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

% **Reserved on: January 04, 2024**
Decided on: April 15, 2024

+ **CRL.A. 1202/2015**

PANKAJ GOEL ..... **Appellant**

Through: Mr. D. S. Kohli, Mr. Yash Kadyan, Mr. Himanshu Dahiya, Mr. Mannat Kohli, Advocates.

V

STATE (THROUGH CBI) ..... **Respondent**

Through: Mr. Yudhvir Singh Chauhan, APP for State with SI Naresh Kumar, P.S. Anti-Corruption Branch.

CORAM
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

1. The present criminal appeal is filed under section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as **"the Code"**) to set aside the judgement dated 29.10.2015 (hereinafter referred to as **"the impugned judgment"**) and order on sentence dated 02.11.2015 (hereinafter referred to as **"the impugned sentence order"**) passed by the court of Ms. Poonam Chaudhry, Special Judge

– 07, (PC Act Cases of ACB), GNCTD Central District, Tis Hazari Court, Delhi (hereinafter referred to as **"the trial court"**) bearing CC no. 04/2012 titled as **State V Pankaj Goel and another** arising out of FIR bearing no 0023/2004 registered under sections 467/468/471/420 read with section 120 B IPC along with sections 13(1)(d) and 13(2) of the Prevention of Corruption act, 1988 (hereinafter referred to as **"PC Act"**) at P.S. Anti-Corruption Branch, Delhi.

2.The brief facts of the case are that M/s Aruna Builders and Suppliers, Shakti Nagar, Delhi was awarded four work orders bearing no 254, 255, 256 and 257 dated 07.08.1998 amounting to Rs.6.8 lacs pertaining to improvement of roads in the area of Jahangir Puri. The fresh bitumen as per terms and conditions of the work orders was to be procured by the contractor from any of the Government Oil Companies which are M/s IOCL, BP and HP for execution of the work orders and receipt issued by the government Oil Company was to be deposited with MCD, Delhi and no receipt of any other dealer was allowed to be submitted. Pankaj Goel (hereinafter referred to as **"the appellant"**) was serving as a Junior Engineer and C.B. Singh, the co-convict was serving as an Executive Engineer in Division No. XVI, Civil Lines Zone, Municipal Corporation of Delhi (MCD) on or before 07.08.1998 and they entered into a criminal conspiracy with M/s Aruna Builders & Suppliers, 26/87, Shakti Nagar, Delhi through its proprietor/contractor Arun Kumar Bansal (who was stated to be died during the investigation) along with Naresh Gupta, Assistant Engineer/co-accused (who also died in 2006 during the investigation) to defraud MCD with aim to pass bills and release payment to the contractor resulting in a pecuniary gain of Rs. 6.8 lacs through the use of forged invoices. Arun Kumar Bansal in furtherance of conspiracy used substandard/unauthorised bitumen in execution of work orders and submitted bills amounting to Rs.6.8 lacs along with forged vouchers/invoices regarding the purchase of bitumen from M/s Indian Oil Corporation Ltd. and said bills were cleared by the engineers of Division No. XVI MCD by abusing their official position as public servant thereby causing pecuniary benefit to M/s Aruna Builders and Suppliers.

2.1 Rajinder Singh Manku (PW16) in May, 2004 was posted as Inspector in ACB, GNCT Delhi and received source information to said effect. ACP Rajinder Singh Manku verified veracity of information and thereafter prepared a detailed report and submitted to Senior Officer regarding commission of offences under section 120B IPC read with section 420/468/471/467 IPC and section 13(2) read with section 13(l)(d) of PC Act. ACP Rajinder Singh Manku with the approval of Senior Officers prepared a *rukka* dated 25.05.2004 (Ex.PW16/A) and accordingly FIR bearing no 23/2004 (Ex. PW1/A) was got registered and investigation was assigned to PW20 Inspector S.S. Sandhu posted in Anti-Corruption Branch.

2.2 PW20 S.S. Sandhu during investigation received files (Ex. PW3/A to Ex. PW3/H from PW3 Pushkar Raj, Head Clerk, MCD which were seized vide seizure memo Ex.PW3/J. PW20 S.S. Sandhu sent a letter Ex.PWI5/B to the General Manager (Sales), IOCL, Mathura and received reply Ex. PW15/A from the Chief Engineer, Chief Refinery Coordinator wherein it was mentioned that in the year 1998 there was no customer in their record by the name of M/s Aruna Builders and Suppliers and invoices prepared by IOCL were computer generated but the invoices submitted by the M/s Aruna Builders and Suppliers were manually prepared. PW20 S.S. Sandhu also sent one letter to Executive Engineer, Division no. XVI, MCD to provide measure books/registers bearing no 1766 Ex. PW13/A and 1769 Ex. PW13/B relating to work orders no. 254 to 257 and work order no. 186 and 535 and received measurement books Ex. PW13/A (as exhibited in another case) and Ex. PW13/B (as exhibited during trial arising out of FIR no 24/04) vide letter Ex. PW17/A from PW17 Ashok Drabu, Executive Engineer.PW20 S.S. Sandhu interrogated the appellant co-convict C.B. Singh and co-accused Naresh. PW19 Inspector K.L. Meena was entrusted with further investigation on 22.11.04 and interrogated co-accused Naresh Gupta and the appellant. PW19 Inspector K.L. Meena called Head Clerk K.P. Singh and PW4 Khazan Singh, UDC of Account Section during investigation who informed that tender files and account files of the work orders Ex. PW3/A to Ex. PW3/H bear the signatures of the appellant, co-accused Naresh Gupta (since deceased), co-convict C.B. Singh and Arun Kumar Bansal (since deceased). The further investigation was transferred to PW21 Inspector Santosh Kumar on 13.12.2005.

