



2024:DHC:7665



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 19th July, 2024

Pronounced on: 4th October, 2024

+ CRL.A. 657/2012 & CRL.M.(BAIL) 1118/2012

G P SHARMA

..... Appellant

Through: Mr. Siddharth Aggarwal, Sr. Adv. with
Mr. Krishna Multani, Advocate.

Versus

CBI

..... Respondent

Through: Mr. Atul Guleria, SPP for CBI with Ms.
Rupali Wadhwa, Mr. Bohit Sharma, Ms.
Parul Yadav & Mr. Surender Sharma,
Advocates.

+ CRL.A. 663/2012 & CRL.M.(BAIL) 1093/2012

BRIJ PAL SINGH

..... Appellant

Through: Mr. Arvind K. Nigam, Senior Advocate
with Mr. Samrat Nigam, Mr. Rajneesh &
Ms. Arpita Rawat, Advocates.

versus

C.B.I.

..... Respondent

Through: Mr. Atul Guleria, SPP for CBI with Ms.
Rupali Wadhwa, Mr. Bohit Sharma, Ms.
Parul Yadav & Mr. Surender Sharma,
Advocates.

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CRL.A. 657/2012 and Connected Appeals



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+ CRL.A. 724/2012

AJAY VERMA

..... Appellant

Through: Mr. Ajay Verma, Advocate.
versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Atul Guleria, SPP for CBI with Ms.
Rupali Wadhwa, Mr. Bohit Sharma, Ms.
Parul Yadav & Mr. Surender Sharma,
Advocates.

+ CRL.A. 735/2012

AJAY KUMAR JAIN

..... Appellant

Through: Mr. M.P.Singh, Ms. Manju Lata Singh,
Mr. Ghanshyam Sharma, Mr. Deepak
Daima and Mr. Inder Kumar Rawat,
Advocates.

versus

STATE THR. CBI Respondent

Through: Mr. Atul Guleria, SPP for CBI with Ms.
Rupali Wadhwa, Mr. Bohit Sharma, Ms.
Parul Yadav & Mr. Surender Sharma,
Advocates.

+ CRL.A. 658/2012 & CRL.M.(BAIL) 1119/2012, 222/2022

P K SHARMA

..... Appellant

Through: Mr. Arvind K. Nigam, Senior Advocate
with Mr. Samrat Nigam, Mr. Rajneesh &
Ms. Arpita Rawat, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

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CRL.A. 657/2012 and Connected Appeals



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Through: Mr. Atul Guleria, SPP for CBI with Ms. Rupali Wadhwa, Mr. Bohit Sharma, Ms. Parul Yadav & Mr. Surender Sharma, Advocates.

+ CRL.A. 664/2012 & CRL.M.(BAIL) 1125/2012, 210/2022

ANIL KUMAR

..... Appellant

Through: Mr. Arvind K. Nigam, Senior Advocate with Mr. Samrat Nigam, Mr. Rajneesh & Ms. Arpita Rawat, Advocates.

versus

CBI

..... Respondent

Through: Mr. Atul Guleria, SPP for CBI with Ms. Rupali Wadhwa, Mr. Bohit Sharma, Ms. Parul Yadav & Mr. Surender Sharma, Advs.

+ CRL.A. 668/2012 & CRL.M.(BAIL) 1122/2012, 211/2022

S S ARYA

..... Appellant

Through: Mr. Arvind K. Nigam, Senior Advocate with Mr. Samrat Nigam, Mr. Rajneesh & Ms. Arpita Rawat, Advocates.

versus

CBI

..... Respondent

Through: Mr. Atul Guleria, SPP for CBI with Ms. Rupali Wadhwa, Mr. Bohit Sharma, Ms. Parul Yadav & Mr. Surender Sharma, Advocates.

+ CRL.A. 667/2012 & CRL.M.(BAIL) 1120/2012
RAMKESH MEENA

..... Appellant

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Through: Mr. Pramod Kumar Dubey, Senior Advocate with Ms. Pinky Dubey, M Mr. Satyam Sharma, Mr. Prince Kumar, Ms. Adkita, Ms. Amrita Vatsa, Ms. Ritvika Paswal, Mr. Ayush Sachan & Mr. Shivam, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Atul Guleria, SPP for CBI with Ms. Rupali Wadhwa, Mr. Bohit Sharma, Ms. Parul Yadav & Mr. Surender Sharma, Advocates.

+ CRL.A. 670/2012 & CRL.M.(BAIL) 1123/2012

ARUN KUMAR SHARMA Appellant

Through: Mr. Ashwin Vaish and Mr. Vinod Pandey, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Atul Guleria, SPP for CBI with Ms. Rupali Wadhwa, Mr. Bohit Sharma, Ms. Parul Yadav & Mr. Surender Sharma, Advocates.

+ CRL.A. 722/2012

SUBHASH CHAND Appellant

Through: Mr. Subhash Chain, Advocate.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Atul Guleria, SPP for CBI with Ms. Rupali Wadhwa, Mr. Bohit Sharma, Ms.

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Parul Yadav & Mr. Surender Sharma,
Advocates.

+ CRL.A. 723/2012

DEEPAK GOEL

..... Appellant

Through: Mr. Deepak Goel, Advocate.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Atul Guleria, SPP for CBI with Ms.
Rupali Wadhwa, Mr. Bohit Sharma, Ms.
Parul Yadav & Mr. Surender Sharma,
Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present appeals under Section 374 of the Code of Criminal Procedure, 1973, (for short, 'CrPC') have been filed assailing the impugned judgment of conviction dated 17.05.2012 and order on sentence dated 22.05.2012, passed by Sh. P.S. Teji, learned Additional Sessions Judge-cum-Special Judge (CBI), Karkardooma Courts, Delhi, whereby, the Appellants have been convicted in AC No. 12/2006, arising out of FIR No. RC-4(A)/05-ACU-VIII, under Sections 120B read with Sections 420, 468 and 471 of the Indian Penal Code, 1860, (for short, 'IPC'), and Sections 13(2) read with Section 13(1)(d) and Section 15 (added subsequently, while framing of charge) of the Prevention of Corruption Act, 1988, (for short, 'PC Act'), registered by CBI.

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2. For sake of convenience, the details of the Appellants/Convicts in the present batch of appeals have been set forth as follows: -

Criminal Appeal Number (CRL.A.)	Name of the Appellants/Convicts	Convicted for Offences Punishable under Sections	Quantum of Sentence Awarded to the Appellants/Convicts
657/2012	G.P. Sharma arrayed as Junior Engineer of MCD (Accused No. 5) Hereinafter referred to as 'J.E./A-5'	120B, 420 read with 511 of the IPC 420 read with 120B of the IPC	- For 120B IPC, RI for 3 years with fine of Rs. 25,000/- each, in default, SI for 6 months; - For 420/511 IPC, RI for 3 years with fine of Rs. 25,000/- each, in default, SI for 6 months;
663/2012	Brij Pal Singh arrayed as Executive Engineer of MCD (Accused No. 1) Hereinafter referred to as 'E.E./A-1'	15 read with 13(1)(d) read with 13(2) of PC Act 13(2) read with 13(1)(d) of PC Act	- For 120B IPC, RI for 3 years with fine of Rs. 25,000/- each, in default, SI for 6 months; - For 420 IPC, RI for 3 years with fine of Rs. 25,000/- each, in default, SI for 6 months;
664/2012	Anil Kumar arrayed as Assistant Engineer of MCD (Accused No. 2) Hereinafter referred to as 'A.E./A-2'		For S. 15 read with S. 13(1)(d) r/w 13(2) PC Act, RI for 2 years with fine of Rs. 25,000/- each, in default, SI for 6 months;

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			For S. 13(1)(d) r/w 13(2) PC Act, RI for 2 years with fine of Rs. 25,000/- each, in default, SI for 6 months;
735/2012	Ajay Kumar Jain @ A.K. Jain arrayed as Junior Engineer of MCD (Accused No. 8) Hereinafter referred to as 'J.E./A-8'		
658/2012	P.K. Sharma arrayed as Assistant Engineer of MCD (Accused No. 3) Hereinafter referred to as 'A.E./A-3'	15 read with 13(1)(d) read with 13(2) of PC Act	- For S. 15 read with S. 13(1)(d) r/w 13(2) PC Act, RI for 2 years with fine of Rs. 25,000/- each, in default, SI for 6 months; - For 120B IPC, RI for 3 years with fine of Rs. 25,000/- each, in default, SI for 6 months;
668/2012	S.S. Arya arrayed as Assistant Engineer of MCD (Accused No. 4) Hereinafter referred to as 'A.E./A-4'	120B, 420 read with 511 of the IPC	For 420/511 IPC, RI for 3 years with fine of Rs. 25,000/- each, in default, SI for 6 months;
667/2012	Ramkesh Meena arrayed as Junior Engineer of MCD (Accused No. 6)		

