Sr. No. 2

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Pronounced on : 25.09.2024

Case No: CRA No. 10/2013
c/w
CRA No. 11/2013
IA No. 18/2013
CRA No. 12/2013
IA No. 19/2023
CrlM No. 1809/2022

CRA No. 10/2013 :

Param Satbir Singh (Age 52 years),
S/o Sujan Singh,
R/o Ward No.1,
Tehsil & District Kathua,
Presently lodged at
District Jail, Amphala, Jammu.

CRA No. 11/2013 :

P.N.Koul, aged 72 years,
S/o Late Damodar Koul,
R/o 62-C MIG Flats,
Pkt.-6 Mayur Vihar, Phase- III, Delhi.

CRA No. 12/2013 :

Smt. Urmila Devi, age 55 years,
W/o Sh. Vinod Kumar R/o Ward No. 2,
Chhatri Ka Pura, Morena (M.P) at present
lodged in District Jail Ambphalla, Jammu. ...Appellant(s)..

Through :- Mr. Sunil Sethi, Sr. Advocate with
Mr. Waheed Choudhary, Advocate in
CRA No. 10/2013.
Mr. P.N.Goja, Sr. Advocate with
Mr. B.K.Bhat, Advocate &
Mr. Abhinav Jamwal, Advocate in
CRA No. 11/2013.
Mr. R.K.Bhatia, Advocate in
CRA No. 12/2013.

Vs

State through
Central Bureau of Investigation,
Jammu. ...Respondent(s)..

Through :- Ms. Monika Kohli, Sr. AAG.

Coram: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

1. Three separate appeals stand filed against the judgment dated 14.02.2013, passed by the court of learned Special Judge Anti-corruption (CBI cases) J&K, Jammu, whereby the appellants, P.N.Koul, Smt. Urmila Devi and

Param Satbir Singh, in the appeals stand convicted for offences under Section 5 (2) read with 5 (1) (d) PC Act Svt. 2006 and Sections 120-B read with 419, 420, 468 & 471 RPC and each of the appellants has been sentenced to undergo simple imprisonment for one year and a fine of Rs.50,000/- each. The fine was to be recovered from the estates of the appellants unless deposited within one month. The charge sheet was presented by the respondent-CBI against six accused in RC 7A 2000 Jammu. The accused-Randhir Singh Pathania was acquitted of the charges framed against him. The accused-Swaran Singh died during the pendency of the trial. The accused-Darshan Singh during the course of trial confessed the charges framed against him and was convicted for offences under Section 120-B read with Sections 419, 420, 468 and 471 RPC and sentenced for the period as mentioned in the order dated 04.04.2009. All the appeals are heard together and being disposed of as the appeals arise out of the same judgment. The appellants are referred to as accused in the judgment for the purposes of discussion.

2. The case was registered by the respondent initially under Section 5 (2) read with 5 (1) (d) of the J&K PC Act, Section 120-B read with Sections 419, 420, 468 and 471 RPC after information was received from a reliable source regarding the fake Insurance Policy issued by the officials of LIC and the benefit that purportedly was given in pursuance to the Policy. The Insurance Policy bearing no. 140792833 issued from LIC Branch, Kathua allegedly in the name of non-entity-Puran Singh on 28.05.1998 and the claim made by the appellant-convict Smt. Urmila Devi on the basis of said Insurance Policy and which was also realized had its consequences as it came to light later on that the Insurance Policy, the claim put-forth on the said Policy and the cheque issued as Insurance Claim were part of conspiracy mainly through the accused, Darshan Singh and Urmila Devi. The death of Puran Singh in a rocket launcher attack, who was non-existing person and on whose name the Policy was prepared was the

reason to seek claim by the beneficiary of the Insurance Policy. The said Puran Singh was not found to be army personnel on the basis of which the insurance claim was sought to be realised on behalf of the beneficiary of the Insurance Policy. The investigation revealed that Puran Singh was only a fictitious policy holder of which the fruits were realized allegedly by the accused Urmila Devi and Darshan Singh in connivance with the other accused against whom the challan was presented in the court of law.

3. The case set up by the prosecution was that LIC agent Swaran Singh, accused, who expired during the course of trial submitted proposal for insurance in the name of non-existing person Puran Singh with the attestation from accused R.S.Pathania, the Development Officer. The particulars of the said Puran Singh were mentioned as son of late Dev Singh R/o H.No. 47, Ward No.5, Chhatri Kapura, Subash Nagar Morena (M.P). The accused Urmila Devi was mentioned as nominee and related as mother of the said Puran Singh. The insurance was for Rs.50,000/- under Plan and Term 88-25 being Double Risk Policy. The premium was deposited for the Policy with back date 28.05.1998, which could be done in view of the nature of the Policy. The documents enclosed with the proposal form were fraudulent. The Form No. 3777 of LIC was signed at four places by the employer of the said Puran Singh and attested by the accused-Swaran Singh and it was admitted by the accused Darshan Singh during the course of investigation that the signatures on the form were of non-existent entity. The accused Param Satbir Singh, Head Grade Assistant in LIC Branch, Kathua had processed the proposal and accepted the same though it is alleged that he was not competent to do so for Double Risk Policy exceeding Rs.25,000/- and thus the Policy was fraudulently issued by LIC Branch, Kathua. The accused Darshan Singh issued communication on 02.12.1998 though in the name of accused Urmila Devi and informed the Insurance Company that Puran Singh had died in the operational area of Assam on 22.10.1998. The signatures of

Urmila Devi were forged by the accused Darshan Singh. On the completion of the formalities, claim papers were sent by the LIC Branch, Kathua to the accused Urmila Devi at the Morena address. The documents which purported to have writing/signatures of Urmila Devi and provided to the LIC for claim were allegedly signed by the accused-Darshan Singh. The investigation also reveals that the Border Roads Organisation has no Unit under the name of BRC in Assam or elsewhere. The documents claim to be issued by the Unit of Puran Singh were all fictitious. The accused-P.N.Koul is alleged to have dispensed with the necessary requirement of investigation in the admitted early death claim as the insured was army personnel and had died while on duty. The death claim was sanctioned by the competent authority vide letter dated 30.10.1999 and PNB cheque bearing No. 802439 dated 25.11.1999 was issued for Rs. 102530/- by LIC Kathua. The cheque was sent to the accused Urmila Devi by post on the address given of Morena (M.P) and it was also delivered to her on 11.12.1999. The accused Darshan Singh realised the cheque fraudulently on the name of the accused Urmila Devi and credited in the Account No. 1182 of said Urmila Devi after the accused presented the cheque in the aforesaid account of Urmila Devi. The amount of Rs.55000/- from the aforesaid account was withdrawn on 22.01.2000 on the signatures of Urmila Devi. The other amount was also withdrawn from the account of the accused Urmila Devi after the cheque amount was credited in her account. The handwriting experts also gave their opinion regarding the signatures of the accused Darshan Singh on various documents relating to the Policy obtained in the name of Puran Singh. The investigation culminated into the presentation of challan against the accused mentioned in it for offences under various sections of PC Act and the RPC. The accused denied the charges and claimed trial.

