BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	30.07.2024
Pronounced on	: :	04.03.2025 & 24.03.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).Nos.554, 568 and 588 of 2019 & 390 of 2020
and
Crl.M.P.(MD).No.4804 of 2024

Crl.A(MD).No.554 of 2019:

R.Inbaraj ... Petitioner/Accused No.3

Vs.

State by
The Inspector of Police,
SPE, CBI, ACB,
Chennai,
(RC/MA1/2014/A0050) ... Respondent/Respondent

PRAYER: This Criminal Appeal is filed under Section 374(2) of Cr.P.C. to call for the records and to set aside the judgment passed in C.C.No.2 of 2016 dated 14.11.2019 on the file of the II Additional District Court for CBI Cases, Madurai.

For Appellant : Mr.Balasundaram, Senior Counsel
for Mr.Sanjay Vignesh

For Respondent : Mr.M.Karunanithi,
Special Public Prosecutor for CBI

Crl.A(MD).No.568 of 2019:

S.Srinivasan ... Appellant/Accused No.2

Vs.

State Rep. by
The Inspector of Police,
SPE:CBI:ACB:Chennai. ... Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374(2) of Cr.P.C. r/w. Section 27 of P.C.Act, 1988, to call for the records and set aside the judgment dated 14.11.2019 made in C.C.No.02 of 2016 on the file of II Additional District Court for CBI Cases, Madurai.

For Appellant : Mr.M.Jegadeesh Pandian

For Respondent : Mr.M.Karunanithi,
Special Public Prosecutor for CBI

Crl.A(MD).No.588 of 2019:

A.P.Muthuramalingam ... Appellant/Accused No.1

Vs.

The State Rep. by
Inspector of Police,
SPE,CBI, ACB,
Chennai.
RC/MA1/2014/A0050 ... Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374(2) of Cr.P.C., r/w. Section 27 of P.C.Act, 1988, to call for the records pertaining to the judgment dated 14.11.2019 passed in C.C.No.2 of 2016 by the learned II Additional District Judge for CBI Cases, Madurai and set aside the same and allow this appeal.

For Appellant	:	Mr.R.Singgaravelan, Senior Counsel for Mr.D.Selvanayagam
For Respondent	:	Mr.M.Karunanithi, Special Public Prosecutor for CBI

Crl.A(MD).No.390 of 2020:

State through
Special Public Prosecutor,
Central Bureau of Investigation,
Anti Corruption Branch, Madurai. ... Appellant/Complainant

Vs.

1.A.P.Muthuramalingam(A-1)
the then Senior Divisional Commercial Manager,
Southern Railway, Trichy.

2.S.Srinivasan (A-2)
the then Divisional Materials Manager,
Southern Railway, Trichy. ... Respondents/Accused

PRAYER: This Criminal Appeal is filed under Section 378(2) of Cr.P.C. to call for the records in C.C.No.2 of 2016, dated 14.11.2019 on the file of the learned II Additional District and Special Judge for CBI Cases, Madurai and to set aide the Judgment of acquittal of A-1 & A-2 u/s.13(2) r/w.13(1)(d) of PC Act, 1988 and to convict A-1 & A-2 for the charges u/s.

13(2) r/w.13(1)(d) of PC Act, 1988.

For Appellant : Mr.M.Karunanithi,
Special Public Prosecutor for CBI

For Respondents : Mr.R.Singgaravelan, Senior Counsel
for Mr.D.Selvanayagam for R1

: Mr.M.Jegadeesh Pandian for R2

COMMON JUDGMENT

Accused Nos. 1 to 3 in C.C.No. 2 of 2016 on the file of the II Additional District Judge, (CBI Cases), Madurai have filed these appeals in Crl.A.(MD).Nos. 554, 568, 588 of 2019 challenging the following conviction and sentence imposed against them vide impugned judgement dated 14.11.2019:

2.A3 has filed this appeal challenging the following conviction and sentence of imprisonment:

Crl.A. (MD). No.	Rank of the Accused and Name	Charges proved under sections	Punishment (Imprisonment and Fine)
554/ 2019	A-3 R.Inbaraj C.C.No. 02/2016	U/s.13(2) r/w. Section 13(1) (d) of PC Act,1988	Sentenced to undergo 4 years of Rigorous imprisonment and to pay a fine of Rs.25,000/- and in default has to undergo R.I., for six months.
		U/s.120-B r/w.420 I.P.C.,	Sentenced to undergo 2 years of Rigorous imprisonment and to pay a fine of Rs.15,000/- and in default has to undergo R.I., for six months.
		U/s.420 I.P.C.,	Sentenced to undergo 2 years of Rigorous imprisonment and to pay a fine of Rs.10,000/- and in default has to undergo R.I., for six months.
		The above sentence of imprisonment imposed, shall run concurrently.	

2.1.A2 has filed this appeal challenging the following conviction and sentence of imprisonment:-

Crl.A. (MD). No.	Rank of the Accused and Name	Charges proved under sections	Punishment (Imprisonment and Fine)
568/ 2019	A-2 S.Srinivasan C.C.No. 02/2016	U/s.120-B r/w.420 I.P.C.,	Sentenced to undergo 2 years of Rigorous imprisonment and to pay a fine of Rs.15,000/- and in default has to undergo R.I., for six months.
		U/s.420 I.P.C.,	Sentenced to undergo 2 years of Rigorous imprisonment and to pay a fine of Rs.10,000/- and in default has to undergo R.I., for six months.
		The above sentence of imprisonment imposed, shall run concurrently.	

2.2.A1 has filed this appeal challenging the following conviction and sentence of imprisonment:

Crl.A.(MD). No.	*Rank of the Accused and Name*	*Charges proved under sections*	*Punishment (Imprisonment and Fine)*
588/ 2019	A-1 A.P.Muthuramalingam C.C.No.02/2016	U/s.120-B r/w. 420 I.P.C.,	Sentenced to undergo 2 years of Rigorous imprisonment and to pay a fine of Rs.15,000/- and in default has to undergo R.I., for six months.
		U/s.420 I.P.C.,	Sentenced to undergo 2 years of Rigorous imprisonment and to pay a fine of Rs.10,000/- and in default has to undergo R.I., for six months.
		The above sentence of imprisonment imposed, shall run concurrently.	

2.3. The CBI also has filed appeal in Crl.A.(MD).No. 390 of 2020 against the acquittal order passed against accused Nos. 1 and 2 for the offence under section 13 (1)(d) r/w. 13 (2) of the Prevention of Corruption Act 1988.

3. For better appreciation of the case, the appellants in the Crl.A.(MD).Nos. 554, 568, 588 of 2019 are hereafter referred to as accused Nos. 1 to 3 as ranked in C.C.No. 2 of 2016.

3.1. The CBI has registered the case in R.C.No.MA1-2014-A0050 on 17.12.2014, on the basis of the source information under section 120 B r/w. 420 of I.P.C. and Section 13 (1)(d) r/w. 13 (2) of the Prevention of Corruption Act, 1988 against the accused and other person.

3.2. Accused No.1 was the Senior Divisional Commercial Manager, Southern Railway.

Accused No. 2 was the Divisional Material Manager, Southern Railway.

Accused No. 3 was the Store Clerk of Trichirappalli Division, Southern Railway.

Accused No. 4 was private furniture supplier running business in the name of Adithyaa traders.

3.3. A1 to A3 worked in the Southern Railway Department during the period from 2007 to 2011. In the said period, broad gauge conversion work was undertaken at Villupuram – Vellore Section. During the said period, the Deputy Chief Engineer, Construction, Tambaram through the letter dated 24.03.2010 authorized to procure furniture and other materials. Accused Nos. 1 to 3 are bound to follow the procedures to procure the materials. Without following the procedure and also without following the instructions, all the accused conspired together to defraud the fund of the Southern Railway by issuing the purchase orders in favour of A4 and procured lesser number of furniture against the huge purchase order by fabricating forged invoices and delivery challan and acknowledgment as if full quantity as per the purchase order had been supplied. Without supplying the required quantity as per the purchase order, entire amount was disbursed to A4 and A4 after taking his share of the amount, handed over the balance amount to the third accused and thus, there was wrongful loss to the Railway Department to the tune of Rs. 20,70,025/- and wrongful gain to the accused. Therefore, CBI after investigation filed the final report against the accused under sections 120 (b) r/w. 420 of I.P.C. and 13 (1)(d) r/w. 13 (2) of the Prevention of Corruption Act, 1988, before the learned Special Judge, (II Additional District Judge) for CBI cases, Madurai. The learned special judge taken on file the final report in C.C.No. 2 of 2016 and issued summons to the accused and the accused entered their appearance. After their appearance, copies and documents as mandated under section 207 of Cr.P.C. were furnished to them. Thereafter, charges are framed and the same was explained to the accused and all the accused pleaded not guilty and they stood for trial.