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	Hereinafter referred to as ' <i>J.E./A-6</i> '		
670/2012	Arun Kumar Sharma arrayed as Junior Engineer of MCD (Accused No. 7) Hereinafter referred to as ' <i>J.E./A-7</i> '		
724/2012	Ajay Verma arrayed as Proprietor of M/s A.S. Constructions (Private Contractor/Accused No. 11) Hereinafter referred to as ' <i>Private Contractor/A-11</i> '	• 120B, 420 read with 511 of the IPC	• For 120B IPC, RI for 3 years with fine of Rs. 25,000/- each, in default, SI for 6 months; • For 420/511 IPC, RI for 3 years with fine of Rs. 25,000/- each, in default, SI for 6 months;
722/2012	Subhash Chand arrayed as Proprietor of M/s Subhash Brothers (Private Contractor/Accused No. 10) Hereinafter referred to as ' <i>Private Contractor/ A-10</i> '		

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723/2012	Deepak Goel arrayed as Proprietor of M/s Darshan Construction (Private Contractor/Accused No. 9) Hereinafter referred to as 'Private Contractor/A-9'	• 420 read with 120B of the IPC	• For 120B IPC, RI for 3 years with fine of Rs. 25,000/- each, in default, SI for 6 months; • For 420 IPC, RI for 3 years with fine of Rs. 25,000/- each, in default, SI for 6 months.
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BRIEF BACKGROUND

3. The present appeals arise out of the following facts: -

- i. On 01.02.2005, an information was received, based on which, the FIR in the present case had been registered, wherein it was stated that various Divisions of the Municipal Corporation of Delhi (for short, 'MCD') in Delhi during the years 2003 and 2004, installed signboards at various traffic junctions and, to indicate area names, road names etc.
- ii. *Vide* MCD Office Order No. D/218A/EE(P)III/2003 dated 16.01.2003, it was provided that these signboards are to be made with very high intensity micro prismatic retro-reflective sheets so that they will be visible to the road users, whether motor vehicle drivers or pedestrians, even during night and other low light conditions.
- iii. The concerned Zones and Divisions of MCD were authorized to float Notice Inviting Tenders (for short, 'NITs') so as to get these signboards installed for the benefit of the general public, however, in contrast to

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this, it was alleged that the concerned Executive Engineers (E.E.) and other staff of various Divisions of MCD had entered into a criminal conspiracy with contractors and had installed the signboards which were not of actual retro-reflective sheets.

- iv. The Planning Department of the MCD, as per its aforesaid Office Order dated 16.01.2003, had also provided that the quality of these retro-reflective signboards of the MCD were to be as per the specifications ASTM-4956-01 TYPE-IX at the rate of Rs. 12,387.60 per sq. meter. The said specifications were also appended with the Schedule to the NITs and provided as under: -

“Providing and fixing retro reflective sign board with very high intensity retro-reflective sheeting as per ASTM D-4956-01 type IX made out of 2 mm thick alu. sheet posted on M.S. Angle 40x40x4 mm for back support face to face to be covered fully with the blue base very high intensity retro reflective sheeting and subject matter cut out of transport over lay fine hoard to be mounted on two channels”

- v. It was alleged that E.E./A-1 and his predecessor, Sh. RK Sharma, who was holding office till 19.02.2004, had entered into criminal conspiracy with the unknown private contractors of MCD with a common object to cheat the MCD and committed criminal misconduct in awarding tenders to some unknown contractors during the years 2003 and 2004 for providing and fixing the retro-reflective signboards in the municipal jurisdiction limits of Division-XXII of the MCD.
- vi. It was further alleged that the unknown contractors were acting in conspiracy with E.E./A-1, Sh. RK Sharma, A.E./A-3 and other



unknown Junior Engineers of different wards of Division-XXII of MCD and have knowingly fabricated and installed inferior quality signboards which cost only about Rs. 3,000/- per sq. meter, at several places within the jurisdiction of Division-XXII of MCD which was in violation of the aforesaid specifications provided by MCD itself.

- vii. It was further disclosed that the boards of inferior and sub-standard quality were manufactured by Sh. Anil Kumar Bhutani of M/s Anil Engineering Works for unknown contractors.
- viii. Therefore, the unknown contractors have fraudulently claimed payments running into lakhs of rupees by tendering false bills showing that the work has been executed as per the aforesaid specifications of MCD and had, while acting in connivance with the E.E.(s) and A.E.(s) of Division-XXII and other unknown J.E.(s) of the MCD, without submitting the mandatory warranty certificates to the MCD had caused huge loss to MCD and Government Exchequer.
- ix. On the basis of the aforesaid information, FIR bearing No. RC-4(A)/05-ACU-VIII was registered with CBI for the offences punishable under Section 120B read with Sections 420, 468 and 471 of the IPC and Section 13(2) read with Section 13(1)(d) of the PC Act.

REVELATIONS IN INVESTIGATION AND FINAL REPORT

- 4. After a thorough investigation respondent/CBI submitted a final report in the present case which comprised as under: -
 - i. It was alleged that the accused officials of MCD, Division-XXII of Shahdara, North Zone, entered into a criminal conspiracy with private



contractors with an object to cheat the government exchequer whereby the accused contractors had knowingly installed fabricated signboards with inferior quality of sheets which costs only Rs. 3,000/- per sq. meter and accused engineers of MCD had accepted those inferior quality of signboards and had processed and passed the bills for payment to accused contractors causing huge wrongful loss to MCD and corresponding gain to themselves.

- ii. During the investigation, it was noted that there are various types of retro-reflective sheets available in the market which are selected according to user's requirement and grading/specification of these sheets, in accordance with coefficient of retro-reflection in it, as recognized by "American Society for Testing of Materials" (ASTM) are also followed in India. It was also noted that Engineering Grade of sheet is of inferior quality and High Intensity Grade (HIG) which is non-micro prismatic known as 'Type-III' are of high quality. Out of these micro-prismatic grade sheets (Very High Intensity Grade) which starts from Type-IV, Type-IX sheets have Very High Intensity Retro Reflectivity as per ASTM 4956-01, as noted hereinabove, and is suitable to be installed at short road distances on highways, airports etc., for signing purposes. Type-IX sheet is the costliest sheet in the market as per the pricing standards and there is a vast difference amongst their prices, however, the difference in quality is only with respect to their retro reflectivity.



- iii. As per the aforesaid Office Order of MCD, it was directed that only Type-IX sheets are to be used for installation purposes. However, in the investigation, it was revealed that signboards of inferior and substandard quality were installed by the contractors to whom work orders were issued.
- iv. In pursuance of the authorization given to the Executive Engineers by MCD, NITs were floated by them and 6 work orders were issued to the private contractors for the installation of signboards comprising of Very High Intensity Retro-reflective Micro-prismatic sheet, ASTM-4956-01, Type-IX sheet. The *modus operandi* followed by the Officials of MCD and private contractors are similar in each case. The details and roles of the appellants including the Officials of MCD and the private contractors to whom the Work Orders were issued for the installation of signboards consisting of the above noted specifications are demonstrated in the following chronological manner in Work Order wise sequence.

Work Order Nos. 172 (Ex. PW-5/E) & 261 (Ex. PW-5/D), Dated 04.08.2003 & 11.09.2003

- v. Sh. RK Sharma had floated NITs and issued these work orders in favour of Private Contractor/A-10, proprietor of M/s Subhash Brothers. Private Contractor/A-10 had fabricated and installed inferior quality of signboards which were of HIG sheet instead of Type-IX sheet from M/s Super Art, Paharganj, New Delhi (fabricator). The said fabricator had



confirmed that Private Contractor/A-10 had asked for HIG sheets and not Type-IX sheets and had paid him accordingly.

