

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4327 of 2023

Arising Out of PS. Case No.-6 Year-1996 Thana- C.B.I CASE District- Patna

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Pervez Ahmad, son of Late Tahir Hussain R/o B- 55, Ground Floor (East),
P.C. Colony, Kankarbagh - Patna Lohia Nagar, P.s. - Kankarbagh, dist. -
Patna.

... .. Appellant

Versus

The Central Bureau of Investigation, Bihar Patna

... .. Respondent

With

CRIMINAL APPEAL (SJ) No. 4461 of 2023

Arising Out of PS. Case No.-6 Year-1996 Thana- C.B.I CASE District- Patna

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Braj Bhushan Rai @ B.B. Rai @ Brij Bhushaan Rai, son of Late Jagannath
Rai, Resident Of House No.58, Kalaji Nagar, Samne Ghar, Police Station -
Lanka, District - Varanasi (Uttar Pradesh).

... .. Appellant

Versus

The Central Bureau of Investigation, Patna

... .. Respondent

With

CRIMINAL APPEAL (SJ) No. 4472 of 2023

Arising Out of PS. Case No.-6 Year-1996 Thana- C.B.I CASE District- Patna

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Ramapati Chakhaiyar, S/O Late Pashupatinath Chakhaiyar R/O Harmu
Housing Colony, C/96, Ranchi, P.S- Argora, Distt.- Ranchi, Jharkhand.

... .. Appellant

Versus

The Central Bureau Of Investigation, Bihar, Patna.

... .. Respondent

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Appearance :

(In CRIMINAL APPEAL (SJ) Nos. 4327 of 2023 & 4472 of 2023)

For the Appellant/s	:	Mr.Ranjeet Kumar, Advocate Mr.Mohit Shrivastava, Advocate Mr.Ayush Kumar, Advocate Mr.Kanishk Kaustubh, Advocate Mr.Shikhar Mani, Advocate Mr.Rishabh Gupta, Advocate Ms.Lakshmi Kumari, Advocate Mr.Rajnish Prakash, Advocate
For the CBI	:	Mrs.Nivedita Nirvikar, Sr. Advocate Mr.Sourendra Pandey, Spl.PP (CBI) Mr.Praveen Kumar, Advocate

(In CRIMINAL APPEAL (SJ) No. 4461 of 2023)

For the Appellant/s : Mr.Sanjeev Ranjan, Advocate



For the CBI : Ms.Aastha Ananya, Advocate
Mrs.Nivedita Nirvikar, Sr. Advocate
Mr.Sourendra Pandey, Spl.PP(CBI)

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 28-10-2024

Heard learned counsel for the appellants in all these three criminal appeals and learned counsel for the Central Bureau of Investigation.

2. These criminal appeals have been filed against the impugned judgment of conviction and order of sentence dated 19.09.2023 passed by learned Special Judge, CBI- 1st, Civil Court, Patna in connection with Special Case No. 16 of 2018, RC No. 06(A)/1996, CIN No. 3428/2014 under section 374(2) of the Code of Criminal Procedure, whereby and whereunder the appellant in Cr. Appeal (SJ) No. 4327/2023 has been convicted for the offences under Section 120B and 420 of the Indian Penal Code (in short the "I.P.C.") and sentenced to undergo rigorous imprisonment for five years and fine of Rs. 16 Lakhs, in default of payment of fine, a sentence of six months simple imprisonment has also been awarded by the learned trial court. In Cr. Appeal (SJ) No. 4461/2023, appellant has been convicted for the offence



under Section 120B and 420 of the I.P.C. and Section 13(i) (d) r/w 13(2) of Prevention of Corruption Act and sentenced to undergo R.I. for five years and fine of Rs. Six Lakhs, in default of payment of fine, further to undergo simple imprisonment of six months. Lastly, in Cr. Appeal (SJ) No. 4472 of 2023, appellant has been sentenced to undergo R.I. for five years under Section 420 r/w 120B of the I.P.C. and Section 13(1)(d) r/w 13(2) of the P.C. Act and fine of Rs. Six lakhs, in default of payment of fine, further to undergo simple imprisonment for six months. Learned trial court further ordered that all the sentences of appellants shall to run concurrently.

3. As per brief facts of prosecution case, one Braj Bhushan Rai @ B.B. Rai, who was posted as the then General Manager (Telecom), South Gaya in the year 1994, while hatching a conspiracy alongwith Ramapati Chakhaiyar, TDE Gaya, who was holding the charge of General Manager, Gaya South, Ram Bharoshe Singh, the then Account Officer, Gaya and Priteshwar Prajapati, the then AE telecom, Gaya, without floating a tender, allotted the work for repairing of faulty



cards and faulty EPBT in favour of M/s Nalanda Telecom Services, Patna, for which the Department of Telecommunication has suffered a loss of Rs. 18,00,000/-. It further alleged that the accused persons violated the direction as provided by the Directorate of Telecom, New Delhi, according to which, the work of repairing of faulty cards and EPBT were to be sent at different repairing centres within the territory of India, where Bhuvneshwar Circle was marked for the work of Bihar Telecom Circle. It is further alleged that the rate of minimum repairing price was quoted by ITI Mankapur, Lucknow, but the then Ramapati Chakhaiyar has given his noting in favour of M/s Nalanda Telecom Services, which was also affirmed by T. Prajapati by noting that M/s Nalanda Telecom Services is capable of doing so and having sufficient infrastructure for the aforesaid work. It is further stated that R.B. Singh had recorded that the rate, which was quoted by M/s Nalanda Telecom Services is competitive and it has long experience, but he did not find the requirement of floating of tender. Accordingly, all the accused persons/appellants /convict, while in connivance with each other hatched a



criminal conspiracy to allot the aforesaid work to be done by M/s Nalanda Telecom Services, Patna for which the Department of Telecommunication, Govt. of India, has suffered huge loss to the public money, as stated above.

4. On the basis of aforesaid information, First Information Report bearing RC 6(A)/1996 dated 29.01.1996 was registered. After investigation, the Central Bureau of Investigation (in short 'C.B.I.') submitted charge-sheet on 02.04.2002 against the accused namely, Braj Bhushan Rai, Ramapati Chakhaiyar, Ram Bharoshe Singh, Tileshwar Prajapati and Pervez Ahmad under Section 120B/420 of the Indian Penal Code and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

5. Learned Special Judge, CBI South, Patna on the basis of aforesaid charge-sheet, took cognizance against the accused persons vide order dated 12.04.2002 under Section 120B/420 of the I.P.C. and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

6. Learned trial court explained the aforesaid charges to appellants/convicts, which they pleaded "not guilty" and



claimed trial.