3.4. The prosecution had examined P.W.1 to P.W.67 and marked Ex.P.1 to P.155 to prove the case. The learned judge after considering the above evidence and the documents, questioned the accused under section 313 of Cr.P.C. by putting the incriminating materials available against them and they specifically denied the same as false and no witness was examined on their side, but Exs.D.1 to D.5 were marked on the side of accused No.3. The learned trial judge after considering the entire evidence and the arguments of the learned counsel appearing for the accused and the learned special public prosecutor appearing for the CBI convicted the accused and imposed the sentence of the imprisonment as stated above. The learned trial judge acquitted the accused Nos.1 and 2 under section 13 (1)(d) r/w. 13 (2) of the Prevention of Corruption Act 1988. Aggrieved over the same, accused have filed the above appeals challenging the conviction and sentence imposed against them. The CBI also filed appeal challenging the acquittal of Accused Nos.1 and 2 under section 13 (1)(d) r/w. 13 (2) of the Prevention of Corruption Act 1988.

4. **<u>The learned senior counsel Thiru. R.Singaravelan appearing on behalf of the appellant/accused No.1 in Crl.A.(MD).No.588 of 2019 made the following submissions</u>**:-

4.1. The evidence of **the approver/**PW2 is not corroborated by any other evidence. Without any corroboration on material particulars, the learned trial judge ought to have acquitted the appellant/ accused No.1. He has not deposed about the involvement of accused Nos.1 and 2 and he deposed about the involvement of accused No.3 alone. The same was accepted by the learned trial judge but the learned Judge convicted the appellant. Therefore, there is a perversity in the finding of the learned trial judge in convicting the appellant/ accused No.1 without any materials.

4.2. The learned trial judge in the judgment has concurred with the submission of the learned counsel for the accused that the prosecution has not come forward with correct quantum of misappropriation i.e., in the FIR, the loss was stated as 'Rs.76,29,407/-' and in the final report, it was stated as 'Rs.20,70,025/-'. But, the learned trial Judge erroneously convicted the appellant for the alleged charges.

4.3. The learned trial judge has held that PW2, approver has not implicated A1 and A2 and hence, there was no evidence to prove the charge of conspiracy. In the prosecution evidence, no circumstances are available to presume agreement between the accused to do illegal act to convict them under section 120 (b) of I.P.C. Therefore, he seeks to set aside the conviction under section 120 (b) of I.P.C.

4.4. There is no evidence to prove that appellant/accused No.1 is involved in the act of cheating. There is no evidence to prove the offence of cheating against the appellant that he entered into a transaction with accused No.4 with intention from inception to deceive and dishonestly deliver the valuable security and convert the same to his use. Therefore, no offence under section 420 of I.P.C is made out.

4.5. The prosecution intentionally has not examined number of witnesses and hence adverse inference can be taken against the prosecution under section 114 of the Evidence Act.

4.6. The learned trial judge failed to consider that no material has been adduced on the side of the prosecution to prove that PW2 approver was in charge of day to day affairs of Adthiyaa traders, owned by A4.

4.7. The learned trial judge failed to consider that the bill was passed subsequent to the concurrence by the account's department and hence it can be presumed that the purchase was made as per law.

4.8. To prove the supply of the materials less than what was mentioned in the purchase order has been supplied , many station masters have not been examined. There is no adequate evidence that less quantity was supplied and consequentially without ascertaining the actual loss, the conviction is not legally valid.

4.9. The learned trial judge has not properly appreciated the "DBR" and "DBI", Ex.P.91 etc., where it is erroneously found that there had been supply of less material and hence there was no loss to the railway.

4.10. The learned trial judge has erroneously held that the accused have not followed the procedure of obtaining the permission from the head of the department without submitting single purchase under one indent and intentionally split the indents as against Ex.P.150 and Ex.P.111 which has not been clearly proved and hence, he seeks for acquittal.

4.11. The learned senior counsel to support his argument relied the following precedents and also submitted detailed written submission:-

S.No.	Name of the Parties	Judgement Reported
1	Noor Mohammed Yusuf Manin Vs State of Maharastra	1970 (1) SCC 142.
2	P.K.Narayanan Vs State of Kerala	1995 (1) SCC 142
3	State Vs Nalini	1999 (5) SCc 253
4	Ram Narain Poplu Vs CBI	Crl LJ 4801 (SC)
5	Hirala Harilal Bhagawathi Vs CBI	2003 SCC (cri) 1121
6	S.W.Palanitkar Vs State of Bihar	2002 SCC (cri) 129

5. **<u>The learned Senior counsel Thiru.Balasundaram appearing on behalf of the appellant in Crl.A.(MD).No. 554 of 2019 / accused No.3 made the following submissions</u>**:

5.1. The records show that there was no reference that the charge was read over and the signature of accused was obtained from him. He placed reliance on paragraph 12 of the judgment and submitted that without obtaining the signature in the charge and without any statement that the charge was read over to the accused and without any signature in the proceedings of the charge, there is non-compliance of mandate of Section 228 of Cr.P.C. and hence there is a miscarriage of justice. Therefore, the case has to be remitted back to the trial court for compliance of the requirement of section 228 of Cr.P.C.

5.2. The sanction was accorded against A3 under Ex.P.1 by P.W.1. He is not the competent authority as per section 19 of the prevention of corruption Act. He is not the removing authority as required under section 19 of the Prevention of Corruption Act. Therefore, sanction by incompetent authority is illegal and hence cognizance taken also is illegal. He further submitted that the sanctioning authority has not applied his mind in according the sanction. He specifically submitted that in Ex.P1 (sanction order) it is only stated that "*investigation reveals*" and he has not stated that the *"file reveals"*. He has not discussed in the sanction order about the shortage of the stock, purchase order and actual quantity available at the spot. He just endorsed the view of the investigating officer without applying his mind independently. Therefore there is non application of mind and hence the sanction is invalid. He also stated that subsequently dismissal order was passed by the competent authority on the basis of the conviction.

5.3. The learned senior counsel further submitted that the learned trial judge has wrongly stated the rank of the 3rd accused as store officer without due application of mind. Because of the wrong description of the post, there was a wrong assumption relating to the duty of A3 and hence final decision was wrong. Therefore, he seeks to set aside the judgment.

5.4. The investigating agency has not recovered the *"tools and plant register"* to prove the deficiency in stock verification and the same was admitted by PW35. Further, there was no verification of the stock register. Therefore, the charge of supply of material less than the purchase order has not been proved.

5.5. A3 is a clerical staff in the traffic department of the southern railway and he has just obeyed the orders of his superiors and he has no independent role in calling for the tender and awarding of contract in favour of A4. Apart from that station masters are responsible for the verification of the stock register and the station masters for the relevant period were intentionally withheld by the prosecution to prove the deficiency of the stock.

5.6. The evidence of PW34 is very vague and he only produced the account statement of the Adhithya traders. The account statement marked under Ex.P69 is not sufficient to corroborate the evidence of the approver PW2. The evidence of PW2 approver that A3 received the entire amount and he gave 10% commission is not corroborated by any other circumstances.

5.7. The learned senior counsel submitted that the violation of the procedure in calling the tender and awarding the contract do not make out criminal offence. At the worst it may attract only departmental action. Without initiating the departmental proceedings, after long time the FIR was registered and final report was filed upon making the stock verification in the year 2015. Therefore, there is infirmity even at the stage of the registration of the case and therefore the learned senior counsel seeks to acquit A3.

5.8. The prosecution has not proved the actual loss and they only stated notional loss of Rs.20,70,025/- without determining the actual loss and hence, the charge against the accused is deemed to be not proved.

5.9. In conclusion the learned senior counsel submitted the following precedent :-

In the case of ***Sindhu Janak Nagargoje Vs. The State of Maharashtra & Others*** reported in ***2023 AIAR (Criminal) 815***

6. **The learned counsel Thiru.Jegadeesh Pandiyan appearing for A2 made the following submission** :-

6.1. A2 was Divisional material manager. In the railway department, there is separate store and commercial department. Once purchase order is issued, the divisional material manager has no role to play after that. The specific allegation against A2 to prove the charge of conspiracy is that he had approved the purchase order without verifying the fund allocation, signature of the appropriate officials and account vetting. All the said irregularities were rectified through the post facto approval. Therefore, the charge framed against the petitioner itself is prima facie illegal. Therefore, he seeks for acquittal.

6.2. In the purchase order approving authority's signature is available and therefore, it is duty of this appellant to affirm the same. He also stated that the learned trial judge in para 171 clearly found that the 1st accused was the responsible ,and his office is the control centre for the entire transaction. The learned counsel also reiterated the submission that this appellant had no role after the issuance of purchase order on the basis of the evidence of PW5, 6 and 7. In that event, fixing the criminal liability on this appellant/ A2 is not legally valid.

6.3. The learned counsel submitted that there was an earlier complaint and the same was also closed and hence the present FIR is not legally valid and for this, he relied the averment made in the Ex.P.14. The investigation officer PW67 also stated that earlier complaint was closed on the basis of the Ex.P.13.

6.4. A2 has no knowledge about Ex.P.125 and the same was admitted by the prosecution witnesses. Hence, the failure to follow the instruction of the Venkatraman can not be fastened on the appellant.

6.5. The specific case of the prosecution is that A1 and A3 in order to avoid the requirement to get the permission from the higher officials for the purchase of the material above the value of Rs.1,00,000/- , they made split up purchase with criminal intention to purchase without getting the permission and called for the tender for split up purchase and granted tender in favour of A4. In the said process A2 has no role. Therefore, he seeks acquittal.