- vi. J.E./A-6 under whose supervision private contractor/A-10 completed the work, made false entries in his Measurement Book No. 7036. J.E./A-6, after conducting 100% test check at the spot, had appended a false certificate to the effect that the sheets installed by Private Contractor/A-10 are of Type-IX sheet. A.E./A-2, who had also conducted a test check, had also signed on the same Measurement Book thereby falsely certifying that the work executed by Private Contractor/A-10 was as per the NIT specifications.
- vii. Thereafter, E.E./A-1 gave false certificate to the effect that the signboards installed are as per the specifications and subsequently, passed the bills of Rs. 1,53,706/- and Rs. 1,53,736/- respectively, in favour of Private Contractor/A-10. However, the payment of those bills was not made to Private Contractor/A-10. Therefore, E.E./A-1, A.E./A-2, J.E./A-6 and Private Contractor/A-10 attempted to cheat the MCD/ Govt. Exchequer by accepting signboards of inferior quality.

Work Order No. 213 (Ex. PW-5/B), Dated 18.08.2003 & Order Nos. 308 (Ex. PW-5/C) & 309 (Ex. PW-5/A) Dated 26.09.2003

- viii. Sh. RK Sharma again floated NITs and issued these work orders in favour of Private Contractor/A-11, proprietor of M/s A.S. Constructions Co., New Delhi. Private Contractor/A-11 fabricated and installed inferior quality of signboards which were of HIG sheet instead of Type-IX sheet from Sh. Ashok Kumar Sharma, PW-10 (fabricator). The said



fabricator had confirmed that Private Contractor/A-11 had asked for HIG sheets and not Type-IX sheets and had paid him accordingly.

- ix.** J.E./A-8 under whose supervision, Private Contractor/A-11 completed the work, made false entries in his Measurement Book No. 1122. J.E./A-8, after conducting 100% test check at the spot, had appended a false certificate to the effect that the sheets installed by Private Contractor/A-10 are of Type-IX sheet. A.E./A-4, who had also conducted a test check, had also signed on the same Measurement Book thereby falsely certifying that the work executed by Private Contractor/A-11 was as per the NIT specifications.
- x.** Thereafter, E.E./A-1 gave false certificate to the effect that the signboards installed are as per the specifications and subsequently, passed the bill of Rs. 1,11,457 in favour of Private Contractor/A-11 in relation to Work Order No. 213. However, the payment of that bill was not made to Private Contractor/A-11 as the same was pending due to non-availability of funds with MCD.
- xi.** Similarly, in relation to Work Order Nos. 308 and 309, J.E./A-7 under whose supervision Private Contractor/A-11 completed the work, made false entries in his Measurement Book No. 1807. J.E./A-7, after conducting 100% test check at the spot, had appended a false certificate to the effect that the sheets installed by Private Contractor/A-11 are of Type-IX sheet. A.E./A-3, who had also conducted a test check, had also signed on the same Measurement Book thereby falsely certifying that



the work executed by Private Contractor/A-11 was as per the NIT specifications.

- xii. Thereafter, E.E./A-1 gave false certificate to the effect that the signboards installed are as per the specifications and subsequently, passed the bills of Rs. 1,03,813/- and Rs. 1,05,454/- respectively, in favour of Private Contractor/A-11 with regard to Work Order Nos. 308 and 309. However, the payment of those bills was not made to Private Contractor/A-11 as they are pending for payment. Therefore, E.E./A-1, A.E./A-4, A.E./A-3, J.E./A-8, J.E./A-7 and Private Contractor/A-11 attempted to cheat and cause wrongful loss to the MCD/ Govt. Exchequer by accepting signboards of inferior quality thereby accruing corresponding gain to the accused contractor.

Work Order No. 552 (Ex. PW-12/A), Dated 17.03.2004

- xiii. E.E./A-1 had floated NITs and issued these work orders in favour of Private Contractor/A-9, proprietor of M/s Darshan Constructions. Private Contractor/A-9 had fabricated and installed inferior quality of signboards which were of HIG sheet instead of Type-IX sheet from Sh. Ashok Kumar Sharma (fabricator). The said fabricator had confirmed that Private Contractor/A-10 had asked for HIG sheets and not Type-IX sheets and had paid him accordingly.
- xiv. J.E./A-5 under whose supervision Private Contractor/A-10 completed the work, made false entries in his Measurement Book No. 1953. J.E./A-5, after making an abstract of this work in Measurement Book and conducting 100% test check at the spot, had appended a false certificate



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to the effect that the sheets installed by Private Contractor/A-9 are of Type-IX sheet. A.E./A-2, who had also conducted a test check, had also signed on the same Measurement Book thereby falsely certifying that the work executed by Private Contractor/A-9 was as per the NIT specifications.

- xv. Thereafter, E.E./A-1, after conducting a test check, gave false certificates to the effect that the signboards installed are as per the specifications and subsequently, passed the bills for payment of Rs. 1,41,850, in favour of Private Contractor/A-9. The payment of the said bill was made to Private Contractor/A-9 *vide* Cheque No. 809434 dated 30.08.2004 and hence, E.E./A-1, A.E./A-2, J.E./A-5 and Private Contractor/A-9 cheated the MCD/Govt. Exchequer by accepting signboards of inferior quality and making payment to Private Contractor/A-9 for the substandard work done by him thereby causing wrongful loss to the exchequer of MCD and corresponding gain to themselves.

5. Based on the aforesaid facts and material evidences which were collected during investigation to substantiate the commission of offences punishable under Section 120B read with Sections 420, 511 of the IPC and Section 15 read with Section 13(1)(d) of the PC Act, chargesheet was filed on 06.01.2006 before the learned Special Court against the present appellants, in these batch of appeals, arraying them as accused Nos. A-1 to A-11, as noted hereinabove, for causing wrongful loss to the exchequer of MCD.

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6. The sanction for prosecution, in terms of Section 19 of the PC Act, of the appellants who were the Officials of MCD was applied for and sanction orders, Ex. PW-19/A to Ex. PW-19/H; all dated 11.09.2006, were obtained from the Commissioner of MCD, Sh. Ashok Kumar (PW-19).

7. The prosecution had cited as many as 26 witnesses in the chargesheet and out of these, only 19 witnesses were examined during the course of the trial. After the conclusion of prosecution evidence, all the incriminating materials and evidence were put to the appellants and thereby, they have taken their respective defences. The appellants had also led defence evidence in order to dispel the case of the prosecution and prove their innocence and examined 5 witnesses to substantiate their defence namely, DW-1 Sh. V.K. Goel, DW-2 Shiv Kumar Thapa, DW-3 Sh. A.K. Verma, DW-4 Sh. Madan Singh Mehra and DW-5 Sh. M.S. Rao.

8. The learned Trial Court rejected the defence taken by the appellants and convicted and sentenced them accordingly as noted hereinabove. Hence, the present appeals challenging the impugned judgment of conviction and order on sentence passed by the learned Special Court has been filed by the appellants.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

9. Learned Senior Counsels have advanced arguments on behalf of E.E./A-1; A.E./A-2; A.E./A-3; A.E./A-4; J.E./A-5; J.E./A-6 and learned Counsels have advanced arguments on behalf of J.E./A-7; J.E./A-8, Private Contractor/A-9; Private Contractor/A-10 and Private Contractor/A-11.



9.1 Arguments advanced on behalf of E.E./A-1 are as follows: -

Invalidity Of Sanction for Prosecution

a) Learned Senior Counsel for E.E./A-1 has submitted that the latter is a Group 'A' employee of the MCD and the competent authority, as per the Delhi Municipal Corporation Act, 1957, (for short, 'DMC Act') to grant sanction for prosecution, in terms of Section 19 of the PC Act, against him is the Corporation itself and not the Commissioner of MCD. However, in the present case the sanction for prosecution of the E.E./A-1 (Ex. PW-19/A) has been granted by PW-19, who was the Commissioner of MCD at that relevant point in time, which is contrary to the law laid down by a Coordinate Bench of this Court in **G.S. Matharao v. CBI, 2012 SCC OnLine Del 480**. It is also the case of the appellant that the competency of the competent authority to grant sanction for his prosecution strikes at root of the matter thereby causing prejudice to the Appellant and leading to miscarriage of justice in the instant case.

