**IN THE HIGH COURT AT CALCUTTA**
**CRIMINAL APPELLATE JURISDICTION**
**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.A. 225 of 2013**

**Sufal Kumar Naskar**
**-Vs-**
**Central Bureau of Investigation**

| | |
|---|---|
| For the Appellant | : Mr. Subhasish Mukhopaddhay<br>Mr. Sandip Chakraborty<br>Mr. Kaustav Das |
| For the C.B.I. | : Mr. Anirban Mitra<br>Mr. Amajit Dey |
| Heard on | : 19.02.2024, 06.03.2024, 21.03.2024,<br>17.05.2024, 27.09.2024 |
| Judgment on | : 06.05.2025 |

**Ananya Bandyopadhyay, J.:-**

1. This appeal is preferred against the judgment and order of conviction dated 26.02.2013 and 27.02.2013 passed by the Learned Judge, Special (C.B.I.) Court, Asansol, Burdwan, in Special (C.B.I.) Case No.32/2011 convicting the appellant under Sections 420/468/471 of the Indian Penal Code and Section 13(2) of the Prevention of Corruption Act and sentencing him to suffer rigorous imprisonment for 7 years to pay a fine of Rs.5,000/- in default rigorous imprisonment for 3 months for the charge under Section 420 of the

Indian Penal Code, for 7 years rigorous imprisonment and to pay fine of Rs.5,000/- in default, for rigorous imprisonment of 3 months for the charge under Section 468 of the Indian Penal Code, for rigorous imprisonment of 1 year and to pay fine of Rs.500/- in default rigorous imprisonment for 15 days for offence under Section 471 of the Indian Penal Code and for 7 years rigorous imprisonment and fine of Rs.5000/- in default rigorous imprisonment for 3 months for offence under Section 13(2) of the Prevention of Corruption Act.

2. Prosecution case precisely stated the complainant being informed by an unknown source the F.I.R., being Crime No. RC-24/90 was registered with the Delhi Special Police Establishment, Calcutta at 15:00 hours by Sri M.C. Sharma, Inspector of Police, C.B.I., S.P.E., A.C.B., Cal on 22.05.1990 regarding offence under Sections 120B/420/467/468/471 of the Indian Penal Code, Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act and Sections 5/6 of the Explosive Substances Act, 1908. It was alleged that one S.K. Naskar, Lower Division Clerk posted in the office of the Controller of Explosives, Asansol from 1986 to April, 1990 misused his official position as public servant and entered into criminal conspiracy with (2) Gangadhar Mahato, Works-in-Charge, M/s. Naba Nirman (3) M/s. Vivek Banerjee & Amalendu Chakraborty, of South Dhadka (4) M/s. Gurudeo Singh (5) Laxmi Chandra Agarwal (6) M/s. Deo Bharat Singh (7) M/s. Harish Chandra Agarwal (8) M/s. Gagan Das & Co. and others with an intention to cheat in pursuance thereof “A2” managed to get the license renewed, firstly upto March, 1988 and then till 31.03.90 on the basis of an endorsement of

Deputy Controller of Explosives, Asansol (which was forged by “A1”) in turn “A2” took regular delivery from the authorized dealers with a dishonest intention to sell the same in the market.

3. After investigation 3 charge-sheets all dated 03.02.1994 were submitted that culminated in 3 trials being Special (C.B.I.) Case No.78/2006 (re-numbered as 83/2011), 80/2006 (re-numbered as 36/2011) and 90/2006 (re-numbered as 32/2011). The present appeal pertained to the charge-sheet dated 03.02.1994 wherein it was alleged that the appellant was only a Lower Division Clerk in the office of Controller of Explosives, Asansol during the year 1989, he had no authority to issue or endorse or renew any license or issue any letter of authority i.e., temporary license to any party/persons. The investigation also claimed to had revealed that S.K. Naskar forged or got forged license bearing no.1546/Ex-vide form 22 printed no.16403 dated 23.06.1989 and letter of authority vide no.E3(6) Ben dated 21.04.1989 both favouring M/s. Deo Bharat Singh and handed over the said forged license and letter of authority to M/s. Deo Bharat Singh against some consideration from the said firm with the full knowledge that the said documents were forged. S.K. Naskar forged or got forged license bearing No.BI 1764/Ex. (Form No.22) printed no.16404 dated 26.06.89 and letter of authority vide no. E 3(6) BI dated 27.04.89 both in favour of M/s. Gagan Das & Co. and handed over the said forged license and letter of authority to M/s. Gagan Das & Co. against consideration from the said firm with full knowledge that the documents were forged. Investigation also allegedly revealed that the appellant forged or got forged letter of authority or permission letter vide no.