6.6. The counsel also submitted that FIR was registered on the basis of the source information with allegation that more than an amount of Rs. 76,00,000/- was defrauded. But, the final report was filed with the averment that loss was caused to the tune of Rs.20,70,025 /-. In the FIR, there is allegation of the purchase through 97 indents and in the final report it is stated 26 indents. Two purchase orders were not marked. As stated above A2 has no role in the said splitting of the indents. Therefore, charge was not sufficiently proved.

6.7. Ex.P.125 is not original and it is only photo copy and hence the decision made on the basis of Ex.P.125 is not legally maintainable. He also stated that suspicion howsoever strong is not ground to convict the appellant.

7. **Submission of Thiru. M.Karunanithi learned special public prosecutor for CBI**

The learned trial judge considered all the evidence adduced before the trial court in elaborate manner and rendered conviction on the basis of the sufficient incriminating materials available against the appellants and hence there is no ground to interfere with the said well reasoned judgment of the learned trial judge.

 7.1. He also submitted that the prosecution clearly proved through materials that the conspiracy took place between the appellants to defraud the railway fund through purchase order without obtaining the signature of the appropriate authority and received lesser than the required materials and granted tender in favour of A4 even though a lowest bidder was available. It is not necessary to prove the conspiracy charge with participation of the each accused in every stage of the act. Each accused has played a vital role in their act of confirming the purchase order and disbursement of amount to A4. Therefore he seeks to confirm the conviction passed by the learned trial judge.

7.2. Thiru. M.Karunanithi learned special public prosecutor for CBI has submitted that the argument of the learned senior counsel Thiru.Balasundaram that there was total non compliance of 228 Cr.P.C., and consequent failure of justice is not legally correct. The charge was properly framed and explained through questioning and the appellants thoroughly understood the charges and questioning and pleaded not guilty. In the said circumstances, there was no infirmity in the framing of charge and questioning of the accused and he specifically stated that 220 of Cr.P.C is followed by 228 (2) of Cr.P.C. and therefore there was a due compliance. There was no defense either before the trial court or before this court that the charges were not explained and the accused was misled by the misleading charges. In the said circumstances the learned senior counsel's submission is not correct and he relied upon catena of decisions of Hon'ble Supreme Court judgements in this aspect. He also submitted that the appellants after knowing the substance of the charges made lengthy cross examination of all witnesses and put forth their case clearly and hence there was no failure of justice.

7.3. Thiru. M.Karunanithi, the learned special public prosecutor for CBI has submitted that the sanction was accorded by P.W.1 with competency and application of mind. During the cross examination of P.W. 1 there was no question posed as to incompetency and mechanical satisfaction. He also reiterated the principle that when the witness has not been cross examined about a particular aspect, his chief examination is to be accepted by making the reliance of the Hon'ble Supreme Court decision In Re ***Arvind Singh Vs. State of Maharashtra*** reported in ***2021 (11) SCC 1***. Apart from that he submitted that the sanctioning authority has clearly applied his mind and accorded the sanction. This court has no jurisdiction to sit over the subjective satisfaction of the sanctioning authority as appellate authority.

7.4 Thiru. M.Karunanithi learned special public prosecutor for CBI after reading through the evidence of the witnesses and documents of the prosecution and even defense document, specifically argued that the prosecution proved the charge on the basis of the available evidence. Apart from that the accused have not offered any explanation during the questioning under section 313 of Cr.P.C. Therefore he seeks to confirm the conviction and sentence imposed against them.

7.5. Thiru. M.Karunanithi learned special public prosecutor for CBI submitted the following precedents to fortify his submission:

2020 (7) SCC 722 para 35, 2018 (7) SCC 743, 2004 (5) SCC 334, AIR 2010 SCC 3392, 2009 (12) SCC 546, 2003 (1) SCC 217, AIR 1998 SC 2702, AIR 2005 (SC) and 2021 (11) SCC 1.

8. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record and the precedents relied upon by them.

9. Whether the conviction and sentence of imprisonment passed against the appellants in Crl.A.(MD).No.554, 568, 588 of 2019 requires any interference?

9.1.Whether the judgment of acquittal passed against the appellant in Crl.A.(MD).No.568 of 2019 and 588 of 2019 under Section 13(2)r/w13(1)(d) of the Prevention of Corruption Act, 1988 is correct?

9.2. Each accused through their respective senior counsel made the submission and the sum and substance of the contentions are as follows:-

9.2**.1**. Non- examination of LW10 is fatal to the prosecution.

9.2**.2.** A2 has no role either in the auction process or in the credit of the amount in A4's account on the basis of the purchase order.

9.2**.3** Approver's evidence lacks creditability.

9.2.**4** Charge was not properly framed and explained and hence there is a violation of the provision under 228 of Cr.P.C.

9.2.**5** The sanction granted by PW1 is invalid both on the ground of incompetency and non- application of mind.

9.2**.6** Failure to follow the procedure does not make out the criminal offence when there was ratification subsequently.

9.2**.7** There was no definite stand of the prosecution relating to the quantum of cheated amount.

9.2.8. There was suppression of earlier closure report.

10. A1, A2, A3 are railway servants hatched a conspiracy with A4 private contractor to cheat the railway department and defrauded the railway fund to the tune of Rs.20,70,025/- by abusing their official power in floating the tender of purchase of furniture for an imaginary quantity, which is more than the requirement, in violation of the known procedure of railway department, issued purchase order for more than the quantum of required furniture in favour of A4, received lesser quantity of furniture than the quantity mentioned in the purchase order, prepared the invoices and delivery challan for more quantity of furniture as if the entire quantity of furniture was supplied as per the purchase order.

10.1. The prosecution to prove the above charges has come forward with the following intended procedural violation committed by the accused Nos. 1 to 3:

10.1.1. The accused Nos. 1 to 3 are duty bound to procure the non stock purchase items namely furniture etc., by collectively preparing the indent and get approval from the higher officials and call for tender and allot the tender to the lowest bidder and make him supply the said furniture to each stations by making proper entry in the indent register, day book issue register (DBI), day book receipt register (DBR) and numerical register. They are also duty bound to maintain the common furniture distribution register.

10.1.2. In this case, neither of above said procedure was followed for the supply of the furniture and grant of tender nor prepared the above said registers in accordance with the requirement. On the other hand, imaginary quantity of furniture requirement list was prepared and tender was floated and the said tender was allotted to A4 even though other lowest eligible bidder was available and purchase order was issued in favour of A4 for the huge quantity and he supplied only lesser quantity than mentioned in the purchase order and the amount was deposited in the account of A4 for the supply of huge quantity mentioned in the purchase order and the same was withdrawn by A4 and the A4 handed over the amount after deducting his commission to A3 and thereby caused a loss of Rs.20,70,025/-.

10.2 Therefore, this court for the sake of convenience splits the discussion under the following headings:

10.2.1. Discussion on the preparation list for the procurement of the furniture.

10.2.2. Discussion on the tender process in issuing the purchase order.

10.2.3. Discussion on the supply of the lesser quantity of the furniture than mentioned in the purchase order.

10.2.4. Discussion on the deposit of amount in PW2's account for the quantity mentioned in the purchase order and distribution of the said amount to A3.

11**. Discussion on the preparation list for the procurement of the furniture.**

According to the prosecution, gauge conversion work was in progress and hence LW10/ Venkatraman Deputy Chief Engineer, Construction/Chief Commercial Inspector, Tambaram had assessed the requirement of furniture and sent to A1 to purchase the furniture as per the requirement. His assessment report was Ex.P125 and Ex.P.129. The said report contained requirement of the furniture items for each station

11.1. In the southern railway department, there are two departments namely store department and commercial department. The store department relates to the purchase of the stock item. The commercial department relates to the purchase of non stock items. So far as non stock items are concerned, officers at each level have independent powers to purchase the items to the limit as stated in the department circulation and the same was marked as Ex.P150 and Ex.P.111. Which are as follows :-

DELEGATION OF POWERS FOR NON-STOCK DEMANDS / REQUISITIONS (REVENUE & PLANNED WORKS)

Sl. No		Level of signing of Non-stock requisitions / indents for procurement through-Local Purchase / Spot Purchase, Tenders at Divisional / Depot Level, Tenders at HQ Level **			
	Value of Non-Stock Requisition *	Indenting Official / Officer	Controlling Officer	Approving Officer	Finance Vetting
1	2	3	4	5	6
1	Upto Rs. 10,000/- only in value	Supervisor / Dealing Clerk	Sr. Supervisor / Section in Charge	JS Officers. SS officers in absence of JS Officers	Not Necessary
2	Above Rs. 10,000/- & upto Rs. 50,000/- only in value	Sr.Supervisor / Asst. Officer	Asst. Officer	SS Officers. JAG/SG Officers in absence of SS Officers	Not necessary
3.	Above Rs. 50,000/- & upto Rs.2 Lakhs only in value	Asst. Officer	Sr. Scale	JAG / SG Officers ****	As given below.

11.2. Ex.P.111 also demands preparation of the consolidated non stock indents with assessment of need base and determination of demand. Ex.P.125 also stated that official accused are duty bound to make assessment of necessity of the non stock items and consequential determination of the non stock items. As per the above documents the accused officers are empowered to purchase consolidated non stock items through tender process upon preparation of need assessment report and consequential demand determination upto the margin of Rs.2,00,000/-. Exceeding the margin of Rs.2,00,000/- it is mandatory to obtain the approval from the higher officials. The object of the preparation of the consolidated non stock items is intended to reduce the expenditure of the railway and also to supervise the said requirement by the higher officials and avoid the malpractices and the said condition is as follows :-

> " *The indents should not be split up around the same period in order to bring them within the purview of local purchase*".