7. To established its case before the learned trial court, prosecution has examined altogether **29** witnesses which are as under:

Serial No.	Name of the Prosecution Witnesses
PW-1	Dharmpal Saini
PW-2	Madan Mohan Trivedi
PW-3	Deendra Prasad Gupta
PW-4	R.K. Singh
PW-5	Moti Lal
PW-6	Kaushlendra Prasad
PW-7	M. Modi
PW-8	D.P. Singh
PW-9	R.N. Mahto
PW-10	Abhay Shankar Verma
PW-11	Narrendra Kumar Singh
PW-12	Bangali Das
PW-13	C.V. Rajan
PW-14	Avadh Bihar Singh
PW-15	Ram Narayan Maurya
PW-16	Shambhu Kumar Mahto
PW-17	Shiv Shankar Singh
PW-18	Jageshwar Prasad
PW-19	Vinod Kumar Sinha
PW-20	Santosh Kumar Sinha
PW-21	Satish Kumar
PW-22	Indrajeet Singh
PW-23	Akshaivar Nath Tiwary
PW-24	Ganesh Chandra Jha
PW-25	Shivjee Jha
PW-26	Vinay Kumar Premi
PW-27	Harsh Narayan Prasad Verma
PW-28	Devendra Kumar Yadav



PW-29	M. Modi.
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8. The prosecution has produced and relied upon following documentary evidences also as to substantiate its case during trial, which are as under:

Number of Exhibits	List of Documents
Exhibit – 1 & 1/A	Grant of Sanction against Braj Bhushan Rai and R.P. Chakhariyar
Exhibit – ½	Grant of sanction against T. Prajapati
Exhibit – 2	File No. G.N.T.(s)/T.E.C.H/P.C.
Exhibit – 2/1, 2/2, 2/3	Noting of 04.08.1994 and 05.08.1994
Exhibit – 2/4	Bill related to file claimed by T.D.E. Bill related to file claimed Nalanda Telecom Service.
Exhibit – 3 to 3/6	Bill dated 13.12.93, 13.12.93, 13.12.93, 12.01.94, 13.01.94, 13.01.94, 20.09.94, 12.03.94, 19.03.94, 16.03.94, 05.09.94, 25.08.94, 19.06.94, 19.06.94, 05.09.94, 25.08.94, 13.07.94.
Exhibit – 3/19 to 3/24	Signature of Kaushlendra Prasad, Moti Lal and D.P. Singh
Exhibit – 4 to 4/13	N.T.S. Card Bill dated 13.12.93, 16.03.94, 05.09.94, 25.08.94, 19.06.94, 19.06.94, 25.08.94, 19.08.94, 03.10.94, 15.10.94, 13.07.94.
Exhibit – 4/14	Signature of M.K. Singh
Exhibit – 4/15	Signature of M.K. Singh
Exhibit – 4/16	Signature of M.K. Singh
Exhibit – 5 to 5/6	Noting
Exhibit – 5/7	Signature of Kaushal Kishore
Exhibit – 5/8	Noting of R.N. Mahto
Exhibit – 5/9	Signature and comment of R.N. Mahto
Exhibit – 6	Original Stay Order
Exhibit – 7	Work Order
Exhibit – 8	File related to T.D.M. Office, Jamshedpur work prepairing.
Exhibit – 9 to 9/10	Total 11 Vouchers



Exhibit – 9/11 to 9/52	Total 42 Vouchers which are present in Ext.8
Exhibit – 10	Inspection Report.
Exhibit – 11	File of G.L. 18/94, 95 T.D.E. Office, Ara
Exhibit – 12	Letter typed and signed by Surendra Prasad Singh.
Exhibit – 13	Letter dated 05.09.2001 and Annexures.
Exhibit – 14	Seizure list.
Exhibit – 15	Letter sent by I.T.I. Manakpur to G.M. Operation, T.O.T. Patna dated 11.05.93.
Exhibit – 15/1	Related comment
Exhibit – 15/3	Comment dated 23.05.94 of G.M. Operation, B.B. Rai.
Exhibit – 16	File of operation cell department of telecom, patna
Exhibit – 17	File of Director, Telecom North, Patna
Exhibit – 17/1	Page No. 31 of chart Purv File.
Exhibit – 17/2	Page 167 of Purv File
Exhibit – 18	File of T.D.M. Hazaribagh office
Exhibit – 19	File related to Nalanda Telecom Services which related to repairing to T.D.M., Hazaribagh C.Dot Card.
Exhibit – 20	File S-20/95-96 T.D.M. related to Ara office
Exhibit – 21 to 21/1	Seizure list dated 02.02.2001 and 18.06.2001
Exhibit – 22	File related to T.D.E. Sasaram
Exhibit – 23	File related to T.D.E Sasaram which has bill of Nalanda Telecom Service Annexed.
Exhibit – 24	Paid copies of total 13 Nalanda Telecom Service Bill
Exhibit – 26	Circular D.O. No. 36-9/92 P.H.M.F.T. dated 05.07.94 which is on page 90 of Ext. 16.
Exhibit – 27	Comment on Ext.16 note sheet No. 16/N
Exhibit – 28	Bill N. N.T.S./Card/93-94 dated 23.09.93.
Exhibit – 28/1 to 28/10	Signature of Julius Khalko
Exhibit – 28/11	Bill No. N.T.S./Card/95-96/008
Exhibit – 28/12	Bill No. N.T.S./Card/95-96/009
Exhibit – 2813 to 28/15	Bill No. N.T.S./Card/95-96/075, 076 and 007 dated 10.06.96
Exhibit – 29	Bill file of Nalanda Telecom Service related to Sasaram T.D.E.
Exhibit – 29/1	Bill file



Exhibit – 30	Bill file of Nalanda Telecom Service related to T.D.E. Gaya
Exhibit – 31 & 31/1	FIR and signature
Exhibit – 32	Letter dated 24.11.2000
Exhibit – 32/1	Telecom faber and procedure
Exhibit – 33	Seizure Memo
Exhibit – 34	Letter dated 14.08.2001 issued by Sri V.P. Singh, Vigilance Officer
Exhibit – 35	Seizure Memo dated 19.09.2001
Exhibit – 36	Vigilance File No. B.I.G./10/04/G
Exhibit – 37 to 37/3	Total 4 seizure memo dated 02.05.96
Exhibit – 38	Signature of Inspector Ashesh Kumar on Chargesheet
Exhibit – A	Letter dated 05.08.1994

9. The defence has not produced any witness but they produced the following documentary evidence in support of their defence, which are as under:

Number of Exhibits	List of Documents
Exhibit – A	Initials of R.P. Chakhariyar at page 202 of Ext. 30 of Prosecution
Exhibit – B	Letter No. 27 dated 14.10.94 of G.M. South, Gaya Ext 16 of prosecution.
Exhibit – C	Extension of validity of tender, page 208 of Ext. 17
Exhibit – D	Page 12, 13, 14 and 15 of Ext. 36 of prosecution.
Exhibit – E	Letter dated 12.06.17 of D.E.N.T.T. of Telecom and letter dated 10.10.2001 of C.B.I. total 3 pages.
Exhibit – F	Letter dated 22.02.95 of vigilance office, page 129/7, Ext 17 of prosecution.
Exhibit – G	Letter dated 23.04.93 of Director North, page No. 17, Ext. 17 of prosecution.
Exhibit – H	Inspection report dated 19.12.94 of M/s Nalanda



	Telecom, Page No. 111/36 of page 36, 3 pages.
Exhibit – I	Letter dated 01.01.96 vigilance office, page No. 112/37, Ext-36 of prosecution.

