

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Reserved on: 01.06.2022
Pronounced on: 30.06.2022

1. CRA-S-712-SB-2004 (O&M)

Inderjit Singh Tandi

... Appellant

Vs.

Central Bureau of Investigation

... Respondent

2. CRA-S-742-SB-2004 (O&M)

Pritam Singh

... Appellant

Vs.

Central Bureau of Investigation

... Respondent

3. CRA-S-883-SB-2004 (O&M)

Raj Kumar

... Appellant

Vs.

Central Bureau of Investigation

... Respondent

4. CRA-S-931-SB-2004 (O&M)

Gurnam Singh

... Appellant

Vs.

Central Bureau of Investigation

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. Paras Talwar, Advocate,
Mr. Prabhdeep Singh Bindra, Advocate
for the appellant(s) (in CRA-S-712 & 742-SB-2004).

Mr. Veneet Sharma, Advocate
for the appellant (in CRA-S-883-SB-2004).

Mr. Vipul Goel, Advocate for
Mr. Yogesh Goel, Advocate
for the appellant (in CRA-S-931-SB-2004).

Ms. Shubhra Singh, Sr. Panel Counsel
for the respondent-CBI.

ARVIND SINGH SANGWAN, J.

Present four appeals are filed challenging the judgment of conviction dated 15.03.2004 passed by the Special Judge, CBI, Punjab, Patiala, holding appellants Inderjit Singh Tandi, Pritam Singh, Gurnam Singh and Raj Kumar guilty of offence punishable under Section 120-B of the Indian Penal Code (for short 'IPC') read with Sections 420, 468, 471 IPC. In addition to this, appellants Inderjit Singh Tandi, Pritam Singh and Gurnam Singh were held guilty of offence under Section 13(1) (d) punishable under Section 13(2) of

Prevention of Corruption Act, 1988 (for short 'PC Act') and appellants Inderjit Singh Tandi and Gurnam Singh were also convicted under Section 167 IPC as well as the order of sentence of even date, vide which all four appellants were directed to undergo R.I. for a period of 01 year under Section 120-B IPC read with Section 420 IPC, 02 years R.I. under Section 420 IPC, 01 year R.I. under Section 471 IPC, 01 year R.I. under Section 468 IPC and 02 years R.I. under Section 13(1)(d) punishable under Section 13(2) of PC Act. Apart from this, appellants Inderjit Singh Tandi and Gurnam Singh were also sentenced to undergo R.I. for a period of 06 months under Section 167 IPC and to pay total fine of Rs.15,000/- by appellants Inderjit Singh Tandi and Gurnam Singh each, fine of Rs.14,000/- by appellant Pritam Singh and fine of Rs.10,000/- by appellant Raj Kumar, in R.C. No.14 datd 12.02.1998 under Section 120-B IPC read with Section 420 IPC and Section 13(1)(d) read with Section 13(2) of PC Act.

Brief facts of the case are that this Court took suo motu action on a newspaper item dated 13.05.1996 captioned as 'Ghost Units eating up subsidy' and while treating the same as writ petition, directed the CBI to conduct an investigation. In pursuance of the directions, CBI registered the aforesaid FIR against unknown officials/officers of Industries Department of Punjab Govt. and some private persons. Later on, during the investigation, it was found that accused Raj Kumar floated four bogus firms by the names of M/s Moon Industries, Chhatti Wind Gate, Amritsar, M/s Mahajan Steel Industries, M/s Punjab Engineering Corporation, Amritsar and M/s National Steel Industries

and with a view to get benefit of the Industrial Policy and Incentive Code, 1989, commonly known as Subsidy Benefit Scheme, he approached the Industries Department, Amritsar claiming to have purchased machinery worth Rs.6,91,900/- from M/s Atul Traders, New Delhi for M/s Moon Industries, machinery worth Rs.8,11,500/- from M/s Charanjit Engineering, Putligarh, Amritsar for M/s Mahajan Steel Industries, machinery worth Rs.3,01,900/- from M/s Punjab Machine Tools for M/s Punjab Engineering Corporation and machinery worth Rs.1,25,800/- from M/s Atul Traders for M/s National Steel Industries. He forged false and fictitious documents/bills of purchase of said machinery for all the four firms. He filed applications for subsidy on the basis of forged and fictitious documents. At the relevant time, accused Pritam Singh was the General Manager, while Gurnam Singh and Inderjit Singh Tandi were working as SPIOs respectively in the office of General Manager, District Industries Centre, Amritsar. It was their duty to verify the facts stated by the subsidy claimants and to recommend, sanction and disburse the subsidy only to the genuine claimants. As per allegations in the final report, accused Gurnam Singh falsely verified the forged machinery bills and recommended the subsidy qua firms M/s Moon Industries, M/s Mahajan Steel Industries and M/s Punjab Engineering Corporation, while accused Inderjit Singh Tandi verified the bills and recommended the same qua firm M/s National Steel Industries. Accused Pritam Singh further recommended the subsidy and after it was allowed by the District Level Committee, of which he was also Member Secretary, issued the sanctioning letters to accused Raj Kumar and the subsidy amount to the tune of

Rs.4,01,980/- was paid. The CBI thus found that all of them entered into a criminal conspiracy and in pursuance thereof, by misusing their official positions as public servants, facilitated the payment of subsidy amounts in favour of bogus firms of Raj Kumar, who was the proprietor. They also found that various firms, from which the machinery was allegedly purchased by accused Raj Kumar on the basis of forged and fictitious bills, were not in existence. After completing the investigation, report under Section 173 Cr.P.C. was filed.

The trial Court, thereafter, framed the charge against all the accused persons under Section 120-B IPC read with Sections 420, 167, 468, 471 IPC and Section 13(1)(d) punishable under Section 13(2) of PC Act.