11.3. As per the exhibit Ex.P.151, apart from the preparation of consolidated non indents purchase, it is the further requirement to get the essentiality certificate to make the purchase above the margin of Rs. 1,00,000/- or Rs.2,00,000/-. The purpose behind the requirement is stated as follows in the Ex.151 :-

> *"To avoid malpractices the estimated value, last purchase rates and quantity should be indicated in the indents both in figures and words."*

11.4. As per the procedure, to purchase the non stock items on the basis of the said assessment report, it is the duty of accused A1 to prepare the consolidated indent with the required number of furniture and the same is to be sent to the approval of the higher officers if the amount would exceed more than Rs.1,00,000/- or Rs.2,00,000/- Accused Nos. 1 and 3 with criminal intention had prepared individual indent in clandestine manner to avoid the purported permission from the higher officials and floated the tender by preparing individual indent.

11.5.In this case the accused officers, without preparing the consolidated non stock indents, with intention to defraud the railway fund prepared individual indent in order to avoid the approval from the higher officials. The act of splitting up of quantities to be procured is to bring down the value of the each indent to the lower level of approval and to avoid getting the permission of higher officials and this is a serious criminal misconduct.

12.6. From the contents of the Ex.P.111, Ex.P.150 and Ex.P.151 it is clear that the 1st accused officer lacks the power to approve the indents requisition exceeding Rs.2,00,000/-. But to avoid the same all the accused officers conspired with each other and adopted the method of splitting of indents in order to restrict the purchase within the monetary power/ approving power of 1st accused.

1**2.** Even to exercise the said limited power of purchase upto the value of Rs.2,00,000/-, there should be preparation of needs assessment and demand determination and the said requirement is stated in the Ex.P. 125. LW10 already determined the said need assessment and communicated the same to the accused officers. But the purchase order was not made in accordance with the said communication. They prepared the individual indent without needs assessment base and demand determination and called for tender . To put it otherwise, there is total absence of essentiality certificate and consolidation certificate. It is the duty of the indentor to submit the purchase requirement with the essential certificate and consolidation certificate. A3 has prepared the said indents without the said required certificate and the same was approved by A1 and A2. Further there was alteration in the indent with addition of more non stock items. The said alteration was made by A3. The alteration not only is apparent on the face of the document and also substantiated through the report of the hand writing expert marked under Ex.P.101 and the evidence of the expert PW58. A1 without perusing the same, had approved the purchase. From the above it is clear that there is interse conspiracy among the officers in the issuance of the tender to purchase the non stock items. The same was clearly proved through evidence of PW3, PW5 and various material documents. The learned trial judge also made a detailed discussion on the basis of the materials and the evidence and has held that the A1 and A3 had actively participated in the preparation of the individual indent instead of preparing of consolidated indent with criminal intention to avoid the process of getting the permission from the higher officials and in order to swindle the amount. The argument of the counsel for the accused officers that the word "*around the same period*" is not applicable to this case on the ground that purchase was made through the different purchase orders. The said argument has no substance on the premise that the entire allegation is to procure the furniture and the other non stock materials during the period 2007-2011 of the gauge conversion work and the same could be treated as the same period. Therefore this court finds that the accused Nos. 1 and 3 have not prepared the list of requirement of furniture as per the procedure in order to make illegal gain for themselves and cause loss to the department.

13. Discussion on the tender process in issuing the purchase order.

13.1. Following the said preparation of the illegal individual indent, the tender process was also not conducted in a fair manner. In the tender process, number of persons had participated including PW2's Adthiya Traders. As per Ex.P84, lowest bidder was one "Astalakshmi Marketing", but, purchase order was awarded in favour of the approver P.W.2/Accused No.4 in order to do undue favour to PW2, when the lowest bidder was not disqualified in any other manner.

13.2.Similar modus operandi was followed in all the tender process of each indent i.e., more than 26 items of the indents were awarded in favour of the PW2 and in all the process of the tender and award of contract, A3 alone represented by his active participation on behalf of PW2. Therefore, the intention of A1, A2 and A3 to defraud the fund of the railway by awarding the contract to P.W.2 is clearly established.

14. Discussion on the supply of the lesser quantity of the furniture than what is mentioned in the purchase order.

P.W.2 was awarded contract to supply larger quantity of furniture in the purchase order. But he had supplied only lesser quantity than what is mentioned in the purchase order. It is the duty of A3 to maintain the indent register, day book issue register (DBI), day book receipt register (DBR) and numerical register. PW3 vigilance officer attached with the railway department had conducted enquiry relating to the issue of fraud. During the course of the enquiry, A3 was asked to produce all the registers. But he produced only numerical register.

14.1. After the purchase order, the quantity mentioned in the purchase order had not been supplied. It is duty of A3 to prove the supply of the said non stock items mentioned in the purchase order through the documents namely various maintenance registers i.e., indent register, day book issue register (DBI), day book receipt register (DBR),numerical register and purchase order register. In this case, A3 without any plausible reason, failed to produce the same during the enquiry conducted by the department. The department also had given sufficient opportunity to produce the same, but he has not produced. He only produced numerical register. As per the evidence of PW3, the same did not contain proper entries of supply of the materials. PW5 also corroborated the evidence of PW3 in this aspect. PW8 also deposed that A3 not only failed to maintain the above register, he has also not prepared the indent as per the procedure and got the approval as per the requirement. PW4 also deposed in the same line and stated that A3 has not maintained the register DBR/ DBI and he submitted his report under Ex.P40 which reveals the non supply of the material. That apart in the department, the purchased items were transported from the railway godown with proper challan namely ST-47. In the said challan also there was no mentioning of the supply and distribution of the non stock materials mentioned in the purchase order. PW2 has deposed that A3 alone participated in the entire tender process and he alone filled the tender form and other annexed documents and he had received the entire amount apart from the commission amount meant for him. PW2 also deposed that he is not authorized to procure some of the non stock items namely the machinery etc., but according to PW2 A3 manipulated the entire records relating to the said purchase order and obtained the amount from PW2 after the credit in his account. Similarly even for "*parcel trolly* " supply there was no proper FSW bills. As per the railway procurement of the non stock items terms, FSW bills is same as the ST-47 challan . A3 made falsification of both ST-47 challan and the FSW bills. From the above discussion it is clear that right from the raising of indent till the supply of the non stock items to the end user namely individual stations, the accused officers planned scientifically with aid of the approver PW2 and defrauded the railway fund and thereby caused loss to the railway and the same was clearly demonstrated from the following tabular columns containing the particulars of the purchase order and receipt of the non stock items:-

Sl. No	*Description of the materials*	*Number of the purported purchases the over essentiality*	*Number of the items supplied*	*Amount of the misappropriation*
1	Half Arm Steel Tubuler Chair	330	24	3,50,025/-
2	Steel Almirah 4 ½ feet	48	12	2,08,800/-
3	Steel Table	70	--	3,43,100/-
4	Revolving Chair	111	12	4,07,300/-
5	Wooden Table	66	12	4,78,400/-
6	Steel Almirah 6 Feet	13	--	88,400/-
7	Fake Note Detecting Machine	35	--	98,000/-
8	Parcel Trolley	6	--	96,000/-
Total Loss				***20,70,025/-***

14.2.The prosecution also examined number of witnesses and produced the documents to show the non supply of the non stock materials to the individual railway stations as per the purchase order. The acknowledgment of the receipt of the non stock items and the corresponding witnesses are tabled as follows:-

Sl.No.	Witnessed by	At the railway station	Acknowledgem e nt marked as
1.	P.W.50	Thurunjiapuram	Ex.P.91
2.	P.W.30	Thandarai	Ex.P.62
3.	P.W.35	Venkatesanpuram	Ex.P.70
4.	P.W.36	Thiruvannamalai	Ex.P.71
5.	P.W.42	Kaniyambadi	Ex.P.79
6.	P.W.46	Agaram Sibbandhi	Ex.P.87
7.	P.W.47	Mambalapattu	Ex.P.88
8.	P.W.61	Arani Road	Ex.P.102
9.	P.W.67	Thirukovilur	Ex.P.131
10.	P.W.67	Kannamangalam	Ex.P132

14.3. In the said numerical register also no proper entries were made relating to the supply of the furniture. The said evidence of PW3 corroborates with the evidence of PW5. The furniture available in the each station does not tally with the quantity mentioned in the purchase order. But total amount mentioned in the purchase order had been sanctioned and credited in the account of PW2. Therefore, the prosecution clearly proved that the huge quantity of furniture as mentioned in the purchase order had not been supplied by A4.

15. Discussion on the deposit of amount in the PW2's account for the quantity mentioned in the purchase order and distribution of the said amount to A3.