Non-Application Of Mind By Competent Authority

b) Learned Senior Counsel further submitted that the manner in which the sanction for prosecution has been obtained does not also inspire confidence in the present case as the same has been granted without due application of mind. It is pointed out that it is an admitted case of CBI that only the report of SP, draft order of sanction and a copy of FIR were sent to the competent authority at the time of seeking of sanction order. The statements of witnesses, documents which were collected during the investigation and the report of CRRI, Ex. PW-7/E, was not sent to the competent authority, PW-19. Attention of this Court has also been drawn to the testimony of PW-19, wherein, it is recorded that the latter had



accorded sanction for prosecution without perusing the aforesaid documents as the same were not presented by CBI to him.

c) Learned Senior Counsel has also drawn the attention of this Court to the fact that the CBI had registered 6 cases on 01.02.2005 against 45 MCD Officials with respect to the same subject matter pertaining to 6 divisions of MCD and the contents of the FIRs in those cases are also the same. Sanction orders for prosecution of all 45 MCD Officials were sought and all of them were issued on 11.09.2006, which is the same date on which sanction orders in the present cases have been issued. Interestingly, the contents of all the 45 sanction orders are the same and it is a matter of record that the proceedings against the 37 MCD Officials in other RCs, except for the MCD Officials in the present RC, have been dropped since the sanction in prosecution were found invalid. It is the case of the present Appellant that his case is also at par with the other 37 MCD Officials who have since been discharged by the learned Special Judge as the sanction for prosecution in those cases have been found invalid.

The details of the said cases are as under: -

- (i) CBI v. Sudhir Mehta and others (RC No. 2(A)/05) in CBI/40/2016 decided *vide* order dated 25.05.2017;
- (ii) CBI v. Anil Tyagi and others (RC No. 3(A)/05) in CBI/42/2016 decided *vide* order dated 11.07.2017;
- (iii) CBI v. R.B. Bansal and others (RC No. 1(A)/05) in CBI/43/2016 decided *vide* order dated 03.08.2017;
- (iv) CBI v. R.P. Kohli and others (RC No. 3(A)/05) in CBI/45/2016 decided *vide* order dated 18.08.2017;



(v) CBI v. M. S. Rana and others (RC No. 2(A)/05) in CBI/44/2016 decided *vide* order dated 13.07.2017.

d) Reliance has been placed on the judgment of **CBI v. Ashok Kumar Aggarwal, (2014) 14 SCC 295**, and **Mansuklal Vithaldas Chauhan v. State of Gujarat, (1997) 7 SCC 622**, to contend that the grant of sanction for prosecution in the present cases are invalid.

Faulty Inspection Of The Installed Signboards

e) Learned Senior Counsel has further contended that the inspection of the retro reflective signboards was made in a mechanical manner without following any scientific methodology and their testing was done in the bright daylight. To support this contention, attention of this Court has been drawn to the testimony of PW-7, scientific expert, who has admitted that the testing was not done at the laboratory of Central Road Research Institute (CRRI) under the requisite light, temperature, and humidity. It is further submitted that CRRI has not adopted the norms of ASTM at the time of inspection of the signboards. It is also the case of the Appellant that CRRI does not possess the testing facilities of the retro reflective sheets and as PW-7 has admitted that there is no provision in CRRI to distinguish the retro reflective sheets from micro prismatic grade Type IV and Type X sheets.

f) It is also submitted that perusal of the report, Ex. PW-7/E, which has invariably been relied on by the learned Trial Court for convicting the Appellant as well as the other MCD Officials, would show that the same has not been signed by any person. It is also the case of the Appellant that no training was imparted to the MCD Officials so as to enable them to distinguish between the



normal engineering grade sheets and retro reflective sheets. It is also the case of the Appellant that the report of CRRI is inconclusive and the maker of the said report has not been examined before the learned Trial Court. It has also been argued that the signboards installed were to be tested by the contractor itself after a period of 2 years however, testing in the present case has been done even prior to the said stipulated period.

g) It has also been argued that CRRI is not an expert body under Section 293(4)(g) of the CrPC and therefore, the learned Special Judge has erred in relying upon the report of CRRI while passing the impugned judgment of conviction. It is also pointed out that no notification to the effect has been placed on record or tendered before the learned Trial Court which could show that the concerned Official from CRRI, who has signed the report, is a Government Scientific Expert.

False Certifications & Entries in Measurement Book

h) Learned Senior Counsel submitted that in the contract executed between the MCD and the private contractors there were no special terms and conditions for installation of retro reflective micro prismatic sheets as also in the NITs floated by the MCD and the whole work orders were based on general terms and conditions for such contracts, therefore, the Appellant cannot be held responsible, in case, the alleged sheets were not installed by the private contractors as per the specifications.

i) It is also the case of the Appellant that perusal of the certificates would show that they do not find any mention of installation of retro reflective



signboards or Type IX sheets. The certificates issued were in consonance with the requirements of the NIT and the CPWD manuals.

j) He has further submitted that E.E./A-1 was not the person who had certified the quality or had done inspection of specifications of the installed signboards; instead, he had merely forwarded the same on the basis of the certificates given by Assistant Engineers and Junior Engineers and the same cannot be attributed to having intention to cheat.

k) He has further submitted that the learned Trial Court has failed to appreciate the fact that E.E./A-1 had assumed the charge of Office of Executive Engineer of Division XXII only on 19.02.2004 whereas all the work orders, except Work Order No. 552 dated 17.03.2004, were floated and issued during the tenure of his predecessor, Sh. RK Sharma. It is also pointed out that the said sole work order was also awarded on the basis of tender which was already awarded to the contractor.

No Loss to State Exchequer

l) It has also been argued that the payment has only been made in one work order and for the remaining 5 work orders, the same is still pending and therefore, it would be wrong to say that any loss had been caused to the State Exchequer.

Arguments on behalf of A.E./A-2, A.E./A-3 and A.E./A-4

9.2 Arguments on behalf of A.E./A-2, A.E./A-3, A.E./A-4 are similar to that of E.E./A-1, apart from the sub-para (a), (j) and (k) of para 9.1, and no additional arguments have been advanced by the learned Senior Counsel for these Appellants.



9.3 Arguments advanced on behalf of J.E./A-5 are as follows: -

- a) Learned Senior Counsel for J.E./A-5 has submitted that the latter was not responsible or had competency to check for the quality of the material supplied and the special conditions which have been relied on by the prosecution. He has further submitted that special conditions which were required for the installation of retro reflective Type IX sheets were not appended with the NITs and the contracts which were executed by the MCD. It is also the case of the Appellant that the latter was not consulted or briefed in the preparation of the Office Order dated 16.01.2003.
- b) Learned Senior Counsel has drawn the attention of this Court to the testimony of PW-10, Ashok Kumar, who is purportedly alleged to have fabricated the signboards for the contractors and submitted that the said witness has resiled from his statement and having any knowledge regarding any such fabrication of the signboards for any of the contractors. It has been argued that apart from the said testimony there is nothing on record to show that J.E./A-5 knew or was involved in the fabrication of the installed signboards.
- c) He has further submitted that the responsibility of a Junior Engineer is only meant to check the quantity of materials which were supplied by the contractor and not the quality. It is also the case of the Appellant that the Measurement Book was used to check the mathematical calculations and the quality of the work is not mentioned in the said Book by the Junior Engineer as the same is mentioned in the interim or final bills. Attention of this Court has been drawn towards the certification in Measurement Book No. 1953 dated 31.03.2004 and it is submitted that the same does not constitute certification



regarding the quality of the signboards, however, those certifications were made regarding the quantity of the material and the same is also acknowledged by the Private Contractor/A-9.

d) Besides these arguments, other arguments regarding the non-application of mind while granting sanction for prosecution, inconclusive report of CRR and allegations *qua* false certifications and entries in the Measurement Book and bills are similar to that of accused/Appellant, A-1 to A-4.

9.4 Arguments advanced on behalf of J.E./A-6 are as follows: -

a) Learned Senior Counsel for J.E./A-6 has submitted that the MCD was not equipped with equipment which could help in the ascertainment of the quality of the signboards installed. He has further submitted that the method of ascertaining the quality of retro reflective sheets is not mentioned in the NITs or Work Orders or the contract executed between MCD and private contractors. It is also the case of the Appellant that it was not mentioned in the contract that only Type-IX sheets are to be used for the purpose of installation in the Work Orders issued by the MCD.

b) It has also been argued that the samples which were used for testing the quality of the signboards were drawn randomly out of the installed signboards.

c) Other arguments advanced on behalf of J.E./A-6 are similar, as noted hereinabove, to the cases of the other co-convicts, therefore, the same have not been repeated for the sake of brevity.

9.5 Learned counsel appearing for J.E./A-7 and J.E./A-8 have also advanced similar arguments to that of J.E./A-5 and have adopted the arguments advanced on behalf of E.E./A-1, to the limited extent, as noted hereinabove.