In prosecution evidence, PW1 Vijay Kumar Chauhan, proprietor of M/s Arun Roadlines appeared and stated that he was an agent of M/s Bhandari Inter-State Carriers, Jalandhar. His contract came to an end in June, 1989. photocopy of a bill Ex.PW1/1 was put to him, which was objected to by the defence counsel and the objection was kept open. This witness, on seeing the photocopy of this document, stated that same do not bear his signatures. In cross-examination, this witness stated that on photocopy Ex.PW1/1, signatures are not visible, but volunteered that they are not his signatures. He further stated that he could not say that what is the position of signatures on the original of the photocopy i.e. Ex.PW1/1. This witness admitted that it is correct that he had crossed the printed name of M/s Bhandari Inter-State Carriers on the bills, which were still with him, even after expiry of the contract with M/s Bhandari

Inter-State Carriers. This witness stated that he had a rubber stamp with cross marks and he used to put it on M/s Bhandari Inter-State Carriers on the bills. He further stated that said rubber stamp was not handed over to CBI, as he had destroyed the same. This witness further stated that his office was at 35, New Grain Market, Jalandhar, which he took on rent from one Karnail Singh Nijjar, an NRI and denied the suggestion that he concocted the story of rubber stamp. He further stated that till 1996, he had only one worker, who name was Subhash.

PW2 Sohan Singh stated that Ex.PW1/1, which is photocopy of a bill, do not relate to M/s Bhandari Inter-State Carriers.

PW3 Gurdeep Singh stated that he was having business under the name and style of M/s Makkar Trading Co. at 34, New Gopal Nagar, Jalandhar and M/s Arun Roadlines was having business in the adjoining shop No.35 from 1986 to 1988. Thereafter, the shop was occupied by South Freight Movers. One Vijay Kumar was running the business of M/s Arun Roadlines, as he was having agency of M/s Bhandari Inter-State Carriers. In cross-examination, this witness stated that he had not brought any title deed of SCF No.34 and denied suggestion that he was not doing any business in SCF No.34. In further cross-examination, this witness pleaded ignorance about owner of SCF No.35 as well as whether M/s Arun Roadlines was a partnership firm or proprietorship concern.

PW4 Manohar Singh stated that J.K. Textile Engineering is running by his son Navtej Singh since 1984 and he had not seen any concern by

the name of M/s Charanjit Engineering Company. In cross-examination, this witness stated that Putligarh is a big locality and there are 100 of industries and it is possible that concern with the name of M/s Charanjit Engineering Company exist in Putligarh and this fact is not in his knowledge.

PW5 Amarjit Singh Sidhu, Additional Controller of Store, Department of Industries, Sector-10, Chandigarh stated that he was Deputy Director, Department of Industries from 1996 to 1999. The State Govt. floated industrial policies for giving incentive to industrialists. These policies are provided in Industrial Policy and Incentive Code, 1989 published by Department of Industries, Punjab. The General Manager was associated with District Level Committee. Prior to 1992, District Level Committee was competent to grant subsidy upto Rs.2.2 lacs, which was later on enhanced to Rs.5.00 lacs. This witness further stated that industries mentioned in Annexure-II in the Industrial Policy and Incentive Code, 1989 were not eligible for subsidy. The department used to get report with regard to functional status of the industry and thereafter, subsidy was to be released. This witness proved documents Ex.PW5/1 to PW5/15; various letters/report of District Level Committee, on the basis of which, subsidies were released. All these documents were photocopies and it is stated that original of these documents were annexed with the application submitted to District Level Committee. This witness further stated that Rs.1,08,900/- was given as subsidy to M/s Moon Industries, Chhati Wind Gate, Amritsar. Ex.PW5/16 was signed by Pritam Singh and recommendation Ex.PW5/17 was signed by Gurnam Singh. Similarly, this

witness proved the documents/reports of accused persons Ex.PW5/18 to Ex.PW5/31 regarding release of subsidy to accused Raj Kumar on verification by Gurnam Singh. This witness further stated that as per policy, industrial unit should remain in production for a period of 05 years from the date, when it commences production and in case of failure, department was to make a report.

In cross-examination, this witness stated that policy Ex.PW5/1 was notified in the Gazettee on 31.03.1989 and he had not dealt with files of M/s National Steel Industries and M/s Moon Industries. This witness further stated that he had not seen Gurnam Singh writing or signing and he had never signed in his presence. District Level Committee is headed by Deputy Commissioner. This witness pleaded ignorance regarding the fact that M/s Moon Industries was closed before 1994. In further cross-examination, he stated that Ex.PW5/21 and Ex.PW5/33 are the documents relating to release of subsidy to M/s National Industry, which were prepared on the basis of application given by the said industrial unit. In the documents submitted by the unit, a loan of Rs.9.00 lacs was shown with cash credit limit of Rs.2.00 lacs, as per project report, which was prepared by Chartered Accountant and the payment was made directly by bank to the supplier of machinery and field staff did not verify this fact. He further stated that later on, practice of visiting of field staff to the industrial unit was discontinued and as per the policy, affidavit and undertaking of the industrial unit was taken that it is functional and remain functional for a period of 05 years. Subsidy to M/s National Industry was released on 30.08.1991. This witness further stated that Inderjit Singh Tandi was transferred in 1991 and later

on, J.S. Mohal was Joint Director in 1996, who prepared a report Ex.PW5/34. This witness was confronted with the report and stated that no fault was found with Inderjit Singh. He further stated that none of the documents, which were attested by Inderjit Singh pertaining to M/s National Industry was found to be ingenuine or fake and certificate of registration submitted by M/s National Industry was not found to be bogus later on.

PW6 Jai Parkash Gupta, Industrial Advisor-cum-Additional Director, Department of Industry stated that he handed over the documents vide seizure memo Ex.PW6/1, which bear his signatures and of Surjit Singh, General Manager. The memo Ex.PW6/2 bears his signatures and Ex.PW6/3 bears signatures of Pritam Singh. He deposed that from December, 1996 to April, 1999, he remained posted as General Manager, District Industry Centre, Amritsar and tried to locate the unit M/s Mahajan Steel Industries, M/s National Steel Industry, M/s Moon Industry and M/s Punjab Engineering Works, but could not trace them, as he was not familiar with Amritsar. He asked 2-3 persons of the area, but they said that industries are not in existence.

In cross-examination, this witness stated that he do no remember, when he visited M/s National Steel Industry, however, on seeing the file, he stated that he recollect that he visited the area known as Bhagtan Wala Gate opposite Dana Mandi, Amritsar along with Baljinder Walia, Project Manager of his office, who told him about the place, where the industrial unit was located earlier. In further cross-examination, this witness stated that Baljinder Walia also pointed towards that M/s Mahajan Steel Industry was in existence at Peer

Shah Road, outside Gate Hakima, Amritsar and similarly, M/s Moon Industry was located at Chhati Wind Gate, Amritsar and M/s Punjab Engineering Works was situated at Gill Wali Gate, Amritsar, as informed by Baljinder Walia, Project Manager. This witness, in cross-examination, also proved certain memos Ex.PW6/5 to PW6/7.

