that tiles were fixed and due measurement of tiles was done. It was further submitted that repair work was done at

Sanchaar Haat on two dates and it is so evident from the Inspection Reports Ex.PW-5/A & Ex.PW-7/A. It was next submitted that the deposition of *Sanchaar Haat* employees PWs-3, 4, 6, 9, 10,11, 18 and 26 of no civil work being carried out at *Sanchaar Haat* stands belied from Inspection Report Ex.PW-5/A and their cross-examinations. It was further submitted that no reliance can be placed upon Inspection Memo (Ex.PW-7/A), as it is a unreliable document, because H.R.Tohan (PW-6) had deposed that copy of agreement, schedule of quantity and copy of bills were not shown to him when the Inspection Report (Ex.PW-7/A) was prepared by him.

7. Learned counsel for appellants submitted that the entire case set up against appellants is of technical nature and it is evident from the deposition of PW-7, that the prosecution version stands demolished as contrary version has been put-forth by him in his cross-examination. It was pointed out that Inspection Report (Ex.PW-5/A) was prepared without the site inspection and so, no reliance can be placed on it and that the persons responsible for supervision or execution for the maintenance work were S.E., C.E., Principal C.E., DGM(F) and CAO, who have not come forward to prove the prosecution case. It was next submitted that all bills of *badarpur*, cement, payment of labour etc. were provided to the Investigating Officer but they were withheld and have been proved by the defence witness DW-1. Attention of this Court was drawn to the evidence of PW-3, PW-4, PW-7, PW-8, PW-28 and PW-29 to point out that prosecution version stands demolished from the cross-examination of aforesaid witnesses. Finally, it was submitted on behalf of appellants that

whatever repair work was done, it is checked by the higher authorities and monitored through Financial Monitoring System (FMS).

8. Learned counsel for appellants thus submitted that the impugned conviction and sentence awarded is unsustainable as the basis of the two bills i.e. Ex. PW-2/A and Ex. PW-2/B is the MB No.373 which has not been duly proved on record and so, the very basis of the prosecution case gets demolished. Attention of this Court was drawn to first Inspection Report (Ex. PW5/A) to submit that this report is based upon the information supplied by *Anil Kumar(Jr. Engineer)* but the said Jr. Engineer has not signed this report nor has any official witness deposed in respect of the contents of this inspection report. It was pointed out that the evidence of G.B.Singh (PW-5) does not incriminate appellants because in the inspection report (Ex.PW-5/A), it is recorded that Anil Kumar J.E. had got the tiles fixed in the hall and battery room.

9. It was asserted that the Inspection Report Ex.PW-7/A deserves to be discarded as in this very report, it is recorded that copy of agreement, schedule of quantities or copy of bill paid were not made available and even the copy of technical sanction estimate to access the actual requirement was not available and so, the opinion expressed in this report regarding there being no visible difference between the old flooring and so called now flooring is without any basis. It was pointed that P.R. Charan Babu (PW-7) who has proved the Inspection Report (Ex. PW-7/A), has admitted in his evidence that Inspection Report in respect of repair of damage flooring at Sanchar Haat, Shakti Nagar was prepared on seeing M.B.No. 373. It was also pointed out that this witness has stated that the total work mentioned has been done on the same date i.e. 8th

August, 2003 and it is highly improbable that the work could be done on one day. It was further pointed out by petitioner's counsel that in cross-examination, this witness P.R.Charan Babu (PW-7) has demolished the prosecution case as after seeing the MB, he has disclosed the date of start of construction was on 27th July, 2003 and another date which seems to be the actual date i.e. 18th July, 2003.

10. It was next submitted by appellants' counsel that this witness P.R.Charan Babu (PW-7) has admitted that he did not mention the date of start of construction in this inspection report and no document except measurement book was made available to him during inspection. It was submitted that this witness has categorically admitted that copy of agreement, copy of bill etc. were not shown to him at the time of inspection. It was also submitted that this witness P.R.Charan Babu (PW-7), did not use any scientific instrument to ascertain the age of tiles and did not take any sample and so, the evidence of this witness could not be relied upon. It was further pointed out that this witness P.R.Charan Babu (PW-7) had not asked the in-charge of battery room about the date of fixing of tile in the battery room. As regards other official witnesses are concerned i.e. PW-3, 4, 6, 9, 10, 11, 18 and 26, it was submitted that these witnesses in their cross-examination, have admitted that the tile work was carried out in the hall and bathroom of *Sanchaar Haat*. Thus, it was submitted that prosecution fails to prove its case and so, appellants deserve to be acquitted.