15.1.The prosecution produced numerous documents and let in oral evidence to prove the credit of the amount in the account of PW2 for the entire quantity mentioned in the purchase order and the amount was withdrawn by PW2 and same PW2 has also handed over the amount minus his commission to A3. PW2 approver has clearly deposed about supply of the lesser quantity and credit of more amount over and above the supplied quantity and the withdrawal of the amount by PW2 and handing over to A3 after deducting his commission amount. Testimony of PW2 is cogent and trustworthy. He was subjected to incisive cross examination and nothing was elicited to disbelieve his version. His evidence corroborated with the bank statement. There was no explanation on the side of the accused during the course of questioning under section 313 of Cr.P.C. Therefore, prosecution also proved the credit of the amount in PW2's account and the transfer of the said portion of the amount to the account of A3

15.2. The supply of the non stock materials had not tallied with the acknowledged materials i.e., there is a difference between the acknowledgment and the purchase order. That apart there is a manipulation in the acknowledgment also. The said manipulation also further proved from the evidence of the PW65. Ex.P.113 contains reimbursement of charges incurred towards the transport materials of Rs.22,400/- but PW65 specifically denied the same. Therefore there is also manipulation of the reimbursement of the transport amount of the non stock materials.

16. Discussion on the plea Non -examination of L.W.10.

There was a detailed submission was made by the learned counsel on record about the non-examination of L.W.10. The prosecution filed te death certificate of L.W.10. But, the learned counsel for the accused before the trial Court disputed the same and the said person was alive at Srirangam Trichirappalli. But, no evidence was adduced for the same. Therefore, the learned Trial Judge has correctly presumed the death of L.W.10, by accepting the death certificate as a conclusive proof for the death of L.W.10. The non-examination of the said witness no way affected the prosecution case of preparation of 26 indents on various dates without preparing the single indent to purchase the materials as against the direction of the said Venkatraman under Ex.P125, Ex.P129. Ex.P125 and Ex.P129 were the assessment work done by L.W.10. The said document was produced and marked and proved in accordance with law. The learned trial Judge has elaborately discussed the above issue and has correctly held that the non-examination of L.W.10 is not fatal to the prosecution, when the documentary evidence is available to prove the fact. It is well settled principle that a fact may be proved either through the oral evidence, documentary evidence or both. In this case, the prosecution proved the assessment of required number of furniture under Ex.P.125, Ex.P129 made by L.W.10. Contrary to the same, the appellants conspired together and prepared separate indents and defrauded the Railway Department amount. Hence, this Court is unable to accept the argument of the learned counsel that the non-examination of L.W.10 is fatal to the prosecution.

17.**Discussion on defect in framing of charges**:

The learned Senior Counsel Thiru.Balasundaram would submit that there was non-compliance of Section 220 of Cr.P.C. To consider the same, this Court extracts the Form 32 of Cr.P.C, and place hereunder:

FORM No.32

CHARGES

(See Sections 211, 212 and 213)

II.CHARGES WITH TWO OR MORE HEADS

(1)(a) I, (name and office of Magistrate, *etc,*) hereby you (*name of accused person*) as follows:

On Section 241. (b) *First*.- That you, on or about the ----- day of ---, at ----, knowing a coin to be counterfeit, delivered the same to another person by name, A.B., as genuine, and thereby committed an offence punishable under Section 241 of the Indian Penal Code, and within the cognizance of the Court of Session.

Secondly.- That you, on or about the ---- day of -----, at ------, knowing a coin to be counterfeit attempted to induce another person, by name, A.B., to receive it as genuine, and thereby committed an offence punishable under Section 241 of the Indian Penal Code, and within the cognizance of the Court of Session.

(c) And I hereby direct that you be tried by the said Court on the said charge.

(Signature and Seal of the Magistrate)

17.1.In the said Form-32, there is no legal requirement to obtain the signature of the accused in each page of the charges. The charges under various Sections in 19 pages are framed. Plea of the accused also has been recorded as follows:

17.2.All the accused are officers of the Railway department. They clearly understood the charges and made detailed cross examination on all

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— 21822 —

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A-2 : He plead not guilty

A-3 : He plead not guilty

28/6/16

CHARGE – II : punishable u/s 420 IPC.

A-1 He plead not guilty

A-2 He plead not guilty

28/6/16

A-3 He plead not guilty

CHARGE - III : punishable u/s 13(2) r/w 13(1)(d) of P.C. Act 1988.

A-1 He plead not guilty

A-2 He plead not guilty

A-3 : He plead not guilty

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for CBI Cases.
Madurai

aspects. Therefore, the contention of the learned Senior counsel that there was non-compliance of Section 228 of Cr.P.C., cannot be accepted. When they understood the charges and framed their defence and cross examined the witnesses effectively and if there is any non compliance it should be proved that it has caused miscarriage of justice and failure of justice as stated in Section 464 of Cr.P.C. This Court finds neither miscarriage of justice nor failure of justice in this case. "***As per records, there was a clear mentioning about the explanation of the charges framed and alsofact that the appellants "pleaded not guilty".*** In the case of ***Rattiram Vs. State of M.P*** reported in ***(2012) 4 SCC 516*** the Hon'ble three Judges Bench of Supreme Court has laid down following detailed principles to find out if there was any failure of justice or miscarriage of justice :-

> ***37. .....*** *The legislative intendment inhered in the language employed is graphically clear that lancination or invalidation of a verdict after trial is not to be taken recourse to solely because there is an error, omission or irregularity in the proceeding. The term "a failure of justice" has been treated as the sine qua non for setting aside the conviction.*
>
> ***44 - 49****. .... "judging a question of prejudice, as of guilt, courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself."*

65.Certainly, if the failure of justice is not bestowed its due signification in a case of the present nature, every procedural lapse or interdict would be given a privileged place on the pulpit. It would, with unnecessary interpretative dynamism, have the effect potentiality to cause a dent in the criminal justice delivery system and eventually, justice would become illusory like a mirage. It is to be borne in mind that the legislature deliberately obliterated certain rights conferred on the accused at the committal stage under the new Code. The intendment of the legislature in the plainest sense is that every stage is not to be treated as vital and it is to be interpreted to subserve the substantive objects of the criminal trial.

17.3.Therefore, mere absence of the statement in the charge that it was read over and explained has no consequence upon the proceedings as it is already observed that all the accused understood their charges and cross examined the witnesses and submitted their detailed submission knowing the contents of the charges and this Court comes to the conclusion that the charge was properly read over and they pleaded not guilty. In this case, in view of full compliance of the requirement under form 32 of Cr.P.C., and the appellants were also aware of the substance of the charges and done a detailed cross examination on all aspects covering the allegation, this Court finds neither miscarriage of justice nor failure of justice. They were the officers of the Railway Department and in the said circumstances, in the absence of the specific evidence that they did not understand the charges and they were not able to cross examine the witnesses cannot be accepted.

18**. Discussion on sanction:**

The learned counsel made submission that the sanctioning authority has not applied his mind. The learned Senior counsel Thiru. Balasundram submitted that in the sanction order it is stated that the "*investigation reveals*" and not stated the "the *file reveals*" and therefore, according to the learned Senior counsel, the sanctioning authority granted sanction without application of mind. It is the specific evidence of P.W.1 that he perused the investigation report along with documents and gave the sanction after his satisfaction on the materials in the following words:

> *"4.AND WHEREAS, I, P.RAJESWARAN, Sr.Divisional Personnnel Officer, Southern Railway, Madurai Division, being the authority competent to remove Shri.R.Inbaraj from office, after proper application of mind and fully and carefully examining the material documents vis., copies of FIR, Purchase Order documents, Stock Verifiers' Report, Internal investigation*

report, Copies of Schedule of Powers, documents seized during search, copies of supplier's bills, copies of documents related to VM-KPD Gauge conversion, copies of acknowledgements from the respective stations etc., and the statement of witnesses recorded under Section 161 Cr.P.C., 1973 by the Investigating Officer placed before me with regard to the said allegation and circumstances of the case, am statisfied that the said Shri.R.Inbaraj has committed the offences punishable u/s 120-B r/w 420 IPC and Section 13(2) r/2 13(1)(d) of Prevention of Corruption Act, 1988, as stated in the report and he should be prosecuted in the Court of Law for the offences alleged with other accused persons."

18.1.From the above decision of the sanctioning authority, this Court is unable to espouse the argument of the learned Senior counsel that the sanctioning authority granted sanction without application of mind. Further, as rightly argued by the learned Special Public Prosecutor, there was no cross examination of the following portion of the chief examination of P.W.1 relating to the accord of sanction:

□மேலும் Sanction கொடுப்பதற்கு முன்பு நான் எல்லா கொப்புகளையும் பார்த்து R.Inbaraj (A3)-க்கு எதிரான குற்றச்சாட்டு முதன்மை நோக்கில் உள்ளது என திருப்தியுற்று அவருக்கு எதிராக வழக்கு தொடர அனுமதி அளித்தேன்.□

19.**Discussion on the plea of A2' Role:**

The learned counsel for A2, Thiru.Jagatheespandian made a submission that A2 has no role in the process of approving any indent, purchase of many materials mentioned in the indent and the amount credited in the account of P.W.2/approver. The said submission is misconceived one. There was a material correction in all indent relating to the quantity of the goods. It is the specific case of the prosecution, that the accused changed the requirement of the number of the goods as stated in the earlier part of this judgment as against the approved list of purchase of goods and defrauded the railway amount. The said conspiracy is clearly proved without any doubt whatsoever. Therefore, this Court declines to accept the contention of the learned counsel. P.W.2/approver has also clearly deposed about his involvement.