PW7 Baljit Singh, Senior Assistant, Director, Industries, Punjab stated that he handed over 05 files and letter to CBI vide seizure memo Ex.PW7/1 to Ex.PW7/2.

PW8 Surinder Singh Mali, a political worker, stated that Lakhwant Singh Mali is his younger brother and was working under M/s Punjab Machine Tools in 1986. Due to disturbance in Punjab, he shifted to Chandigarh in 1988-89. This witness was shown photocopies of the bills Mark PW8/A to Mark PW8/C, which did not bearing signatures of his brother.

In cross-examination, this witness stated that he is illiterate and has not received any education in school.

PW9 Lakhwant Singh Malhi stated that he was running a business by the name of M/s Punjab Machine Tools at Batala, which was started in 1985-86. He also stated that he had seen bills Marks PW8/A to Mark PW8/C, which did not bear his signatures and he had not supplied any goods or received payment. In 1989, he shifted to Chandigarh.

In cross-examination, this witness stated that M/s Punjab Machine Tools was not registered with the Registrar of Firms and he could not rule out whether there may be any other concern by the same name of M/s Punjab

Machine Tools at the relevant period.

PW10 B.D. Dhuppar, Additional Director, Industries, Department of Industries and Commerce, Punjab stated that he joined the department in 1979 and worked as such till 1998. This witness deposed about the policy instructions and the procedure for grant of incentive by way of subsidy. He stated that report was received from the field functionaries and a seniority list was prepared. As per policy of 1989, it was mandatory for an industrial unit to remain in production at least for a period of 05 years from the date of commencement of production.

In cross-examination, this witness admitted a document dated 27.08.1991 Ex.PW10/D1, which bears signatures of accused Pritam Singh and report Ex.PW5/34, which bears his signatures. This witness stated that High Court had directed CBI to conduct inquiry and directions were with regard to disbursement of subsidy during 1995-96 and he do not know that any such report was submitted by CBI.

PW11 K.P. Singh, Superintendent, Punjab Secretariat, Finance Department proved the sanction orders for the prosecution of Gurnam Singh, Pritam Singh and Inderjit Singh Tandi as Ex.PW11/1 to Ex.PW11/3.

PW12 Om Parkash, Post Master, Post Office, New Delhi proved a letter Mark PW12/A. This witness was declared hostile and was cross-examined by Public Prosecutor and stated that postal envelope Mark PW12/A was returned to his office. In cross-examination, this witness further stated that he do not remember that CBI has seized any record and there are cuttings on the

endorsement of Mark PW12/A, which he cannot tell and only the Postman can tell.

PW13 Jai Bir Singh stated that he was working as Assistant Vigilance Officer in Mahanagar Telephone Nigam Ltd., New Delhi and proved a letter Ex.PW13/1, which bears signatures of Ramzee Singh, Vigilance Officer regarding information of telephone Nos.5735017 and 587266.

PW14 Sarabjit Singh, an employee posted in the office of Deputy Commissioner, Amritsar from July, 1987 to May, 1992, stated that he was Chairman of District Level Single Window Committee, which was dealing with sanctioning of subsidy to industrial units and proved minutes Ex.PW6/4, which bears his signatures regarding sanctioning of subsidy to industrial units.

PW15 Surinderpal Singh stated that he was employed in Punjab and Sind Bank, Janakpuri, New Delhi and handed over some documents vide seizure memo Ex.PW15/1 to Ex.PW15/3.

In cross-examination, this witness stated that CBI neither seized nor demanded original documents regarding opening form of M/s Atul Traders.

PW16 Hardip Singh, Project Manager, Office of GM, District Industries Centre, Amritsar identified the signatures of Gurnam Singh on letter and receipt Ex.PW16/1. In cross-examination, this witness stated that Ex.PW16/1 relates to disbursement of subsidy, which was released, when the industrial unit was functional and entire formalities were completed before release of subsidy.

PW17 Harjit Singh, Senior Assistant, Office of GM, District

Industries Centre, Amritsar stated that he handed over documents relating to proceedings of the District Level Committee, Amritsar to CBI pertaining to M/s Moon Industries as Ex.PW5/17 to Ex.PW5/29, which bear signatures of Gurnam Singh and files relating to M/s Punjab Engineering Corporation, Amritsar vide Ex.PW17/1 to Ex.PW17/9 under the signatures of Gurnam Singh and file relating to M/s National Steel Industries vide Ex.PW17/10 to Ex.PW17/16 as well as memos Ex.PW5/4 to Ex.PW5/15, which bear signatures of Inderjit Singh Tandi and also the files relating to M/s Mahajan Steel Industry Ex.PW17/2 to Ex.PW17/25 under the signatures of Gurnam Singh. This witness further stated about disbursement of subsidy to the aforesaid firms.

In cross-examination on behalf of Gurnam Singh, this witness stated that subsidy case was sanctioned by District Level Committee.

PW18 Satish Kumar Sharma stated that M/s Atul Traders never carried out any work at his residential address and deposed about installation of two telephone numbers i.e. 5705266 and 5706188 in 1980. In cross-examination, this witness stated that he never worked with any govt. office or never participated in any survey.

PW19 R.K. Tejpal, SDO (Enforcement), Sale Tax Department stated that he received a letter from CBI to verify the address of M/s Atul Traders and to find whether it is registered with Sales Tax Authorities and letter was exhibited as Ex.PW19/1, in which it was verified that no such firm was registered with Sales Tax Authorities.

PW20 S.K. Nigam, Assistant Director of Industries (Central Zone,

Govt. of Delhi stated that CBI asked him certain information vide letter Ex.PW20/1. In cross-examination, this witness stated that he do not remember whether the report was made by field officer before writing the letter Ex.PW20/1.

PW21 Lahori Ram stated that he was a Clerk in the office of Director of Industries, Punjab and proved the documents regarding posting of three accused persons vide Ex.PW21/1 to Ex.PW21/10.