4. The prosecution had produced number of witnesses in support of its case. The accused Darshan Singh, who was alleged to be mastermind of

forging the documents pertaining to the Insurance Policy and Claim confessed the charges framed against him and also sentenced for the same as mentioned above. It may also be mentioned herein that the accused Urmila Devi who is alleged to be partner of crime with the accused Darshan Singh has neither stated to have filled Form No.3777 which is required to be filled by an Army Personnel for obtaining Insurance Policy nor a signatory to the same. Darshan Singh is stated to have filled the Form.

5. Before proceeding further in the case, it is profitable to note the prosecution evidence.

6. PW-1 Moti Lal Dhar was posted as A.O (Claims) Divisional Office, LIC Building, Jammu. His deposition is general in nature and is not related to the case as such. The witness has not handled the early death claim cases. He has not gone through the manual regarding claims investigation.

7. PW-2 Radhey Sham was posted as Manager (Claims) Divisional Office, LIC, Jammu, He has stated that the Policy could be issued on the submission of proposal form and deposit of premium in respect of the Policy. Form No. 3777 is required to be obtained by army personnel for obtaining Insurance Policy along with other documents. The early claim arises where the death of insured takes place within two years of the issuance of Policy Bond and the death occurring within two to three months of issuance of Policy is treated as very early claim. HGA was authorised to accept policy up to maximum limited of Rs.50,000/-. As per the witness, the agent identifies the proposal and certifies about his identity and income. He had produced the file pertaining to Insurance Policy No. 140792833 and the seizure memo is marked as EXP-RSC. In cross-examination, he has stated that according to claim investigation manual the investigation could be waived when the insured had died in an accident at public place or an FIR has been recorded in this regard. Investigation is imperative where the death has occurred within one year

of the issuance of policy and the investigation is to be ordered by Senior Divisional Manager. The witness is unable to identify the author of note dated 20.10.1999 marked as EXP-SL. The witness has not handled the present case.

8. PW-3 R.R.Dhar was posted as Senior Manager, Punjab National Bank, Kathua and is unable to state as to whether the cheque marked as EXT-P1/4 of Rs. 102530/- issued in the name of Urmila Devi by State Bank of India, Morena, Indore in respect of Account No. LIC-4 was received in Kathua Branch of PNB for clearance. It was necessary for the clearance Branch to see that the person who had produced the cheque was the account holder and the particulars mentioned therein matched with the particulars of the account holder.

9. PW-4 Pardeep Dhawan was posted as Account/Assistant Manager in Industrial Area Branch of SBI, Kathua. As per the witness, the cheque bearing No.802439 dated 25.11.1999 was received in the Bank from SBI, Morena Branch in favour of Urmila Devi W/o Late Puran Singh. The cheque is marked as PD. The witness was not posted in Industrial Area Branch at the time of clearance of the cheque and has no personal knowledge of clearance of the cheque.

10. PW-5 R.K.Bhat then AAO LIC Branch, Kathua has deposed that he had not met Swaran Singh, who was working as agent at Kathua. Accused Param Satbir Singh was the Head Grade Assistant and accused R.S.Pathania was the Development Officer of Kathua at that time. HGA was authorised to issue Jeevan Shree Policy of amount not exceeding Rs.25000/- in the year 1999-2000. He was familiar with the writings of both the accused persons. The witness identifies the signatures of R.S.Pathania on From No. 3801 annexed with Policy No. 140792833 and who had also identified the claimant and had also signed the Form as attesting person. The signatures were marked EXP-RKB. The payment was made through cheque. The accused Param Satbir Singh has accepted

the proposal with an endorsement remarks "Accepted" on Form No. 3104 and is marked as EXP-RKB/1. The document indicated that Policy had been issued for 25 years on ordinary rate and had covered accident benefits. The Proposal Form 300 was filled by the proposer Puran Singh from back date of 28.05.1998 which was permissible under rules. As per the witness, the death claims filed within three years of the issuance of Policy are required to be investigated. The witness has identified the signatures of AAO with official seal on the original Policy and is marked as A. The copies of two extracts from dispatch register regarding sending of cheque by registered post are marked as EXP-RKB/2 and EXP-RKB/3. In cross-examination, the witness has stated that he had not read the claim investigation manual. He cannot identify the writings of accused P.N.Koul though he could identify the signatures of accused Param Satbir Singh on EXP-RKB/1. The particulars of customer were to be verified by the LIC agent. The witness was not shown the original dispatch register and cannot say who was the author of the entries in the register nor about the A.D of the registered letter containing the cheque. The role of accused R.S.Pathania was limited to identification of claimant. He was not sure that the signatures on Form No. 3801 were those of accused R.S.Pathania.

11. PW-6 Nagarmal, Branch Manager LIC Unit No. 3, Jammu has deposed of formality of filling Form No. 3777 and the formalities connected to the same with regard to Insurance Policy to be obtained by army personnel. The investigation was necessary if the Policy Holder dies shortly after he obtained Policy though the investigation could be waived by the competent authority. Double natural risk cover was available under LIC claim No. 88-25. He has also identifies the endorsement and signatures of accused Param Satbir Singh on the Policy marked as EXP-RKB/1. The witness is unaware of the fact if the accused Param Satbir Singh was competent to accept the Policy. In cross-examination, the witness has, however, deposed that as Param Satbir Singh did not work with him he

could not identify his writing as well as the signatures. He had also not worked with the accused P.N.Koul. The witness has further deposed that he has not gone through claims manual.

12. PW-7 B.D.Gupta, Manager (Claims) D.O.Cell LIC Rail Head Complex, Jammu has deposed that full particulars of insured Puran Singh were mentioned in proposal form of Policy No. 140792833. The witness has worked with accused R.S.Pathania and Param Satbir Singh and identifies the handwriting of R.S.Pathania on top of the proposal form. The name of Suram Singh as agent with Code No. 560 is also mentioned. The Policy was valued at Rs.50,000/- and the nominee was shown as Smt. Urmila Devi mother of the deceased in the proposal form, which was accepted by accused Param Satbir Singh. The witness identifies the handwriting and signatures of Param Satbir Singh on EXP-RKB/1. In case of accidental death, three times the insurance sum was payable as benefit arising out of the Policy. The accused Param Satbir Singh could accept the Policy only within the limit of Rs.25000/- and it is as per the Rules mentioned in the financial powers of LIC Officers. The investigation was required to be conducted by the Insurance Company if the death of insured occurs within two years of acceptance of Policy though it could be waived of up to a sum of Rs.20000/- at that time. In cross-examination the witness states that as per para 25 Chapter 22 of the manual, no investigation was required if the insurance amount was up to Rs.20000/-. The amount is, however, not specified in the said para of the manual. The proposal form was complete though could be accepted only by senior officer. Policy Bond in file marked A bears the name of AAO as Deepak Chawla and thus shows acceptance of proposal. He is not aware of the documents furnished by accused Urmila Devi at the time of obtaining of the claim.

