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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. 24/2013**

MAHAVIR SINGH

(ii)+ **CRL. A. 27/2013**

S. C. SHARMA & ORS.

(iii) **CRL. A. 29/2013**

PRADEEP MAAN

.....Appellants
Through: Mr. Amit Sharma &
Mr. Roopansh Purohit,
Advocates

Versus

CBI

.....Respondent
Through: Mr. Rajesh Kumar, Special Public
Prosecutor for CBI in Crl. Appeal
No.27/2013
Mr. Anil Grover, Special Public
Prosecutor with Ms. Noopur
Singhal, Advocate in Crl. Appeal
No. 24/2013 & 29/2013
Inspector Vinod Gandhi, EOW

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. The above captioned appeals arise out of common impugned judgment of 19th December, 2012 vide which appellants- *S C Sharma, Nihal Chand, Ramesh Chand Bansal, Mahavir Singh and Pradeep Mann* have been convicted for the charges under Sections 13(2) r/w Section 13(1) (d) of *Prevention of Corruption Act, 1988* (henceforth referred to as the '*PC Act*') r/w Section 120B IPC; under Sections 420/467/468 & 471 IPC and Section 13(2) read with Section 13(1) (d) of PC Act, 1988 r/w Sec. 120B IPC and under Section 120B IPC r/w Section 420/467/468 & 471 IPC & Section 13 (2) r/w Section 13 (1) (d) of PC Act, 1988 in CC No. 31/11 and CC No. 32/11 of RC No. 51(A)/03. Vide order of 20th December, 2012, they have been sentenced as under:-

"CC 31/11

Convict SC Sharma

<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 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) 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 Mahavir Singh

<i>u/S 120B IPC:</i>	<i>Rigorous Imprisonment for 02 years and fine of Rs.20,000/- in default SI for 06 months</i>
<i>u/S 420 IPC:</i>	<i>Rigorous Imprisonment for 02 years and fine of Rs.20,000/- in default SI for 06 months</i>
<i>u/S 468 IPC:</i>	<i>Rigorous Imprisonment for 02 years and fine of Rs.20,000/- in default SI for 06 months</i>
<i>u/S 471 IPC:</i>	<i>Rigorous Imprisonment for 02 years and fine of Rs.20,000/- in default SI for 06 months</i>

CC 32/11

Convict SC Sharma

<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>	
<i>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 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) 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 Pradeep Mann

<i>u/S 120B IPC:</i>	<i>Rigorous Imprisonment for 02 years and fine of Rs.20,000/- in default SI for 06 months</i>
<i>u/S 420 IPC:</i>	<i>Rigorous Imprisonment for 02 years and fine of Rs.20,000/- in default SI for 06 months</i>
<i>u/S 468 IPC:</i>	<i>Rigorous Imprisonment for 02 years and fine of Rs.20,000/- in default SI for 06 months</i>
<i>u/S 471 IPC:</i>	<i>Rigorous Imprisonment for 02 years and fine of Rs.20,000/- in default SI for 06 months</i>

All the sentences shall run concurrently. ”

2. The facts as emerging from the impugned judgment are as under:-

“1.0 On 23/9/03 on the basis of an information RC No. 51(A)/03 was lodged u/S 120B, 420, 467, 468, 471 IPC and u/S 13(2) r/w Sec.13 (1) (d) of PC Act, 1988, primarily on the allegations that during the period January 2003 onwards some officials of the MTNL Civil Wing, Rohini and Idgah Division entered into criminal conspiracy with some private contractors and made bogus payments for the works which were not actually executed. The allegations centered around construction of boundary wall on a plot of land meant for Telephone exchange building, Mangolpuri. CBI had an information that the suspects flouted the rules and in conspiracy with each other sanctioned the bills and made the payments to the contractors, even though no work had been executed. CBI also had an information regarding bungling in the work order for the whitewash and repair of RLU building Lothian Road, Kashmiri Gate.

1.1 Pursuant to the registration of FIR, the detailed investigation was conducted. The investigation revealed that MTNL adopts CPWD manual in respect

of civil works and the CPWD Codes are also equally applicable.