10. After examination of prosecution witnesses and by taking note of evidence and incriminating circumstances as surfaced during trial, statement of accused/appellants was recorded under Section 313 of the Cr.P.C., which was denied by the aforesaid appellants in totality by claiming themselves complete innocence and false implication.

11. On the basis of evidences as surfaced during the trial, the learned trial court convicted and sentenced the appellants/convicts, in aforesaid terms. Being aggrieved of which present appeals were preferred.

12. Hence, the present appeals.

13. It is submitted by Mr. Ranjeet Kumar, learned counsel appearing on behalf of the appellants that learned trial court failed to appreciate inconsistencies, infirmities, contradiction, omission and addition of various material aspects arising out of prosecution witnesses, which surfaced during course of trial. It is submitted that learned trial court failed to appreciate that neither any rule was violated while



allowing the work to M/s Nalanda Telecom nor any excess payment was made. It is submitted that the finding of learned trial court that repairing work was allotted to M/s Nalanda Telecom Services under conspiracy by accused persons and excess amount paid thereof caused pecuniary loss to the telecom department, is without any material witnesses on this aspect, rather prosecution witnesses themselves admitted that the telecom department benefited out of entire transactions. It is submitted that the evidence on record nowhere appears to established the essential legal ingredients for the offences under Section 420 and 120B of the Indian Penal Code and, thus, conviction as secured under Prevention of Corruption Act under Section 13(i)(d) r/w 13(2) is bad in the eyes of law. In support of his submission, learned counsel relied upon the legal reports of Hon'ble Supreme Court as available through **Mariam Fasihuddin and Another Vs. State by Adugodi Police Station and Others** reported in **2024 SCC OnLine SC 58** and **A. Sivaprakash Vs. State of Kerala** reported in **(2016) 12 SCC 273**.

14. Learned counsel appearing on behalf of Central



Bureau of Investigation submitted that from the materials available on record, which are nothing but the bills which duly exhibited, it appears that due to conspiracy of officials of telecom department, South Zone, Gaya with the proprietor of M/s Nalanda Telecom Service, the Telecommunication Department suffered loss of Rs. 15,00,000/- to 18,00,000/-. It is submitted that despite of lacking of proper experience and work ability, work order was issued in favour of M/s Nalanda Telecom Services, where the rate offered by the ITI Mankapur, Lucknow was on lower side and by ignoring the lowest rate and experience of ITI Mankapur, Lucknow, the work was allotted to M/s Nalanda Telecom Services which in itself sufficient to suggest that the said company obtained work order under collusion and conspiracy of higher officials of Telecommunication Department, South Zone, Gaya.

15. It is also submitted that the prosecution sanction against the accused persons was duly obtained. Learned counsel further submitted that the accused persons have no explanation that how they ignored the lower rate quoted by ITI Mankapur, Lucknow.



16. In view of aforesaid, it is submitted that the present appeal is devoid of any merit and, therefore, same be dismissed as no interference is required at appellate stage.

17. I have perused the Trial Court Records carefully and gone through the evidence available on record as also considered the rival submissions canvassed by learned counsel appearing on behalf of the parties.

18. After hearing the arguments and upon perusal of record, it appears that the evidence as surfaced during the trial are required to be discussed for the purpose of its re-appreciation for the just and proper disposal of the present appeal, which is as under:

19. **PW-1 is Dharmpal Saini.** He was posted as Assistant Director General (Vigilance), Department of Telecommunication, New Delhi and deposed that concerned Minister of the Department, at New Delhi given sanction for prosecution. He approved the sanction order against accused Brij Bhushan Rai and Ramapati Chakhaiyar. He signed the sanction order on behalf of the President. Sanction order for prosecution, upon his identification, was exhibited as **Exhibit-**



1 and Exhibit 1/1.

19.1. It appears from his cross-examination that at the time of ordering sanction for prosecution, the convict/accused Brij Bhushan Rai @ B.B. Rai was the General Manager of Telecom Department, Patna and he was also Incharge of Gaya. It was stated that the sanction order was not annexed with investigation report of C.B.I.

20. **PW-2 is Madan Mohan Trivedi.** He was posted as Telephone Operator with General Manager, G.M.T. (South), Gaya. He identified the handwriting of Tileshwar Prajapati, Ram Bharosa Singh and Ramapati Chakhaiyar (accused/convict). He said to worked with these people. He identified the relevant file number, which was prepared in ordinary course of official business, which he identified during trial, and upon his identification, it was exhibited as **Exhibit-2**. He was not aware about the fact of the case. He identified the handwriting of **Exhibit 2/2 and 2/3**, which is the notice dated 04.08.94 and 05.08.94 in handwriting of Tileshwar Prajapati, Ram Bharosa Singh and Ramapati Chakhariyar (accused/convict). He also identified the handwriting of R.P.



Chakhaiyar, with which he was acquainted out of official communication.

21. **PW-3 is Devendra Prasad Gupta.** He was also working with G.M.T.(S) Gaya in A.D.T. Commercial Section in the year 1996. He was aware about the process of agreement related with faulty cards and Electric Push Button Telephone (EPBT) sets repairing. It was deposed by him that for repairing work of Rs. 5000/- to 50,000/-, vendor was provisioned to invite through sealed quotation and for repairing work for more than Rs. 50,000/- there was provision for tender. It was stated that no relaxation can be done for a work order having value of more than Rs. 5000/- in repairing case. It was stated that B.B. Rai was the G.M. South. He stated that the work, which was given by B.B. Rai (accused/appellant) to M/s Nalanda Telecom Services, Patna was in violation of several rules which was in vogue. It was stated that one can said easily after going through documents that work order was on lower rate. It was stated by him that for administrative purposes, the whole Bihar was divided into three zones, i.e. north area, south area and central area. It



was stated that the north area was headed by Director (north), similarly south area was headed by General Manager (south) and central area was headed by Chief General Manager (central). It was stated that EPBT sets were introduced in the year 1990. It was also stated that whenever repairing and maintenance work were required, a tender was floated through Tender Committee, which was constituted from time to time for the said purpose headed by Chairman, Chief General Manager, Bihar Circle, Patna. It was stated that accused/appellants namely, Ramapati Chakhariyar and B.B. Rai mentioned in their notes that the work was to be done only in compliance of departmental rules.