2.3 PW21 Inspector Santosh Kumar during investigation he arrested co-accused Arun Kumar Bansal (since deceased) vide arrest memo EX.PW6/A. PW21 Inspector Santosh Kumar took the specimen signatures of the contractor, the appellant and co-convict C.B. Singh Ex.PW8/Al to A10 and PW8/B1 to B11 respectively on 12.03.2009 and specimen signatures of the co-accused (since deceased) PWIO/AI to A10 on 09.03.2009 and sent specimen signatures and questioned documents to FSL through PW7 HC Dasan and obtained FSL report Ex.PW21/A. PW21 Santosh Kumar obtained sanctions Ex. PW14/A and Ex. PW13/A for prosecution against the appellant and co-convict C.B.Singh respectively. PW21 Santosh Kumar also obtained bio data Ex. PW2/A and Ex. PW2/B and posting orders of the appellant and co-convict C.B. Singh. PW21 Inspector Santosh Kumar also arrested the appellant and co-convict C.B. Singh vide arrest memos and personal search memos Ex. PW5/A to Ex. PW5/D. PW21 Inspector Santosh Kumar also sent a letter Ex. PW21/B to Superintendent Engineer, MCD regarding the procedure for procurement bulk bitumen from Indian Oil Corporation for construction work and received reply Ex. PW17/B from concerned official. The charge sheet after completion of investigation was filed against the appellant and co-convict C.B Singh for offences punishable under sections 120B/420/467/468/471 IPC read with sections 13(1)(d)/13(2) of the PC Act.

2.4 The court of Sh. Rakesh Siddhartha, Special Judge: (PC ACT) - 6, Delhi vide order dated 08.04.2011 framed charges for the offences punishable under sections 120B/420/467/468/471 IPC read with sections 13(1)(d) and 13(2) of the PC Act against the appellant and the co-convict C.B. Singh to which they pleaded not guilty and claimed trial. The prosecution in support of its case examined 21 witnesses.

2.5 The appellant and co-convict C. B. Singh were examined under section 313 of the Code wherein he denied incriminating evidence and pleaded false implication and innocence. The appellant stated that a junior engineer is not involved in process of award of work orders. The investigation was not fair and proceedings were manipulated. The sanction Ex. 13/A was not given by a competent person. The co-convict stated that he was not involved in the process. It was responsibility of the contractor regarding genuineness of the documents. The investigation was not fair and proceedings were manipulated. The documents submitted by the contractor were to be examined by the account department. The appellant and co-convict C.B. Singh preferred to lead defence evidence and examined three witnesses.

2.6 The appellant and co-convict CB Singh were convicted for the offences punishable under sections 120B IPC, sections 13(1)(d) and 13(2) of the PC Act read with section 120B IPC and under section 420 IPC read with section 120B IPC vide impugned judgment dated 29.10.2015.

2.6.1 The appellant along with co-convict C.B. Singh vide impugned order on sentence dated 02.11.2015 were sentenced to undergo rigorous imprisonment for 02 years each with fine of Rs. 5,000/- each for the offence punishable under section 120B IPC and in default of the payment of fine to further undergo simple imprisonment for three months. The appellant and co-convict were also sentenced to undergo rigorous imprisonment for 02 years each with fine of Rs. 10,000/- and in default to further undergo simple imprisonment for three months for the offence punishable under section 420 IPC read with section 120B IPC. The appellant and co-convict were also sentenced to undergo rigorous imprisonment for 02 years each with fine of Rs. 5,000/- each and in default to further undergo simple imprisonment for three months for the offence punishable under sections 13(1)(d) and 13(2) of the PC Act read with section 120B IPC. All the sentences were ordered to be run concurrently. The benefit under section 428 of the Code was extended to the appellant and co-convict CB Singh. The appellant has paid the fine.