13. PW-8 Sham Lal, Administrative Officer LIC Branch, Rail Head Complex, Jammu has stated that he had examined the documents pertaining to the claim arising of death of Puran Singh. The form had

been handled by agent with Code No. 560-13J and the form had signatures of insured which was deposited on 10.08.1998. The proposal was accepted by P.Singh HGA Assistant as recorded on the form. He was not aware of financial limit of HGA Assistant. The Policy was for Rs.50000/- having double risk cover with Rs.1 lac and Rs.1.50 lac as benefit in case of natural or accident death respectively along with bonus. As per the letter intimating death of Puran Singh, it was an accidental one in a rocket launcher attack on 22.10.1998. As the documents submitted for claim were complete there was no requirement of filing of FIR. The claim was sanctioned in favour of accused Urmila Devi in terms of the order passed on the margin of the file by Mr. Koul and also having his signatures on the same. It is marked as EXP-SL/1 on page No. 51 of the file marked as A. The witness has also identified his signatures on the note exhibited as EXP-SL. As it was not accidental death, nominee received the ordinary claim. Mr. Koul was required to get the case investigated as the death had taken place within one year of issuance of Insurance Policy. The investigation was waived of in the present case. In cross-examination, the witness states that he has not read the claim investigation manual nor the investigation having been conducted in such like cases. The witness had made mention of Article 25 of the manual in the note but was informed by P.N.Koul that investigation could be dispensed with. The witness has not himself gone through Article 25 of the manual. He has not mentioned in the note of the accused P.N.Koul having informed of dispensing with of investigation under Article 25 of the manual. The witness has also deposed of the particulars as mentioned in the proposal form of Puran Singh and Urmila Devi. Infact the witness has also deposed that he cannot say of the claim manual. He has no specialisation regarding such claim cases.

14. PW-9 Mohinder Lal was posted as Head Grade Assistant LIC Branch Office, Kathua and has deposed that whereas non-early claims were

processed and sanctioned at the Branch Level, the early claims were taken care of at the Head Office. The claims arising out of death of insured within three years of the Policy are termed as "Early Claims". The investigation was must if the death of insured takes place within three years of Policy. He knew accused Swaran Singh, agent. The note EXT-P2/1 on file marked A is in his handwriting and his note on the file is marked as ML. The note was written by him on telephonic instructions from Head Office. The note was written by him on the basis of documents and the practice which was in vogue but the note regarding waiving of investigation was as per telephonic instructions received from Manager (Claims). P.N.Koul had not cited any rule or clause for waiving of investigation. The witness could not identify signatures of Manager (Claims) on the letter marked as A/1, which was written to Senior Branch Manager, Kathua. In cross-examination, the witness has stated that Form 3801 required attestation only when the claimant puts his thumb impression on the Form. The accused Urmila Devi had put her signatures on the Form. He has not gone through the investigation manual. The note was written on the advice of A.O B.L.Bhat. He cannot identify the signatures of P.N.Koul though worked with him. He did not find it necessary to obtain written order from Manager (Claims) with regard to waiving of the investigation in the present case.

15. PW-10 Brij Lal Bhat then posted as AEO LIC Office, Kathua has deposed of the manner in which early claims were required to be investigated by the Divisional Office. The Policy Proposal No. 1764 was deposited with accused Pathania, who was working as Development Officer. He was not aware of the financial powers of Officers. The file was complete in all respects when it reached him. The claim was accepted vide note marked as EXP-SL/1 and sanction letter marked as EXP-SL/1 was prepared after letter marked A1 with the file reached him. HGA Mohinder Lal prepared the payment voucher. The witness had passed the

claim of Rs.102530/- in favour of Urmila Devi. The witness identifies signatures of Mohinder Lal and his own at B&C on the document. In cross-examination, the witness has stated that attestation was required as Urmila Devi had signed the Form 3801 in Hindi though this formality was not provided in any Rule. He is not aware of Article 25 of the manual. Note EXT-P2/1 on file marked A was placed before him and he put his signatures after going through the same, which mentioned of telephonic conversation received by PW-Mohinder Lal. The note is in the handwriting of PW-Mohinder Lal and also having signatures at the bottom. The witness could not identify the handwriting EXP-SL and EXT-SL/1.

16. PW-11 N.K.Sharma then AAO LIC Branch, Kathua was dealing with Account Section. As per the witness, claim vouchers were issued by PW-B.L.Bhat then Administrative Officer. The witness has identified his signatures on the cheque marked as EXT-P14 which was issued in the name of Urmila Devi W/o Late Puran Singh for Rs.102530/-. The witness had identified the signatures of B.L.Bhat on the vouchers. The cheque was issued in Policy issued under Plan No. 88-25. In cross-examination, the witness has deposed that the claim voucher has been prepared in Kathua Branch itself does not know who had prepared the cheque in Claims Section. Had he known that there is any discrepancy in the cheque that in cheque nominee has been mentioned as wife of Policy Holder though recorded as mother of Policy Holder in the Policy document he would have returned the matter to Claims Section. The file was sent along with claim voucher to Account Section to cheque the record, if necessary. It was for the concerned clerk to cheque the record. The officer was to sign the cheque after examining the voucher and the cheque.

17. PW-12 Satish Choudhary then Head Grade Assistant, LIC Branch Office, Kathua has identified the signatures of agent Swaran Singh on the application for his appointment as agent. The agent was identified by

R.S.Pathania as mentioned in the Form. Swaran Singh was appointed on 29.07.1992 and terminated vide order dated 12.10.2001. As per the witness, Swaran Singh has since died.

18. The statements of PW-13 B.S.Karkhur, PW-14 Ramesh Waygonkar, PW-15 N.C.Singhai and PW-16 Ishwar Lal Nagrani, who were posted in Morena Branch of SBI shall be referred to at appropriate stage of the discussion.
19. PW-17 Hemant Singh @ Vivek Karkhur was given up by the prosecution.
20. PW-18 Anupam Chattopadhayay had only furnished the reply on the basis of record to the queries from CBI and as per the record the name of Puran Singh did not exist in the records of Unit 1999 which did not exist.
21. PW-19 Gursharan Kaur @ Inderjit Kaur was not examined during trial.
22. PW-20 Vinay Mahajan and PW-21 G.N.Jatley are witness to the search conducted at Nehru Nagar Pathankot and memo prepared of the search exhibited as EXT-P16. PW-22 Cherian Abraham was not examined during trial.
23. PW-23 Rajinder Singh Chauhan had witnessed obtaining of specimen writing and signatures of accused Darshan Singh by Dy.S.P Sharma and the signatures of the witness are exhibited as EXT-PRC/1 to EXT-PRC/18 on the specimen signatures marked S9 to S26.
24. PW-24 V.R.Potdar is also witness to the specimen signatures obtained of accused Darshan Singh marked S1 to S8 and the signature of witness on exhibits are EXT-PVRP-1 to EXT-PVRP-8.
25. PW-25 R.Madhusudan is also witness to the specimen handwriting obtained of accused Darshan Singh and marked as S27 to S36 and S44 to S134 and the signatures of the witness on the same as EXT-PRM/1 to EXT-PRM/100.
26. PW-26 Krishan Lal Godiya posted as Post Master at Morena Post Office has deposed that M.M.Kataria was his Assistant Post Master and could identify his writing and signature. Ram Ji Lal Rajouria was posted as

Postman at the relevant time. The witness has identified the signatures of M.M.Kataria along with seal on letter dated 19.10.2001 and marked as EXT-P/19. The delivery slip was with regard to item No. 333 and article was delivered to Urmila Devi. The entry having signatures of Postman Ram Ji Lal is marked as EXT-P19/1. The witness has stated that the office which delivers the post retains the copy of receipt book as being the only record in respect of registered letters. House Number and the name of husband of Urmila Devi was recorded in the delivery slip but ward number was not mentioned. The letter EXT-P19 also mentions the ward number.