22. **PW-4 is Ram Kailash Singh.** He was posted in General Account Officer, Telecom Department, Dhanbad in the year 1994-95, where he passed several bills, which was exhibited as **Exhibit-2/4 and Exhibit-3 to Exhibit-3/16.** He was not the custodian of said files and bills and only after getting satisfied, he passed said bills. Same was also not objected by the Audit. **PW-5 is Sri Prasadi Ram,** who was posted as D.G.M. Jamshedpur between 1994-99. It was



stated by him that the bill dated 13.07.94, 15.10.94, 20.10.94, 03.10.94 (total three), 17.08.94, 25.08.94, 05.09.94, 19.09.94 (two), 19.06.94, 25.08.94 and 05.09.94 are related with M/s Nalanda Telecom Services, which was raised in connection with card repairing. He passed aforesaid bills after checking it in normal course of business, which bears his signature, which, upon his identification, was exhibited as **Exhibit 3/17 to 3/30**. At that point of time, 48 telephone exchanges were under his jurisdiction. All bills came before him after processing from lower level, which was raised on the basis of agreement. He never witnessed agreement. The work done was checked by field officer.

22.1. Upon cross-examination on behalf of accused/appellant B.B. Rai, it was said that all 14 bills were genuine and it was consisting work completion certificate. Whereas, upon cross-examination on behalf accused/appellant Parvez Ahmad, it was stated that the payment was made to M/s Nalanda Telecom Department after completion of entire work.

23. **PW-6 is Koushalendra Prasad.** He also



identified the signature of one Motilal, S.S. Yadav and and D.G. Singh, which, upon his identification, exhibited as **Exhibit Nos. 3/19, 3/20, 3/21, 3/22, 3/23 and 3/24.**

He also identified his signature thereon. It was stated that all these bills are related with faulty cards, which is related with M/s Nalanda Telecom Services, Patna. He stated upon cross-examination on behalf of accused/appellant B.B. Rai that the aforesaid bills were properly checked and certified by field officer Sri Maheshwar Modi.

24. **PW-7 is Maheshwar Modi.** He was posted on 22nd March 1997 at Bermo in S.D.E. Group. A total of 12 telephone exchanges were under his jurisdiction. He failed to name them. He counter-signed the work completion certificate of M/s Nalanda Telecom Services (in short 'NTS') card bill dated 13.12.93, 16.03.94, 05.09.94, 25.08.94, 19.06.94, 19.06.94, 25.08.94, 17.08.94, 30.10.94(2), 03.10.94(2), 15.10.94 and 13.07.94 which are said to be the part of **Exhibit 4 to 4/13.** It was stated that movement register was maintained at Bermo and Gomiya. It was stated that card repairing work was given to private contractor under



order of TDE, Dhanbad.

24.1. Upon cross-examination on behalf of accused/appellant B.B. Rai, it was stated by him that at that point of time the TDE was Motilal, who is now retired. It was stated that work completion certificate was signed by Telephone Inspector K.N. Singh which was also counter-signed by him and sent to TDE, Dhanbad. All 14 bills were found genuine and only getting work done satisfied, the work done certificate was issued.

25. **PW-8 is Dineshwar Pd. Singh.** He was also posted between June 1994 to July, 1997 at Dhanbad in the account office as T.D.M. He said to be aware about the clearance of telephone parts repairing bill. Upon cross-examination on behalf of B.B. Rai (accused/appellant), it was stated by him that after being satisfied and completion of all official formalities and found the bills correct, it was ordered to pay. He made payment against the bills only after found it correct. Work was related with repairing. He also identified the bills and vouchers related with payment during the trial, which upon his identification, duly exhibited through **Exhibit-**



4, 5 & 9 series.

25.1. Upon cross-examination, it was stated by him that he is not in position to say whether any other firm except M/s Nalanda Telecom Services was given any work order for the period of 1992-95. Upon cross-examination on behalf of accused/appellant Parwez Ahmad, it was stated that the payment was made to M/s Nalanda Telecom Services against the work done by said firm. It was stated that in 1994, Bihar and Jharkhand was joint State and the Chief General Manager of Telecom, Patna was the head of entire Bihar. He also affirmed the administrative divisions of entire Bihar in three zones, as North, South and Central, where North zone was headed by Director, south zone was headed by G.M. It was stated that before introducing Push Button System, the telephone was repaired by the employee of the department. Maintenance work was also done by the employee of the department. It was denied by him that he had any knowledge, whether any decision was taken by the tender committee under the chairmanship of Chief General Manager that work be allotted to the local firm, as it caused a lot of



inconvenience, if the work order of repairing was given to outside agency, as it usually causing delay of repairing work. It was stated that he never deal with **Exhibit-2** which is File No. G.N.T(s)/T.E.C.H./P.C.

26. **PW-10 is Abhay Shankar Verma.** He deposed that he visited the premises of M/s Nalanda Telecom Services, Patna and prepared the list regarding telephone exchange cards and telephone set, which was there for repairing. The said list, upon his identification, exhibited as **Exhibit-10**. It was received from Telecom District, Gaya. It was stated that said machines were lying there for more than one and half months and was not repaired on priority basis.

27. **PW-11 is Narendra Kumar Singh,** who approved the proposal for repairing of 65 cards, which is **Exhibit-5/1 to 5/3**. He could not disclose whether said work allotted to M/s Nalanda Telecom Services out of urgency at local level to avoid any delay. **PW-12 is Bengali Das.** He deposed in his examination-in-chief about page no. 61 which is a letter issued from General Manager, South dated 6th September, 1994, where instruction was issued that no



outside agency can be engaged for repairing work except emergency and same can be done only with prior approval. It appears from his deposition that two repairing centres were opened out at ITI Mankapur, Lucknow and another at Bhuvneshwar. A direction was also given through letter dated 14th November, 1994 to get repaired the instrument from either of the aforesaid firm/institute. It was stated that rate approval letter was issued on 09.08.1994. He Never witnessed any agreement. It was stated that complain of EPBT was very frequent causing annoyance in consumer and, if it was given for repairing to outside agency, it was likely to take more time. It was stated that when the work was started, M/s Nalanda Telecom Services was not the approved agency for repairing, but subsequently it was approved due to work load. The repairing work was also done by ITI centre, Lucknow. The work of said centre was not satisfactory as it was never done on time. He categorically stated that the work of M/s Nalanda Telecom Services was satisfactory. **PW-13 is C.B. Rajan**, who issued prosecution sanction letter on 28.01.2002 under his signature against accused T. Prajapati.



PW-14 is Awadh Bihari Singh, who also signed on the forwarding letter on certain letter and documents. **PW-15 is Ram Narayan Maurya**. He deposed in his examination-in-chief that in the year 2002, he was posted as Chief Account Officer in the office of C.G.M. Telecom Office, Patna. He could not disclose that under limited tender, on urgent basis, the repairing work of faulty cards & EPBT was given to M/s Nalanda Telecom Services.

28. **PW-16 is Sri Sambhu Kumar Mahto**. He deposed in his examination-in-chief that he identified his signature on the bills of M/s Nalanda Telecom Services raised through TDE, Sasaram, which is **Exhibit '14'**. It was prepared under the instruction of C.B.I. (Investigating Agency).