E3(6) Ben dated 21.02.1989 and 26.05.1989 favouring M/s. Vivek Banerjee and Amalendu Chakraborty and handed over the said forged license/letter of authority to M/s. Vivek Banerjee & Amalendu Chakraborty against some consideration from the said firm with full knowledge that the said documents were forged. Owing to the alleged forged license and letter of authority the above mentioned firm was able to purchase the under mentioned explosive from I.C.I. India Ltd., namely –

| Sl. No. | Name of the Firm | SG | Fuse | Detonator |
|---|---|---|---|---|
| 1. | M/s. Deo Bharat Singh | Nil | Nil | Nil |
| 2. | M/s. Gagan Das & Co. | 10 Kg. | 25 Coils | 300 Nos. |
| 3. | M/s. Vivek Banerjee & Amalendu Chakraborty | 35 Kg. | 175 Coils | 1200 Nos. |

The aforesaid acts of the appellant allegedly constituted offences punishable under Sections 420/468/471 of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, obtaining sanction. Except the appellant, other accused persons were not sent up for trial and they were shown as prosecution witnesses.

4. Charges were framed under Sections 420/468/471 of the Indian Penal Code and Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act against the appellant to which he pleaded not guilty and claimed to be tried.

5. In order to prove its case, the prosecution examined 15 witnesses and exhibited certain documents.

6. Learned Advocate representing the appellant submitted as follows:–

i. The complaint disclosed on source information, conspiracy between the appellant, and named and other unknown accused persons with an intention to cheat the Government and in pursuance of the conspiracy Gangadhar Mahato managed to get the licence renewed firstly upto March, 1988 and then till 31.03.90 using the endorsement of Deputy Controller of Explosives (the same was allegedly forged by appellant) delivery was taken by G. Mahato from I.C.I./I.E.L., and also that accused nos.3 to 8 in collusion with appellant managed to obtain forged authority letter of Deputy Chief Controller and with the same sought delivery from I.C.I./I.E.L., with dishonest intention to sell the same in the market and thus FIR disclosed conspiracy to commit offence under Sections 467/468/471 of the I.P.C., between appellant and other accused persons and single offence under Sections 13(1)(d)/13(2) of the Prevention of Corruption Act. Subsequently, when the investigation culminated in three reports in Special Case Nos. 1/94, 2/94 and 3/94 wherein accused Nos. 2 to 8 were shown as witnesses and for alleged difference in forged matters separate charges for offences under Sections 420/468/471 I.P.C., and Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act were framed and three trials violated provisions of Article 20 of the Constitution of India and Section 300 of the Code of Criminal Procedure and on this score alone the impugned Judgment of conviction and sentence should be set aside.

ii. The Learned Judge failed to appreciate that in the circumstances made out in the charge that F.I.R., named accused Nos. 2 to 8 were not involved in commission of offences under Section 420 of the Indian Penal Code, appellant could never have been tried for commission of the same or conspire for the same and thus in turn the charges under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act became meaningless and redundant.

iii. The sanction order being issued under Section 19(1)(c) of the Prevention of Corruption Act by the office of Deputy Chief Controller of Explosives, Calcutta, was illegal vitiating entire trial.

iv. One sanctioned order was obtained for offences under Sections 420, 468, 471 I.P.C. and Sections 13(2) and 13(1) (d) of the Prevention of Corruption Act, three prosecutions could never lie since single sanction order could never satisfy the legal requirements of Section 19 of the Prevention of Corruption Act and thus the legal safeguard envisaged in the provisions of the Act in respect of Public servant was completely ignored and the Learned Trial Court continued to conduct three trials despite recorded protest from the earliest stage of trial till the final pronouncement of judgment.

v. Sanction order of 12.08.91, forensic report of 18.06.91 and the three Investigation reports of 03.02.1994 themselves show that investigation suffered unexplainable delay.

vi. The Investigating Officer was not competent to investigate inasmuch as the present investigation was not legally handed over to the Delhi

Special Police Establishment and the appellant was in consequence, not given the protection of Section 17 (c) of the Prevention of Corruption Act.

vii. Failure of the prosecution to examine its source as prosecution witness was highly illegal and resultant presumption of false implication of appellant stood confirmed making the judgment liable to be set aside.