Arguments on behalf of Private Contractors/A-9 to A-11

9.6 Learned counsels for the Private Contractors has made the following submissions: -

- a) Learned counsels for the private contractors have submitted that the retro reflective board is a Non-Delhi Schedule Rate Items (Non-DSR) in terms of the CPWD Manuals and Specifications however, rate of the same is not available in the Schedule of the CPWD. The rates of the same were analysed and issued by the Planning Department of MCD which is determined based on the prevailing market rates. It is further submitted that NITs included the estimate of all the items; however, the special terms and conditions with respect to the Non-DSR items including the retro reflective micro prismatic Type IX sheet was not there in the NITs issued by the MCD.
- b) Attention of the Court has been drawn towards the testimony of Sh. RK Sharma, who was erstwhile Executive Engineer, wherein he had admitted that in the NITs floated during his tenure specifications regarding the Type IX sheets were not there.
- c) Besides these aforesaid arguments, learned counsel for the Private Contractors have adopted the arguments advanced by the learned Senior Counsels for E.E./A-1 and other A.E.(s) and J.E.(s) to the extent that the same are applicable to them.

SUBMISSIONS ON BEHALF OF THE CBI/RESPONDENT

10. Learned SPP for the CBI has advanced arguments which are common against the cases of all the Appellants and the same are as follows: -



Description of Sheets to be Installed

a) Learned SPP for the CBI has submitted that the identity and classification of the sheets which have been installed in pursuance of the Work Orders issued is of essence in the present case as the schedule of work appended to the NITs specifically provides that the sheets which were directed to be used for installation of the signboards are to be micro prismatic grade sheets of Type IX and as per the standards of ASTM 4956-01. Attention of this Court has been drawn towards the para 4 of the chargesheet, wherein, the description and distinguishing features of the various kinds of engineering sheets have been mentioned and the same has also been placed on record as Ex. PW-3/A. It is also submitted that the specific conditions were also circulated with the circular in question i.e., Ex. PW-1/C.

Specifications and Quality of Material to be Used

b) Learned SPP for the CBI has further submitted that perusal of the NITs and especially the schedule attached to it clearly shows that the quality of signboards was to be of Type-IX sheet as per the ASTM 4956-01 standard. He further submitted that the Measurement Book also shows that the A.E.(s) and J.E.(s) have given certification to the extent that the signboards which have been installed were as per the said standards. However, to the contrary, the expert report (Ex. PW-7/E) of CRRI shows that the installed signboards were not of micro prismatic sheet Type IX.

c) It is also the case of CBI that ample evidence has been placed on the record to substantiate the report of CRRI and the same has been rendered after due testing of the signboards installed by the private contractors. It is also



submitted that it is not the case of the convicts that there was any confusion regarding the quality and category of sheets which were directed to be installed as per the Work Orders issued to the private contractors.

Certifications by the MCD Officials

d) Learned SPP for the CBI has also submitted that the concerned MCD Officials have certified that the materials used were as per the NIT conditions and specifications as the same can be manifestly seen from the entries of the Measurement Book and bills which have been raised by the private contractors. However, the report of CRRI shows otherwise. It is the case of the prosecution that the installed signboards were not in conformity with the specifications provided by the MCD *vide* Office Order dated 16.01.2003 and were of inferior quality standards. It is further submitted that the Measurement Books were not only used for physical quantity checks but also for the quality of the material used in the installation purposes.

Expert Witness and Report of CRRI

e) Learned SPP for CBI submitted that under Section 293 of the CrPC the report issued by the expert enumerated therein, can be relied upon as evidence without calling the said expert as witness. However, in the present case, the expert from CRRI who had rendered the report has been examined before the learned Trial Court, therefore, his evidence is relevant under Section 45 of the Indian Evidence Act, 1872, (for short, 'IEA'). It is the case of the prosecution that, as per ASTM, it is not mandatory that the quality or testing of the sheets can only be done in a laboratory.



f) It is also submitted that the testing in the present case was done with the help of reflectometer R-4500 and the signboards which were installed by the private contractors had failed to pass the test of retro reflectivity. It is also argued that there is no restriction as such that the testing of the signboards cannot be done before 2 years of their installation or execution of work.

g) The report of the CRRI clearly demonstrates that the private contractors had used ASTM 4956-04 instead of ASTM 4956-01 sheets. Learned SPP for CBI has submitted that even though the test was conducted in the bright daylight still the same cannot be construed as a sole factor to disregard the report of the expert as the tests were conducted with the aid of the reflectometer.

h) Regarding the difference in the timing of the *panchnamas* i.e., Ex. PW-7/A to Ex. PW-7/D, it is submitted that the minor contradiction in stating the time of the *panchnama* does not make a major difference at all as the inspection and testing were not done by a single person alone. It consisted of a team of CBI Officials, Expert, MCD persons. It is also pointed out that none of the witnesses were confronted with the variation in timings of the *panchnamas*.

Sanction Order for Prosecution

i) Regarding the challenge of the convicts in respect of sanction order, it is submitted that the same has been an afterthought and it also does not find mention in the memo of appeal.

j) It is further submitted that the sanction for prosecution of the present Appellants has been passed after due application of mind. It is the case of CBI that the grant for sanction for prosecution is an administrative function and while examining the sanction, the Court is not exercising powers of Appellate Court



over such sanction order. It is also argued that the application of mind does not mean that the sanctioning authority should examine every detail to decide the veracity of the allegations made against the proposed accused at that relevant stage.

k) Learned SPP for CBI has also submitted that the learned Trial Court after examining material available on record has upheld the sanction order of prosecution and the same cannot now be challenged in view of the bar under Section 19(3) of the PC Act. It is also submitted that the sanctioning authority, in view of the incriminating evidence placed before it, was satisfied that a *prima facie* case against the Appellants is made out and had granted the sanction for prosecution after getting clarifications of certain queries from CBI. It is further submitted that the sufficiency of the material placed before the sanctioning authority cannot be questioned by the Appellants at this stage of the case.

11. The case of the Respondent/CBI against the respective Appellants are as follows: -

11.1 Role of E.E./A-1

a) E.E./A-1 was working as Executive Engineer in Division XXII and was bestowed with the duty to check the quality of the signboards installed by the private contractors and passing bills of payment. It is the case of the prosecution that E.E./A-1 was the person who had after inspection of the work executed by the private contractors had made endorsement/entry in the Measurement Book that the same were in consonance with the standards provided in the NITs floated by MCD. All the requisite documents pertaining to the certificate of test/warranty had been obtained by the private contractors from E.E./A-1.



Validity of Sanction for Prosecution

- b) Regarding the invalidity of the sanction order for prosecution against E.E./A-1, it is submitted that though he was working as Executive Engineer in the said Division of the MCD at the time of commission of the offences, he was a Group 'A' employee of lower category and was appointed by Commissioner of MCD. It is further submitted that the said post of lower category of Group 'A' employee does fall under the category of higher officers as provided under Section 89 of the DMC Act. It is also pointed out that as per Section 59(d) of the DMC Act, Commissioner of MCD was the appointing as well as the Disciplinary authority of E.E./A-1 and therefore, the sanction for prosecution granted by the PW-19 was valid sanction as it was accorded by the competent authority.
- c) It is also pointed out that the Hon'ble Supreme Court ***vide* Order dated 09.11.2012 passed in SLP Crl. 7932-7933/2012** had confined the applicability of **G.S. Matharoo's case (*supra*)** only to the parties of that case, therefore, the law laid down by this Court in **G.S. Matharoo (*supra*)** does apply to the facts of the present case. It is also pointed out that the said SLPs had also been dismissed by the Hon'ble Supreme Court ***vide* Order dated 26.08.2014.**
- d) With respect to the accused MCD Officials against whom proceedings were dropped by the CBI pursuant to the orders passed by the learned Special Judge, as noted hereinabove (***supra sub-para (c) para 9.1***), it is submitted that the present MCD Officials who have been convicted by the learned Trial Court cannot seek parity with those who were discharged as those MCD Officials had assailed the sanction orders *qua* them during the pendency of the trial however, the present MCD Officials, except E.E./A-1, never chose to avail such remedies.



It is also pointed out that it is only at the request of E.E./A-1 his challenge *qua* the sanction order was decided alongwith the main case after the hearing of the same.

