* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: July 15, 2022***

***Pronounced on: August 05, 2022***

\+ **CRL.A. 1190/2012**

PHOOL KUMAR MEHRA ...... Appellant
Through: Mr. Manu Sharma, Mr. Vaibhav Tomar, Mr. Aditya Bharadwaj, Ms. Shristi Gupta, Mr. Kartikay Masta and Mr. Varun Kumar, Advocates

Versus

STATE OF DELHI ...... Respondent
Through: Mr. Hirein Sharma, Additional Public Prosecutor for State with SI Bijender Singh, Anti Corruption Bureau

\+ **CRL.A. 1234/2012**

IRFAN KHAN ...... Appellant
Through: Mr. Harish Pandey, Advocate

Versus

STATE ...... Respondent
Through: Mr. Hirein Sharma, Additional Public Prosecutor for State with SI Bijender Singh, Anti Corruption Bureau

**CORAM:**
**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**JUDGMENT**

1. The above captioned appeals are directed against the judgment dated 11.09.2012 and order on sentence dated 13.09.2012 passed by the learned trial court in CC No. 04/2007, vide which appellant- Phool Kumar Mehra [in

the first captioned appeal Crl.A.1190/2012] has been held guilty of the offences under Section 15 of Prevention of Corruption Act, 1988 read with Sections 120B/420/511 IPC. Vide impugned order dated 13.09.2012, the appellant- Phool Kumar Mehra has been directed to undergo rigorous imprisonment for a period of one year and fine of Rs.4,000/- and in default of payment of fine, he has been directed to further undergo simple imprisonment of four months. Besides, he has also been sentenced to rigorous imprisonment of one year with fine of Rs.4,000/- under Section 120-B IPC and in default of payment of fine, he is directed to undergo simple imprisonment of four months. He is also sentenced to undergo rigorous imprisonment of one year with fine of Rs.4,000/- under Section 420 IPC read with Section 511 IPC and in default of payment of fine, he is directed to undergo sentence of four months.

2. Vide impugned judgment appellant- Irfan Khan [in the second captioned appeal Crl.A.1234/2012] has also been held guilty and vide impugned order on sentence, he is sentenced to undergo rigorous imprisonment for a period of one year with fine of Rs.4,000/- under Section 120 B IPC and in default of payment of fine, he is directed to undergo simple imprisonment of four months. He is also directed to undergo rigorous imprisonment for one year with fine of Rs.4,000/- under Section 420 IPC read with Section 511 IPC and in default of payment of fine, the appellant is directed to undergo simple imprisonment of four months.

3. By this common judgment, I shall dispose of both the captioned appeals as these arise out of common impugned judgment dated 11.09.2012 and order on sentence dated 13.09.2012.

4. The factual matrix of these appeals, as spelt out in the impugned

judgment dated 11.09.2012, are that appellant- Phool Kumar Mehra was the Superintendent of Children Home for Boys, Narela; Home for Aged and Infirm Persons, Narela and After Care Home for Boys, Narela, when the tenders for the work of white wash and paint in these 'Three Homes' was invited in the year 2003, which was awarded to appellant No.2-Irfan Khan. A complaint was received at the Anti Corruption Branch (ACB), Delhi by Sh.R.P.Singh, Welfare Officer, with regard to irregularities committed by the appellant- Phool Kumar Mehra in conspiracy with appellant- Irfan Khan. An enquiry committee was constituted, which found that the work in question was awarded in violation of the prescribed rules, as the work order was for more than value of Rs.One Lac and so, open tenders should have been invited but instead thereof, limited quotations were called and the work was awarded to an individual. It was further found that since the work order involved higher amount, open bid should have been called, so that others could have quoted the lower rates than the one given by appellant- Irfan Khan. It was also found that the work was of sub-standard, which amounted to no work and for such work, inflated bills to the tune of Rs.10,66,569/- were submitted, and thereby, both the appellants cheated the Government. Accordingly, a case FIR No. 40/2004, police station ACB, under Sections 13(1) (d) r/w Section 15 of Prevention of Corruption Act, 1988 read with Sections 120B/420/409/468/471/511 IPC was registered by the Anti Corruption Branch against both the appellants. The appellant- Phool Kumar Mehra was charged for the offences under Section 15 of The Prevention of Corruption Act, 1988 read with Sections 120-B/420/511 IPC and appellant- Irfan Khan was charged for the offences under Sections 120B/420/511 IPC.