3. The appellant being aggrieved filed the present appeal to challenge the impugned judgment dated 29.10.2015 and impugned order on sentence dated 02.11.2015 primarily on the grounds that the impugned judgment is against the law and contrary to the facts and circumstances. The trial court has not considered the inherent inconsistencies and contradictions in the prosecution case and the evidence and benefit of doubt ought to have been extended to the appellant. The appellant was not under obligation to insist for invoice from the contractor as an evidence of procurement of bitumen from authorized source or to verify genuineness of invoice. There is no evidence to draw an inference regarding the appellant arrived at any agreement to do any legal act through illegal means. The prosecution has failed to prove that the appellant had any knowledge about the invoices being fabricated document and as such the appellant could not have been convicted for having committed offences of conspiracy, cheating or misconduct. The trial court has erred in concluding that MCD has suffered any wrongful loss in relation to the work orders subject matter of present case as MCD never received any complaint regarding quality of work and too much weight was given to the invoice and payments were released against the actual work executed at site. The responsibility as per work order of procuring bitumen from authorized source was on the contractor only and the appellant being a Junior Engineer had no role in procurement of bitumen. The appellant was one of the supervisory officer to ensure execution of the work in consonance with the quality stipulated under the work order. The trial court has committed grave illegality in rejecting testimony of the defence witnesses. The trial court has wrongly relied upon sections 91 and 92 of the Indian Evidence Act to brush aside Ex. DW 6/DA. The trial court has ignored serious infirmities in the investigation which cumulatively hit at the root of the case of the prosecution. The trial court has wrongly invoked section 106 of the Indian Evidence Act to shift the burden of proof upon the appellant. The impugned judgment suffered from various legal defects. The appellant also raised various other grounds to challenge impugned judgment and impugned order on sentence.It was prayed that the impugned judgment and order on sentence be set aside.

4. The perusal of impugned judgment reflect that the trial court considered argument advanced on behalf of the appellant that the present case was registered on the basis of a source information as deposed by PW16 but the source of the said information was not disclosed. The prosecution neither examined informer as a witness nor inquiry report stated to be conducted by PW16 was placed on record. It was also argued that PW16 submitted detailed report to seniors and a criminal case was got registered with the approval of senior officers but the approval of senior officers was not placed on record. It was also argued on behalf of the prosecution that PW16 conducted secret enquiry before registration of FIR and PW16 after being satisfied that the appellant and other accused were guilty of serious misdemeanour registered against them. The trial court opined and held that non-disclosure of source of secret information was not fatal to the case of prosecution as prosecution is not bound to disclose the source of its information and purpose of secret enquiry was to find out whether criminal proceedings can be resorted to save honest public servants from vexatious prosecution.

4.1 The counsel for the appellant argued that registration of case without conducting preliminary enquiry was fatal for the prosecution. The perusal of *rukka* Ex. PW16/A reflected that no effort was made by PW16 to conduct enquiry before registration but *rukka* Ex.PW16/A was drawn by PW16 pursuant to the receipt of the secret information on 25.05.2004 and within 5 minutes thereof FIR bearing no 23/2004 Ex. PW1/A was registered.

4.2 The impugned judgment reflects that PW16 Inspector Rajinder Singh Manku in May, 2004 received source information that M/s Aruna Builders and Suppliers, Shakti Nagar, Delhi was awarded four work orders bearing numbers 254, 255, 256 and 257 dated 07.08.1998 amounting to Rs.6.8 lacs pertaining to improvement of roads in the area of Jahangir Puri and as per terms and conditions of the work orders fresh bitumen was to be procured by the contractor from any of the Government Oil Companies for execution of the work orders. The engineers of Division No XVI MCD, Delhi while executing work entered into a criminal conspiracy with accused Arun Kumar Bansal with the intention to cheat MCD and in furtherance of said conspiracy accused Arun Kumar Bansal used substandard/unauthorised Bitumen. Subsequently bills amounting to Rs.6.8 lacs along with forged vouchers/invoices submitted by the contractors regarding the purchase of bitumen from M/s Indian Oil Corporation Ltd. were cleared by the engineers of Division No. XVI MCD including the appellant by abusing their official position as public servant thereby caused pecuniary benefit to M/s Aruna Builders and Suppliers. PW16 after verification of veracity of information submitted a detailed report to his Senior Officer and with approval of senior officer present case was registered. It is established that PW16 conducted preliminary secret enquiry before registration of case and if said preliminary enquiry report is not placed on record, it is not fatal to case of the prosecution. The trial court was justified in holding that that non-disclosure of source of secret information was not fatal to the case of prosecution as prosecution is not bound to disclose the source of its information.

5. The trial court also considered argument advanced on behalf of the appellant and co-convict C.B. Singh that there was nothing on record to show that substandard quality of bitumen was used by the accused Arun Kumar Bansal, proprietor of M/s Aruna Builders and Suppliers in execution of work orders in question except from bald allegations in FIR. PW20, the first Investigating Officer in cross examination deposed that he had not received any complaint in respect of the work carried out with regard to work orders in question and further deposed that he had not visited the sites nor collected the samples from the site and as such samples could not be sent to the laboratory. It was further argued that DW5 also deposed that the material used for road works in question was in conformity with the technical specifications and proved the lab test reports of the work orders as Ex. DW5/A to DW5/P. The trial court noted that DW5 in cross examination deposed that the reports were notprepared in his presence and accordingly opined that authenticity of the reports Ex. DW5/A to Ex. DW5/P was not proved did not find much substance in the said argument as the work orders stipulated that original receipt of bitumen procured from an authorized government refinery was to be submitted to MCD which was not done.