viii. From the sanction order never did it become clear as to what prompted the so called sanctioning authority to give sanction since it never quoted by which letter and who requested him and further fact that the said sanctioned order was never passed on an investigation report and thus the language of sanctioning authority clearly revealed that the Investigating Officer failed to exercise his independent assessment as required under the relevant provisions of law.

ix. The Report of the Government Examiner of questioned documents, Central Forensic Institutes (dated 18.06.1991 and marked as Exhibit-32) did not specify the manner of examination of documents, process of taking those documents in possession and in the absence of clear finding regarding alleged involvement of the petitioner in the said offences or any finding to the effect that those documents were forged and especially when hand writing of appellant was proved by one who had no knowledge of the same, the present conviction and sentence were bad in law.

x. The judgment of conviction and sentence should be set aside since it never considered that PW-8 basically demolished the prosecution case and reiterated innocence of the appellant.

xi. The judgment of conviction and sentence should be set aside since proof of exhibits belied all legal standards.

8. Learned Advocate representing the appellant further submitted as follows:–

i. After investigation three charge-sheets all dated 03.02.1994 were submitted that culminated in three trials being Special (CBI) Case No. 78/2006 (renumbered as 83/2011), 80/2006 (renumbered as 36/2011) and 90/2006 (renumbered as 32/2011) where save and except the appellant all other FIR named accused were released from charges and the FIR named co-accused persons were arraigned as Prosecution Witnesses and the same Handwriting Expert's Report was used in three trials.

ii. It was germane to mention that in two trials Special (CBI) Case No. 78/2006 (renumbered as 83/2011) and 80/2006 (renumbered as 36/2011) the Appellant had been acquitted of the charges.

iii. Be it mentioned that in the instant case appealed against being Special (CBI) Case No.90/2006 (renumbered as 32/2011) the FIR named accused and beneficiaries namely M/s. Gagan Das and Co. represented by its partner Uttam Kumar and M/s. Deo Bharat Singh have been arraigned as PW-1 and PW-3 respectively and the other FIR named accused namely M/s. Vivek Banerjee and Amalendu Chakraborty did not turn up in the trial.

iv. It was clearly apparent from the depositions of PW-1 who was an FIR named co-accused that there was no proof of demand of illegal gratification by the accused Appellant except the oral evidence of said PW-1 which has not been corroborated by any other witness and/or evidence on record nor it has been proved beyond doubt and/or corroborated by any other evidence / witness on record though the said transaction is alleged to have taken place in the office of the Appellant which was a public place. Be that as it may, the evidence of the PW-1, an FIR named accused, has been given undue credence by the Learned Trial Judge (vide Page 97-98 of the Paper Book) and erroneously held against the accused/ Appellant being oblivious of the basic principle of Criminal Jurisprudence that when two views are possible the view that favours the accused should be taken i.e. any Benefit of Doubt must always be given to the accused as it has been held by the Hon'ble Apex Court in *Kali Ram -Vs. State of Himachal Pradesh reported in (1973) 2 Supreme Case Cases 808*.

v. Similarly in the case of PW-3, an FIR named co-accused, the same factual and legal issues as mentioned in the immediately preceding paragraph hold true, not to mention in the case appealed against PW-3 specifically stated in his deposition that neither he had any proof of demand of illegal gratification by the accused/appellant nor there is any proof of payment of any illegal gratification to the appellant.

vi. In the aforesaid manner the Prosecution has failed to prove unequivocally the demand of illegal gratification and it is fatal to the prosecution case. The situation as arisen in the present case was taken care of by the Hon'ble Apex Court in its Judgement in *P. Satyanarayana Murthy -Vs- The District Inspector of Police and Another as reported in JT 2015 (8) SC 255.*

vii. It will not be out of place to mention that PW-1, Uttam Kumar and PW-3 Deo Bharat Singh were FIR named accused and, therefore, their evidences ought to have been taken and/or should be taken very cautiously with a grain of salt but the Learned Trial Judge's observation proves bias because any Benefit of Doubt should go in favour of the accused.

viii. Regarding Hand Writing Expert's Report (Exhibit - 32) and his deposition did not disclose the process of examination and the reasoning behind the opinion vide his deposition in the penultimate to the effect "*It is a fact that the process of examination has not been mentioned in my report*".