27. PW-27 B.A.Vaid has examined the writings and signatures of accused Darshan Singh and given his report and the same are exhibited as EXT-P27/19 and EXT-P27/20.

28. PW-28 Sachindra Sharma then posted as Divisional Manager Incharge LIC Srinagar Division has accorded sanction for prosecution of accused R.S.Pathania. The order is marked as EXT-P24. He had not worked with R.S.Pathania.

29. PW-29 M.M.Mukherjee had given sanction for prosecution of accused Param Satbir Singh and bears his signatures and is marked as EXT-P29/1. The sanction was forwarded to S.P. CBI vide letter marked EXT-P29/2. As per the witness, Head Grade Assistant could under write a Policy up to value of Rs.25000/-. He has not mentioned the Rule with regard to financial powers of H.G Assistant or Administrative Officer, which keep on changing.

30. PW-30 Vijay Sadhoo and PW-31 Khalid Beigh from CBI have not been examined.

31. PW-32 V.P.Sharma has investigated the case. His statement shall be referred to as and where required during the course of discussion.

32. On the closure of prosecution evidence, the statements of the accused under Section 342 Cr.P.C were recorded. The accused denied the prosecution evidence. They did not produce any evidence in defence.
33. Learned counsel for both the sides have advanced arguments in the matter.
34. The learned counsels appearing for the accused have submitted that the prosecution has failed to produce the evidence against the accused in a convincing manner. The learned trial court has held the accused guilty more on assumptions than reliable evidence produced by the prosecution against the accused.
35. Ms. Monika Kohli, learned Senior Additional Advocate General has submitted that the trial court has relied upon the evidence after thoroughly going through the same. The conviction is based upon the evidence which is reliable and unflinching.
36. The court while discussing the appeals will focus mainly on the points which are urged by the counsels for the respective accused and skip certain piece of evidence which is otherwise not controverted by the counsels.
37. The Insurance Policy approved of Puran Singh with accused Urmila Devi as nominee and subsequently the claim arising out of the said Policy due to the death of Puran Singh and also the claim released have brought the case against the accused as the Insurance Policy and the claim raised and realized were found to be fictitious one. The acceptance of the Form in question was by accused Param Satbir Singh is proved by the evidence brought on record by the prosecution. The proposal form accepted by accused is exhibited as EXP-RKB/1. The Policy was issued and is marked as ‘A’ in the file mark ‘A’.
38. Mr. Sunil Sethi, learned Senior counsel appearing for the accused Param Satbir Singh has argued that the learned trial court has held the accused guilty when there was no credible evidence qua the powers used by the

said accused while accepting the proposal form. The trial court has in view of the conflicting statements given by the prosecution witnesses qua the powers of the HGA has erred in holding that the accused exceeded the limit required for accepting the proposal form though there is no conspiracy either proved against the accused while accepting the proposal form. The other side has contended that the trial court has held the accused guilty after assessing the statements of witnesses where they have deposed that the accused Param Satbir Singh could not accept the proposal form when the limit of the Policy had exceeded Rs.20,000/-.

39. As far as the accused Param Satbir Singh is concerned, the allegation against the accused is that the accused had accepted the proposal for LIC Policy under 'Jeevan Mitra' plan for Rs.50,000/- though he was competent to accept Policy with an upper limit of Rs.25,000/-. The Policy has been issued in favour of Puran Singh, who was later on found to be a fictitious person after the whole transaction had already taken place and the benefit arising out of the Policy on account of death of Puran Singh had already been granted. The Policy was issued as a result of forged signatures on the proposal form by the accused Darshan Singh. The accusation against the accused Param Satbir Singh does not travel beyond the alleged transgressing the financial powers with which he was invested with being HGA. The trial court has relied upon the statements of some of the prosecution witnesses, who are from LIC and had allegedly mentioned in their depositions that the accused was not authorised to issue the Policy beyond limit of Rs.20,000/- though the Policy was issued for Rs.50,000/-. It is very relevant to mention herein that no documentary proof was placed on record during trial by the prosecution in order to cement its case that the position which the accused Param Satbir Singh was holding as HGA at the time of acceptance of Policy was not authorised to accept such Policy. In other words, the financial powers which were bestowed upon the LIC officials, who are accused in the case,

were not placed on record by the prosecution. The trial court has relied upon the oral evidence with regard to the allegations levelled against accused Param Satbir Singh. As the Policy was obtained in the name of Puran Singh who was stated to be an army personnel the Proposal Form No. 3777 was required to be filled by the proposed insured in order to obtain the Policy to be issued by the LIC. PW-Moti Lal Dhar has only stated that the Policy Form could be filled by the insured or also through an agent. PW-Radhey Sham has deposed that HGA could accept Policy up to maximum limit of Rs.50,000/- or in other words he has approved that the accused Param Satbir Singh did not exceed his powers by accepting the proposal. PW-R.K.Bhat has deposed of the accused Param Satbir Singh being Head Grade Assistant in LIC Branch Office, Kathua and that HGA could issue the Policy not exceeding Rs.25,000/- in the year 1999-2000. The witness has stated that the accused Param Satbir Singh had accepted the proposal as revealed from his signatures with endorsement 'accepted' on Form 3104 and the entry has been marked as EXP-RKB/1. PW-Nagarmal is not aware whether the accused Param Satbir Singh was competent enough to accept the Policy issued in favour of Puran Singh. PW-7 B.D.Gupta like PW-R.K.Bhat has also deposed that the accused Param Satbir Singh could not accept the Policy as his limit for acceptance of Policy was only Rs.25,000/-. This witness has also not seen the financial powers which were given to the HGA. The witness has also deposed that the financial powers of officers keeping on changing and that the proposal form in question could be accepted by senior officer of the company. PW-Sham Lal, Administrative Officer, who also dealt with the claims, has not deposed to the effect that the accused Param Satbir Singh was not competent to accept the proposal form. Infact he has only stated that the proposal was accepted by P.Singh, HGA as mentioned on the form. The witness is candid enough in stating in his deposition that he was not aware of financial limits of Head Grade