11.2 Role of A.E./A-2; A.E./A-3; A.E./A-4

- a) Besides the submissions which have been recorded hereinabove, similar arguments have been made by learned SPP for CBI against these A.E.(s). Their role in the present case is that they after conducting a test check of the work, executed which they were supervising, had signed, or made endorsements in their respective Measurement Books to the effect that signboards installed by the private contractors had been in consonance with the specifications mentioned in the schedule to the NITs floated by the MCD. The case of the CBI against them is that the said certification made by these A.E.(s) was made falsely and deliberately as they were acting in furtherance of their conspiracy to cheat and cause loss to the State Exchequer.
- b) The submissions regarding the non-application of mind to the grant of sanction for prosecution against these Appellants are also same except regarding the invalidity of the sanction order which has specifically been assailed by E.E./A-1.
- c) These MCD Officials have also not challenged the sanction order during the pendency of the trial before the learned Trial Court hence, they are also not liable to be treated at par with those Officials in other RCs against whom proceedings were dropped pursuant to order passed by the learned Special Judge.



11.3 Role of J.E./A-5; J.E./A-6; J.E./A-7; J.E./A-8

- a) The role of these J.E.s are also similar as they have given false certificates and made endorsement in the Measurement Book to the effect that work executed by the private contractors under their respective supervision, as noted above, was as per the specifications mentioned in the NITs even though the signboards which were installed were of inferior quality.
- b) Rest of the submissions with regard to these J.E.s have been noted above and are similar to that of A.E.s.

11.4 Role of Private Contractors/A-9 to A-11

- a) While acting in conspiracy with the MCD Officials, the private contractors had raised bills of payment in respect of their work executed in pursuance of the Work Orders issued in their favour on the basis of the false certifications and endorsements given by the MCD Officials.
- b) In Work Order No. 552, Private Contractor/A-9 had received the payment *via* encashment of cheque for the bill raised by him thereby causing loss of Rs. 1,41,850 to the State Exchequer. However, in the rest of the Work Orders, payment for the bills raised by the private were not made owing to the reasons, as noted above. Hence, an attempt to cheat was made by the Private Contractors/A-10 and A-11, in connivance with the MCD Officials to cause loss to the State Exchequer.

ANALYSIS AND FINDINGS

12. The primary contention on behalf of the MCD Officials, being E.E./A-1, A.E./A-2, A.E./A-3, A.E./A-4, J.E./A-5, J.E./A-6, J.E./A-7, J.E./A-8, is that the sanction for prosecution as required under Section 19 of the PC Act, 1988 read



with Section 197 of the Cr.P.C, 1973 is invalid. The sanction for prosecution in the present appeals was granted by PW-19, who at the relevant time was Commissioner in the MCD. It is pointed out that the CBI had registered 6 RCs on 01.02.2005 against the 45 officials of MCD with respect to the same subject matter pertaining to 6 divisions of MCD. Accordingly, CBI sought sanction for prosecution against 45 officials of MCD from PW-19 together. It is further come on record, all the sanctions orders with respect to the said 45 officials of MCD, i.e., the aforesaid appellants and 37 other MCD Officials in the related 5 other matters were issued on the same date i.e., on 11.09.2006. The sanction orders in the present appeals have been placed on record as PW-19/A to PW-19/H. It has come on record that contents of all the 45 sanction orders are same. Consequently, CBI filed 6 chargesheets before the Id. Special Judges, CBI. It was pointed out that sanction order with respect to the similarly placed Officials of MCD has since been declared invalid by respective learned Special Judges in all the other 5 cases. The list of such cases is reproduced as under: -

- (i) CBI v. Sudhir Mehta and others (RC No. 2(A)/05) in CBI/40/2016 decided *vide* order dated 25.05.2017;
- (ii) CBI v. Anil Tyagi and others (RC No. 3(A)/05) in CBI/42/2016 decided *vide* order dated 11.07.2017;
- (iii) CBI v. R.B. Bansal and others (RC No. 1(A)/05) in CBI/43/2016 decided *vide* order dated 03.08.2017;
- (iv) CBI v. R.P. Kohli and others (RC No. 3(A)/05) in CBI/45/2016 decided *vide* order dated 18.08.2017;



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(v) CBI v. M. S. Rana and others (RC No. 2(A)/05) in CBI/44/2016 decided *vide* order dated 13.07.2017.

13. The aforementioned sanction orders have been declared invalid by the respective learned Special Judges primarily on the ground that the same were passed without due application of mind, and therefore, unsustainable in law. Reason for such a finding in the aforesaid orders passed by respective learned Special Judges was that the SP report which was sent to the Sanctioning Authority was not accompanied by any documents collected during the investigation by the CBI, and more significantly, the report from the CRRI was also not appended with the said report sent for seeking sanction for prosecution against MCD Officials. It was noted that at the time of sending of the SP Report, the report from CRRI was awaited.

14. It was further noted that the sanctioning order was, thus, passed without having perused the statement of witnesses or any document collected by the CBI during investigation as well as without the report of CRRI on which the entire prosecution case is based upon. It was further observed that when clarification was sought by the Director, Vigilance, MCD, the reply given by CBI was in aggressive tone, and thus, there was indirect pressure to accord sanction for the prosecution at the earliest on the grounds of delay.

15. As noted hereinabove, the sanction orders in the aforesaid RCs as well as the present sanction orders were issued on the same date and contents of the same are identical. In the present case, IO/PW-18, in his cross-examination as recorded on 22.03.2012, has stated that, "*It is correct that before grant of sanction by the Commissioner, CRRI report was not available*" (page 10 of

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cross-examination of PW-18) and PW-19, Sanctioning Authority, Commissioner of MCD, during his cross-examination as recorded on 20.03.2012, has stated that *“As it is an old case, I do not remember if I had written a letter to the SP, CBI for seeking some clarifications. I do not remember if the report form CRRI was not received by the time I granted sanction. I do not remember if I had made a mention of CRRI report in my order or not.”* (page 4 of cross-examination of PW-19). Thus, in the present case as well, the circumstances in which the sanction orders were passed are similar to the aforesaid cases wherein identical sanction orders have been declared invalid. Findings with respect to the said sanction orders has not been challenged by the CBI and the same has now attained finality. The submission on behalf of the CBI that the present issue was not raised before the learned Trial Court and the same was also not been taken in the present appeal, is not tenable as the issue is legal in nature and goes to the very root of the matter. However, it is not denied that the sanction orders which have been declared invalid were issued on the same date and were identical. It is also not in dispute that the sanction orders in the present case was also issued in similar circumstances as mentioned hereinabove. In these circumstances, the contention of the CBI that the Appellants herein had to show that failure of justice had occasioned on account of defect in sanction for prosecution in terms of Section 19(3) of the PC Act is not tenable. In these circumstances, when the Appellants are identically placed with the 37 other Officials of MCD in 5 other cases, wherein, they have been discharged on account of invalid sanction order, the aforesaid stand of the CBI cannot be accepted. In addition, it is also pertinent to note that CRRI report which was filed along with chargesheet and placed on

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record by CBI was unsigned and also, records the fact that it is difficult to confirm the type of micro prismatic grade sheet i.e., from Type IV to Type X. This was a relevant material which should have been placed before the Sanctioning Authority. Therefore, the orders granting sanction, i.e., Ex. PW-19/A to Ex. PW-19-H, in view of non-application of mind are held to be invalid, and therefore, cannot be sustained.

16. The Hon'ble Supreme Court in **State of Karnataka v. Ameerjan, (2007) 11 SCC 273**, while dealing with interpretation and/or application of the provisions of Section 19 of PC Act, has held and observed as under: -

“9. We agree that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not.

10. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. We have noticed hereinbefore that the sanctioning authority had purported to pass the order of sanction solely on the basis of the report made by the Inspector General of Police, Karnataka Lokayukta. Even the said report has not been brought on record. Thus, whether in the said report, either in the body thereof or by annexing therewith the relevant documents, IG Police, Karnataka Lokayukta had placed on record the materials collected on investigation of the matter which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not evident. Ordinarily, before passing an order of sanction, the entire records containing the materials collected against the accused should be placed before the sanctioning authority. In the event, the order of sanction does not indicate application of mind as (*sic* to) the materials placed before the said authority before the order of sanction was passed, the



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same may be produced before the court to show that such materials had in fact been produced.”