5. Appellants were tried for the aforesaid offences charged against them

and prosecution examined thirteen witnesses in support of its case. Appellant- Irfan Khan in his statement recorded under Section 313 Cr.P.C. denied the charges levelled against him and submitted that he is innocent and has been falsely implicated in this case. Appellants- Phool Kumar Mehra and Irfan Khan, both got two witnesses each examined in their defence.

6. After analysing the testimonies of the witnesses examined, the trial court held as under:-

> *"The above revelations go to show that there was an agreement between accused P.K. Mehra and accused Irfan Khan to do an illegal act by illegal means and they entered into a conspiracy. The act done by one of them pursuant to the agreement is the act of the other and both are jointly responsible and the events and the circumstances throw light on the conspiracy. The accused P.K.Mehra by abusing and misusing his official position awarded the contract to accused Irfan Khan who was not competent to execute the same. In pursuance to the criminal conspiracy entered into the accused Irfan Khan submitted inflated bills which were verified and certified by accused P.K. Mehra and both the accused in conspiracy with each other dishonestly and fraudulently made an attempt to defraud the government.*
>
> ***14. <u>CONCLUSION</u>***
>
> *On the basis of the above discussion in my opinion it can therefore by safely concluded that accused P.K. Mehra and accused Irfan Khan entered into a criminal conspiracy with a view to cheat the government of Rs.10,66,959/- and in pursuance thereof accused P.K. Mehra in utter violation and disregard of the rules of the department awarded the contract of white washing to accused Irfan Khan. The work of white washing amounted to no work and was of sub standard quality whereas accused Irfan Khan submitted inflated bills for Rs.10,66,959/- which were verified and certified by accused P.K. Mehra despite the fact that the work had not actually*

*been performed and accused P.K. Mehra abused and misused his official position and despite not being empowered to award work, awarded the work of white wash to accused Irfan Khan who was not competent to execute the same and also while working as a public servant made an attempt as defined in clause C (1) of Section 13 of the Prevention of Corruption Act, 1988 by committing the offence of criminal misconduct for defrauding the government to the tune of Rs.10,66,959/-."*

7. With the aforesaid findings, the learned trial court, held the appellants guilty and convicted them for the offences, as has been spelt out in the introductory paragraph of this judgment.

8. During the course of hearing, learned counsel appearing on behalf of appellant- Phool Kumar Mehra submitted that there is no evidence on record to justify inference of criminal conspiracy. It is pleaded that a committee comprising of appellant, Mahesh Sharma (PW-6) and Sant Raj Gupta (PW-11) was formed for the process of tender of the work in question and since the rates quoted by Irfan Khan were lowest, the committee recommended the work to him under the contract and thus, the allegation of the prosecution of appellant having any criminal conspiracy with the Irfan Khan for awarding the work, deserves to be rejected. It is further pleaded that Irfan Khan was asked to work on trial basis and once the work was found satisfactory, the work was awarded to him in writing and since the work had begun early, therefore, it was completed in 12 days and bills were submitted. This appellant had contended that the work was completed and at worst, what prosecution can state is that it was not done to the satisfaction, but the fact remains that the work was done and payment of the bills have not been made to Irfan Khan and since, no payment was made, prosecution failed to bring any evidence on record to show that the appellant had received any

amount out of such payment. Lastly, it was submitted that prosecution has failed to establish its case against appellant Phool Kumar Mehra and so, the impugned judgment and order on sentence deserve to be quashed. Reliance was placed upon the decisions in ***M. Narayanan Nambiar Vs. State of Kerala*** 1963 (2) CrliLJ 186; ***State of Gujarat Vs. Manshankar Prabhashankar Dwivedi*** (1972) 2 SCC 392; ***Major S.K. Kale Vs. State of Maharashtra*** (1977) 2 SCC 394; ***S.P. Bhatnagar Vs. State of Maharashtra*** *(*1979) 1 SCC 535**;** ***H.R Barshal Vs. State of H.P. & Ors.*** 2002 (1) ShimLC 253 and ***State of M.P. Vs. Sheetla Sahai & Ors.*** (2009) 8 SCC 617 in support of above submissions.