11. On the contrary, learned special public prosecutor for respondent-CBI refutes the aforesaid stand taken on behalf of appellants and supports the impugned judgment and submits that from the evidence of G.B.Singh

(PW-5) and P.R.Charan Babu (PW-7) the prosecution case stands proved beyond reasonable doubt and so, these appeals deserve dismissal.

12. Upon hearing and on perusal of scrutiny of evidence on record, I find that the trial court has concluded that the repair work was not done in *Sanchaar Haat* while relying upon deposition of P.R.Charan Babu (PW-7), because this witness had stated in evidence that the repair work at *Sanchaar Haat* was purportedly done on 8th August, 2003. However, this witness in his cross-examination has admitted that the repair work at *Sanchaar Haat* had commenced on 18th July, 2003 and it was concluded on 8th August, 2003. On this aspect, Mukesh Kapoor, Accounts officer, Cash, (PW-16) has also deposed. It is relevant to note that G.B.Singh (PW-5) in his cross-examination has admitted that repair work was done at *Sanchaar Haat*. So, there is no basis to conclude that fake bills were prepared regarding the repair works done at *Sanchaar Haat*. Infact, D.S.Negi (PW-2), Mr. Mukesh Kapoor (PW-16), H.S.Sharma (PW-20) and Swaran Lata (PW-23) from the accounts department of MTNL have duly deposed in respect of the bills (EX. PW2/A & PW2/B) after the verification of the work done was obtained.

13. From the cross-examination of Bal Kishan Kaushik (PW-3), Ganga Kumari (PW-4) and Satish Kumar (PW-26) it stands established that the repair work at *Sanchaar Haat* toilet and battery room was duly done. G.B.Singh (PW-5) has deposed that no inspection of battery room was carried out before 31st December, 2003 and thus, there was no basis to conclude that no repair work was done in the battery room or in the toilet at *Sanchaar Haat*. From the evidence of G.B.Singh (PW-5), the charge of no work being done stands falsified, as the statements of PW-3, PW-4,

PW-6, PW-9, PW-10, PW-11, PW-18 and PW-26 of no civil work being carried out in *Sanchaar Haat*, stand negated from the Reports (*Ex. PW-5/A & Ex. PW-7/A*). Otherwise also, Inspection Report (*Ex. PW-7/A*) cannot be relied upon, as it was prepared without going through the copy of agreement, schedule of quantity etc. Upon analysis of deposition of PW-7, I find that the version put-forth by him in chief-examination, stands demolished by him in the cross-examination. Trial court has erred in relying upon the chief-examination only of above referred witnesses.

14. In the considered opinion of this Court, the trial court has erred in relying upon the unreliable version putforth by P.R.Charan Babu (PW-7) and above referred witnesses. This Court is constrained to observe that the best evidence has been withheld. The Officer Superintendent Engineer, Junior Engineer, Principle Chief Engineer, DGM (Finance) and CEO (Accounts Officer) were relevant witnesses, who could have conclusively proved the charge against the appellants. It has come in evidence that bills regarding purchase of bricks, cement, payment of labour etc were provided to the Investigating Officer but these bills have not been proved on record. Another aspect, which needs to be highlighted is that the bills (*EX. PW-2/A & B*) relating to the M.B. No. 373, have been duly proved on record. Thus, the substratum of the prosecution case gets demolished. G.B.Singh (PW-5) has proved the Inspection Report (*EX. PW5/A*) and it is clearly recorded that Anil Kumar (Junior Engineer) had got the tiles fixed in the hall and the battery room.

15. Upon analysing the evidence of this crucial witness G.B.Singh (PW-5), I find that his evidence does not incriminate appellants. Without determining the age of tiles, it cannot be concluded that there was no

visible difference between the old flooring and the new flooring. Upon considering the crucial evidence of PW-5 and PW-7 and the entire evidence on record, this Court is of the considered view that the prosecution has failed to prove this case beyond reasonable doubt against appellants.

16. Consequentially, impugned judgment and order on sentence cannot be sustained and are hereby set aside, while extending the benefit of doubt to the appellants.

(SUNIL GAUR)
JUDGE

MAY 07, 2019

r /v