PW22 Pardeep Malhotra, Assistant Excise and Taxation Commissioner, Amritsar proved the memorandum under the signatures of Partap Singh Ex.PW22/1 and two other letters as Ex.PW22/2 and Ex.PW22/3.

PW23 Gurdeep Singh Joga, Sr. Assistant Incentive Division Officer, Industries Department proved the letters Ex.PW23/1 to Ex.PW23/5, which were prepared by the officials of Block Level Committee. In cross-examination, this witness stated that he never dealt with documents nor the same were in his custody and S.L. Bhardwaj and A.S. Bhatia stand retired and he only identified the signatures on these documents.

PW24 Harbans Lal Kukreja stated that he is residing in house No.3009/3, West Patel Nagar with his mother and no firm/unit by the name of M/s Atul Traders work from that place and Raj Kumar is distantly related to his mother.

PW25 Anita Tejpal, widow of Raj Kumar stated that her husband died in January, 2000 and complaint Ex.PW25/1 bears the signatures of her husband. In cross-examination, this witness stated that she has no knowledge

about the allegations in the complaint, which is under signatures of her husband Raj Kumar only on the last page. She denied that her husband was involved in two criminal cases and his anticipatory bail was declined.

PW26 Inspector Bhuri Singh, CBI (Investigating Officer) stated that he registered the FIR Ex.PW26/1 and submitted the report under Section 173 Cr.P.C. He proved various documents with regard to investigation and verification Ex.PW26/2 to Ex.P26/12. This witness, in cross-examination, stated that case was registered on directions given by the High Court in Civil Writ Petition No.10475 of 1996. The copy of the writ petition is not part of the challan and a newspaper report was treated as writ petition. He admitted that during 1995-96, there were 236 units, which were given subsidy to the tune of Rs.30.00 lacs to Rs.50.00 lacs. He further stated that staff correspondent of the newspaper has reported the certain plots in the industrial focal point are misused and misutilized. He also stated that on completion of the investigation, he submitted the challan and also received a complaint from one Raj Kumar. With reference to policy/instructions, he stated that in some policies, an undertaking was required to be given that if owner of the unit default in continuous running of the same for five years, he will reimburse the subsidy with interest. He never tried to collect the record of consumption of electricity from PSEB and also did not secure the record from the concerned bank, from where the loan facility was availed by M/s National Steel Industries, Amritsar.

In further cross-examination, this witness stated that M/s National Steel Industries also availed loan of Rs.5.00 lacs, as per certificate issued by

State Bank of India Mark PW26/D-A and statement of account Mark PW26/D-B and electricity connection Mark PW26/D-C. He further stated that report of M/s National Steel Industries contained report of Marwaha and Associates Chartered Accountants and certificates are Ex.PW26/D-1 and Ex.PW26/D-2. This witness also stated that he had seized two cheques Ex.PW17/D-2 and Ex.PW17/D-5 and Ex.PW17/D-3 is the project report of M/s National Steel Industries as well as electricity bill. This witness further stated that he tried to seize the original documents of the photocopies, as subsidy was released on the basis of photocopies and had not verified it from the bank. This witness stated that he do not know whether the bank got the machinery of the firm insured with Oriental Insurance Company and Raj Kumar filed a bond with M/s National Steel Industries as Ex.PW26/D-3. He stated that regarding G.M. Industries, he do not know if any report was sent to the Project Manager with regard to M/s Moon Industries. This witness stated that there is a report Ex.PW26/D-4 of the Chartered Accountant and balance sheet as Ex.PW26/D-5. He further stated that file of M/s Moon Industries contain an undertaking of Raj Kumar to return the subsidy along with interest in the event of default, which is Ex.PW26/D-6. This witness admitted the balance sheet, certificate of profit and loss prepared by the Chartered Accountant as Ex.PW26/D-7 to Ex.PW26/D-11. Similarly, this witness also admitted the fact with regard to number of documents submitted by M/s Mahajan Steel Industries as Ex.PW26/D-12 to Ex.PW26/D-16.

Thereafter, CBI closed the prosecution evidence and as per

statement of the accused under Section 313 Cr.P.C., in which all the incriminating evidence was put to them. Accused Raj Kumar denied having claiming subsidy in an illegal manner for the units, which were not in existence, rather it was stated that machinery was purchased by availing bank loan and the bank made payment to seller of the machinery.

Similar is the statements of Gurnam Singh, Inderjit Singh Tandi and Pritam Singh, they denied the suggestion that without following the rules and procedure, they made recommendation for release of subsidy. All the witnesses stated that papers were routed through proper procedure and on verification of all the facts, subsidy was sanctioned and released.

In defence, accused Inderjit Singh Tandi produced DW1 Baldev Raj, Sr. Assistant, State Bank of India, Amritsar and he stated that on the basis of sanctioning, loan of Rs.5.00 lacs towards machinery and cash credit limit to the tune of Rs.3.50 lacs was given. This witness stated that draft was paid to M/s Atul Traders, New Delhi regarding purchase of machinery and the insurance was taken by the bank through New India Insurance Company. The Bank Manager and Field Officer made physical verification of the machinery and made their report Ex.DW1/1.

In cross-examination by CBI, this witness stated that surveyor of the insurance company also visited the spot for physical verification of machinery.

DW2 Sumant Sood, another witness produced on behalf of Inderjit Singh Tandi, stated that he was surveyor, deputed by New India Insurance

Company to take photographs of the machinery by doing spot inspection and he prepared photographs and negatives Ex.DW2/1 to Ex.DW2/12 and submitted vide report Ex.DW2/13 to the Branch Manager. In cross-examination by CBI, this witness stated that he prepared the report of making physical verification at the spot.

DW3 Madan Lal, one another witness produced on behalf of Inderjit Singh Tandi, stated that he is Assistant in New India Insurance Company and proved the policy Ex.DW3/2, issued under the signatures of Jaishree Kaur, Divisional Manager, New India Insurance Company and also proved photocopy of the survey report as Ex.DW3/A.

DW4 Jaspal Singh, produced on behalf of accused Pritam Singh, stated that he was General Manager, District Industries Centre, Hoshiarpur and proved the attested photocopy of Ex.DW4/1 and Ex.DW4/2 regarding duty of a General Manager and eligibility of subsidy for an industrial unit. In cross-examination by CBI, he stated that rules and policies are framed by the Govt.