5.1 The counsel for the appellant argued that it was obligation of the contractor to furnish original invoice for proving fresh receipt of bitumen and referred stipulation 6 and 7 of work orders Ex. PW3/A, 3/C, 3/E & 3/G to establish that it was obligation of the contractor and no corresponding responsibility was assigned to the junior engineer to ascertain the genuineness of the documents furnished by the contractor. The appellant being a junior engineer was responsible for adhering to the quantitative and qualitative work executed at site and the prosecution has not pointed out any deficiency in respect of the measurements of the work actually executed at site and relied upon the lab test reports independently carried out by the independent laboratory set up by the MCD to prevent any defiance from the specifications in the work actually executed at site.

5.2 There is factual force in argument advanced by the counsel for the appellant that it was obligation of the contractor to furnish invoices regarding purchase of bitumen from government agency and there is nothing on record to establish that the appellant being a junior engineer was under such obligation for producing original invoices regarding procurement of bitumen from government agency. It is also established on record as deposed by DW5 that material used for road work in question was in conformity with the technical specifications and proved the lab test reports of the work orders as Ex. DW5/A to DW5/P. The trial court was not justified in rejecting lab test reports Ex. DW5/A to Ex. DW5/P merely on ground that these reports were not prepared in presence of DW5.

6. The trial court in impugned judgment considered argument that Sh. Sant Lal, the Chief Engineer, MCD had sent a written statement with a circular Ex. PW20/DA to the investigating officer PW20 in pursuance of a notice for joining investigation wherein stated that the work orders were executed as per the terms and conditions stated therein. PW18 also stated that no complaint was received with respect to the quality and quantity of the work orders. The investigating officer PW19 also deposed that he had not verified from MCD regarding the deficiency in execution of work orders. PW19 also did not conduct investigation as to the source from where bitumen was purchased. The first investigating officer PW16 also stated that no complaint was received regarding the quality and quantity of the four work orders and also deposed that he did not make enquiry regarding the process of sale supply of bitumen from IOCL. Accordingly the prosecution has failed to prove deficiency in the work orders or that bitumen was not purchased from an authorized government oil company. It was further argued that invoice was of no significance as DW6 Shri K.S. Sandhu, retired Director, MCD deposed that invoice was a document submitted by the contractor as proof of his claim as regards the quality and quantity of material and the claim ofthe contractor was not binding on the department. DW6 also deposed that for release of payment, the account division had to verify the entries in MB/register and laboratory test reports. DW6 further deposed that CPWD manual Ex. DW6/A applicable to MCD provides that the role of engineers was only inspection of work at site, recording entries in MB/register and there was no mechanism available to engineers to verify the invoices submitted by the contractor and the contractor was responsible for the correctness of the documents submitted by him. The trial court noted that DW6 in cross examination stated that in case a complaint was received regarding submission of fake invoices by contractor then it could be sent to the police. It was also argued that the investigating officer neither seized any document nor inspected site. However the trial court did not agree with these arguments by observing that PW16 received source information in 2004 whereas the work of repair under the work orders in question were carried out in 1998 and during this period roads in question might have repaired more than once and with regard to non seizure of documents during enquiry, the trial court observed that it was not incumbent upon investigating officer to do so as it was not an investigation but only a preliminary inquiry. The trial court under given facts and circumstances of case has rightly observed in this regard.

7. It was also argued on behalf of the appellant and co-convict C. B. Singh before the trial court that the prosecution has failed to prove that the invoices were forged. The invoices were to be submitted by the contractor and it was not the duty of the appellants and co-convict C.B. Singh being engineers to verify the invoices. The contractor was responsible for the genuineness and correctness of the documents.

The investigating officer PW20 was confronted with Ex.PW20/DA which was statement/report of Chief Engineer, MCD, addressed to PW20 wherein it was stated that the responsibilities of the engineers of MCD was restricted to the execution of work and not to ascertain the correctness and genuineness of the documents furnished by the contractors. It was also argued that the circular Mark PW12/B of MCD also provided that the contractor was solely responsible for the correctness and genuineness of the invoices and documents submitted by him. DW1 also deposed that it was the duty of contractor to purchase bitumen and furnish invoice and the engineers get work executed as per the contract. DW2 K.P. Singh, Superintendent Engineer also deposed that it was the contractor who was responsible for the correctness of documents submitted by him and the accounts department had to scrutinize the documents.

7.1 It was argued on behalf of the prosecution that DW2 on being questioned with regard to Mark C to C of circular Mark 12B admitted that as per the said circular the contractor had to attest the documents to be submitted in the presence of the Engineer in charge or divisional accountant and Ex.PW20/DA was dated 06.07.04 and circular Mark 12B was dated 24.05.01 whereas the work orders were dated 07.08.98 and as such Ex. PW20/DA and Mark 12/B had no relevance to the agreements/contracts work orders as they could not be retrospective in operation. DWl in cross examination deposed that Executive Engineer can return the bills in case of any discrepancy in the bills.

7.2 The trial court observed that the engineers have also to verify the genuineness of the bills. The trial court also noted that the original work orders were primary evidence of documents and oral evidence could not be led to contradict its terms and referred sections 61 and 62 of the Indian Evidence Act, 1872. The trial court also referred section 91 and 92 of the Indian Evidence Act to dispel contention of the defence counsel with regard to Ex. PW20/DA and Mark 12/B. The trial court also observed that fresh bitumen was to be purchased by the contractor as per the terms and conditions of the work orders and original receipt of purchase of same was to be submitted to MCD. The trial court ultimately held that it was incumbent on the accused including the appellant to comply with the terms of the work orders and documents Ex. PW20/DA and Mark 12/B relied upon by accused including the work orders of no significance in view of the express terms of the work orders and agreements.