- 1.2 MTNL was initially allotted a plot of 4000 sqm and later on additional 104.70 sqm land was allotted and therefore, MTNL had a total piece of land measuring 4104.70 sqm allotted by DDA for construction of telephone exchange. The possession of this land was given to MTNL on 10/5/01. At the time of the possession, the land was surrounded with 2ft high masonry wall with missing chain link fencing. In order to save the land from trespassers, a proposal was mooted for the construction of compound wall, pursuant to which an estimate of Rs.16,52,700/- for construction of compound wall supported on RCC Column and beams with provision of 10 ft high compound wall plus 2ft high grill was prepared. Besides this, steel gate of 7.2m wide was also required to be made. After having the estimate being duly signed by the competent authority, the then SE Sh. Harbhajan Singh called the tender twice but on both times the tenders were rejected on the ground of high rates.*
- 1.3 While the matter rested thus, allegedly the then XEN Sh. SC Sharma (A1) in violation of the rules, dishonestly split up the total work of construction of boundary wall for the Mangolpuri Telephone Exchange into following five parts:*

 - A) Earth Filling Work;*
 - B) Brick Work;*
 - C) RCC Work;*
 - D) Iron Grill (I); and*
 - E) Iron Grill (II)*
- 1.4 The splitting up was done by A1 SC Sharma without any justification and without prior permission of CGM, MTNL. Allegedly, XEN had done the splitting up of the work in order to bring the same within his financial powers.*
- 1.5 The investigation revealed that accused persons in conspiracy with each other violated the CPWD*

Manual regarding calling of tenders and made the payment without any work having been executed or incomplete/ insufficient work being executed. The subject matter of RC No.51(A)/03 are the above said five works, the bills of which have been sanctioned by Sh. SC Sharma, XEN or Sh. Nihal Chand, the then XEN. Since all 05 bills are part of the same chain of action, this Court has conducted the trial of both the cases together and also propose to dispose off the same by a common judgment.”

3. CC No. 31/11 and 32/11 relate to RC No. 51(A)/03 in which appellants *SC Sharma and others* were put on trial for the offences under Sections 13(2) r/w Section 13(1) (d) of *PC Act* r/w Section 120B IPC and under Sections 420/467/468 & 471 IPC. Trial Court had relied upon evidence of 32 witnesses to convict appellant- *SC Sharma and others* after discarding their statements recorded under Section 313 Cr.P.C. While convicting the appellants, the trial court has held as under:-

“The prosecution has successfully proved by way of clinching material on record that A1 to A3 entered into conspiracy with A6 and raised forged bills relating to the work, which were not executed, and released the payment causing loss to public exchequer.”

It is pertinent to note that in CC 32/11 the afore-referred A1 to A3 are appellants- *SC Sharma, Nihal Chand and Ramesh Chand Bansal* and reference to A6 is to appellant –*Pradeep Mann*.

4. The challenge to the impugned conviction and sentence by learned counsel for appellants is on the ground that trial court has erred in holding that the work was not done. Learned counsel for appellants contended that there is no evidence to show that so called sanction of ₹16,52,700/-

was for construction of boundary wall on plot measuring 4104.70 sq.meter at Mangolpuri and the prosecution version of Appellant- S.C.Sharma (XEN), splitting the sanction, stands falsified from the deposition of PW-15-*H.K. Bansal* who has deposed that the sanction of ₹11,87,36,700/- was already split twice. It is pointed out that CAG Report did not find any fault in the award of work by appellant- *S.C.Sharma* and even higher officers of MTNL did not find any fault in the award of work by this appellant.

5. It was next submitted that respondent has failed to establish non-execution of work. It was pointed out that the execution of grill work at CSD Store, Rohini is established from the evidence of Saharum Mia (*PW3*), Prem Kumar Bhalla (*PW-8*), Mohar Singh Meena (*PW-9*), Harish Chandra Sharma (*PW-10*) & Ashok Kumar Chandok (*PW17*). It was pointed out that Mohar Singh Meena (*PW-9*) has deposed that on instructions of the Superior Officer, work pertaining to one project can also be executed at a different site and payment was made for Mangolpuri work under expenditure head of Rohini Division. It was further submitted that the measurement books have been withheld and though the Investigating Officer had seized the CAG Report but it has not been proved in evidence, as the said report exonerates the appellant.