DW5 Nirmal Singh, Clerk in the office of G.M., DIC, Amritsar, produced on behalf of Gurnam Singh, produced the office orders Ex.DW5/1 to Ex.DW5/3 regarding posting of Pritam Singh.

DW6 Harbhajan Singh, produced on behalf of accused Raj Kumar, stated that he knew Raj Kumar, who started four factories, which were installed in 1990-91 and were closed in 1996-97. He was visiting the said factories and machinery was installed in his presence.

The trial Court framed following points for determination of cases

of the appellants: -

- (a) Whether the subsidy has been illegally and wrongly released to four industrial units namely M/s Moon Industries, M/s Mahajan Steel Industries, M/s Punjab Engineering Corporation and M/s National Steel Industries, by the accused in conspiracy with each other?
- (b) Whether the sanction accorded for the prosecution of the accused is legal and valid?
- (c) Whether the CBI is competent to investigate the case?

Thereafter, the trial Court vide impugned judgment of conviction and order of sentence dated 15.03.2004, held the appellants guilty of aforesaid offences and sentenced them to undergo maximum imprisonment for a period of two years with a direction that all the substantive sentences shall run concurrently.

The appellants preferred appeals before this Court and during pendency of the same, their sentence was suspended.

During pendency of these appeals, one of the appellant namely Gurnam Singh died on 09.08.2008, therefore, appeal (CRA-S-931-SB-2004) stands abated.

Learned senior counsel for appellants Inderjit Singh Tandi submits that in CWP-10475-1996, vide order dated 07.09.1996, it was directed that CBI should examine the cases 1996 onwards, however, as per statement of PW10 B.D. Dhuppar, the directions were with regard to disbursement of subsidy

released during 1995-96 and there was no directions to investigate the cases prior to this period, though there was a general direction to investigate the cases against all the accused persons, however, only the case was registered with regard to four industries run by accused Raj Kumar and it has come in the evidence that during this period, subsidy amount upto Rs.50.00 lacs was disbursed to various big industries. Learned senior counsel has referred to policy Ex.PW5/1 under which the disbursement of subsidy was made. It is argued that it is provided under this policy scheme that the unit is to run continuously for a period of 05 years and in case the owner closes the unit, he will return the subsidy along with interest to the Govt. Learned senior counsel has referred to the statement of various prosecution witnesses, who had admitted this condition being part of the policy instructions, however, despite the fact that a bond was furnished by accused Raj Kumar being owner of the units that he will return the subsidy amount, the prosecution has been initiated against the appellants, who are employees of the Industries Department, in an illegal manner.

Learned senior counsel has further referred to statement of PW6 Jai Parkash Gupta, who stated that subsidy in question regarding M/s National Steel Industry was given in the year 1991 and appellant Inderjit Singh Tandi, who was Industrial Promotion Officer, was to check the working of unit at initial stage. Learned senior counsel has referred to cross-examination of PW5 Amarjit Singh Sidhu, who clearly admitted that no document relating to M/s National Steel Industry was found to be bogus and in his verification report, his

Project Manager told him about the site, where the same was in existence. It is further submitted that PW5 has clearly admitted about all the relevant documents, attached with the proforma submitted by co-accused Raj Kumar for claiming the subsidy, were never found to be bogus and rather from the statement of DW1 Baldev Raj, bank official and DW3 Madan Lal, an official of New India Insurance Company, it is clear that loan was disbursed and paid to M/s Atul Traders, supplier of the machinery. Both these witnesses have also stated that before sanctioning of the loan, physical verification of the machinery was done and similarly, before releasing the insurance policy, even the photographs of the machinery were taken, therefore, there is no evidence to show that appellant Inderjit Singh Tandi being the Industrial Promotion Officer verified any bogus document or prepared any illegal report.

Learned senior counsel has relied upon survey report Ex.DW2/13 as well as registration/licence of the unit, report of Chartered Accountant, project report, electricity bills, which were never taken in possession by PW26 Bhuri Singh, Investigating Officer, which clearly suggest that M/s National Steel Industry was in existence on 06.04.1990, therefore, the trial Court, without referring to all these documents, wrongly convicted the appellants.

It is further argued that even the charge under Section 13(1)(d) punishable under Section 13(2) of PC Act is not sustainable and the subsidy amount was released on 30.08.1991 and appellant Inderjit Singh Tandi was transferred on 27.08.1991, as per statement of PW10 B.D. Dhuppar, Additional Director, Industries Department, therefore, once prior to disbursement of the

subsidy, the appellant was transferred from the place, he cannot be held responsible for non-report of closure of the unit subsequent to release of subsidy.

It is also argued that even it has come in the statement of PW6 Jai Parkash Gupta that Baljinder Walia, Project Manager of his office, who was accompanying him, when he had gone to visit and locate four units and taken him to four different places, where all the four units were there. It is next submitted that PW6 stated that he remained posted in the area from December, 1996 to April, 1999 and he was not in the office, when the subsidy amount was released in 1991, therefore, after five years of releasing of the subsidy amount, CBI had wrongly relied upon verification report submitted by this witness, who at the first instance, stated that he could not locate the units, but later on, with the help of Baljinder Walia, Project Manager, he had visited all four units i.e. M/s National Industry, located at Bhagtan Wala Gate opposite Dana Mandi, Amritsar, M/s Mahajan Steel Industries, located at Peer Shah Road, outside Gate Hakima, Amritsar, M/s Punjab Engineering Works, located at Gill Wali Gate, Amritsar and M/s Moon Industries, located at Chhati Wind Gate, Amritsar and were identified by Baljinder Walia, Project Manager of his office. It is argued that once all the four units were duly located, there was no occasion for the trial Court to convict the appellants.

It is next argued that as per the policy, all the four units were continued for five years w.e.f. 30.08.1991 and the verification done by PW6 in 1996 i.e. after five years, has no merits to convict the appellants. It is further

argued that though it has come in the statement of PW6 Jai Parkash Gupta that while conducting the physical verification regarding location of the four units, he was assisted by Baljinder Walia, Project Manager of his office, who helped him in verifying the same at four different places, however, CBI intentionally did not make Baljinder Walia a witness, though he was most material witness being Project Manager of the area to tell about the details of all the four units, therefore, the CBI had not brought the complete evidence on record.