29. **PW-17 is Shiv Shankar Singh**, who also disclosed about the financial limit of tender. He also affirmed three administrative division of Bihar. South area covers with Dhanbad, Gaya, Hazaribagh, Ara, Ranchi, Jamshedpur and Sasaram. **PW-18 Jageshwar Prasad** stated during the trial that from **Exhibit 17/2**, particularly page nos. 3, 4 & 5, it



appears that some works of aforesaid tender was done by M/s Nalanda Telecom Services. The approval was done by the Director of North Telecom Division Sri R.K. Tyagi. The work done was given on the request of M/s Nalanda Telecom, which was done at lowest tender rate. It was submitted that lowest rate was offered by M/s Fantasy as per agreement dated 17.03.1993, which was for one year and subsequently extended by the then Director Vijay Kumar. The agreement of Nalanda Telecom was dated 23.04.1993. The open tender was invited from the office of North Telecom Director.

29.1. Upon cross examination, this witness approved the participation of M/s Nalanda Telecom in tender, when this firm was not declared L-1, a request was made by this firm to give some work at the rate of L-1. Whereafter, the work of Bhagalpur Telecom Division was given for one year to M/s Nalanda Telecom for repairing of Push Button as per L-1 rate. It was also extended for one time, which was based upon its performance.

30. **PW-19 is Binod Kumar Sinha**, who turns hostile during the course of trial as he could not depose before



the court that any loss was accrued to the Telecommunication Department out of work allotment to M/s Nalanda Telecom Services, nothing substantial appears out of his cross-examination which may be used for the purpose of contradiction or corroboration of other prosecution witnesses, who appears to supported the case of prosecution.

31. **PW-20 is Santosh Kumar Sinha.** He deposed in his examination-in-chief that since 2001 he was posted as SDE at Jamshedpur. He deposed *qua* **Exhibit '8'** which was related with payment made to M/s Nalanda Telecom Services, Patna for repairing faulty EPBT and cards. It was stated that as per norms, the said repairing work was to be sent to ITI Mankapur. He calculated the loss on the basis of work quoted by ITI Mankapur and rate quoted by M/s Nalanda Telecom Services, Patna. **PW-21 is Satish Kumar.** He deposed *qua* **Exhibit '20'**. He stated that repairing work was sent to ITI Mankapur, for which the department suffered a loss of Rs. 2900/- per instance. It was stated that the bill of M/s Nalanda Telecom Service was passed in due course by Ara Division.

32. **PW-22 is Indrajeet Singh.** He stated that



department suffered a loss of Rs. 1,31,000/- due to availing services of M/s Nalanda Telecom Service. The loss was also of Rs. 66,100/- for transportation charge. He identified the bills paid to M/s Nalanda Telecom Service bearing his initial, which was made against repairing of cards. **PW-23 is Akshaywar Nath Tiwari.** He also identified different bills during the trial which upon cross-examination on behalf of accused B.B. Rai stated that no loss caused to Telecommunication Department. **PW-24 is Ganesh Chandra Jha,** who was posed between July 1993 to 1994 in C.J.M.T. Office, Bihar Circle, Patna at A.G.M. (Operation). He deposed qua **Exhibit '16'** which was related with repairing of faulty C-Dot cards. This file was dealt by this witness in capacity of A.G.M. (Operation) on several occasions. It was stated by him that ordinary C-Dot Cards was to sent Bhuvaneshwar for repairing as per **Exhibit '26'** but it was permitted to be done at local level in emergency.

33. **PW-25 is Shivjee Jha.** He identified different bills of **Exhibit '28'** series, upon perusal of which, it was deposed by him that out of said bill, no loss was caused to telecom department. **PW-26 is Vinay Kumar Premi.** He



also, after perusal of different bills, identified the same. He stated in his cross-examination that no loss out of said bills was caused to telecom department.

34. **PW-27 is Harsh Narayan Prasad Verma**, who deposed *qua* **Exhibit '30'**, consisting of different bills, bearing signature of R.P. Chakhariyar (accused/appellant). It was also passed by him. The rest signatures were not identified by this witness. He could not depose that whether any loss was caused out of payment of aforesaid bill. **PW-28 namely, Devendra Kumar Yadav** deposed that he was quoted the rate for tender. It was stated by him that when he quoted repairing rate in the year 1993, at that point of time, site repairing facility was not available. He never participated in any tender for any zone of Bihar.

35. **PW-29 is Mayup Moitra**. He appears to be the Investigating Officer of the case. He identified the signature of Sri J.P. Mishra and S.P. Javed Ahmad on F.I.R. which upon his identification exhibited as **Exhibit '31' and '31/1'**. He was stated that during investigation he has collected the relevant telecom financial rules vide letter dated 24.11.2000



produced by Sri R.N. Mourya, the then Chief Account Officer, O/o the GMT, Patna. Aforesaid letter was marked as **Ext.32** and telecom power and procedure was marked as **Ext.32/1** (with objection). He also seized certain documents i.e. bills of Nalanda telecom service Patna in r/o TDM, Sasaram vide seizer memo dated 18-06-2001. This seizure memo was bearing the signature of Indrajeet Singh, the then DET, Sasaram and also bearing his signature. This seizer memo upon identification was marked **Ext-33**. He had also collected bill for the period of ten years of the accused officers named in the FIR of this case, vide letter dated 14-08-2001 issued by Sri B.P. Singh, the then Vigilance Officer, BSNL, Patna. As per said letter Sri B.B. Rai had functioned as GMT(S) Gana from 30-07-1994 to 10-08-1994, Sri R.P Chakariyar had worked as TDE, Gaya with effect from 01-04-1994 to 15-02-1996, Sri Ram Bharose Singh, as account officer O/o the GMT(S) Gaya w.e.f 25-02-1992 to 03-11-1995 and Sri T.Prajapati as ADT O/o GMT, Gaya w.e.f. 01-10-1993 to 25-04-1995. Upon identification, same was marked as **Ext-34**. He had also collected documents pertaining to the current



bank account of M/s Nalanda Telecom Services, Patna (proprietor Perwej Ahamad). It was seized through seizure memo dated 19-09-2001 which bears the signature of Awadh Bihari Singh the then Assistant Bank Manager, PNB, New market branch, Frazer Road, Patna. This seizure memo upon identification marked as **Exhibit-35**. He had examined witnesses in respect of the relevant documents collected in this case and recorded the statement of witnesses u/s 161 Cr.P.C., during course of investigation. It transpired that the offer letter dated 11-05-1993 of Sri P.K. Yadav, M/s ITI, Lucknow quoted the lower rates than that of Nalanda telecom service Patna, which was perused by Sri B.B. Rai while functioning as GMT(O) Patna. This fact is evident from perusal of page no 70-N of **Exhibit-16**. Sri B.B. Rai had mentioned that M/s ITI, Mankapur will be informed for further necessary action. The offer letter of NTS, contained many enclosures quoting the rates against each components of spare parts/cards. The documents was annexed in file as **Exhibit-2** which runs from pages-1 to 78, the entire file had been marked as **Exhibit-2**. The offer letter was also enclosing