7.3 The counsel for the appellant argued that the appellant that being a junior engineer has to supervise execution of work at site and was not under obligation to ascertain the veracity of the invoices furnished by the contractor and his actual job was to record the activities of execution in the measurement book and furnish the details regarding the actual execution of work at site. It was further argued that this prevailing practice was codified by the department in terms of the circular dated 24.05.2001 EX-PW20/A. The counsel for the appellant relied on testimonies of DW2 K.P. Singh and DW6 K.S. Sandhu. It was further argued that verification of genuineness of the invoice was the sole responsibility of the contractor and the engineers were not under obligation to verify the same.

7.4 It is correct that it was duty of the contractor as per terms and conditions of work orders to procure bitumen from the government agency and thereafter to submit original invoices. The contractor has to submit the bills and was responsible for genuineness of the documents which are required to be verified by the account department. The engineers including the appellant were required to verify the bills as per terms and conditions of work orders but it does not mean the engineers including the appellant were responsible to ensure that the bitumen was actually purchased by the contractor i.e. Aruna Contractor and Suppliers. The document Ex. PW20/DA although issued subsequent to work orders should not be over looked by the trial court which cast duty on contractor regarding genuineness of the bills/invoices. The document Ex.PW20/DA was prepared by MCD itself.

8. The defence counsel before trial court argued that the invoices were genuine. The Public Prosecutor argued that the accused C.B. Singh EE (co-covict), Pankaj Goel JE (the appellant) and Naresh Gupta (AE, since deceased) in furtherance of conspiracy with Arun Kumar Bansal, contractor (since deceased) to cheat MCD passed the bills on forged invoices and released payments to Arun Kumar Bansal thereby causing pecuniary gain to the contractor to the tune of Rs.6.8 lacs and the appellant and co-convict C.B. Singh by abusing their position as public servants dishonestly and fraudulently cheated MCD by permitting withdrawal of payment for the bills on forged invoices. It was also argued that it was for the prosecution to prove affirmatively that accused by corrupt or illegal means and by abusing their position obtained pecuniary advantage for themselves or any other person. It was for the prosecution to show that accused with oblique motive departed from the terms of the work orders and knew that the contractor had not purchased fresh bitumen from authorized government Oil Company. The defence counsel relied on **Major S.K. Kale V State of Maharashtra,** 1977 SCC Crl356.

8.1 The trial court observed that to establish the offence of conspiracy, the prosecution relied on the testimony of PW16 Inspector Rajinder Singh Manku who deposed that he had received source information to the effect that M/s Aruna Builders and Suppliers, Shakti Nagar, Delhi had been awarded 4 (four) work orders bearing no. 254, 255, 256 and 257 dated 7.8.98 Ex. PW3/A to Ex. PW3/H pertaining to improvement of road in the area of Jahangir Puri amounting to Rs.6.8 lacs by the Engineering Division of MCD, Delhi. PW16 further deposed that as per the terms and conditions of the work orders, fresh bitumen had to be purchased by the contractor from any government refinery and the original receipt of the same was to be submitted to the MCD. PW16 further deposed that the Engineers of Division no. XIV, MCD while executing the work orders entered into a criminal conspiracy with the contractor Arun Kumar Bansal, proprietor of M/s Aruna Builders & Suppliers to cheat MCD by using sub-standard/unauthorized bitumen. PW16 further deposed that in furtherance of the said conspiracy, the contractor Arun Kumar Bansal used sub-standard unauthorized bitumen and submitted bills amounting to Rs.6.8 lacs pertaining to four work orders along with forged invoices vouchers relating to purchase of bitumen from Indian Oil Corporation which were cleared by Engineer of Division No XVI by abusing their official position as public servants and thereby causing pecuniary benefit to M/s Aruna Builders and Suppliers and loss to MCD.

8.2 The trial court also considered arguments advanced on behalf the prosecution that the first investigating officer PW20 deposed that during investigation he had sent a letter Ex. PW15/B to the General Manager, Sales of IOCL, Mathura Refinery to verify and report regarding the cash memos and gate passes produced by contractor Arun Kumar Bansal regarding sale and dispatch of bitumen and to confirm whether the bills/cash memos and gate passes were genuine or otherwise. PW20 received reply Ex.PW15/A stating that on verification of record pertaining to the relevant period, it was found that there was no customer by the name of M/s Aruna Builders & Suppliers in their customer master record. IOCL also intimated that during the relevant period the challans were computer generated and at no point of time manual challans were issued to parties regarding the supply of bitumen from their terminal. The defence counsel on other hand argued that the testimony of PW20 could not be relied upon as he did not join any official from Bitumen Section of IOCL, Mathura in the investigation and also did not seize record of Bitumen Section of IOCL, Mathura. The trial court also relied on sections 101 and 106 of the Indian Evidence Act.