Assistant. It is evident from the statement of this witness also that the witness may be stating of the competency to accept the proposal form by senior officers of the company but without knowing as to whether the competency to accept the proposal form before issuance of Policy was with the accused Param Satbir Singh who was HGA at the relevant point of time. The statements of above mentioned witnesses do not prove the factum of the accused Param Satbir Singh being not vested with power qua the Policy issued in the name of Puran Singh as none of them had even knowledge of the financial powers of Head Grade Assistant at the relevant point of time. PW-V.P.Sharma, the Investigating Officer in the case, has casually mentioned in his statement recorded before the court that the accused Param Satbir Singh was not having financial powers with regard to the Policy in question. It was the duty of the Investigating Officer to obtain the rules and regulations of the insurance company regarding the financial powers of the officials of the company in order to ensure himself that HGA Param Satbir Singh had transgressed the financial limits while dealing with the insurance documents of Puran Singh. The learned trial court while holding the accused Param Satbir Singh guilty of the charge levelled against him has relied upon the statements of the witnesses of which the mention is made by this court above. The court is not convinced with the reasoning given by the trial court to hold the accused guilty on the basis of the oral statements of some of the prosecution witnesses from the LIC who had deposed that HGA had limits up to Rs.25,000/- to accept the proposal for the Policy. In the absence of any document on record regarding the financial powers which the LIC official could exercise and even the prosecution witnesses not having gone through the financial powers of the HGA or any other official of the LIC, the trial court erred in holding the accused Param Satbir Singh guilty of the charges levelled against him. The accused Param Satbir Singh has been held to be co-conspirator with other accused

only for the reason that the accused Param Satbir Singh had transgressed his financial limits by accepting the Policy of Rs.50,000/- to which he was not authorised to deal with. The alleged fictitious information given in the proposal form by the accused Darshan Singh cannot be linked to the accused Param Satbir Singh only for the reason that the said accused had accepted the same allegedly because of exceeding the quantum of Policy amount. The accused Param Satbir Singh has neither identified the person to be insured nor is concerned with the other details given in the proposal form which came to be accepted by the accused Param Satbir Singh. The initial formalities which were required to be filled in the proposal form were either to be seen by the accused Swaran Singh LIC agent (who died during the trial) or the accused R.S.Pathania who had attested the Form. It cannot be remotely held that the accused Param Satbir Singh had conspired with the co-accused while accepting the proposal form. The accused cannot be held guilty on surmises and the proof regarding the complicity of the accused has to be based upon credible evidence to be produced by the prosecution which in the present case the prosecution had failed to produce and the trial court also failed to marshal the evidence in its right perspective qua the accused Param Satbir Singh. It is also to be noted that the Policy marked as A bears the signature of Deepak Chawla AAO as per PW-7 B.D.Gupta from LIC. Even if the proposal form is accepted by the accused Param Satbir Singh, the Policy was not issued by him but by Deepak Chawla who could have also verified and refused the issuance of Policy on the basis that the HGA was not competent to accept the proposal form but the same has not happened. The court even if presumes for the sake of argument that the accused accepted the proposal form beyond his financial limits even then the act of the accused cannot said to fall within the realm of Section 5 (2) of the PC Act. At the most, it can be a mere act of negligence or mistake on the part of the accused Param Satbir Singh and nothing more. It is not

revealed from the evidence that when the Policy was issued in favour of Puran Singh who was later found to be non-existent entity, the accused had known that the Policy will be utilized to reap undue benefit for the nominee in the Policy. The criminal misconduct on the part of the accused Param Satbir Singh or that he conspired with the co-accused in any manner for eventually causing any benefit to the non-existent entity while accepting the Policy Form is not proved. No corrupt or illegal means are employed by the accused so as to corner him for causing pecuniary benefit to beneficiary. As some benefit enured to the nominee of Policy later on without any evidence implicating the accused of acceptance of Policy knowingly that his acceptance was with a view of ensuring Policy benefit in future illegally, the accused cannot be blamed of any wrong doing. The finding of the learned trial court convicting the accused Param Satbir Singh for commission of offences in which he has been charged is held to be not sustainable. The accused Param Satbir Singh is acquitted of the charges framed against him.

40. The accusation against the accused P.N.Koul is that the accused on submission of the claim for the Policy issued earlier in the name of fictitious identity Puran Singh was required to investigate the claim put forward in pursuance to the alleged death of the insured but the accused did not follow the mandatory procedure of investigation of the death claim which ultimately resulted into sanctioning of the amount in favour of the co-accused Urmila Devi.

41. Mr. P.N.Goja, learned Senior counsel appearing for accused P.N.Koul has argued that the claim put forward in the Insurance Policy in question was not required to be mandatorily investigated. The manual on the subject itself clarifies the aforesaid position. In the absence of positive requirement to investigate the death claim brought before the accused it was wrong on the part of the trial court to hold the accused of not following the procedure in the claim brought before him. It is also

pleaded that the trial court has relied upon the evidence which had no value in the eyes of law more so when there was no documentary proof that the accused P.N.Koul had passed any written instructions on the basis of which the note was prepared by PW-Manohar Lal indicating that it was the accused P.N.Koul on whose directions the investigation was dispensed with. There is absolutely no evidence on record, direct or indirect, to even suggest that the accused P.N.Koul had conspired with the co-accused in dispensing with the investigation of the claim filed in pursuance to the Policy earlier issued in favour of Puran Singh.

42. Ms. Monika Kohli, learned Senior Additional Advocate General has contended that it was wrong on the part of the accused P.N.Koul to not investigate or allow the investigation of the death claim filed before the said accused though it was imperative as the death was reported within two months of issuance of Insurance Policy. The circumstances clearly bring out that the accused was hand in glove with the co-accused in the case. The trial court has rightly held the accused guilty and convicted him.

43. Before proceeding further in the matter it is to be noted that after the Policy was issued in the name of Puran Singh the insurance claim in pursuance to the Policy issued in the name of Puran Singh was sought from the Insurance Company as the insured was reported to have died in a rocket launcher attack which occurred on 22.10.1998. The death claim was purportedly approved by the accused P.N.Koul and the investigation in the claim as required was not done as a result there was a sanction for payment of Rs. 1,02,530/- in favour of co-accused Urmila Devi as insurance claim for the death of Puran Singh.