the list of places, for which M/s Nalanda telecom services was doing similar nature of work, which included the area of Bhagalpur. It was stated that investigation further revealed that report dated 24-06-1994, submitted by Shri K.M. Das, the then Vigilance Officer, Patna specifically mentioned that M/s Nalanda telecom services did not have any infrastructure for handling the work of cards repairing. This report was available in vigilance file no-Vig/10/94/G. This file was collected earlier by I.O. which had been perused by him during investigation and he had also examined the relevant witnesses of said file namely, Sri Salil Kumar Dey Sarkar, the then ADT Vigilance Officer of CGMT, Patna. This file was prepared in ordinary course of official business and was marked as **Exhibit-36** with objection. Based on the said report banning of the business of M/s Nalanda Telecom Services, Patna had been communicated by Sri H.N. Sahai vide his letter dated 07-09-1994 to all respective authority. On the said report, investigation also revealed that the then Director (North), Patna had mentioned regarding poor performance of M/s Nalanda Telecom Service in r/o Card



repairing work which he had found during his visit to Bhagalpur. This fact is evident from his note dated 13-10-1993 which is available on page no-12-N of **Exhibit-17**. Investigation further revealed that without verifying the work experience of M/s Nalanda telecom services, Patna, Sri T. Prajapati, the then AE Technical, Gaya and Sri R.B. Singh, the then account officer Gaya vide their note dated 04-08-1994, recommended for awarding repairing work of faulty card and EPBT sets to the said firm. Both of them omitted to mention that calling of tender was a mandatory provision. Sri R.P. Chakariar, the then TDE, Gaya also recommended for awarding the said work in favor of the said firm for period of two years vide his note dated 05-08-1994. Sri B.B. Rai, the GMT(S), Gaya had approved for awarding the said work in favor of M/s Nalanda Telecom service, Patna on 08-08-1994, according to formal work order and agreement available in file no. GMT(S)/Tech/PC (**Exhibit '2'**). It was stated that complying the report of the vigilance department of Telecom Patna, Sri B.B. Rai had canceled the agreement dated 09-08-1994 executed with Nalanda telecom services through his



letter dated 19-09-1994 (**Ext-36**) as G.M.T. Operation, Patna, which he was not authorized to do so, since he had relinquished the charge of G.M. south Gaya. The letter dated 05-05-1994 issued by the directorate of telecom had specifically mentioned that regional repairing centre, Bhuwneshwar had been marked for repairing of faulty card of Bihar circle. The said letter also had been sent to GMT south Gaya the said letter is already marked as **Ext-26**. He handed over charge of investigation to Sri S.K. Mishra, the then S.I. CBI, Patna on 01-01-2002. During examination of witnesses, loss suffered by the telecom department was calculated on the difference of rate quoted by M/s I.T.I. Mankapur, comparing to M/s Nalanda Telecom services Patna. Upon his identification, charge-sheet was exhibited as **Exhibit No. 38**.

36. Upon cross-examination, on behalf of accused/appellant namely, B.B. Rai, it was stated that during investigation, he came to know that some preliminary inquiry was done in this case. He could not disclose that appellant was the G.M. South on 25.05.1994, as he was not the Investigating Officer of this case on 20.05.1994. It was



stated that B.B. Rai was not the G.M. South on 20.05.1994. He did not find any letter during investigation which may suggest that work cannot be given to M/s Nalanda Telecom Services, Patna. He could not state that M/s Nalanda Telecom Services was working since July 1994. He never visited the premises of M/s Nalanda Telecom workshop. It was stated that as per the report of the then Vigilance Officer dated 07.09.95 and 19.12.94, a ban was imposed on M/s Nalanda Telecom Services, Patna. It was stated that accused/appellant Braj Bhushan Rai @ B.B. Rai was also the Incharge G.M. South. He has no idea about constitution of any tender committee in the year 1994-95. He came to know that as per letter of DOT Mankapur I.T.I, said firm was only competent firm for repairing work. It was stated that accused/appellants R.P. Chakhariar and T. Prajapati through criminal conspiracy, helped the appellant to get the tender, which is apparent from **Exhibit 2/3**. He never enquired about the infrastructure of M/s Nalanda Telecom Services. It was stated that **Exhibit 'A'** is not clear on this point that when he visited accused R.P. Chakhariyar. It was stated that as per **Exhibit '17'**, work



extension order of M/s Nalanda Telecom is regarding some another tender, which is dated 23.04.1993. It was stated that at page No. 12 of **Exhibit '17'**, performance of Nalanda Telecom was shown as poor, whereas from page 13 of **Exhibit '36'**, it is apparent that M/s Nalanda Telecom Services do not have any infrastructure handling sophisticated equipments. He never made any independent inquiry regarding aforesaid, but stating so as it was deposed by other prosecution witnesses.

37. It was stated by him that on page No. 111/36 of **Exhibit '36'**, the inspection report dated 29.12.1994 of Sri H.N. Sahay, Vigilance Officer, regarding premise of M/s Nalanda Telecom Services, Patna is available, where it is mentioned that Mr. Sahay (V.O.) had inspected and verified the office and workshop and found suitable infrastructure for handling and repairing work of EPBT sets and C-Dot cards. Mr. Sahay visited alongwith AE-vigilance on 20.10.1994 and 24.10.1994 as per report. The said report also reveals that M/s Nalanda Telecom Services have qualified staff for handling the work of EBPT repairing cards and equipments. In



this report, the description of equipment with date of purchase was also mentioned. The source of purchase was also available there. It is pointed out that in view of said report of Mr. H.N. Sahay, the ban imposed on the M/s Nalanda Telecom Service was withdrawn on 06.01.1995. It reveals from said report that as M/s Nalanda Telecom Service have built up newly up-to-date necessary infrastructure, accordingly, ban was withdrawn. He did not collected any evidence against Mr. H.N. Sahay during course of investigation, and, therefore, he was not made accused in this case. It was clarified by this witness that as per **column '4'** of the charge-sheet, it was made clear that ITI, Mankapur quoted Rs. 1200/- for line and control card and Rs. 1000/- for power card, whereas the rate of M/s Nalanda Telecom Services also quoted the same rate, but cost of spares was said to be separately charged.

38. It would be apposite to reproduce the relevant paragraphs from the judgment of Hon'ble Supreme Court as available through **Mariam Fasihuddin (supra)**, which reads as under and appears relevant in present factual aspects:



“The offence of cheating under Section 420 IPC:

22. Section 420 IPC provides that whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy, the whole or any part of 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. Further, Section 415 IPC distinctly defines the term ‘cheating’. The provision elucidates that an act marked by fraudulent or dishonest intentions will be categorised as ‘cheating’ if it is intended to induce the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, causing damage or harm to that person.

23. It is thus 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) the deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) *mens rea* or dishonest intention of the accused at the time of making the inducement. There is no gainsaid that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

24. It is well known that every deceitful act is not unlawful, just as not every unlawful act is deceitful. Some acts may be termed both as unlawful as well as deceitful, and such acts alone will fall within the purview of Section 420 IPC. It must also be understood that a statement of fact is deemed ‘deceitful’ when it is false, and is knowingly or recklessly made with the intent that it shall be acted upon by another person, resulting in damage or loss.² ‘Cheating’ therefore, generally involves a preceding deceitful act that dishonestly induces a person to deliver any property or any part of a valuable security, prompting the induced person to undertake the said act, which they would not have done but for the



inducement.