ix. As per the Hand Writing Expert's Report (G.E.Q.D. Report) in Exhibit Nos. 1, 2, 7 and 8 authorship of the allegedly forged signatures (i.e. Q1, Q2, Q3, Q5, Q6, Q7, Q.8 Q.10) could not be linked to the appellant vide para 8 of G.E.Q.D., report of the Hand Writing Expert. However, para 7 of the G.E.Q.D., report of the Hand Writing Expert says that Endorsement at top right hand corners of the Exhibit i.e. Q.4 (it relates to Exhibit No.-8 ) and Q.9 (it relates to Exhibit No.2) were allegedly in the hand writing of the accused but his report and deposition did not disclose the process of examination and the reasoning in support of his opinion.

x. It points to the great inconsistency and fallacy in the Hand Writing Expert's Report and establishes the view point as held by the Hon'ble Apex Court in many judgments that the opinion of a handwriting expert is the least dependable one among all expert opinions and should be approached with extreme caution while being taken into consideration by the Court and needs to be corroborated by other evidence as in this case the Hand Writing Expert's Report stated that only the endorsements made (Q4 on Ext.2 and Q9 on Ext.8 i.e. both Forms 22 (Forged Licences) are by the appellant/accused and finds that the authorship of the alleged forged signatures i.e. Q1, Q2, Q3, Q5 in Exhibit No.8 and Q7, Q8 and Q10 in Exhibit No.2 could not be linked to the appellant. And whereas Exhibit no.2 and Exhibit No.8 each being a single document have been alleged to be forged by the appellant without disclosing the reasoning behind it.

xi. PW-15 Ravi Gambir, I.O. in his evidence said that he did not seek Hand Writing Expert's opinion with regard to body writings in Ext.-2 and Ext.-8 and the evidence of PW-16 (handwriting expert) reveals that he had not expressed any opinion with regard to writings on the body of the documents Ext.-2 and Exbt.-8. But the Learned Trial Judge himself has compared the body writing in Ext.-2 and Ext.-8 with the specimen/admitted handwriting of the accused appellant by bare eyes thus taking the onus and responsibility of a handwriting expert on himself thereby causing grave miscarriage of justice by substituting court's opinion in place of evidence.

xii. Section 73 of the Evidence Act no doubt gives power to the Court to compare and form opinion about signature, writing or seal with others admitted or proved. Howsoever, it had been repeatedly held by the Hon'ble Apex Court that this power of the Court should be used with extreme caution preferably with help of an expert as the Court should not put itself in the role of an Expert but rather see for itself whether the expert opinion is dependable or not. Because where a handwriting expert's opinion under Section 45 has itself been held by the Hon'ble Apex Court to be not infallible in nature and prove to mistakes such exercise of comparison and forming opinion by the Court under Section 73 can also result in similar mistakes leading to grave injustice. No doubt, such thoughts must have been in consideration of the Hon'ble Apex Court which reflects in various judgements of the Hon'ble Apex Court like *The State (Delhi Administration) Vs. Pali Ram reported in (1979) 2 Supreme Court Cases 158*.

xiii. In that case not only the Court apparently used its power under Section 73 in a lackadaisical manner but also ventured to put itself in the position of an expert and substituted evidence by its own opinion as reflected in the penultimate of the judgment to substitute and/or to supplement the deposition of PW-15 who stated clearly in his deposition that the body of Form 22 was never sent for Handwriting Expert's opinion. Such exercise by the Court has become the sheet anchor of the Prosecution case against the accused thereby seriously prejudicing the interests of the accused as he has been denied the right of cross examining such opinion of the Learned Trial Court substituted as evidence and the appellant was not even provided the opportunity to defend himself by proper questioning under Section 313.

xiv. It was relevant to point out that there was a mention "*Ld. Advocate for the accused, Sufal Kumar Naskar has submitted before this Court that it has not been proved who filled up the bodies of Exhibit 2 and 8 though the bodies are hand written. But the Ld. P. P. says that it is proved by the evidence of PW-8*". The question remains how and in that context it was pertinent to mention that PW-8 was declared hostile.

xv. Some other salient points are as follows:-

a) F.I.R., was filed by H. C. Sharma, Inspector on 22.05.1990 on Source Information: If source was recorded, there remains a diary. The question remains where was that diary.

b) The F.I.R., was seen by Learned C.M.M., Calcutta on 03.08.1990.

c) F.I.R. was signed by H.C. Sharma (PW-4), but he was not the informant. He says that "*as per direction of the then S.P./CBI/ACB/Calcutta Sri G. M. Chakraborty*", he registered the F.I.R.. But if SP received first complaint, the informant will be the FIR maker and the complaint will be the F.I.R.