17. The Hon’ble Supreme Court in **Mohd. Iqbal Ahmed v. State of Andhra Pradesh, (1979) 4 SCC 172**, wherein sanction order against the Appellant therein was challenged regarding the application of mind by the Sanctioning Authority based on the material placed before it, has held and observed as under:

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“3. A perusal of the resolution of the Sanctioning Authority clearly shows that no facts on the basis of which the prosecution was to be sanctioned against the appellant are mentioned in the sanction nor does this document contain any ground on which the satisfaction of the Sanctioning Authority was based and its mind applied. This document merely mentions that the sanction has been given on the basis of a note of the Commissioner, Municipal Corporation which appears to have been placed before the Committee. It is obvious, therefore, that this note, if any, must have come into existence either on March 31, 1969 or at any date prior to this. The prosecution could have proved the facts constituting the offence which were placed before the Sanctioning Authority by producing the note at the trial. But no such thing has been done. What the prosecution did was merely to examine two witnesses PWs 2 and 7. PW 2 has produced the order implementing the Resolution of the Sanctioning Authority which is Ex. P10 and is dated April 21, 1969, that is to say after the sanction was given. This document no doubt contains the facts constituting the offence but that does not solve the legal issues that arise in this case. It is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show that the facts placed before the Sanctioning Authority and the satisfaction arrived at by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest difficulty in the prosecution, the entire proceedings are rendered void ab initio. In the instant case no evidence has been led either primary or

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secondary to prove as to what were the contents of the note mentioned in Ex. PI 6 which was placed before the Sanctioning Authority. The evidence of PW 2 or PW 7 is wholly irrelevant because they were not in a position to say as to what were the contents of the note which formed the subject-matter of the sanction by the Standing Committee of the Corporation. The note referred to above was the only primary evidence for this purpose. Mr Rao vehemently argued that although the resolution, Ex. PI 6 does not mention the facts, the Court should presume the facts on the basis of the evidence given by PW 2 and the order implementing sanction which mentions these facts. This argument is wholly untenable because what the Court has to see is whether or not the Sanctioning Authority at the time of giving sanction was aware of the facts constituting the offence and applied its mind for the same and any subsequent fact which may come into existence after the resolution granting sanction has been passed, is wholly irrelevant. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned.”

18. The Hon’ble Supreme Court in **State of Karnataka Through CBI v. C. Nagarajswamy, (2005) 8 SCC 370**, while dealing with interpretation of Section 300 of the CrPC *vis-à-vis* whether the sanction for prosecution accorded for the prosecution of the accused therein was a valid sanction and can the challenge to same can be brought to Court’s notice at a later stage, has held and observed as under: -

“**15.** Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. It is desirable that the question as regards sanction may be determined at an early stage. (See *Ashok Sahu v. Gokul Saikia* [1990 Supp SCC 41 : 1990 SCC (Cri) 611] and *Birendra K. Singh v. State of Bihar* [(2000) 8 SCC 498 : 2001 SCC (Cri) 17 : JT (2000) 8 SC 248] .)

16. But, even if a cognizance of the offence is taken erroneously and the same comes to the court's notice at a later stage a finding to that effect is permissible. Even such a plea can be taken for the first time before an



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appellate court. (See *B. Saha v. M.S. Kochar* [(1979) 4 SCC 177 : 1979 SCC (Cri) 939] SCC para 13 and *K. Kalimuthu v. State* [(2005) 4 SCC 512 : 2005 SCC (Cri) 1291] .)”

19. The other issue with respect to the sanction order is that PW-19 was not the competent authority to grant sanction for prosecution in the present case for E.E./A-1/Brij Pal Singh, who was the Executive Engineer of the MCD. In RC No. 3A/05-ACU-VIII, learned Special Judge had discharged the public servant, therein, on account of the fact that the Sanctioning Authority was not competent to grant sanction for prosecution and the same was challenged by the CBI before this Court in CRL.REV. 501/2022, which was dismissed *vide* a judgment dated 14.09.2017, wherein the learned Single Judge of this Court observed and held as under: -

“16. It would be necessary to refer to the provisions of Section 465 of the Cr.P.C. also which deals with the effect of any error, omission or irregularity in grant of sanction on the prosecution.

“465. Finding or sentence when reversible by reason of error, omission or irregularity.-

(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby. (2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.”



17. A bare reading of Section 19(1) of the PC Act makes it clear that a court will have the competence to take cognizance of any offence punishable under Sections 7, 10, 11, 13 and 15 against public servants when previous sanction of the competent authority has been accorded. The terms are absolute and brooks of no dispute. What has been prohibited is that a court of appeal, confirmation or revision shall not reverse or alter the findings of the Special Judge on the ground of error, omission or irregularity in the sanction unless in the opinion of that court, a failure of justice has been occasioned, and while coming to such opinion, such court shall have regard to the fact whether such objection ought to have been raised at any earlier stage in the proceedings.

18. The Supreme Court in **Nanjiappa v. State of Karnataka (2015) 8 SCALE 171** has held as follows:

"16. Having said that there are two aspects which we must immediately advert to. The first relates to the effect of sub-section (3) to Section 19, which starts with a nonobstante clause. Also relevant to the same aspect would be Section 465 of the Cr.P.C. which we have extracted earlier. It was argued on behalf of the State with considerable tenacity worthy of a better cause, that in terms of Section 19(3), any error, omission or irregularity in the order sanctioning prosecution of an accused was of no consequence so long as there was no failure of justice resulting from such error, omission or irregularity. It was contended that in terms of explanation to Section 4, "error includes competence of the authority to grant sanction". The argument is on the face of it attractive but does not, in our opinion, stand closer scrutiny. A careful reading of sub-section (3) to Section 19 would show that the same interdicts reversal or alteration of any finding, sentence or order passed by a Special Judge, on the ground that the sanction order suffers from an error, omission or irregularity, unless of course the court before whom such finding, sentence or order is challenged in appeal or revision is of the opinion that a failure of justice has occurred by reason of such error, omission or irregularity. Sub-section (3), in other words, simply forbids interference with an order passed by Special Judge in appeal, confirmation or revisional proceedings on the ground that the sanction is bad save and except, in cases where the appellate or revisional court finds that failure of justice has occurred by such invalidity. What is noteworthy is that sub-section(3) has no



application to proceedings before the Special Judge, who is free to pass an order discharging the accused, if he is of the opinion that a valid order sanctioning prosecution of the accused had not been produced as required under Section 19(1). Sub-section (3), in our opinion, postulates a prohibition against a higher court reversing an order passed by the Special Judge on the ground of any defect, omission or irregularity in the order of sanction. It does not forbid a Special Judge from passing an order at whatever stage of the proceedings holding that the prosecution is not maintainable for want of a valid order sanctioning the same. The language employed in sub-section (3) is, in our opinion, clear and unambiguous. This is, in our opinion, sufficiently evident even from the language employed in sub-section (4) according to which the appellate or the revisional Court shall, while examining whether the error, omission or irregularity in the sanction had occasioned in any failure of justice, have regard to the fact whether the objection could and should have been raised at an early stage. Suffice it to say, that a conjoint reading of sub-sections 19(3) and (4) leaves no manner of doubt that the said provisions envisage a challenge to the validity of the order of sanction or the validity of the proceedings including finding, sentence or order passed by the Special Judge in appeal or revision before a higher Court and not before the Special Judge trying the accused. The rationale underlying the provision obviously is that if the trial has proceeded to conclusion and resulted in a finding or sentence, the same should not be lightly interfered with by the appellate or the revisional court simply because there was some omission, error or irregularity in the order sanctioning prosecution under Section 19(1). Failure of justice is, what the appellate or revisional Court would in such cases look for. And while examining whether any such failure had indeed taken place, the Court concerned would also keep in mind whether the objection touching the error, omission or irregularity in the sanction could or should have been raised at an earlier stage of the proceedings meaning thereby whether the same could and should have been raised at the trial stage instead of being urged in appeal or revision".

(emphasis provided by the court)

19. The argument of Mr. Narender Mann, learned Special Public Prosecutor that the judgment delivered in **Nanjappa (supra)** is per incuriam as it does not take into account the judgments delivered in **State of Bihar and Others**



v. Rajmangal Ram 2014 (4) SCALE 338, Prakash Singh Badal and Anr. v. State of Punjab and Ors. (2007) 1 SCC 1, State of Madhya Pradesh v. Virender Kumar Tripathi 2009 (7) SCR etc. is not correct. The issues involved in the aforesaid cases were different. In **State of Bihar v. Rajmangal Ram** (supra), sanction for prosecution as against the accused persons was granted by the law department of the State and not by the parent department, to which those accused persons belonged. The accused person preferred a writ petition before the High Court of Patna, challenging the maintainability of criminal proceedings on the ground that the sanction was invalid. The High Court interdicted the prosecution on the aforesaid ground. The question, therefore, before the Supreme Court of India in **Rajmangal Ram** (supra) was whether criminal prosecution could be interfered with by the High Court at the instance of an accused who had sought mid-course relief from the criminal charges leveled against him on grounds of defects/omissions or errors in the order granting sanction to prosecute including errors of jurisdiction to grant sanction. The Supreme Court of India, on going through the provisions of Section 19 PC Act read with Section 465 Cr.P.C., answered the aforesaid question in the negative while saying so, the Supreme Court took note of the decisions in **Prakash Singh Badal and Virender Kumar Tripathi** (supra). Thus, what was the challenge before the Supreme Court was the order of the High Court whereby the prosecution against the accused was interdicted mid way. In the present case, the trial court/special court only has dropped the proceedings on the grounds of incompetence of the authority granting sanction to prosecute.