44. It is important to consider the argument raised on behalf of accused P.N.Koul regarding dispensing away with the requirement of investigation with regard to the nature of claim filed before him. The manual of investigation of early death claims is the relevant one for the

purposes of discussion. The trial court had even taken note of the same though holding in the light of other facts the accused failing in his duty to investigate the insurance claim which was mandatory one. The accused has referred to clause (1) of Chapter II of the Manual to impress upon the court that where life assured dies within a short period of obtaining of the Policy the investigation in the death claim is not required or in any case can be waived of by the authority. The reference is also made to Clause (25) of Chapter II of the Manual which relates to the claim arising out of accident. It is submitted on behalf of the accused that the exemption is provided for dispensing with the investigation in a case arising out of accident and that the same is without any capping on the amount of insurance claim. The only rider is that exemption from investigation is not available to the Policy which is double accident benefit and that no such benefit was accorded to the claimant. The other side has pleaded that the trial court has dealt with the manual clauses and have held that the investigation could not be done away without approval in the death claim of the nature like the one in the present case. The double benefit claim was the one which was being dealt in the Policy and therefore the exemption as pleaded by the accused from investigation of the claim in hand could not be banked upon by the accused. Clause (1) of Chapter II of the Manual refers to the definition of 'early claims' and states that the death of the life insured within two years from the date of covering the risk or within two years from the date of last revival or reinstatement of a Policy is to be considered as early claims. Further the investigation may be dispensed with if the Policy does not exceed Rs.20,000/-. The said clause subsequently records that irrespective of what is mentioned above, investigation of claim may be waived even where the above conditions are not satisfied provided the death has taken place due to accident and there is no suspicion of suicide or the suicide clause in the Policy contract or the Policy has become inoperative. *Prima facie* it is culled out from the

aforesaid clause that the claim arising out of accident may not require investigation and that the upper limit of Rs. 20,000/- is not there when the death has taken place due to accident. Clause (25) of Chapter II also does not mention of any amount when the investigation is required provided the claim arises out of accident and should not pertain to double accident benefit.

45. The Policy is mentioned as '88-25' Jeevan Mitra Policy with profits and accidental benefits. PW-R.K.Bhat has stated that endorsement on the entry of the proposal form EXP-RKB1 extends to '88-25 du-or+AB' which indicates that the Policy has been issued for 25 years on ordinary rate and covered accidental benefits. PW-Nagarmal from LIC has stated in general terms that double natural risk cover is available under LIC plan '88-25'. It is further stated by him that where the Policy holder dies a natural death the value of Policy is available. In accidental death, the accidental benefit was also available. PW-B.D.Gupta has deposed that the plan '88-25' means 'Jeevan Mitra Plan' and that the under the same double sum was entitled to the concerned where natural death has taken place and in case of accidental death the benefit would extend three times the insurance sum. The bonus is mentioned in the Policy which may be due in case exigency arises in favour of the nominee of the Policy holder. After the claim was forwarded for realisation of the Policy issued in the name of Puran Singh, the matter proceeded further with the LIC. It is important to take note of the action taken after the claim papers were filed for realising the amount due under the Policy issued in the name of Puran Singh. EXP-P2/1 is the note which is written by PW-Mohinder Lal and the same is admitted by the said witness. EXP-SL is the note which *is written by the PW-Sham Lal* and EXP-SL1 is the note which is written by the accused P.N.Koul. The trial court while taking note of all these documents has held the accused P.N.Koul guilty for the reason that the accused had waived the investigation which was required mandatorily

after the early claim was raised on the death of Puran Singh. The court has believed the testimony of PW-Mohinder Lal qua EXP-P2/1 which is a note from PW-Mohinder Lal. As per the same, the note refers to waiving of investigation regarding the army personnel who died in encounter. Further, the claim is submitted for admission of basic sum amount on the basis of the certificates mentioned in the note. EXP-SL is the note from PW-Sham Lal in which it is written that the accident benefit is not permissible and that as per para 25 of Chapter II of the manual, investigation may not be called for. EXP-SL1 is the purported approval by the accused P.N.Koul for admitting liability of the Insurance Policy but for basic sum assured only. There is no approval regarding acceptance of liability for double accident claim. The learned trial court has relied upon the statement of PW-Mohinder Lal and note EXP-P2/1 written by the said witness to hold that the accused P.N.Koul was instrumental in directing the said PW-Mohinder Lal to write down waiving clause in the said note EXP-P2/1. The note written by the said PW mentions of the telephonic conversation that the witness had with the accused P N Koul. The trial court also mentioned in the judgment that there was invisible character which could be the accused Darshan Singh who in league with the accused P.N.Koul was instrumental in waiving of the investigation. Admittedly, there was no written note from the accused P.N.Koul suggesting the waiving of the investigation. It appears that the trial court was relying more on the documentary evidence than the oral statement of PW-Mohinder Lal in respect of the note EXP-P2/1. There is no substantial proof of the telephonic conversation of the witness with the said accused. It is far stretched reasoning by the trial court to hold the accused guilty. This Court is of the view that merely because the accused Darshan Singh has confessed his guilt during the course of trial it will not by itself mean that the accused P.N.Koul should be held guilty for the said reason. If the accused P.N.Koul is to be held guilty on the basis of

the notes which are admittedly in the handwriting of PW-Mohinder Lal and PW-Sham Lal then there is every probable reason to suspect the said witnesses also to be in league with the accused Darshan Singh.

46. The claimant was approved benefit of the Insurance Policy not as Double Assured Benefit Policy (DABP) but for Basic Sum Assured (BSA) and, accordingly, the cheque was also released in favour of the claimant. At the cost of repetition, the accused P.N.Koul has by virtue of EXP-PSL1 approved liability for BSA only. Taking note of the contention that the accused P.N.Koul faultered in approving the claim for BSA without seeking investigation into the claim, the question still remains as to whether every fault which may be committed by the employee will amount to proving of charge under Section 5 (2) of PC Act. The role of the accused P.N.Koul is required to be seen in the light of allegation against him that he conspired with the co-accused and particularly the accused Darshan Singh while admitting the claim of the claimant after the papers were put forward for the same on the purported death of the insured Puran Singh. Of course, the conspiracy, if any, has to be gathered in the facts and circumstances of the case. Every omission committed by the accused in performance of his duties will not mean that the accused has to be held guilty for the said omission. The omission can be unintentional on account of mere mistake or negligence or even not properly knowing the procedure. The allegations levelled by the prosecution even if it is to be admitted regarding the approval of the claim by the accused P.N.Koul the same shall not attract the provisions of Section 5 (2) of the PC Act or any other penal provision. The view of this Court is that the learned trial court has presumed the facts regarding the accused P.N.Koul qua the alleged waiving of investigation and the forging of the documents in connivance with the accused Darshan Singh which are not in consonance with the evidence that has come on record. None of the prosecution witnesses speaks of the accused P.N.Koul

conniving with the accused Darshan Singh regarding the insurance claim of fake Puran Singh after his purported death during army service. The Court is of the view that the finding of the trial court with regard to the accused P.N.Koul holding him guilty of the offences in which he has been punished is based on surmises and not the evidence that has come on record. The observations by this court for the accused Param Satbir Singh qua his conduct also applies for the accused P.N.Koul. This Court also fails to find any evidence or circumstance in the prosecution evidence that P.N.Koul is guilty of conspiring in any manner with the accused Darshan Singh or any other co-accused. The facts on record do not convince the court of accused acting illegally or adopting any corrupt means to seek benefit for self or for any other person. The accused P.N.Koul is acquitted of the charges framed against him.

47. The accused Urmila Devi is the one, who is supposed to be the eventual beneficiary of the amount of the Claim which was allegedly paid.