8.3 The trial court observed that it was for the accused including the appellant to explain that manually prepared invoices placed on record were of the IOCL but the accused including the appellant did not prove their defence by preponderance of probability and as such adverse inference has to be drawn against them to effect that the invoices were not of IOCL Mathura, Refinery. The accused including the appellant were required to explain unusual practice of issuing manual invoices by IOCL, Mathura, Refinery. No explanation was given by the accused including the appellant regarding the circumstances in which manual invoices were issued by IOCL, Mathura which pointed towards the complicity of accused including the appellant in the conspiracy to manipulate invoices and cause wrongful loss to MCD and section 106 of the Indian Evidence Act is applicable to the facts of the case and raises a strong presumption that accused including the appellant were conspirators in the offences of cheating MCD by abusing their official position. The trial court also observed that the accused including the appellant in statements under section 313 of the Code stated that original receipt of purchase of bitumen from an authorized government oil company was to be submitted by the contractor/proprietor of M/s. Aruna Builders & Suppliers to MCD as per the terms and conditions of the work orders and denied that the invoices submitted by the contractor were forged. Accordingly the accused including the appellant had to prove their defence that the invoices were genuine by preponderance of probability.

8.4 The counsel for the appellant argued that there was no evidence to establish conspiracy and trial court has committed grave illegality holding the appellant guilty of conspiracy while observing existence of conspiracy amongst the appellant and other accused for cheating MCD and thereby the appellant in capacity of a public servant having committed misconduct punishable under section 13 (2) read with 13(1) (d) of the PC Act. The prosecution cannot be absolved of the responsibility of bringing sufficient circumstances pointing towards existence of an agreement amongst the conspirators to do an 'illegal act' or 'a legal act through illegal means'. The counsel for the appellant placed reliance on **Central Bureau of Investigation, Hyderabad V K. Narayana Rao**, (2012) 9SCC 512; **P.K. Narayanan V State of Kerala**, (1995)1SCC 142; **Sherimon V State of Kerala**, AIR 2012 SC 493; **State of Kerala V P. Sugathan & another,** (2000)8SCC 203; **SardarSardul Singh Caveeshar V State of Maharashtra,** MANU/SC/0063/1963.

8.4.1 The counsel for the appellant further argued that the trial court has erred in taking aid of section 106 of the Indian Evidence Act to shift the burden of proof upon the appellant. The procurement of the

Bitumen and furnishing of invoice from authorized refinery as a token of purchase of fresh Bitumenwas sole obligation of the contractor and the JE had no role to play in it and as such invocation of section 106 of Indian Evidence Act to shift the burden of proof merely on the premise that the appellant during statement under Section 313 of the Code has denied that invoice was forged but, failed to offer any explanation regarding the circumstances in which the manual invoice was prepared by IOCL.

8.4.2 The counsel for the appellant argued that entire case of the prosecution is resting on communication dated 24.06.2004 Ex. PW15/A in response to communication dated 16.06.2004 Ex. PW15/B and assumption that the invoice furnished by the contractor was a fabricated document but the appellant was not having any knowledge regarding fabrication of the documents. It was further argued that there was no evidence to establish cheating or misconduct of the public servant. It was also argued that there is no evidence in respect of fraudulent and/or dishonest act attributable to the appellant leading to inducement. The prosecution has failed to bring any circumstance or any direct evidence pointing towards an overt act committed by the appellant which was either dishonest or fraudulent and has led to inducing the employer for fetching wrongful loss or offering wrongful gain to the contractor. The work at site was completed and except for the complaint which culminated into the FIR, there was no complaint with respect to quality of work and/or quantity of work actually executed at site. The bills as per the procedure before release of payment to the contractor were placed before the account clerk who scrutinizes before recommending bills for realization. PW4 Khajan Singh scrutinized the bill of the contractor and he did not find any irregularity or deficiency and recommended for passing of the bill by the accountant PW18 R.K. Bahal. The Additional Public Prosecutor defended the impugned judgment during arguments.

9. Section 120A of IPC defines **"criminal conspiracy"** which reads as under:

> **120A. Definition of criminal conspiracy.—When two or more persons agree to do, or cause to be done,—**
> **(1) an illegal act, or**
> **(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:**
>
> **Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless**

some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation. It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Section 120 B provides punishment for criminal conspiracy which reads as under:-

120B. Punishment of criminal conspiracy.--(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted

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

9.1 The Supreme Court in **State through Superintendent of Police V Nalini & others,** (1999) 5 SCC 253 discussed and summarized ingredients to constitute a criminal conspiracy which are as follows:

i) Conspiracy is when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means.
ii) The offence of criminal conspiracy is an exception to the general law, where intent alone does not constitute crime. It is the intention to commit a crime and join hands with persons having the same intention
iii) Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence.

Usually, the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.
iv) Where in pursuance of the agreement, the conspirators commit offenses individually or adopt illegal means to do a legal act that has a nexus to the object of the conspiracy, all of them will be liable for such offenses even if some of them have not actively participated in the commission of those offenses.