19.1.A2 is the competent authority to decide the mode of tender, securitization of the capability of the supplier and permit the purchase by issuing purchase order. Here two material allegations are there against A2 in addition to the common conspiracy. He has declared PW2 approver as successful bidder inspite of the fact that another eligible bidder submitted a lesser price. He also has not verified capability to supply the non stock items. When purchase order was issued with alterations in respect of quantity and net amount, A1, and A2 could not have issued essentiality certificate and purchase order in favour of Approver A2. Essentiality certificate was issued beyond limit by altering the quantum of items. In addition, the corresponding item mentioned in the purchase order was not supplied as per the essentiality certificate. Therefore submission of learned counsel appearing for A2 that he is no way connected with the purchase order, cannot be accepted.

20**. Discussion on approver evidence:**

P.W.56/the learned Judicial Magistrate has recorded the statement of A4/approver under Section 164 of Cr.P.C., by following the procedure. P.W.54/the learned Chief Judicial Magistrate also recorded tender of pardon as per the procedure envisaged in Cr.P.C. This Court also perused the record of proceedings and finds no infirmities. The learned counsel have not also disputed the said compliance. Now, the learned counsel for the appellants submitted that before rendering conviction, the requirement of law is that the approver's evidence has to be corroborated by remaining evidence in all aspects. To consider the said submission, this Court deduce the following principle laid down by the Hon'ble Supreme Court to base the conviction on the basis of the approver's evidence:

20.1. ***The Hon'ble the Supreme Court in the case of*** *K. Hashim v. State of T.N reported in. (2005) 1 SCC 237* has held as follows:

> *"38. First, it is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction. As Lord Reading says:*
>
> *'Indeed, if it were required that the accomplice should be confirmed in every detail of the crime, his evidence would not be essential to the case; it would be merely confirmatory of other and independent testimony.' (Baskerville case [R. v. Baskerville, (1916) 2 KB 658 : (1916-17) All ER Rep 38 (CCA)] , KB p. 664 : All ER p. 42 B-C)*
>
> *39. All that is required is that there must be some additional evidence rendering it probable that the story of the accomplice (or complainant) is true and that it is reasonably safe to act upon it.*
>
> *40. Secondly, the independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice or complainant that the*

accused committed the crime. This does not mean that the corroboration as to identification must extend to all the circumstances necessary to identify the accused with the offence. Again, all that is necessary is that there should be independent evidence which will make it reasonably safe to believe the witness's story that the accused was the one, or among those, who committed the offence. The reason for this part of the rule is that:

'A man who has been guilty of a crime himself will always be able to relate the facts of the case, and if the confirmation be only on the truth of that history, without identifying the persons, that is really no corroboration at all…. It would not at all tend to show that the party accused participated in it.'

41. Thirdly, the corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another. But of course the circumstances may be such as to make it safe to dispense with the necessity of corroboration and in those special circumstances a conviction so based would not be illegal. I say this because it was contended that the mother in this case was not an independent source.

42. Fourthly, the corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime. Were it otherwise, 'many crimes which are usually *committed between accomplices in secret, such as incest, offences with females' (or unnatural offences) 'could never be brought to justice'. (See M.O. Shamsudhin v. State of Kerala [M.O. Shamsudhin v. State of Kerala, (1995) 3 SCC 351 : 1995 SCC (Cri) 509] .)"*

(emphasis supplied)

20.2.The Hon'ble Three Judges Bench of the Supreme Court in the case of ***Somasundaram v. State,*** **reported in *2020 (7) SCC 722*** after considering the said 'K.Hashim case' and Swarn Singh v. State of Punjab reported in AIR 1957 SC 637 and ***Haroon Haji Abdulla Vs. State of Maharastra*** reported in AIR 1968 SC 832 has held as follows:

> ***78.*** *As laid down by this Court, every material circumstance against the accused need not be independently confirmed. Corroboration must be such that it renders the testimony of the approver believable in the facts and circumstances of each case. The testimony of one accomplice cannot be, ordinarily, be supported by the testimony of another approver. We have used the word "ordinarily" inspired by the statement of the law in para 4 in K. Hashim [K. Hashim v. State of T.N., (2005) 1 SCC 237 : 2005 SCC (Cri) 292] wherein this Court did contemplate special and extraordinary cases where the principle embedded in Section 133 would literally apply. In other words, in the common run*

of cases, the rule of prudence which has evolved into a principle of law is that an accomplice, to be believed, he must be corroborated in material particulars of his testimony. The evidence which is used to corroborate an accomplice need not be a direct evidence and can be in the form of circumstantial evidence.

20.3.In the considered opinion of this Court, P.W.2/Approver/A4's evidence corroborated with the remaining evidence and material collected by the investigating agency. He specifically deposed the *modus operandi* that A3 approached him to supply furniture and other items. He told A3 that he had no manufacturing facility. But, A3 replied that he would take care of it and asked to submit the tender form. After obtaining order, P.W.2 met A3. A3 asked to supply quantity of material less than what is mentioned in the purchase order. Thereafter, he submitted the bills and delivery challan to A3. Subsequently, amount was credited in his account. He informed about credit of amount to A3. A3 received the entire amount and gave 10% commission. The said evidence of PW2 is cogent and corroborated with material particulars. Evidence of PW2 inspires confidence and the learned trial judge correctly relied upon his evidence. He was subjected to incisive cross examination but nothing was elicited to disbelieve his version. Approver's evidence clearly and clinchingly proved defrauding of Railways corpus and said evidence stood corroborated with other material circumstances.

21.Cheating:

The deception is not in the express term and both fraudulent and dishonest intention at the inception is usually made out from entire circumstances of the case. The Hon'ble Supreme Court in the case of ***Bashirbhai Mohamedbhai vs. State of Bombay*** reported in ***AIR 1960 SC 979*** has held that making of false representation is one of the ingredients for the offence of cheating and also the Hon'ble Three Judges Bench of the Supreme Court in the case of ***Shivanarayan Kabra vs. The State of Madras*** reported in ***AIR 1967 SC 986*** has held as follows:

> *The appellant knew fully well that he had no right to do forward business and that he was not a member of any recognised association and that he could not lawfully advertise to P.W.2 for investment in forward contracts.* ***It is not necessary that a false pretence should be made in express words by the appellant. It may be inferred from all the circumstances including the conduct of the appellant in obtaining the property*** *and in Ex.P34 (a) the appellant stated something which was not true and concealed from P.W.2 the fact that he was not a member of any recognised association and that he was not entitled to carry on the forward contract business, it is clear that P.W.2 could not have parted with the sum of Rs.12,000/- but for the inducement contained in Ex.P34*

and the representation of the appellant that he could lawfully carry on forward contract business.

21.1.In the case of ***Ram narayan Popli vs. Central Bureau of Investigation*** reported in ***2003 3 SCC 641*** it is held as follows:

> *Section 420 deals with cheating and dishonestly inducing delivery of property. The offence of cheating is made of two ingredients: deception of any person and fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property. To put it differently, the ingredients of the offence are that the person deceived delivers to someone a valuable security or property, that the person so deceived was induced to do so, that such person acted on such inducement in consequence of his having been deceived by the accused and that the accused acted fraudulently or dishonestly when so inducing the person. To constitute the offence of cheating, it is not necessary that the deception should be by express words, but it may be by conduct or implied in the nature of the transaction itself.*

21.2.In the case of ***Vijay Kumar Ghai v. State of W.B.***, reported in **(2022) 7 SCC 124**

> ***35.*** *To establish the offence of cheating in inducing the delivery of property, the following ingredients need to be proved:*
> *(i) The representation made by the person was false.*
> *(ii) The accused had prior knowledge that the representation he made was false.*
> *(iii) The accused made false representation with dishonest intention in order to deceive the person to whom it was made.*
> *(iv) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed.*

21.3.In this case, ingredients of cheating are clearly proved beyond reasonable doubt. Intention of all the accused right from preparation of procurement list of furniture etc over and above the limit of essentiality, floating of tender for more quantities than the requirement, award of tender in favour of approver, supply of much less quantity of goods than what is mentioned in the purchase order, credit of amount exceeding the supply of goods in the account A2, consequential misappropriation all clearly prove ingredients of cheating. Therefore, this Court finds no merit in the contention of the learned counsel for the appellant that the offence under Section 120-B r/w 420 of IPC, 420 of IPC is not made out. In view of the above discussion, this Court finds no merit to set aside the conviction passed against the appellants under Section 120-B r/w 420 of IPC, 420 of IPC vide impugned judgment dated 14.11.2019 in C.C.No.2 of 2019, on the file of the II Additional District Court for CBI Cases, Madurai.