9. Learned counsel appearing on behalf of appellant-Irfan Khan submitted that appellant is a small time contractor, who pursuant to floating of tender dated 10.04.2003 for the work of white wash, painting, repairing of cooler and electronic appliances, fitting of water and painting, wring of sign board, photo fixing board etc. under four different categories, which were displayed at the Notice Board of ACHB, Narela, Delhi, had submitted his quotation for all the categories. However, his bid was found lowest only for white washing and painting of walls and he was awarded this work and for the other three categories, since his bid was not lowest, the work was awarded to some other contractors. According to appellant, the tender was opened in the presence of all the three Superintendents of the 'Three Homes' in question, namely, Mahesh Kumar Sharma (PW-6); Sant Raj Gupta (PW-11) and the appellant- Phool Kumar Mehra. The work was officially awarded to appellant- Irfan Khan vide letter dated 03.05.2003 and the bills were submitted on 20.06.2003. However, his bills were not cleared by the department, therefore, appellant sent a reminder dated 15.03.2004 to the

competent authority and in response thereto, the DDO and H.O. of ACHB, Narela informed him that his bills have been sent to the Social Welfare Department for approval, payment and necessary action. But since, appellant did not receive payment, he filed a civil suit [CS (OS) 244/2004, titled as *Irfan Khan Vs. Superintendent*] for recovery of amount and also claims to have sent a legal notice dated 14.06.2005 to the department for release of the amount. It is only then, appellant- Irfan Khan claims to have come to know about filing of FIR in question against him and other accused persons.

10. It was further submitted that the learned trial court has failed to appreciate that the prosecution has miserably failed to prove its case of criminal conspiracy hatched between these appellants and also the public witnesses did not support the case of the prosecution. It was submitted that other two Superintendents of Homes and the prosecution witnesses, namely, Mahesh Sharma (PW-6) and S.R.Gupta (PW-11) have stated in their evidence that the tender was opened in their presence as per the procedure.

11. Learned counsel for appellant next submitted that the assertion of prosecution that the Superintendent had authority to float tender upto amount of Rs.25,000/- is wrong, as the Superintendent has sanctioned payments exceeding the amount of Rs.25,000/- to the other contractors, against whom no legal action has been taken, which fact has not been taken into consideration by the learned trial court. On behalf of appellant-Irfan Khan it was submitted that if there are any ir-regularities committed on behalf of co-accused Phool Kumar Mehra, during the course of his duties, then he cannot be held liable for the same unless prosecution proves any kind of criminal conspiracy, which the prosecution has failed.

12. With regard to the calculation of amount under the bills claimed, it

was submitted by learned counsel that the witnesses who had inspected the subject buildings, have in their evidence stated that they had calculated the amount of work on the basis of look at the white wash and paint and they have not provided any specification which would have been provided to the appellant to show the manner in which work could have otherwise been done nor they had any technical knowledge of the same.

13. Learned counsel for appellant also pointed out that the learned trial court has also failed to appreciate that the prosecution witnesses R.K.Sharma (PW-9) and Rajesh Kumar (PW-10) in their testimonies have stated that the work of white wash had continued for 20-25 days and; another prosecution witness Sukhbir Singh (PW-14) has stated that the quotation were approved by three Superintendents and also stated that the bills submitted by the appellant were duly verified and certified by the District Welfare Officer and then forwarded for payment. It was submitted that the appellant- Irfan Khan has been roped in this case only because he has initiated legal proceedings against the department for having failed to clear his payments due. Reliance is placed upon decision in ***Parveen @ Sonu Vs. State of Haryana*** 2021 SCC OnLine SC 1184 in support of aforesaid contentions.