48. Mr. R.K.Bhatia, learned counsel for the accused Urmila Devi has mainly argued qua the alleged role of the accused which pertains to the deposit of the cheque which was issued in pursuance to the claim filed on the death of Puran Singh, who was non-existent entity. It is not disputed during the course of arguments by the counsel for the said accused about the proceedings which took place after the claim was finalised and the amount was allowed to be released in favour of the beneficiary of the Insurance Policy as admittedly the accused Urmila Devi was not involved in the said process. The learned trial court has given the sequence in which the claim was finalised and thereafter the cheque was prepared. The court may at this stage again note that the claim was filed by the accused Darshan Singh and the signatures on the proceedings initiated qua the fictitious claim also bear the signatures of the said accused Darshan Singh, who has confessed the charge framed against him during the course of trial and also sentenced for the offences.

49. The cheque issued in the name of Urmila Devi Wd/o Puran Singh by the Insurance Company is marked as 'PD'and the cheque is bearing No. 802439 dated 25.11.1999 for amount of Rs. 1,02,530/-. PW-13 B.S.Karkahur, PW-14 Ramesh Waygonkar and PW-15 N.C.Singhai are the relevant witnesses who dealt with the cheque which purportedly stood deposited in the account of Urmila Devi at SBI, Morena Branch, Indore, Madya Pradesh. PW-B.S.Karkahur was posted in the said Branch for the last many years and was acquainted with Urmila Devi who was also identified by the witness. As per the witness, the accused Urmila Devi had Saving Account No. 1182/25 and in the opening account form she was shown as wife of Vinod Kumar. The witness has identified the signatures of PW-N.C.Singhai on the reverse of Cheque No. 802439 which had been encashed from the Bank. The same is marked as EXT-P1/4. The amount of Rs.1,02,530/- has been credited in the account of Urmila Devi. From the account 1182 the accused is also stated to have withdrawn different amounts from 22.01.2000 to 09.10.2000 and witness identifies the signatures of the accused on the receipts vouchers and exhibited as EXTP-I/5 to EXTP-1/10. The handwriting expert has also given his opinion regarding the signatures of Urmila Devi which has been verified with the specimen signatures of the accused. Mr.N.C.Sood and PW-B.A.Vaid are the examiners of the handwritings of the accused Darshan Singh and Urmila Devi and have given an opinion and the same are exhibited as EXT-P27/18 and EXT-P27/20. The witness has also deposed about certain FDRs of which the amount has been realized and paid to the accused. The witness has admitted in his deposition that the cheque dated 25.11.1999 had been issued in the name of Urmila Devi Wd/o Puran Singh whereas the account was operated in the name of Urmila Devi W/o Vinod Kumar. The witness further admits that in case of variation the cheque is not cleared. Payment is made to the account holder if the amount is withdrawn through withdrawal form. The witness

has admitted that the payment of Rs.55000/- has been paid to the accused Darshan Singh and that the accused Darshan Singh has signed the receipt which is marked as EXT-P1/28 and the signatures on the withdrawal form EXT-P1/5 appears to be of Urmila Devi. The witness also admits that the payment should have been made to Urmila Devi and further it is not recorded on the form that Darshan Singh was accompanied by Urmila Devi.

50. PW-14 Ramesh Waygonkar who was also in State Bank of India, Morena Branch has deposed that as per the record, the opening account in the Bank has signatures of B.S.Karkhur which is exhibited as EXT-P1/2. This witness also admits that the cheque could not have been deposited in the account of Urmila Devi as the name of the husband had not matched. The cheque was sent by PW-Singhai for clearance. He like PW-B.S.Karhur has deposed that the withdrawal form was required to be signed by the account holder. PW-15 N.C.Singhai has also deposed regarding the credit of cheque amount in the account of Urmila Devi though there was difference in the particulars of the account holder and the payee of the cheque.The witness has also stated that error has taken place as credit voucher had name of account holder and account number.

51. The trial court while taking note of the evidence with respect to the cheque No. 802439 which was issued as claim has held that the cheque was deposited in the account of the accused Urmila Devi. Who presented the said cheque before the bank for realization of the amount is not proved by the witnesses as the pay in slip dated 24.12.1999 (EXT-P15) of the said cheque did not contain the signatures of the accused Urmila Devi. The bank witnesses have not deposed against the accused Urmila Devi so far as the deposit of the cheque with the bank is concerned which eventually resulted into realization of the amount in favour of Urmila Devi.

52. Learned Senior Additional Advocate General has vehemently argued that the pay in slip was presented by the accused Urmila Devi and none else would have deposited the said cheque. It is not, however, made out from the evidence produced by the prosecution. In the absence of the prosecution proving that the cheque was deposited by the accused Urmila Devi for realisation with the SBI, Morena Branch it is not safe to presume that it has to be the accused Urmila Devi. The cheque could be deposited by account holder or any other person. The endorsement EXTP-1/4 on the cheque on reverse is by PW N.C. Singha. The trial court has wrongly presumed that it was the accused Urmila who had deposited the cheque with Morena branch.

53. It is somewhat intriguing that the particulars in the cheque though did not match with the particulars given in the policy of beneficiary and the account of Urmila devi also showed different particulars yet the cheque got cleared at every step. The explanation, plausible one, in this regard remained elusive and the trial court has also noted this fact.

54. The accused Urmila Devi is also alleged to have withdrawn different amounts from the account No. 1182 after the cheque amount stood credited in the said account. The trial court has taken note of the account earlier opened by the accused Urmila Devi with the name of Vinod Kumar as her husband. So far as the opening of the account initially by the Urmila Devi or any transactions having taken place in the said account is not under consideration. However, the same appears to have come in picture in view of the so called deposit of the cheque amount in the said account and that too the deposit allegedly being made by Urmila Devi. This Court has held above that it is not proved by the prosecution that it was infact Urmila Devi who had deposited the cheque with the bank whereupon the amount stood credited in the account. The account in which the cheque amount of Rs.1,02,530/- got deposited amount on different occasion were allegedly withdrawn by the accused Urmila Devi

and that is why the trial court has held that the cheque was presented of Rs.102530/- by the said accused Urmila Devi before the concerned Bank. Further the trial court has held that the amount of Rs.55000/- was also withdrawn and received by Urmila Devi on 22.01.2000. Except for the statement of PW-B.S.Karkhur who was posted in the State Bank of India Branch Morena and had known the accused Urmila Devi for the last many years and had stated that Urmila Devi was accompanied by the accused Darshan Singh when the amount of Rs.55000/- was realized and the amount was given to the accused Darshan Singh none other witness from the Bank produced in the court has stated so. This amount is stated to have been withdrawn on 22.01.2000. EXT-P1/5 is marked on the withdrawal form of the said amount. Infact the witnesses from the Bank in unison state that the amount was required to be given to Urmila Devi and not Darshan Singh as per procedure. Infact on the reverse of the withdrawal form, the signature is of the accused Darshan Singh and not the accused Urmila Devi. The trial court has concluded that this amount was infact received by Urmila Devi through the accused Darshan Singh. The court has believed the statement of PW-B.S.Karkhur in this regard on the ground that Urmila Devi was accompanied by the accused Darshan Singh and on the asking of Urmila Devi, this amount was handed over the Darshan Singh. The bank had not followed the procedure while paying the said amount of Rs.55000/- to Darshan Singh and not Urmila Devi is evident from the statements of the bank officials themselves. There was no reason for the trial court to hold in the absence of signatures of Urmila Devi regarding the receipt of the amount of Rs.55000/- or absence of authorisation for Darshan Singh to receive the said amount to believe that Urmila Devi has received this much of amount. In addition to the aforesaid amount, the accused has also withdrawn amount of Rs.5000/-, Rs.15000/-, Rs.7000/-, Rs.20,000/- and Rs.676/- through withdrawal forms and exhibited as EXT-P1/6 to EXT-P1/10 respectively. The