25. The term ‘property’ employed in Section 420 IPC has a well-defined connotation. Every species of valuable right or interest that is subject to ownership and has an exchangeable value - is ordinarily understood as ‘property’. It also describes one’s exclusive right to possess, use and dispose of a thing. The IPC itself defines the term ‘moveable property’ as, “***intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.***” Whereas immoveable property is generally understood to mean land, benefits arising out of land and things attached or permanently fastened to the earth.

26. Having fully addressed the contours of the offence of ‘cheating’, let us now advert to the facts of the instant case to appreciate whether the allegations made by Respondent No. 2, are sufficient to *prima facie* establish that : (i) the Appellants have deceived Respondent No. 2; (ii) Respondent No. 2 was induced with dishonest intentions; (iii) such inducement was for the delivery of any property or valuable security; and (iv) as a result of such an act, Respondent No. 2 has suffered some damage or injury.”

39. It would be further relevant to reproduce Section

120B of the I.P.C., which reads as under:

“120B. Punishment of criminal conspiracy.—(1)

Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”



40. In the aforesaid context, it would be further apposite to take shelter of guiding note as set by the Hon'ble Supreme Court regarding Section 13(1)(d) of the P.C. Act in

A. Sivaprakash' case (supra), which are as under:

"17. Section 13(1)(d) of the PC Act reads as under:

13. Criminal misconduct by a public servant.—(1)

A public servant is said to commit the offence of criminal misconduct—

* * *

(d) if he—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or"

18. The prosecution has sought to cover the case of the appellant under sub-clause (ii) of Section 13(1)(d) and not under sub-clause (i) and sub-clause (iii). Insofar as sub-clause (ii) is concerned, it stipulates that a public servant is said to commit the offence of criminal misconduct if he, by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage. Thus, the ingredients which will be required to be proved are:

(1) The public servant has abused his position.

(2) By abusing that position, he has obtained for himself or for any other person any valuable thing or pecuniary advantage.

19. It was not even the case set up by the prosecution that the appellant had taken that money from some person and had obtained any pecuniary advantage



thereby. It was the obligation of the prosecution to satisfy the aforesaid mandatory ingredients which could implicate the appellant under the provisions of Section 13(1)(d)(ii). The attempt of the prosecution was to bring the case within the fold of sub-clause (ii) alleging that he misused his official position in issuing the certificate utterly fails as it is not even alleged in the charge-sheet and not even an iota of evidence is led as to what kind of pecuniary advantage was obtained by the appellant in issuing the said letter.

20. In *C. Chenga Reddy v. State of A.P.* [*C. Chenga Reddy v. State of A.P.*, (1996) 10 SCC 193 : 1996 SCC (Cri) 1205] , this Court held that even when codal violations were established and it was also proved that there were irregularities committed by allotting/awarding the work in violation of circulars, that by itself was not sufficient to prove that a criminal case was made out. The Court went on to hold: (SCC p. 207, para 22)

“22. On a careful consideration of the material on the record, we are of the opinion that though the prosecution has established that the appellants have committed not only codal violations but also irregularities by ignoring various circulars and departmental orders issued from time to time in the matter of allotment of work of jungle clearance on nomination basis and have committed departmental lapse yet, none of the circumstances relied upon by the prosecution are of any conclusive nature and all the circumstances put together do not lead to the irresistible conclusion that the said circumstances are compatible only with the hypothesis of the guilt of the appellants and wholly incompatible with their innocence. In *Abdulla Mohammed Pagarkar v. State (UT of Goa, Daman and Diu)* [*Abdulla Mohammed Pagarkar v. State (UT of Goa, Daman and Diu)*, (1980) 3 SCC 110 : 1980 SCC (Cri) 546] , under somewhat similar circumstances this Court opined that mere disregard of relevant provisions of the Financial Code as well as ordinary norms of procedural behaviour of government officials and contractors, without conclusively establishing,



beyond a reasonable doubt, the guilt of the officials and contractors concerned, may give rise to a strong suspicion but that cannot be held to establish the guilt of the accused. The established circumstances in this case also do not establish criminality of the appellants beyond the realm of suspicion and, in our opinion, the approach of the trial court and the High Court to the requirements of proof in relation to a criminal charge was not proper.

21. We, therefore, are of the opinion that the prosecution has miserably failed to prove the charge beyond reasonable doubt and the courts below have not looked into the matter in a proper perspective. We, thus, allow this appeal and set aside the conviction of the appellant. The appellant is already on bail. His bail bonds shall stand discharged.”

41. Having aforesaid guiding legal notes, it appears from the deposition of almost all prosecution witnesses that at the relevant point of time, the Telecommunication Department, Bihar Circle, Patna was divided in three area i.e. (i) North Area (Bhagalpur, Chapra, Muzaffarpur, Katihar, Darbhanga and Motihari); (ii) South Area (Dhanbad, Gaya, Hazaribagh, Ara, Ranchi, Jamshedpur and Sasaram); and Patna Area was consisting of only Patna Zone. After introducing electronic telephone in early 90's, requirement of repairing of Faulty Card, EPBT, Line Card, Control Card arose and for said repairing work, no tender was floated prior to the year 1992. It appears from deposition of prosecution



witnesses that for the first time, tender bearing Tender No. DTN/Faulty Cards/92 dated 07.11.1992 was floated for north area as mentioned above through **Exhibit '17'** where five tenderers were participated including M/s Fantasy and M/s Nalanda Telecom Services, but as the rate quoted by M/s Fantasy was the lowest through **Exhibit '17'**, the work order was given to M/s Fantasy for north circle only.

42. The approved rate for repairing various Cards through aforesaid tender was:

- I. Line Cards Rs. 1200/- each card
- ii. Control Cards Rs. 1200/- each card
- iii. Power Cards Rs. 1000/- each card

The service charge was exclusive of the price of the spares used in repair of C-DOT Cards.

43. After some time, M/s Nalanda Telecom Services, Patna requested to allot certain zones for repair work in north area with same approved rate as L-1, which was quoted by M/s Fantasy, same was considered favorably and work of Bhagalpur district (1 out of 7) districts as mentioned above, was allotted to M/s Nalanda Telecom Services on



23.04.1993, which is also **Exhibit-17**.

44. It appears from the testimony of witnesses that no ever tender was floated for south area and Patna area but number of agencies were involved in doing repairing work like M/s Sanjay Electronics, Patna, M/s Sharma Agro Engineering, Buxar, M/s Laxmi Electronics, Ara, M/s Ameer Consultant, Patna and M/s Fantasy, Maurya Lok, Patna etc. as per **Exhibit 11** and aforesaid facts appears affirmed from the testimony of PW-12 also.