The Supreme Court in **Yakub Abdul Razak Memon V State of Maharashtra,** (2013) 13 SCC 1 followed these principles and reiterated that to establish conspiracy it is necessary to establish an agreement between the parties and the offence of criminal conspiracy is of joint responsibility, all conspirators are liable for the acts of each of the crimes which have been committed as a result of the conspiracy. The Supreme Court again in **Sanjeev V State of Kerala,** Criminal Appeal No 1134 of 2011 decided on 09th November, 2023 and **Pavana Dibbur V The Directorate of Enforcement, Criminal Appeal No 2779 of 2023** decided on 29.11.2023 again referred these principles.

10. It is reflecting that M/s Aruna Builders and Suppliers, Shakti Nagar, Delhi was awarded four work orders bearing no 254, 255, 256 and 257 dated 07.08.1998 Ex. PW3/A to Ex. PW3/H amounting to

Rs.6.8 lacs and as per terms and conditions of the work orders fresh bitumen was to be procured by the contractor i.e. M/s Aruna Builders and Suppliers from M/s IOCL, BP and HP which are Government Oil Companies and the receipt only issued by the Government Oil Company was to be deposited with MCD, Delhi. The appellant was a Junior Engineer and co-convict C.B. Singh was Executive Engineer in Division No XVI, Civil Lines Zone, MCD. PW16 Inspector Rajinder Singh Manku in May, 2004 received source information that the appellant and co-convict C. B. Singh entered into a criminal conspiracy with M/s Aruna Builders & Suppliers through its proprietor/contractor Arun Kumar Bansal along with co-accused Naresh Gupta, Assistant Engineer to defraud MCD by passing bills on forged invoice and thereafter to release payment to the contractor resulting in a pecuniary gain of Rs. 6.8 lacs to the contractor. Arun Kumar Bansal allegedly used substandard/unauthorised bitumen in execution of work orders and submitted bills amounting to Rs.6.8 lacs along with forged vouchers/invoices regarding the purchase of bitumen from M/s Indian Oil Corporation Ltd. The engineers of Division No XVI MCD including the appellant cleared said bills.

Inspector Rajinder Singh Manku after verification and with approval of senior officer prepared a *rukka* dated 25.05.2004 Ex.PW16/A and accordingly FIR bearing no 23/2004 Ex. PW1/A was got registered. The Chief Engineer, Chief Refinery Coordinator vide reply Ex. PW15/A intimated that there was no customer in their record by the name of M/s Aruna Builders and Suppliers in the year 1998 and IOCL prepared computer generated invoices. PW20 S.S. Sandhu also collected measure books/registers bearing no 1766 Ex. PW13/A and 1769 Ex. PW13/B relating to work orders no. 254 to 257.PW19 Inspector K.L. Meena who was entrusted with further investigation was informed by the account officials/officers that tender files and account files of the work orders Ex. PW3/A to Ex. PW3/H bear the signatures of the appellant, co-accused Naresh Gupta (since deceased), co-convict C.B. Singh and Arun Kumar Bansal (since deceased.

11. The trial court to establish conspiracy against the appellant and other accused in impugned judgment relied on the testimony of PW16 Inspector Rajinder Singh Manku who received source information that the appellant and other accused including contractor

M/s Aruna Builders and Suppliers entered into criminal conspiracy to cause wrongful gain to the tune of Rs. 6.8 lacs to the contractor who did not procure bitumen from any government refinery in execution of work orders bearing no. 254, 255, 256 and 257 dated 7.8.98 Ex. PW3/A to Ex. PW3/H and used sub-standard/unauthorized bitumen. The contractor Arun Kumar Bansal submitted bills along with forged invoices vouchers relating to purchase of bitumen from Indian Oil Corporation amounting to Rs.6.8 lacs which were cleared by Engineer of Division No XVI including the appellant by abusing their official position as public servants and caused pecuniary benefit to M/s. Aruna Builders and Suppliers and loss to MCD. The reply Ex.PW15/A reflected that there was no customer by the name of M/s Aruna Builders & Suppliers in the customer master record of IOCL and challans were happened to be computer generated. The trial court also relied on sections 101 and 106 of the Indian Evidence Act by observing that the accused including the appellant could not explain about manually prepared invoices which were placed on record and led the trial court to draw adverse inference against the appellant and other accused and to presume complicity of accused including the appellant in the conspiracy to manipulate invoices and cause wrongful loss to MCD. The trial court also referred statement of the appellant under section 313 of the Code wherein the appellant denied that the invoices submitted by the contractor were forged. The trial also held that the accused including the appellant had to prove their defence that the invoices were genuine by preponderance of probability as per section 106 of the Indian Evidence Act. It has come on record that the contractor i.e. Arun Kumar Bansal was responsible to procure bitumen from government refinery in terms of work orders Ex. PW3/A to Ex. PW3/H and was also responsible to submit original invoices for payment of bills. The appellant being junior engineer was not responsible for submission of original invoices which was to be done by the contractor Arun Kumar Bansal as proprietor of M/s Aruna Builders and Suppliers. The source information received by the PW16 regarding alleged conspiracy between the accused including the appellant is not sufficient to presume existence of conspiracy between the accused including the appellant. The trial court was not justified in applying section 106 of the Indian Evidence Act once on basis of reply Ex. PW15/A wherein it was stated that IOCL issued computer generated challan and it was for the prosecution that manual invoices/challans allegedly issued by IOCL were forged and fabricated and the accused including the appellant were not obliged to prove genuineness of invoices/challans submitted by the contractor on preponderance of probabilities with application of section 106 of the Indian Evidence Act. The evidence against the appellant is that he signed invoices and other documents as verification, which were submitted by the contractor for payment, which is not sufficient to establish misuse of public authority by the appellant. There is no sufficient and convincing evidence that the appellant entered into a conspiracy with other accused to cause wrongful gain to the contractor amounting to Rs. 6.8 lacs as public servant.