signatures of Urmila Devi are on the both sides of the withdrawal slips and cannot be disputed. The court is of the view that withdrawal of these amounts by the accused Urmila Devi will not prove any guilt against the said accused. No doubt the aforesaid amounts stand withdrawn from the Bank account No. 1182, the basic question that remains is whether the cheque of Rs.102530/- was deposited by the accused Urmila Devi or had sufficient knowledge that what she was operating was the result of undue benefit that has been derived from the Policy which was obtained in the name of Puran Singh, non-existent entity. The accused Urmila Devi is illiterate and can hardly put her signatures on the documents.

55. Learned Sr. AAG has vehemently argued that the circumstances prior to deposit of the cheque amount and after withdrawal of amount at different times from the account shows that Urmila Devi committed unholy acts in league with the accused Darshan Singh. The court, however, finds force in the argument of the learned counsel for the accused Urmila Devi that the main offender in the crime was Darshan Singh, who was instrumental in filing all the documents before the Insurance Company and had put signatures of the policy holders on the documents. The accused Urmila Devi is illiterate lady and there was no evidence on record that she ever accompanied Darshan Singh for obtaining any benefit on the basis of Policy before the Company, the said accused cannot be held guilty for conspiring with the accused Darshan Singh. The circumstances and events which are brought on record to implicate the accused Urmila Devi are not established satisfactorily and beyond shadow of doubt. It cannot be ruled out that the accused Darshan Singh tried to get benefit out of the illiteracy of the accused Urmila Devi without the accused Urmila Devi being conscious of what was being done by the accused Darshan Singh. The benefit of doubt has to go in favour of the accused Urmila Devi keeping in view the overall facts and circumstances of the case. The court may also at this stage take note of the fact that so far as receiving of

cheque through post by Urmila Devi is concerned that too cannot be said to have been established. No credible evidence is either on record to reveal that the cheque was received by the accused Urmila Devi as the postman, namely, Ram Ji Lal Rajouria who was supposed to have delivered the cheque on the address was not produced to show that infact it was Urmila Devi who had received the cheque. PW-K.L.Godiya, Postmaster who has been examined in the case, in the opinion of court, cannot state that the cheque was delivered through registered letter to Urmila Devi as he has deposed only on the basis of record EXT-P19, letter from M.M.Kataria, Assistant Postmaster. The address on which it was delivered was also deficient. The entry No. 333 purportedly showing the deliverance of documents to Urmila Devi are not proved as the signatures of the receiver of the documents never got verified. The prosecution has failed to deliver the document to Urmila Devi is not proved gains significance in the light of the so called contention of the prosecution that it was received by Urmila Devi and also produced by her before the Bank for realisation of the cheque amount. There is no doubt in the mind of this Court that the trial court has held the accused Urmila Devi guilty on unconvincing evidence and has presumed certain circumstances which should not have been weighed with it while holding the accused Urmila Devi guilty.

56. Learned counsels for the accused have vehemently argued that the trial court has grossly gone wrong in relying upon the confession of the accused Darshan Singh while convicting the accused. Section 133 of the Evidence Act had no application in the case in hand as the said accused cannot be said to have implicated the aforesaid accused in the case in hand. The other side has indeed argued that the confession of the accused Darshan Singh cannot be brushed aside and the trial court has rightly taken care of the confession of the accused Darshan Singh while convicting the accused also on the basis of said confession.

57. The Court is of the view that the trial court should not have relied upon the confession of the accused in the case in hand keeping in view the nature of the case. No plausible reason is emanating from the impugned judgment which prompted the trial court to rely upon the confession of the accused Darshan Singh. Something wrong if has gone in the Policy transaction, the accused cannot be called as accomplice of Darshan Singh.
58. The sanction has been granted against the accused Randhir Singh Pathania and Param Satbir Singh by PW-29 M.M.Mukherjee and PW-V.P.Sharma respectively vide EXT-P24 and EXT-P29/1. The accused could not seriously contest that the sanction for prosecution given by the witnesses was not proper.
59. The Court has not detailed out and marshalled the evidence on certain aspects as the evidence produced on the same was not contested by the counsels appearing for the accused. There is no contest to the fact and can be none otherwise that the Insurance Policy got issued was in the name of fictitious person, the claim put forward by the accused Darshan Singh was also fake as no such person in the name of Puran Singh was employed with the concerned army Unit as there was no such Unit also and that the claim papers resulted into issuance of cheque in favour of one Urmila Devi through Insurance Company. It is a different matter that the prosecution has alleged that the accused were the ones who had hatched conspiracy in order to grant benefit to the person who would be the beneficiary of the Insurance Policy.
60. In case the investigating agency was to proceed against Param Satbir Singh, in all probability the person who had finally issued the Insurance Policy in favour of fake person should have also been made accused in the case. Similarly, if the investigating agency was to proceed against the accused P.N.Koul then PW-Mohinder Lal and PW-Sham Lal, who were also associated with the approval of the claim perhaps were also required to be made accused in the case. Further, the bank officials of Morena

Branch, who also faultered in crediting the cheque amount in the account in which it was credited and also paid the amount to Darshan Singh who was not supposed to obtain the amount of Rs.55000/- after the cheque amount was credited were probably required to be made accused but not made for the reasons best known to the investigating agency. No more comments are required to be made in this regard by the court.

61. This Court has thus come to the conclusion that the accused Param Satbir Singh and the accused P.N.Koul have not deliberately done the acts which are attributed to them which could invoke the penal provisions against them. The conspiracy angle qua the said accused along with co-accused and particularly Darshan Singh is also not made out. The accused Urmila Devi may not be aware of all the acts which have been committed by the accused Darshan Singh for which he has confessed the charges. The benefit of doubt is to be given to the said accused.

62. In view of the discussion made above, the Court is of the view that the learned trial court has erred in holding the accused Param Satbir Singh, P.N.Koul and Mst. Urmila Devi as guilty and sentencing them for the offences mentioned in the impugned judgment. The accused are acquitted of the charges framed against them. The bail bonds furnished by the appellants herein shall stand discharged.

63. The original records shall be sent back to the trial court.

(PUNEET GUPTA)
JUDGE

Jammu:
25.09.2024
Pawan Chopra

Whether the Judgment is speaking? Yes
Whether the Judgment is reportable? Yes

Pawan Chopra
2024.09.30 11:17
I attest to the accuracy and
integrity of this document