6. It was pointed out by appellants' counsel that as per the evidence of Abbal Singh (*PW-2*) & Dheeraj Singh Negi (*PW-6*), the measurement books were available at the time of inspection, but they were not taken into consideration. To submit so, attention of this Court was drawn to evidence of *Rakesh Dutt* (*PW-22*), who has proved on record the

inspection memo (Ex. PW-22/DA) wherein it is recorded that due to non-availability of MB No. 152 (*the measurement book in question*), verification of various items at the site could not be done. It was further submitted that as per the evidence of Ashok Kumar Chandok (*PW-17*), the work at CSD Store, Rohini was found up to the mark and so, the bills Ex. PW-13/A of ₹2,50,457/- and Ex. PW-17/G of ₹69,500/- were duly paid. It was next submitted that the concerned SC (Civil) was cited as a witness to prove the fact of non-execution of work in question but for reasons best known, the prosecution had not got him examined and this lacuna in the prosecution case goes to the root of the case.

7. Attention of this Court was also drawn to evidence of Harish Chandra Sharma (*PW-10*) to point out that this witness has admitted that the grill was installed on the wall, except wall on the side of the school. It is pointed out that the charge against Mr. Anil Kumar (JE) was that he made unauthorized entries in the measurement book, but he has been acquitted by the trial court for want of measurement books in question. Thus, it is submitted that the prosecution has failed to prove its case, and so appellants deserve to be acquitted.

8. On the contrary, learned Standing Counsel for respondent-CBI submits that as per the evidence of Harish Chandra Sharma (*PW-10*), the bills regarding the work done at CSD Store, Rohini were separately paid. It is submitted that in the face of evidence on record, impugned conviction and sentence awarded to appellants is justified.

9. After having heard learned counsel for the parties and upon scrutiny of the evidence on record, I find that emphasis of the prosecution

case has been that iron grills were not installed in telephone exchange building at Mangolpuri, Delhi. On the other hand, the case of appellants is that on the instructions of Superior Officer, the installation of iron grills was done at CSD Store, Rohini and not at telephone exchange building in Mangolpuri, Delhi. In this regard, attention of this Court was drawn to the evidence of Mohar Singh Meena, JE Civil (PW-9), who has admitted in cross-examination that on instructions of the Superior Officer, work pertaining to one project can be executed at a different site. It is not the case of prosecution that the installation of iron grills at CSD Store, Rohini was not done. Relevantly, Mohar Singh Meena, (PW-9) has deposed that payment made for Mangolpuri work, was under the expenditure head of Rohini Division.

10. During the course of hearing, attention of this Court was drawn to the evidence of Ashok Kumar Chandok, Accounts Officer, Cash (PW-17), who has admitted in cross-examination that the work done at CSD Store, Rohini was found up to mark and so, bills (EX. PW13/A and 17/G) were duly cleared. Although Superintendent Engineer was cited as a witness to prove that work was not done but for reasons best known, the prosecution has not got him examined. Infact, Harish Chand Sharma, Sub-Divisional Engineer, CSD Store (PW-10) has admitted in cross-examination that iron grills were installed at CSD Rohini, Delhi except on the wall at the side of the school. What is fatal to prosecution case is that the measurement books were not proved in evidence, which led to the acquittal of Anil Kumar, JE. In cases like the instant one, production of measurement books was essential and in its absence, the charge framed

against appellants does not stand proved. There is no evidence on record to prove that for the work done at CSD Store, Rohini, Delhi, separate payment was made. The videography was got done but unfortunately, videography was not proved on record, which causes a serious dent in the prosecution case. In the face of acquittal of Anil Kumar, Junior Engineer, conviction of appellants herein cannot be sustained, as failure on the part of prosecution to produce the measurement books, enures to the benefit of appellants as well.

11. Upon considering the prosecution case in its totality, this Court finds that the charge framed against appellants does not stand proved beyond reasonable doubt. While extending the benefit of doubt to appellants, the impugned judgment and order are set aside and appellants are acquitted of the charges against them.

12. These appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

MAY 07, 2019

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