d) PW-4 spoke of G.M. Chakraborty, S.P. Where from and where was his endorsement.

e) PW-1, Uttam Kumar says in his deposition "*when the said two licenses were produced to my dealer Indian Explosives Ltd. at Barakar, no explosive goods were supplied by them rather I was asked by them to contact Asansol office for issuance of goods. Then I went to the office of the Controller of Explosives at Asansol and placed both the licences. The Controller of Explosives told me that both the licences forged.*"

f) It shows that there is no goods supply (No User)

g) Dealer asked him to contact Asansol Office but did not file FIR.

h) PW-1 says that he went to office of Controller of Explosives at Asansol and placed both the licences. The Controller told that both were forged but no F.I.R. (If FIR was already registered he was not apprised of the same and further he was not asked to surrender the licences immediately. PW-1's alleged letter (Ext.-P/3) did not indicate it nor his deposition says so.)

xvi. Although PW-1 in his deposition claims to have written the letter of surrender dated 28.05.1990 (I.O. seized and it was Ext.-3) and surrendered both the licences to Controller of Explosives at Asansol but Ext.-3 shows that the letter of surrender dated 28.05.1990 enclosing licences was addressed to Dy. Chief Controller of Explosives, Calcutta. This variation about Calcutta and Asansol was huge.

xvii. The sanction order smacks of nexus of 1.0. with the authority. Sanction was taken on 12.08.1991 and the charge sheet was submitted on 03.02.1994.

xviii. There was no witness in Seizure list and evidences of PW-1 and PW-3 are contradictory to the charge sheet on user point.

xix. The specimen writings and signatures and admitted signatures and writings of users (PW-1 & PW-3) were not collected by I.O. for seeking Expert opinion a serious lacuna.

xx. The I.O. says that Form 22 was original one but he did not seize the Stock and Issue Register, he did not enquire how Form 22 was issued from Form Section in Calcutta, He did not seize Peon Book, Application File and other relevant documents and his evidence does not show that he has ascertained in whose favour the relevant Form 22 (two nos. i.e., Ext.-2 and Ext.-8) were issued though each Form 22 bearing specific no was accountable one. He also did not ascertain if any

xxi. Form 22 is missing and none of the PWs has thrown light on it nor did the Ld. Trial Judge put a specific question to the accused in 313 of the Code of Criminal Procedure.

xxii. Section 120B of the Indian Penal code was the first Section as per F.I.R. The Second Section was Section 420 of the Indian Penal Code, Third Section was Section 468 of the Indian Penal Code and the last one was Section 471 of the Indian Penal Code. After charge it gets converted to 420 of the Indian Penal Code simpliciter. But the accused/appellant cannot cheat the Govt. because the accused /appellant did not use the forged document nor did he obtain explosives by dint of it. Furthermore, there is no evidence at all of sellers like ICL/IEL, who were misled to grant explosives and no Sell Register/Sale Receipts were produced so act of user not proved. Similarly, Section 471 of the Indian Penal Code without the aid of Section 34 of the Indian Penal Code and without making co-accused facing the trial was not proved.

xxiii. To conclude, most humbly it was mentioned that the self-same Ld. Trial Judge by passing a judgment and order dated 26.02.2013 upon relying on the self-same Hand Writing Expert's Report in Special (C.B.I.) Case No.80/2006 (renumbered as 36/2011) acquitted the appellant of the charges thereby giving the appellant the benefit of doubt.

9. The Learned Advocate representing the C.B.I. did not contradict or deny the judgment of acquittal pronounced in favour of the appellant. Based on the charge-sheet filed on the basis of the same accusation as in the other two cases and in another case being C.B.I. Case No.80/2006 acquitted the appellant. The same benefit is accorded to the appellant in the present case wherein similar charges had been framed and similar evidence had been adduced.

10. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and as such the instant criminal appeal being CRA 225 of 2013 is allowed.

11. Under such facts and circumstances, the judgment and order of conviction dated 26.02.2013 and 27.02.2013 passed by the Learned Judge, Special (C.B.I.) Court, Asansol, Burdwan, in Special (C.B.I.) Case No.32/2011 is set aside.

12. Accordingly, the instant criminal appeal being CRA 225 of 2013 is disposed of.

13. There is no order as to costs.

14. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

15. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

**(Ananya Bandyopadhyay, J.)**