Learned senior counsel has next referred to statement of PW5 Amarjit Sindh Sidhu, Additional Controller of Store, Department of Industries, who remained posted from 1996 to 1999 and deposed that field staff of the Department is not required to verify the genuineness of the bills from the supplier or the sources of purchase of machinery by the unit, as per policy instructions. It is argued that this witness stated that the requirement was to take affidavit and undertaking from the industrial unit that it is functional and will remain functional for five years and field staff only verify the existence of the machinery, which was done in 1991, as deposed by the Manager of the Bank, who extended the loan and Manager of the Insurance Company, who provided the insurance cover to the machinery. It is submitted that thus, no liability can be fastened on the appellant in this regard.

Learned senior counsel has further referred to statement of PW5, who proved on record the document Ex.PW5/34 to submit that in the departmental inquiry, wherein a charge was framed against the appellant on similar grounds regarding releasing of the subsidy in an illegal manner, the

department exonerated him finding no fault in releasing the subsidy, therefore, conviction of the appellant is not sustainable, though CBI has conducted an independent investigation, but even from the statement of this witness, in the light of policy instructions Ex.PW5/1, nothing is proved against the appellant. It is thus submitted that even the sanction granted by the Department to prosecute appellant Inderjit Singh Tandi is defective, as it has come in the statement of PW11 K.P. Singh that he did not know whether before granting sanction, if the inquiry conducted by exonerating the appellant was taken into consideration by the sanctioning authority. It is next submitted that in the absence of all the material documents placed before the sanctioning authority, it cannot be said that there was application of mind by the concerned authority before grant of sanction for prosecution of the appellants. It is also submitted that as per statement of PW14 Sarabjit Singh, an official of office of Deputy Commissioner, Amritsar, who stated that District Level Committee, which sanctioned the subsidy, comprises of the officials of Excise and Taxation Department, Bank, AEE, PSEB, EE from the Pollution Control Board and only after verification by all the departments, subsidy is granted, therefore, the appellant being employees of the Industries Department alone cannot be held liable.

Learned senior counsel on behalf of appellant Pritam Singh has argued that he has no role in verification of the unit at the spot and as per policy, his duty was to examine the report submitted by the field staff of the District Level Committee as per letters Ex.DW1 and Ex.DW4/2 proved by

DW4 Jaspal Singh Grewal, Deputy Director, Industries, Punjab. It is further argued that as per standard procedure, only after District Manager forwards the case to the District Level Committee, it is duty of the District Level Committee headed by the Deputy Commissioner to either approve or disapprove the sanction of the subsidy. It is next argued that only evidence against appellant Pritam Singh is that he prepared the agenda, which was placed before the District Level Committee and preparation of agenda items is not a recommendation by the General Manager, as final authority for grant of subsidy was the District Level Committee. It is also submitted that even the spot verification was not done by the appellant being General Manager and it was done by the field staff, therefore, the appellant cannot be held liable for anything done wrongly by the industrial units or field staff. It is further submitted that in the departmental inquiry conducted by Joint Director, Industries, appellant Pritam Singh was also found innocent on the basis of documentary evidence, therefore, his conviction is liable to be set aside and even in his case, the sanctioning authority has not applied its mind by not considering the inquiry report.

Learned counsel for appellant Raj Kumar has argued that the appellant was granted subsidy amount of Rs.1,08,900/- for M/s Moon Industries, Rs.1,22,000/- for M/s Mahajan Steel Industry, Rs.45,280/- for M/s Punjab Engineering Corporation and amount of Rs.1,25,800/- for M/s National Steel Industries in the year 1991-92, however, the allegations are that on verification done in 1998, it was found that all the units are not in existence and

even the firms, from where the machine was purchased was not in existence. It is further submitted that prosecution could not lead any evidence, as the original documents were never produced and only photocopies were produced and no permission was taken from the Court for leading secondary evidence. It is also submitted that the units had raised loan from the bank for the purchase of machinery and later on, the same was also insured. Learned counsel has referred to the statement of PW26 Inspector Bhuri Singh, who stated that as per policy framed for the growth of industries in Punjab, the person receiving the subsidy had to given an undertaking that he will run the industry continuously for a period of 4/5 years and in default, he will reimburse the subsidy along with interest. This witness further stated that subsidy was paid at the time of purchase of land or the machinery, as the case may be or at the time of commencement of production. This witness admitted that in the present case, the units had obtained loan from the bank. He further stated that he did not try to collect the record of electricity bills from PSEB and since the units did not exist, no such effort was made. This witness also stated that he had not visited the State Bank of India, from where the loan was taken for making payment to M/s Atul Traders and similarly, with regard to M/s National Steel Industry, he also not seen record of State Bank of India, Amritsar. This witness clearly admitted that he had not taken in custody the original bills. In cross-examination, when this witness was confronted with certain documents regarding advancement of loan, electricity connection and payment to supplier of the machinery, he pleaded ignorance about all these facts. Various

documents Ex.PW17/D-A to Ex.PW17/D-D and Ex.PW17/D01 to Ex.PW17/D-5 were put to this witness to suggest that these are the project reports, affidavit of Chartered Accountant, documents relating to obtaining the loan, purchase of machinery and insurance, he pleaded ignorance about all these documents.

Learned counsel has further argued that from the perusal of cross-examination of PW26, it is apparent that he had not conducted proper investigation and only on the basis of inference, he drew the conclusion that the industries were not in existence. It is also submitted that it is not case of the prosecution that loan amount taken by four industries was ever misappropriated, as it was returned in time, therefore, the trial Court wrongly convicted the appellant. It is next submitted that PW26 Investigating Officer further admitted in cross-examination that a total of 236 units received subsidy in the year 1995-96 to the tune of Rs.50.00 lacs, however, except the present case, no other case was registered. It is thus submitted that it is well proved from the documentary evidence that four units were set up prior to 1992, as subsidy was released in 1991, whereas the present case was registered in the year 1998 i.e. much after a lapse of five years, provided in the policy of the State Govt. that the unit obtaining the subsidy should work continuously till 05 years or in the alternative, refund the subsidy amount with interest. It is next argued that the undertakings given by four units are well proved on record and registration of FIR beyond a period of five years is not at all sustainable.