22. Discussion on the appeal filed by CBI in Crl.A.No.390 of 2020:

The learned trial Judge framed the following charges against all the accused Nos.1 to 3:-

1st Charge :-

> *" Thus, you A-1 to A-3 being public servants had abused you official position by deliberately violating the rules, showed undue favour to a private person/A-4 concern (Approver/not sent up for trial) in the matter of the purchase of Furniture items for the stations covered under Villupuram-Vellore Section on account of gauge conversion and caused a wrongful loss to the tune of Rs. 20,70,025/- to the Railways with a corresponding wrongful gain for yourselves;*
>
> *and thereby you **A-1 to A-3** have committed the offences punishable **u/s.120-B r/w 420 IPC and Section 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988** and within my cognizance."*

2nd charge :-

"That in pursuance of the said criminal conspiracy, you A-3 during 2007-2011 did not maintain any proper receipt and delivery of the materials, not maintaining any DBR or DBI Registers, had made false remarks in all the supplier's bill furnished by A-4 concern (Approver/not sent up for trial), that you A-1 had certified all the above said remarks of you A-3 without verifying the entries in the above registers which enabled the Accounts Department to process and release the payment for the bills, that the indent No.719162 was raised by you A-3 for the purchase of parcel trolley and got it approved by you A-1, but for the same indent number you A-3 suppressed the true fact sent a DO letter to DMM advising the supply of the items of xerox machine, flask etc., and got signed by Shri.R.Gopal, the then Divisional Operating Manager; and cheated the Southern Railway, caused a wrongful loss to the tune of Rs.20,70,025/- to the Railways with a corresponding wrongful gain for yourselves;

*and thereby you A-1 to A-3 have committed the offence punishable **u/s 420 IPC** and within my cognizance."*

3rd Charge :-

"thus, you A-1 to A-3, have failed to comply with the procedures, by deliberately violating the provisions

of Cannons of Financial Propriety of Ministry of Railways Stores Directorate, had abused your official position as public servants and cheated the Southern Railways in the matter of purchase of furniture items for the stations covered under Villupuram -Vellore Section on account of gauge conversion, showed undue favour to A-4 a private concern (Approver/not sent up for trial) and caused wrongful loss to the tune of Rs.20,70,025/- to the Railways with a corresponding wrongful gain for yourselves;

and thereby you A-1 to A-3 have committed the offence punishable ***u/s13(2) r/w 13(1)(d) of P.C. Act, 1988*** *and within the cognizance of this Court."*

22.1 After trial, the trial court has acquitted A1 and A2 for offence under section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. But he has convicted A3 under section 13(2) r/w 13(1) d of Prevention of Corruption Act, 1988, on the basis of following reasoning:

(194) *(a). appropriate sanction had been obtained against third accused for prosecution.*

(b). during, the course of purchase of furniture activities, the first accused had exceeded his monetary limits.

(c). the second accused had issued purchase

orders, without actual scrutiny of indents and observing the procedural aspects.

(d) the third accused had raised incomplete indents and did not account for the non-stock items.

(e). purchase and supply of furnitures to the stations reveals large discrepancy. 100 (f). shame and nominal tender procedures were adopted.

(g). one particular supplier of furniture by name M/s.Adithyaa Traders had given undue preference.

(h). powers of public servants abused, by way of conspiracy, cheating had taken place and railways had suffered wrongful loss, in turn the accused had acquired, wrongful gain.

(195). The proved acts of the accused has revealed their criminal intention. It is simply, resulted with the wrongful acquirement of gain by causing wrongful loss to the railways. The method adopted by the accused, to accomplish their mission of dishonest intention is 'cheating' Southern Railway-an unique system of transportation and freight, fulfilling the aspirations of lakhs of people, belongs to different sections of the society.

(196). That the available evidence against first and second accused inrespect of their criminal misconduct, so as to attract Sec.13(2) r/w 13(1)(d) of P.C. Act, 1988, has creates a slightest doubt in my mind.

*The reason is that, even though they exceed their powers, there is an absence of evidence, "**<u>so as to connect first and second accused with the receipt of any valuable things or pecuniary advantage</u>**". P.W.2 has not deposed anything about first and second accused. But the third accused is concerned, the evidence of P.W.2 in this aspect is very much available.*

(197). In the result, that considering the entire material records in this case, circumstantial, oral and documentary evidence, I hold that, the prosecution has proved its case,

> *(a) as against the first accused under Sec. 120-B r/w 420 101 IPC and u/s.420 IPC;*
>
> *(b) as against the second accused under Sec.120-B r/w 420 IPC and u/s.420 IPC; AND*
>
> *(c) as against the third accused under Sec. 120-B r/w 420 IPC & 420 IPC and Sec.13(2) r/w 13(1)(d) of P.C.Act, 1988, respectively, beyond all reasonable doubts.*

(198). (a) I therefore hold that, the first accused herein is guilty of the charges under Sec.120-B r/w 420 IPC and under Sec.420 IPC.

> *(b) I therefore hold that, the second accused herein is guilty of the charges under Sec. 120-B r/w 420 IPC and under Sec.420 IPC.*
>
> *(c) I therefore hold that, the third accused herein is guilty of the charges under Sec.120- B*

r/w 420 IPC & under Sec.420 IPC and guilty under Sec.13(2) r/w 13(1)(d) of P.C. Act, 1988

22.2 This court in earlier part of judgment re-appreciated the evidence on record and provisions of law and concurs with the finding of the learned trial Judge in convicting all the appellants under section 120B r/w 420 of IPC, 420 IPC in appeal Nos.568 & 588 of 2019 which have been filed by A1, A2 and under Section 120 (B) r/w 420 IPC, 13(2) r/w 13 (1)(d) of Prevention of Corruption Act, 1988. in appeal No.554 of 2019 which has been filed by A3.There was clear evidence on record to prove the conspiracy between A1, A2 and A3 who were the Railways Officers in the process of procurement of furniture items etc., by floating tender for more than the actual requirement by issuing essentiality certificate, and purchase order in favour of PW2/Approver/A4 accused and cheated the Railway without making any procurement of said quantity of goods mentioned even in so called purchase order and transferred amount beyond the value of the supplied goods into the account of A4/PW2/approver and misappropriated entire amount excluding commission amount due to PW2,. Approving approver A4's act in that chain of above events starting from preparation of quantity of material over the limit of essentiality, granting of tender in favour of A4/P.W.2 without verification of overwriting and alteration in the purchase order, deposit amount in the account of approver and misappropriation of amount from the account of approver all clearly constitute misconduct punishable under section 13(1)(d) r/w 13(2) Act 1988. But the learned trial judge failed to consider the same in proper manner. He has committed error in acquitting A1, A2 under Prevention of Corruption Act after convicting A1, A2 under section 120B/420 IPC. When the conspiracy to cheat is proved, the act of cheating comes under misconduct. In para 196, of the judgment the learned trial judge failed to appreciate provision 13(1)(d) R/w 13(2) in proper manner. when evidence is available against A3 , in view of finding under section 120B/420 IPC, the trial court ought to have convicted A1, A2 also under section 13(1)(d) R/w 13(2) IPC.

22.3. From the above narration of the events and discussion, the respondents in Crl.A.(MD).No.390 of 2020/Appellant in Crl.A.(MD).Nos. 568 of 2019, 588 of 2019, namely, A1, A2 and A3 jointly prepared the list of procurement of furniture, over and above the limit of the essentiality, flouting all tender procedure and awarded the tender in favour of approver, who supplied less quantity of goods than what is mentioned in the purchase order and credited the amount exceeding the supply of the goods in the account of the approver and consequently misappropriated the said amount from the account of the approver and all these misdeeds clearly constitute the misconduct as per Section 13(1)(d) of the Prevention of Corruption Act, 1988. When there was a benefit obtained by the public servant for himself or for any other person, the offence under Section 13(2) r/w 13(1)(d) of the prevention of Corruption Act, 1988 is clearly made out and the same was fortified by the decision of the Hon'ble constitution bench judgment of Supreme Court in the case of ***M.Narayanan Nambiyar Vs. state of Kerala*** reported in ***AIR 1963 SC 1116***:

> *'10...On a plaint reading of the express words used in the clause, we have no doubt that every benefit obtained by a* ***public servant for himself, or for any other person*** *by abusing his position as a public servant falls within the mischief of the said clause.'*

23.From the above discussion, it is seen that the prosecution clearly proved the case against the respondent Nos.1 and 2 for the offence under Sections 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988. Hence, this Court finds merit in the CBI appeal and inclines to convict the appellant under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption

Act, 1988.

24. It is well settled principle, where the view taken by the trial court in acquitting the accused is extremely perverse and is not reasonably sustainable on the evidence on record, then the appellate court can interfere with such an order of acquittal to ensure miscarriage of justice is prevented. The only possible view as per the evidence is that the appellants had committed the offence under Section 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988.

25.Therefore, this Court inclines to set aside the unmerited acquittal passed by the learned trial Judge under section 13(2) r/w 13(1)(d) of PC Act, 1988, in favour of A1 and A2 namely, the respondents in the Crl.A.(MD)No.390 of 2020. The prosecution clearly proved the offence under section 13(2) r/w 13(1)(d) of PC Act, 1988 against A1 & A2 beyond reasonable doubt and hence this court finds A1 & A2 guilty under section 13(2) R/w 13(1)(d) of Prevention of Corruption Act, 1988. This court holds that the appeal filed by CBI in Crl.A.(MD)No.390 of 2020 deserves to be allowed.

26. Accordingly Crl.A.(MD)No.390 of 2020 is allowed and acquittal under section 13(2) R/w 13(1)(d) of PC Act, 1988, in the impugned judgment is set aside. As a sequel, the respondents 1, 2 in Crl.A(MD) No. 390/2020 are convicted under section 13(2) r/w 13(1)(d) of of Prevention of Corruption Act, 1988.

27. List this case for appearance of the respondent Nos.1 and 2 for questioning the sentence of imprisonment on 24.03.2025.