14. Lastly, it was contended on behalf of both the appellants that the prosecution has not only failed to establish its case but there is no case at all against the appellants and therefore, the impugned judgment dated 11.09.2012 and order on sentence dated 13.09.2012 deserve to be set aside.

15. To the contrary, learned Additional Public Prosecutors appearing on behalf of respondent-State submitted that in the impugned judgment, the learned trial court has rightly relied upon testimony of three official

witnesses i.e. P.P. Dhall (PW-1); Ms. Savita (PW-3) and Ms. Neera Mullick (PW-4), who had conducted the enquiry and submitted their reports with the finding that the appellant – Irfan Khan was awarded the work order on 03.05.2003 without following the due procedure prescribed under the rules; only a few rooms were white washed and no painting work was done and also that he had raised the bills on 15.04.2003 and 17.04.2003 for all 'Three Homes', i.e. much before the work was awarded to him, whereas the work was awarded to him on 30.05.2003. Besides, the bills raised by appellant-Irafan Khan were highly inflated. The trial court also relied upon testimony of R.P.Singh (PW-2), who had registered the complaint against the appellants and P.Anand Rao (PW-5), who had submitted that as per the rules, the white wash is to be done from either PWD, DSIDC or CPWD. The trial court has also relied upon testimony of Mahesh Kumar Sharma (PW-6) and Sant Raj Gupta (PW-11), the other Superintendents of the beggar homes. Therefore, the impugned judgment and order on sentence is well merited and do not call for any interference by this Court and thus, these appeals deserve to be dismissed.

16. In the light of contentions raised by the learned counsel for the parties and after perusal of trial court record, in specific the testimony of witnesses recorded before the learned trial court, this Court now proceeds to evaluate the impugned judgment and order on sentence to find out as to whether the decision of the trial court was just and proper.

17. The factual background of these appeals, which has laid foundation for impugned judgment and order on sentence, has already been elaborated in the preceding paragraphs and needs no reiteration. The learned trial court in the impugned judgment has though taken note of all the prosecution

witnesses examined, however has primarily relied upon testimony of members of the inquiry team i.e. P.P. Dhal (PW-1), Savita (PW-3) and Neera Mullick (PW-4) and also the complainant R.P. Singh (PW-2). This Court has also gone through the testimonies of witnesses examined and scrutinized the same for arriving at a just decision.

18. The Hon'ble Supreme Court in ***Uppa Vs. State of Karnataka*** (2013) 14 SCC 729 has held that *"when an accused is held guilty of an offence and sentenced to imprisonment, his personal liberty is curtailed. While confirming the sentence awarded by the trial court the High Court must consider whether the trial court has correctly evaluated the evidence. The confirmation of sentence awarded by the trial court must be justified by the High Court by giving sound reasons upon an analysis of material evidence."*

19. First coming to the testimony of those witnesses PW1, PW3 and PW-4, who had conducted the enquiry and submitted their reports, this Court finds that the impugned judgment notes that the work was allocated and done without following the due procedure prescribed under the rules; only a few rooms were white washed and no painting work was done. Pertinently, all the three witnesses in their testimonies have accepted that they had not taken dimension of the work carried out or left out nor they had any technical knowledge of the work done and also that the calculation of the expense was made only by looking at the white washing and painting.

20. The prosecution witness PW-2 - R.P.Singh, Superintendent, in his cross-examination has admitted that there was no procedure to give intimation to his superior officers and junior staff while leaving for inspection of the homes or that whenever he left for inspection of the homes, he made an official note in this regard. Also, he has admitted that no such

official note has been produced to show in this case that he had gone for inspection of the home. This witness has stated that he came to know about the white washing work on 27.06.2003 (the work was awarded on 3.5.2003 and bills were submitted on 20.06.2003), which is contrary to his own statement that he had visited the homes when the white wash was going on, which has been heavily relied upon by the learned trial court. This witness has also pleaded ignorance to the fact as to whether the work for repair and white washing were done in the department through comparative chart and stated that he has not verified the bills.