Learned senior counsel for appellants Inderjit Singh Tandi and Pritam Singh and learned counsel for appellant Raj Kumar have lastly argued

that the appellants have faced the agony of protracted trial since 1998 and they are senior citizen and appellant Gurnam Singh has already died.

Learned counsel for the appellants have relied upon **Sait Tarajee Khimchand and others Vs. Yelamarti Satyam and others, 1971 AIR (SC) 1865, Karnail Singh Vs. M/s Kalra Brothers, Sira, 2009 (2) RCR (Civil) 380, LIC of India and another Vs. Ram Pal Singh Bisen, 2010 (4) SCC 491 and Muddoru Rajappa Tipanna Vs. State of Karnataka, 2015 (4) RCR (Crl.) 485**, to submit that in order to prove the document, a party has to lead evidence either by way of primary evidence or by way of secondary evidence and mere exhibition of photocopy of the document in the absence of any permission to lead secondary evidence, is not due proof of original document and therefore, no reliance can be placed on the documents, which are collected by the Investigating Officer/PW26 Inspector Bhuri Singh, to uphold conviction of the appellants.

In reply, learned Sr. Panel Counsel for CBI has argued that as per investigation conducted by PW26 Inspector Bhuri Singh, the units were not found to be existing, therefore, in terms of the directions given by this Court, the FIR was registered against the accused persons, who were either the beneficiaries or employees of the Industries Department, as they have verified fake bills of four firms with extraneous consideration, therefore, the trial Court has rightly convicted the appellants.

After hearing learned counsel for the parties, I find merit in these appeals, for the following reasons: -

- (a) The very genesis of registration of FIR is based on an order passed by this Court in CWP-10475-1996, which reads as under: -

“On May 13, 1996, a news item had appeared in the Daily Tribune under the caption “Ghost units eating up subsidy”. Mr. K.B. Gupta, Engineer-in-Chief/Punjab State Electricity Board (Retd.) of Ludhiana forwarded to the Chief Justice of this Court a cutting of the news item. It was placed by the District Judge (Vigilance) before one of us (Mr. Justice T.H.B. Chalapathi). It was ordered that the letter be treated as a writ petition. Accordingly, vide order dated July 23, 1996 we had directed issue of notice of motion to the Secretary, Department of Industries, Government of Punjab, Chandigarh. It was also directed that a complete list of units to which subsidy had been given during the last one year as also the amount paid to each of the units shall be filed. Notice was also directed to be given to Mr. Varinder Walia, author of the news item which had appeared in the Dally ‘Tribune’ on May 13. 1996.

In pursuance to the notice by the Court, the Secretary Department of Industries did not file any reply. However, Mr. Amarjeet Singh Sidhu, Deputy Director, Department of Industries, Punjab filed a short reply with which he has appended list of 236 units to which subsidy

has been sanctioned during the year 1995-96. A perusal of the list indicates that substantial amounts of money had been paid to various units. Some of the units have been paid as much as 30 lakh each. In case of M/s Rana Sugar Limited, the subsidy is to the tune of Rse 50 lakhs.

Mr. Varinder Walia, Staff Correspondent of The Tribune (who is also present in the Court), has filed an affidavit. He has inter-alia stated that the report published by him in 'The Tribune' of May 13, 1996 is based on "a random survey personally done by him in the area of Bathinda after the publicatlon of news item dated 13th of March, 1996 in the Punjabi Tribune, as a follow-up story". He has referred to the report published by Shri Balbir Singh Dhillon in the Punjabi Tribune of March 13, 1996 in which the glaring irregularities indicating siphoning of subsidies with the connivance of the officials of the Industries Department, Punjab had been highlighted. He has further pointed out that various plots were carved out in the Industrial Area known as the 'Industrial Focal-Point' on Bathinda-Dhabwali Road. In gross violation of the rules most of the plots which were allotted at subsidised rates for growth of industry have been converted into 'palatial residential houses', bank buildings, godowns, offices of

transport carriers, dairies and for keeping live-stocks. He has produced alongwith his affidavit 12 photographs. At certain places the plots are shown to be vacant.

We have heard Ms. Jai Shree Thakur and Mr. Rakesh Garg. Prima-facie we are satisfied that there is a potential scam. The matter deserves to be probed and investigated. In the circumstances of the case, we feel that it is necessary that the investigation is conducted by the CBI. Accordingly, we direct the Deputy Inspector General (CBI), CBI Building, Sector 30, Chandigarh to have the matter investigated thoroughly. He shall submit a report regarding the investigation and the facts found within two months from today. We direct the matter be placed before us on November 22, 1996 as we have already heard the learned counsel at length.”

A perusal of the order would show that it was noticed that there are units, which had received subsidy between Rs.30.00 lacs to Rs.50.00 lacs, as one case of M/s Rana Sugar Ltd. was considered, which was given subsidy of Rs.50.00 lacs, however, it is case of CBI that except four small units of accused Raj Kumar, no investigation was done with regard M/s Rana Sugar Ltd. or other industries, which were given subsidy upto Rs.50.00 lacs. The order further speaks regarding development of an Industrial Focal

Point on Bathinda-Dabwali Road in gross violation of the rules, whereas plots were allotted at subsidized rates and the same were converted into palatial residential houses or other commercial buildings, however, there is no investigation in this regard, which had weighed the mind of Bench, which had passed the aforesaid order.

- (b) A perusal of the investigation conducted in this case and statement of PW26 Inspector Bhuri Singh, Investigating Officer, shows that he conducted the investigation in a very casual manner and while drawing inferences, held that the aforesaid four units i.e. M/s Moon Industries, M/s Mahajan Steel Industries, M/s Punjab Engineering Corporation and M/s National Steel Industries were not in existence. In cross-examination, this witness was confronted with number of documents like application for raising loan from State Bank of India, purchase of machinery from M/s Atul Traders, to whom the cheque was given by the State Bank of India, insurance cover provided by New India Insurance Company, qua which this witness pleaded ignorance and stated that he did not know anything about it.
- (c) The appellants led defence evidence to show that before sanctioning of the loan or issuing the insurance cover, both SBI and Insurance Company through their surveyors got the spot inspection of the machinery conducted and it is only thereafter, the

loan was disbursed or insurance policy was issued. The trial Court had not appreciated the statement of DW1 Baldev Raj, an official of SBI, who proved all these facts. Statement of PW26 is otherwise lacks credibility, as he stated that he had only obtained photocopies of all the documents and never tried to take originals of various documents relied upon by the prosecution. During the trial, no application was moved for permission to lead secondary evidence by summoning original record before the trial Court, therefore, in view of well settled principle of law, as held by the Hon'ble Supreme Court in **Sait Tarajee Khimchand's** case (supra), **Karnail Singh's** case (supra), **Ram Pal Singh Bisen's** case (supra) and **Muddoru Rajappa Tipanna's** case (supra), no reliance can be placed on photocopies, which are though exhibited, but not proved in accordance with the provisions of The Indian Evidence Act.