11.1 The appellant should not be convicted for offence under section 420 IPC and was not justified in holding the appellant guilty of cheating in pursuance of the conspiracy by getting bills passed on false invoices with the dishonest intention to cheat MCD and release of payment to the contractor/accused.

11.2 There is force in arguments advanced by the counsel for the appellant that there was no evidence to establish conspiracy and trial court has committed grave illegality holding the appellant guilty of conspiracy and the trial court has erred in taking aid of section 106 of the Indian Evidence Act to shift the burden of proof upon the appellant.

12. The trial court in impugned judgment after considering and analysing evidence led by the prosecution rightly observed that the court does not sit in appeal over the sanction order and in believing testimonies of PW13 and PW14 who deposed that sanction was granted after application of mind. The trial court also observed that protection under section 197 of the Code is available to a public servant only when the alleged act alone by a public servant is reasonably connected with the discharge of his official duty and sanction is not necessary when the offence complained of has nothing to do with the discharge of his public duty. The trial court rightly observed that regarding charges of conspiracy and cheating, no sanction was required for prosecution of the accused including the appellant.

13. The trial court with regard to the offences under sections 467/468 IPC and 471 IPC observed that the burden of proving that invoices were forged by accused including the appellant was not discharged by prosecution. The trial court held that the prosecution has failed to prove affirmatively that the accused including the appellant had forged the invoices.

14. The trial court observed that to establish the offence under Section 13(l)(d) of the PC Act, the prosecution had to establish that the accused including the appellant being public servants abused their position to obtain for themselves or any other person any valuable thing or pecuniary advantage. The trial court considered argument advanced on behalf of the accused including the appellant that prosecution has failed to prove that they had abused their official position to obtain for themselves or for any other person pecuniary advantage or any valuable thing. It was evident that contractor had submitted the invoices of bitumen to MCD and the duty of engineers was only to verify the work at site and the engineers did not have any role in the verification of bills. PW4 and PW9 had deposed that they had verified the invoices with the entries in the MB/register. The prosecution has failed to prove dishonest intention or *mens rea* on part of accused including the appellant to cheat MCD in conspiracy with contractor by cogent evidence. The trial court held that *mens rea* is not an essential ingredient to constitute an offence U/S 13 (l)(d) of the PC Act after relying on **Runu Ghosh & Others V CBI,** Crl. A. 482/2002, 509/2002 and 536/2002 decided by this Court on 21.12.2011. The trial court while holding the appellant guilty for offence under section 13 (1) (d) read with section 13 (2) of PC Act accepted argument advanced on behalf of the prosecution that a report was already received from IOCL, Mathura Refinery that there was no customer by the name of M/s Aruna Builders and Suppliers in their customer record and PW15 had deposed that manual invoice were never issued by IOCL, Mathura Refinery; the accused including the appellant abused their official position to obtain pecuniary benefit for contractor without public interest and the accused including the appellant in conspiracy with the contractor to cause wrongful loss to MCD and wrongful gain to the contractor passed the bills on forged invoices while they were expected to act in public interest and fairly. The trial court ultimately held that there is sufficient evidence adduced by the prosecution to bring home the charge for the offence punishable under section 13(l)(d) read with section 13(2) of the PC Act read with section 120B IPC.

14.1 It has been established on record that the contractor as per terms and conditions of work orders was responsible for procuring bitumen from authorised government agency which is IOCL in present case and the appellant being junior engineer was not responsible for procurement of bitumen. The contractor also submitted invoices/challans to account department of MCD for encashment of bills. The prosecution could not prove existence of conspiracy between the accused including the appellant. The incriminating evidence against the appellant is that he along with other engineers verified invoices along with bills which is not sufficient to hold the appellant guilty for offence under section 13 (1) (d) read with section 13(2) of PC Act.

15. The trial court was not justified in holding guilty for offences punishable under section 120B IPC, 420 IPC read with section 120B IPC and under section 13(l)(d) punishable under section 13(2) PC Act read with section 120 IPC. The impugned judgment and impugned order on sentence cannot sustain in law and accordingly set aside. The appeal is allowed and the appellant is accordingly acquitted. However, nothing in this judgment be taken as opinion on merit pertaining to co-convict C. B. Singh. The fine, if any, deposited by the appellant is liable to be refunded.

16. The present appeal along with pending applications, if any, stands disposed of.

DR. SUDHIR KUMAR JAIN
(JUDGE)

APRIL 15, 2024
N/ABK/HVK