20. In **Prakash Singh Badal** (supra), the question which had arisen for consideration before the Supreme Court was as to whether an order of sanction is required to be passed in terms of Section 197 of the Cr.P.C. in relation to an accused who has ceased to be a public servant. It was in that context that a question had arisen as to whether the act alleged to be performed under the colour of office is for the benefit of the officer or for his own pleasure. In the context of the question as to whether the public servant concerned should receive continuous protection, it was opined: (SCC Page 25 para 29 herein)

"29. The effect of sub-sections (3) and (4) of Section 19 of the Act are of considerable significance. In sub-section (3) the stress is on "failure of justice" and that too "in the opinion of the court". In sub-section (4), the stress is on raising the plea at the appropriate time. Significantly,



the "failure of justice" is relatable to error, omission or irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is (sic not) considered fatal unless it has resulted in failure of justice or has been occasioned thereby. Section 19(1) is a matter of procedure and does not go to the root of jurisdiction as observed in para 95 of Narasimha Rao case. Subsection (3)(c) of Section 19 reduces the rigour of prohibition. In Section 6(2) of the old Act [Section 19(2) of the Act] question relates to doubt about authority to grant sanction and not whether sanction is necessary."

21. Similarly, in other cases referred by the learned counsel for the petitioner/CBI, the issues were different.

22. The mandate of Sections 3 and 4 of Section 19 is required to be exercised by the superior courts as has held in **Nanjappa** (supra)"

20. Learned SPP for the CBI has submitted that the judgment relied upon by learned Special Judge was of **G. S Matharaoo** (*supra*) which was challenged before the Hon'ble Supreme Court, and the same was dismissed *vide* order dated 26.08.2014 in SLP Criminal Nos. 7932-7933/2012, however, the Hon'ble Supreme Court noted that the all the questions of law were kept open. The aforesaid fact was brought to the knowledge of the learned Single Judge of this Court, while disposing of the aforesaid Criminal Revision Petition filed by the CBI, against the orders of discharge. It is again not in dispute that the aforesaid order has been passed with respect to the similar sanction order passed by PW-19 in the aforesaid RC. It is also not in dispute that the E.E./A-1 is similarly placed with the Respondent in the aforesaid petition, i.e., Rajinder Prakash Kohli. In view of the above, sanction order for prosecution in respect of E.E./A-1, Brij Pal Singh, is set aside on this ground as well.

21. So far as the other grounds in the appeals are concerned, it is relevant to note that, while framing charges against the present Appellants, the learned



Special Judge *vide* order dated 20.02.2009 had noted the fact that retro reflective micro prismatic Grade sheets Type IX” was to be used for the sign boards. The main thrust of the case of the prosecution is based on the CRRI report Ex. PW-7/E (colly). The said report towards its end records as under: -

“As per ASTMD-4956-04 the range of micro prismatic grade sheet varies from Type IV to Type X and It is difficult to confirm the type so values were not compared with the standard value.”

22. It is further noted that Ex. PW-7/E is otherwise an undated and unsigned document and the same is sought to be proved through PW-7, Dr. Surendra Mohan. The submission on behalf of learned Counsels for the Appellants is that the said document would not be covered under Section 293 of the Cr.P.C. as no notification or copy thereof has been placed on record or produced during the course of trial proving that the person who submitted the report had been notified as a government scientific expert under Section 293(4)(g) of the Cr.P.C.

23. In response to the same, learned SPP for the CBI submits that the said report can be admissible under Section 45 of the IEA which is for the purposes of producing expert opinion. Various other grounds have been taken to dispute the authenticity of the said report inasmuch as, *vide panchnama* dated 13.04.2005 (from 12:30 P.M. to 05:30 P.M.) (Ex. PW-7/D), it has come on record that 8 sign boards at different locations were examined in the span of 5 hours in the absence of the Investigating Officer, IO/PW-18.

24. As per the case of the prosecution, *panchnamas* being Ex. PW-7/A, Ex. PW-7/B, Ex. PW-7/C and Ex. PW-7/D were prepared on 01.04.2005, 04.04.2005, 05.04.2005 and 13.04.2005 respectively. It has emerged through the



testimony of PW-7 that on the basis of the signboards examined as per these *panchnamas*, he had given his expert report (PW-7/E). The prosecution has examined PW-11, Vipin Chaudhary, the then, Telecom Technical Assistant in the office of SDO(P), Yamuna Vihar at Brij Puri, and PW-13, Prem Chand, retired Head Clerk as independent witnesses to these *panchnamas*. PW-11 was a signatory to *panchnama*, Ex. PW-7/A and has admitted his signatures at the said memo. PW-13 was signatory to Ex. PW-7/B and Ex. PW-7/D and has admitted his signatures at said memos. However, PW-13, in his cross-examination, has stated that nothing was seized in his presence and all the paper work was done whilst sitting in the MCD Office of Division-XXII, Bhajan Pura. He has further stated that he had signed the said *panchnama* documents on the asking of XEN, Naresh Gupta, and the said documents were not read over to him. The said XEN, Naresh Gupta, was neither cited as witness nor examined by prosecution before the learned Trial Court. It is pertinent to note that one of the signatories to *panchnama*, Ex. PW-7/A, Sh. Om Prakash (UDC, Accounts clerk in Division XXII of MCD) was examined as PW-9 by the prosecution before the learned Trial Court, however, he has not stated anything regarding the said *panchnama*. Besides these prosecution witnesses, other independent witnesses who were signatories to the aforesaid *panchnamas*, were cited as witnesses alongwith chargesheet however, they were subsequently dropped and were not examined by the prosecution during the course of trial. In view of the inconsistencies in the testimonies of the aforesaid independent witnesses, as noted hereinabove, regarding the examination of the installed signboards and preparation of *panchnamas*, reliance cannot be placed on them.



25. PW-7 has neither produced the recorded reading of the Recto-reflectometer R4500 nor any tabulated sheets of observations of the said reading which obtained on the field were placed on record. Finally, it was admitted by PW-7 that CRRI does not possess testing facilities to distinguish the category of retro reflective micro prismatic grade sheet Type IV and Type X sheets. As noted hereinbefore, the entire case of prosecution is that installed retro reflective micro prismatic grade sheet were not of Type IX. The fact that this could not have been tested by the CRRI itself creates a doubt in the present report.

26. The other witness sought to be examined by the prosecution was PW-10, Ashok Kumar Sharma, who in his statement under Section 161 of the Cr.P.C. had stated that he was fabricator of sign board in respect of M/s A.S. Constructions of Private Contractor/A-11 and that he had used only HIG sheets and not Type IX micro prismatic sheets but the said witness was examined as PW-10 and had not supported the case of the prosecution at all in this regard. Apart from the aforesaid evidence, the prosecution relied on certain work orders and the bills raised in the present matter, the same need not be gone into on account of the fact that the prosecution case with respect to the fact that micro prismatic grade sheet Type IX were not used has not been proved beyond reasonable doubt. It is also pertinent to note in the 6 work orders which are subject matter of the present appeals, payment was made with respect to only 1 work order which is Ex. PW-12/A and the payment with respect to the remaining 5 work orders have not been made by the MCD.



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27. In view of the aforesaid discussion, this Court is of the considered opinion that the prosecution has also not been able to prove the case beyond reasonable doubt *qua* the appellants.
28. Therefore, the judgment of conviction dated 17.05.2012 and order on sentence dated 22.05.2012 are set aside. Appellants stand acquitted.
29. The appeals are allowed and disposed of accordingly.
30. Bail bonds stand discharged.
31. Copy of this judgment be communicated to the concerned Jail Superintendent for necessary information and compliance.
32. Judgment be uploaded on the website of this Court *forthwith*.

AMIT SHARMA
JUDGE

OCTOBER 04, 2024/bsr

Signature Not Verified

Digitally Signed By BHASKAR
SINGH RAWAT
Signing Date: 08/10/2024
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CRL.A. 657/2012 and Connected Appeals