21. Further, the learned trial court in the impugned judgment has relied upon the testimony of P.Anand Rao (PW-5), Superintendent in Social Welfare Department to show that as per the rules, the white wash is to be done from either PWD, DSIDC or CPWD. However, has failed to deal with assertion of appellant- Phool Kumar Mehra that the notification for tender was displayed on the Notice Board of ACHB, Narela, Delhi.

22. Accordingly, there is no justification as to why the learned trial court has not relied upon the testimony of Sant Raj Gupta (PW-11) Superintendent, wherein he has stated that there were four envelopes and the tender for white wash and painting of 'Three Homes' were opened in his presence and, which bore signatures of all those who were present. Also, though the learned trial court has briefly noted the statements made by the defence witnesses in support of the appellants, however, has failed to observe on their testimonies, in specific to the testimony of Kamaljeet (D2W1), who had deposed that he was awarded the tender of cooler repairing under the same tender but different category; and Sanjeev Kumar (D2W2), who has deposed that he had applied for tender after seeing the

tender inviting Notice on the board of Beggars Home, Lampur. Narela. Delhi, but the tender was not awarded to him as his bid was on the higher side.

23. In the light of afore-noted narration, this Court finds that there are several discrepancies in the prosecution case. It is not disputed that the tender for the work in question was not awarded to the PWD, DSIDC or CPWD, however, it is not denied that the tender for 'Four work orders' was invited by putting a notification on the Notice Board of ACHB, Narela, Delhi. The assertion that if more bids were invited, the lower rates could have been quoted, is a hypothetical assertion and cannot be accepted. The fact remains that the tender for four different categories were invited, out of which work under only one category for white washing and painting was awarded to the appellant-Irfan Khan. The tender was opened in the presence of all the three Superintendents of the homes and the work for white washing and painting was awarded to appellant-Irfan Khan, who had since quoted the lowest price.

24. This court further fails to understand as to why payments with regard to other three categories of work, for which allocation of contract was done by virtue of very tender in question, have been made, however, only qua the work of white washing and painting, the prosecution has set up the case on the ground of procedural lapse for allocation of tender. It is not disputed that payments qua the work tender in question to appellant-Irfan Khan, have not been made despite his filing of civil suit before the competent court. The respondent-State has nowhere asserted that the payment of the work done by the appellant-Irfan Khan was made to him. If the bills raised by the appellant-Irfan Khan were exaggerated or were on the higher side; and the

work was not satisfactorily done or incompletely done, then at most what could have been done by the respondent was to make necessary deductions or make less payment for not adhering to the norms set out. However, it is not disputed that dimensions for work done were not noted by the Inspecting Committee and also, it is admitted that the estimated cost of the work was taken on the basis of mere glance on the wall, without any technical verification.

25. Relevantly, this Court finds that in the impugned judgment, though the learned trial court has taken note of different exhibits tendered by the witnesses at the time of evidence like quotations (Ex.PW6/A) and stock register (Ex.PW14/PX1 to PX3) and files Ex.PW2/B1 to B3, however has not observed upon their contents and same is entirely based upon the testimonies of the parties. Also, if that be the case, the trial court has only considered the testimonies of PW-2 and PW-5, who have since deposed against the appellants, but has ignored the testimonies of PW-6, PW-11, D2W1 & D2W2 as has been noted hereinabove. The learned trial court has also failed to appreciate that the prosecution witnesses R.K.Sharma (PW-9) and Rajesh Kumar (PW-10) in their testimonies have stated that the work of white wash had continued for 20-25 days and; another prosecution witness Sukhbir Singh (PW-14) has stated that the quotations were approved by three Superintendents including PW-6 and PW-11 and also stated that the bills submitted by the appellant were duly verified and certified by the District Welfare Officer and then forwarded for payment.