- (d) It is not explained by CBI as to why the directions of this Court were not complied with in letter and spirit, as no FIR was registered with regard to big industrial units, as mentioned in the order itself, who were granted subsidy to the tune of Rs.30.00 lacs to Rs.50.00 lacs and out of 236 units, the FIR was registered only qua four units of appellant Raj Kumar. There is no explanation with regard to directions given by this Court regarding setting up of an Industrial Focal Point on Bathinda-Dabwali Road, which was

later on converted into residential houses or commercial buildings.

- (e) From perusal of report under Section 173 Cr.P.C., it appears that just to cover up the directions given by this Court, one FIR was registered qua four units of appellant Raj Kumar, though the directions were with regard to conducting the investigation with regard to 236 units, which were granted subsidy in the year 1995-96.
- (f) Even otherwise, the trial Court had not considered that only condition for grant of subsidy was that unit should remain operational for a period of five years from the date of commencement of the production and owners of the units were directed to file an undertaking in the shape of affidavit that if they failed to do so, they will return the subsidy amount along with interest. In this case, subsidy was released in 1991 and FIR was registered after 05 years, in 1998.
- (g) It is not case of the Industries Department that at any point of time, they asked appellant Raj Kumar to return the subsidy, as his unit was found to be in existence. Rather a period of five years lapsed in 1996 and the FIR was registered in the year 1998, therefore, no penal action could be taken beyond the period of five years, as per own policy of the State Govt.
- (h) It has also come in the prosecution evidence that the District Level Committee was constituted under the Chairmanship of Deputy

Commissioner, which scrutinize the application, before sanctioning the subsidy and it included the officials from Excise and Taxation Department, Industries Department and other departments and after verification by the Committee, the subsidy was released.

- (i) So far as the case of appellant Inderjit Singh Tandi is concerned, he was working as Industrial Promotion Officer and was to make a report at initial stage that the unit was in existence. Vide order Ex.PW10/D1, he was transferred on 27.08.1991, whereas subsidy was released subsequently on 31.08.1991.
- (j) PW5 Amarjit Singh Sidhu contradicted the investigation conducted by PW26 Inspector Bhuri Singh and has categorically stated that all the relevant documents attached by four units for the purpose of claiming subsidy were never found to be bogus and especially with regard to Inderjit Singh Tandi, this witness stated that none of the document attested by Inderjit Singh Tandi was found to be ingenuine or fake and report submitted by him was also based on the fact that DW1 Baldev Raj, an official of SBI, stated that M/s National Steel Industry was given advance money for purchase of machinery to the tune of Rs.3.70 lacs and cash credit limit of Rs.3.50 lacs. Similarly, as per DW3, the machine, which was installed in the unit, after spot inspection, was insured by New India Insurance Company, therefore, appellant Interjit Singh Tandi prepared the verification report on the basis of all the documents

and it cannot be said that unit was not in existence in 1991, when the report was prepared, whereas PW26 visited the units in the year 1998.

- (k) So far as appellant Pritam Singh is concerned, he has no role in verification of the units at the spot. As per his duty roster, he was to examine the report submitted by the field staff and then refer the case to the District Level Committee, as proved from the statement of DW4 Jaspal Singh Grewal and he only prepared the agenda, which was placed before the District Level Committee and the agenda was not in the shape of any recommendation, as final action was to be taken by the District Level Committee.
- (l) Both appellants Inderjit Singh Tandi and Pritam Singh faced departmental inquiry for the allegations that such bogus documents were verified by them and in the same, they were found to be innocent, as a finding was recorded that no document was found to be bogus. The trial Court has not dealt with this aspect of the case that the documents were not found to be bogus in the departmental inquiry, how PW26 found that the documents were in fact fake.
- (m) A perusal of a letter sent by Director of Industries and Commerce to SP, CBI clearly shows that subsidy was granted under 1987-89 policy, after due verification by field staff and this letter initially suggests that any irregularity or illegality was committed by the appellants.

- (n) Though it is well settled principle of law that mere exoneration in departmental inquiry do not exonerate a person in criminal prosecution but the fact as admitted by PW26 is that no document verified by the appellants was found to be fake or ingenuine in departmental inquiry, have a direct bearing on the present case, especially in view of the fact that PW26 admitted that he never took any original document in possession during the investigation and all the documents are photocopies attached with the chargesheet.
- (o) Though during examination-in-chief, when photocopies of documents were exhibited, an objection was raised regarding admissibility, which was kept open, to be decided at final adjudication, but the trial Court did not pass any specific order in this regard and therefore, the photocopies of documents, though exhibited, are not proved as per law.
- (p) After re-appreciation of the entire evidence, this Court finds that the same do not prove the case of the prosecution beyond doubt, especially in view of statement of PW26 that the investigation conducted by him is based on inference that four units were not existence in the year 1998, whereas as per policy of the State Govt., units were to remain operative till 1996 i.e. for a period of five years from the date of coming into operation from the date of release of subsidy, which was released in the year 1991, therefore,

this Court cannot uphold the judgment of conviction and the order of sentence dated 15.03.2004 passed by the trial Court.

Accordingly, the appeals filed by appellants Inderjit Singh Tandi, Pritam Singh and Raj Kumar are allowed and the impugned judgment of conviction as well as the order of sentence dated 15.03.2004 passed by the Special Judge, CBI, Punjab, Patiala are set aside and they are acquitted of the charge framed against them, as appellant Gurnam Singh has already died and appeal filed by him stands abated.

[ARVIND SINGH SANGWAN]
JUDGE

30.06.2022
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No