45. An agreement with M/s Fantasy was executed with respect to Patna area on 25.03.1994, against same rate by the General Manager, Patna Area, as it was approved for north zone, as discussed aforesaid. This agreement was executed for Patna zone without tender. M/s Fantasy was also working in south area/zone against same rate as of north area.

46. Like earlier, on 29.07.1994, M/s Nalanda Telecom Services, Patna submitted an application before the authorities of south area regarding allotment of some work on the approved rate for north area. The noting on aforesaid



application was recorded by Sri Tileshwar Prajapati, AETC, Office of GMT, South Gaya as well as Ram Bharoshe Singh, Account Officer, GMT, South Gaya, which was accepted and recommended by R.P. Chakhariyar, TDE, Gaya (appellant) as per **Exhibit '2'**.

47. On the basis of aforesaid recommendation, Sri B.B. Rai (appellant) General Manager, South Area and ordered to execute an agreement with M/s Nalanda Telecom Services, Patna, which is **Exhibit '2'**. It was executed on 09.08.1994 against same rate as it was approved for South Area/zone in terms of **Exhibit '11'**. Consequently, a letter dated 09.08.1994 bearing letter No. GMT(S)/Tech/PC/4 dated 9th August, 1994 communicated to various officers under South Area like TDM-Jamshedpur, Gaya, Hazaribagh, Dhanbad, Ara at Bhojpur, Sasaram etc. to avail services of M/s Nalanda Telecom Services, Patna for repairing work. The rate of North Area tender was approved by the Senior Tender Committee of the Chief General Manager, DOT, Bihar, Patna. It transpires from the testimony of prosecution witnesses that on 07.09.1994, the agreement dated 09.08.1994 was stayed



by Chief General Manager, Bihar Circle, Patna as executed aforesaid with M/s Nalanda Telecom on the allegation that M/s Nalanda Telecom Services do not have sufficient and up-to-date infrastructure as to do the required repairing work. Consequent upon, M/s Nalanda Telecom Services through its proprietor Md. Parwez Ahmad (appellant herein) submitted application and requested for verification and inspection of his premises and service centre, which was inspected by the Vigilance Officer of DOT, Bihar, Patna where allegations were found incorrect. Resultantly, the ban, as imposed aforesaid, was withdrawn on 09.01.1995 by the Chief General Manager, Telecom, Bihar Circle as imposed earlier vide its order dated 07.09.1994 as mentioned aforesaid, and, accordingly, the intimation for withdrawal of ban was given to all districts falls under the jurisdiction of south zone. The withdrawal of ban completely transpires from the testimony of PW-11 as discussed aforesaid. It also appears from testimony of PW-12 that repairing work of faulty cards and EPBT sets were carried out by several agencies besides M/s Nalanda Telecom Services, like M/s Sharma Agro Industries, Buxar; M/s Laxmi



Electronics, Sheetal Tola, Ara; M/s Amee Consultancy, Patna and M/s Sanjay Electronics, Gardanibagh, Patna. It transpires from the deposition of PW-4 that the work of M/s Nalanda Telecom Services was found satisfactory and only thereafter bill raised by M/s Nalanda Telecom Services was passed and for said work and payment made there, audit never raised any objection. Same fact was also testified by PW-5 regarding satisfactory work performed by M/s Nalanda Telecom Services, Patna.

48. The calyx of allegation *qua* cheating and defalcation appears based upon **Exhibit '15'** which is the rate quoted by ITI Mankapur, Lucknow. It appears out of allegation that M/s Nalanda Telecom Services charged extra money for the spare parts, whereas the price of spare parts was inclusive in the repairing charge itself. But, from perusal of **Exhibit '15'** it transpires that same is silent regarding cost of spare parts and, therefore, merely on this ground, it cannot be said that the rate quoted by M/s Nalanda Telecom Services, Patna was on higher side or had any fraudulent intention under conspiracy with other accused-appellants.



49. In support of the aforesaid findings, **Exhibit '11'** also appears important, which reveals that M/s Fantassy; M/s Sharma Agro Industries, Buxar; M/s Laxmi Electronics, Sheetal Tola, Ara; M/s Ameer Consultancy, Patna; M/s Sanjay Electronics, Gardanibagh, Patna charged additional amount for spare parts. Similarly, the rate of north area and south area, as quoted by M/s Nalanda Telecom Services, Patna was exactly same and, therefore, the charge cannot be said a hidden charge as it was paid to others and no additional amount was ever charged by M/s Nalanda Telecom Services, Patna above the approved rate.

50. It appears that finding of learned trial court through impugned judgment *qua* extra charge is merely on the basis of presumption by ignoring all such aforesaid facts. **Exhibit '11'** appears completely overlooked by the learned trial court as the rate of M/s Fantassy was approved through tender and for same rate M/s Nalanda Telecom Services, Patna was allowed to work for one district in north division i.e. Bhagalpur and also the districts falling under the south zone, therefore, there was no concealment *qua* rate.



51. The question of wrongful loss also appears not convincing as with same rate, number of agencies were paid by the department even without entering into the agreement, therefore, it cannot be said that the appellants were under dishonest intention and under conspiracy paid anything on higher side to M/s Nalanda Telecom Services, Patna, as alleged.

52. In view of the aforesaid discussion, it also transpires that no offence under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1985, appears to be made out against the appellants as the payment was made in furtherance with agreement which was signed on 08.08.1994. Though, it was put on hold vide order dated 07.09.1994, but after vigilance verification, same was withdrawn vide order dated 06.01.1995 and, thereafter, finding the bill genuine, the payment was made to the M/s Nalanda Telecom Services, Patna. All these facts get its affirmative strength out of testimony of PW-29 also.

53. Therefore, the aforesaid factual aspects of this case do not suggest criminality of the appellants beyond the



realm of suspicion and, thus, in the opinion of this Court, the approach of the learned trial court to the requirements of proof in relation to a criminal charge, was not proper. Hence, this Court is of the view that prosecution failed to prove the charge beyond reasonable doubt as the learned trial court failed to look into the matter in proper perspective, as discussed aforesaid.

54. Hence, all these three appeals stand allowed.

55. Accordingly, the impugned judgment of conviction and order of sentence dated 19.09.2023 passed by learned Special Judge, CBI- 1st, Civil Court, Patna in connection with Special Case No. 16 of 2018, RC No. 06(A)/1996, CIS No. 3428/2014, is quashed and set aside.

56. Resultantly, the appellants/convicts namely, Parvez Ahmad (in Cr. Appeal (SJ) No. 4327 of 2023), Braj Bhushan Rai @ B.B. Rai @ Brij Bhushan Rai (appellant in Cr. Appeal (SJ) No. 4461 of 2023) and Ramapati Chakhaiyar (appellant in Cr. Appeal (SJ) No. 4472 of 2023) are acquitted of the charges leveled against them by the learned trial court. They are directed to be released forthwith, if their presence



are not required in any other case. Fine, if any paid, be returned to appellants immediately.

57. Let a copy of this judgment alongwith the Trial Court Records be sent to the learned Trial Court forthwith.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.12.2024
Transmission Date	17.12.2024