26. It is pertinent to mention here that the Hon'ble Supreme Court in ***N. Raghavender Vs. State of Andhra Pradesh, CBI*** **2021 SCC OnLine SC 1232** has observed as under:-

*"46. Section 420 IPC, provides that whoever cheats and thereby dishonestly induces a person deceived to deliver any property to any person, or to make, alter or destroy, the whole or any part of valuable security, or anything, which is signed or sealed, and which is capable of being converted into a valuable security, shall be liable to be punished for a term which may extend to seven years and shall also be liable to fine.*

***47.*** *It is paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) mens rea of the accused at the time of making the inducement. It goes without saying that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.*

***48.*** *It is equally well-settled that the phrase 'dishonestly' emphasizes a deliberate intention to cause wrongful gain or wrongful loss, and when this is coupled with cheating and delivery of property, the offence becomes punishable under Section 420 IPC. Contrarily, the mere breach of contract cannot give rise to criminal prosecution under Section 420 unless fraudulent or dishonest intention is shown right at the beginning of the transaction. It is equally important that for the purpose of holding a person guilty under Section 420, the evidence adduced must establish beyond reasonable doubt, mens rea on his part. Unless the complaint showed that the accused had dishonest or fraudulent intention '**at the time the complainant parted with the monies**', it would not amount to an offence under Section 420 IPC and it may only amount to breach of contract."*

27. In view of pertinent observations of the Hon'ble Supreme Court in ***N. Raghavender (Supa)*** and the lacune pointed out in the case set up by the prosecution, this Court finds that the prosecution has failed to establish its case on all three components, as appellant –Phool Kumar Mehra had invited the tender by putting the Notice/ Notification on the Notice Board of ACHB, Narela, Delhi, i.e. within the public purview; the tender was opened in the presence of other two Superintendents and work of tender for other three categories was awarded to others though appellant-Irfan Khan had also applied for the same; and the appellant- Irfan Khan has not been given any payment, and so no gain has come to his hands and loss is caused to the public exchequer.

28. With regard to element of conspiracy between the two appellants, this Court finds that the trial court in the impugned judgment has not been able to spell out that the case of the appellants is beyond reasonable doubt. The Hon'ble Supreme Court in ***Parveen @ Sonu Vs. State of Haryana*** 2021 SCC OnLine SC 1184 has held as under:-

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

29. Admittedly, the tender was floated on 10.04.2003 for the work of white wash, painting, repairing of cooker and electronic appliances, fitting of water and painting, writing of sign board, photo fixing board etc. under four different categories which were displayed at the Notice Board of ACHB, Narela, Delhi. The appellant-Irfan Khan had submitted his quotations for all the categories. However, his bid was found lowest only for one category i.e. white washing and painting of walls, according awarded work only for the said category and not the other categories. It is also not in dispute that the other contractors who have done work in other categories, have received their due payments. Further, it is also not disputed that the tender was opened in the presence of appellant- Phool Kumar Mehra and two other Superintendents (PW-6 & PW-11). If the tender was floated against the procedure, then why not other three contractors, who did work and receive payments were not made accused. Moreover, if the tender was floated by appellant-Phool Kumar Mehra against the procedure but was opened in the presence of other two Superintendents i.e. PW-6 and PW-11, then question arises as to why they have not been made accused by the prosecution. Accordingly, in my considered opinion, the prosecution has not played a fair role and without having any material on record has implicated the appellants herein for the reasons best known to them. However, learned trial court has overlooked the aforesaid facts and evidence and passed impugned judgment and order on sentence.

30. Further, applying the ratio of law laid down by the Hon'ble Supreme Court in decisions quoted above and the evidence as discussed above, this Court finds that prosecution has failed to establish its case against both the appellants and the necessary ingredients of criminal conspiracy between

them are also missing. Accordingly, the impugned judgment dated 11.09.2012 and order on sentence dated 13.09.2012 passed by the learned trial court is hereby set aside and the appellants are acquitted of the offences charged with. Consequently, sureties are discharged and surety bonds stand cancelled.

31. With aforesaid observations, the above captioned two appeals are accordingly allowed disposed of.

**(SURESH KUMAR KAIT)**
**JUDGE**

**AUGUST 05, 2022**
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