04.03.2024

NCC :Yes/No
Internet :Yes/No
Index :Yes/No
sbn

28.**<u>Appearance and questioning on the respondent Nos.1 and 2 in Crl.A.(MD).No.390 of 2020:</u>**

As per the direction of this Court dated, 24.02.2025, respondent Nos.1 and 2 appeared before this Court. When the accused questioned under Section 235 of Cr.P.C., about the sentence of imprisonment to be passed, they have pleaded as follows:

Accused No	*Answer of the accused*
A.P.Muthuramalingam/A1	I was retired from service in 2011, but this case was registered in the year 2014. I am 74 years old, I am suffering from various ailments. I did not commit any offence. Hence I pray for lesser sentence.
S.Srinivasan/A2	எனக்கு 74 வயது ஆகிறது. நான் 1974ல் ரயில்வே பணியில் சேர்ந்தேன். 2015 ஜீன் 30ல் பணியிலிருந்து ஓய்வு பெற்றேன். 35 வருட ரயில்வே பணியில் என் மீது எந்த ஒரு குற்றமும் இல்லை. என் அம்மாவிற்கு 94 வயதுதாகிறது அவர் என்னுடன் இருக்கிறார். மேலும் உடல்நிலை சரியில்லாத எனது மனைவியும் உள்ளார். நான் எந்த தவறும் செய்யவில்லை. எனக்கும் என் மீது சுமத்தப்பட்ட ஊழல் வழக்கிற்கும் எவ்விதமான சம்மந்தமும் இல்லை. வயது முதிர்வு காரணமாக பல உடல்நிலை பிரச்சினைகளும் எனக்கு உள்ளது. சர்க்கரை நோய், இருதயநோய் உள்ளிட்ட பல வியாதிகள் உள்ளது. மேலும் நான் தொடர்ந்து மருத்துவர் ஆலோசனை பெற்று வருகிறேன் ஆகவே குறைந்தபட்ச தண்டணை வழங்க வேண்டுகிறேன்.

29.Discussion on sentence of A3/R.Inbaraj/Appellant in Crl.A.(MD) No. 554 of 2019:

Learned counsel appearing for A3 submitted that disciplinary proceedings had been initiated against A3/appellant in Crl.A(MD)No.554 of 2019 and his service had been terminated as "dismissal from service" vide punishment order dated 19.12.2019, and the same has been confirmed by the appellate authority. He has lost his job and he is aged above 63 years with old age aliments. The learned counsel requested this Court to reduce sentence of imprisonment upon considering the above mitigating circumstances. The learned Special Public Prosecutor would submit that there was a planned execution of Criminal Act and as sequel there is a wrongful loss of Rs.20,70,025.00/- (Rupees Twenty Lakhs Seventy Thousand and Twenty Five Only). Therefore, he seeks to confirm the sentence of imprisonment. The Hon'ble Supreme Court in the case of ***Sunita Devi vs. State of Bihar*** reported in ***2024 SCC Online SC 984*** laid a detailed guidelines to consider mitigating and aggravated circumstances to award sentence of imprisonment. This Court considered the said principles and considering the above mitigating circumstance deserves to be considered to reduce sentence. But misappropriated amount is Rs. 20,70,025.00 (Rupees Twenty Lakhs Seventy Thousand and Twenty Five

Only). Therefore, this Court in the interest of justice, is inclined to **reduce the sentence of imprisonment** *as stated below with payment of compensation of* ***Rs.7,00,000/- (Rupees Seven Lakhs Only)*** in favour of Railway Department in the name of Deputy Chief Engineer, Construction, Tambaram, Chennai, within a period of fifteen days from today, otherwise trial court sentence of imprisonment will be restored.

S.No.	***Charges proved under sections***	***Sentence passed by the Trial Court***	***Sentence passed by this Court***
554/ 2019	U/s.13(2) r/w. Section 13(1) (d) of PC Act, 1988	Sentenced to undergo ***4 years*** of Rigorous imprisonment and to pay a fine of Rs.25,000/- and in default has to undergo R.I., for six months.	Sentence to undergo ***1 year*** of Rigorous imprisonment and to pay a fine of Rs. 25,000/- and in default has to undergo S.I., for six months.
	U/s.120-B r/w.420 I.P.C.,	Sentenced to undergo ***2 years*** of Rigorous imprisonment and to pay a fine of Rs.15,000/- and in default has to undergo R.I., for six months.	Sentenced to undergo ***1 year*** of Rigorous imprisonment and to pay a fine of Rs. 15,000/- and in default has to undergo S.I., for six months.
	U/s.420 I.P.C.,	Sentenced to undergo ***2 years*** of Rigorous imprisonment and to pay a fine of Rs.10,000/- and in default has to undergo R.I., for six months.	Sentenced to undergo ***1 year*** of Rigorous imprisonment and to pay a fine of Rs.10,000/- and in default has to undergo S.I., for six months.
		The above sentence of imprisonment imposed, shall run concurrently.	

30. Accordingly the Crl.A.(MD) No.554 of 2019 is partly allowed in the following terms :

30.1.Conviction passed against the appellant in C.C.No. 2 of 2016 on the file of the Learned II Additional District Judge, for CBI Cases, Madurai vide impugned judgment dated 14.11.2019 is confirmed.

30.2.The sentence of imprisonment passed against the appellant is reduced as stated below ***with condition to deposit further sum of Rs. 7,00,000/- (Seven Lakhs) as a compensation Railway Department in the name of Deputy Chief Engineer, Construction, Tambaram, Chennai, within a period of fifteen days from today, otherwise trial court sentence of imprisonment will be restored.***

30.2.1. Sentenced to undergo Rigorous Imprisonment for four years for offence U/s.13(2) r/w. Section 13(1) (d) of PC Act,1988 is reduced to undergo 1 year and Direction to pay the fine of Rs.25,000/- with default to undergo Simple Imprisonment for 6 months is confirmed.

30.2.2. Sentence of Rigorous Imprisonment to undergo 2 years for the offence under section U/s.120-B r/w.420 I.P.C., is reduced into one year and direction to pay a fine of Rs.15,000/- in default to undergo Simple Imprisonment for 6 months is confirmed.

30.2.3.Sentenced to undergo Rigorous Imprisonment for two years under section 420 of IPC is reduced into one year and direction to pay a fine of 10,000/- in default to undergo Simple Imprisonment for 6 months is confirmed.

30.3. All sentence shall run concurrently.

31. <u>Discussion on Sentence of Imprisonment in Crl.A(MD)No. 588 of 2019/ first respondent in Crl.A.(MD).No.390 of 2020/ A1/ A.P.Muthuramalingam</u>:

The first respondent appeared in person along with his learned counsel. Both pleaded mitigating circumstances to give minimum sentence of imprisonment under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988, and reduce the sentence imposed against him under Sections 420 of IPC and 120 (b) r/w 420 of IPC ie., He is aged above 73 years with old age aliments. Even during the pendency of the trial, he had undergone heart surgery. He has various other ailments. The learned Special Public Prosecutor would submit that there was a planned execution of Criminal Act and as sequel there is a wrongful loss of Rs. 20,70,025.00/- (Rupees Twenty Lakhs Seventy Thousand and Twenty Five Only). Therefore, he seeks to confirm the sentence of imprisonment. The

Hon'ble Supreme Court in the case of Sunita Devi vs. State of Bihar reported in 2024 SCC Online SC 984 laid a detailed guidelines to consider mitigating and aggravated circumstances to award sentence of imprisonment. This Court considered the said principles and considering the above mitigating circumstance deserves to be considered to reduce sentence. But misappropriated amount is Rs.20,70,025.00 (Rupees Twenty Lakhs Seventy Thousand and Twenty Five Only). Therefore, this Court in the interest of justice, is inclined to **reduce the sentence of imprisonment** *as stated below with payment of compensation of* ***Rs.5,00,000/- (Rupees Five Lakhs Only)*** in favour of Railway Department in the name of Deputy Chief Engineer, Construction, Tambaram, Chennai, within a period of fifteen days from today, otherwise trial court sentence of imprisonment will be restored.

Crl.A No.	***Charged proved under Section***	***Sentence passed by the trial Court***	***Sentence passed by this Court***
588/ 2019	U/s.120-B r/w. 420 I.P.C.,	Sentenced to undergo ***2 years*** of Rigorous imprisonment and to pay a fine of Rs. 15,000/- and in default has to undergo R.I., for six months.	Sentenced to undergo ***1 year*** of Rigorous imprisonment and to pay a fine of Rs. 15,000/- and in default has to undergo S.I., for six months.

588/ 2019	U/s.420 I.P.C.,	Sentenced to undergo ***2 years*** of Rigorous imprisonment and to pay a fine of Rs. 10,000/- and in default has to undergo R.I., for six months.	Sentenced to undergo ***1 year*** of Rigorous imprisonment and to pay a fine of Rs.10,000/- and in default has to undergo S.I., for six months.
		The above sentence of imprisonment imposed, shall run concurrently.	

31.1.Further, this Court is inclined to award sentence of one year rigorous imprisonment for the offence punishable under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 with fine of Rs.25,000/- and in default to undergo simple imprisonment for six months.

32. Accordingly the Crl.A.(MD) No.588 of 2019 is partly allowed in the following terms :

32.1.Conviction passed against the appellant in C.C.No. 2 of 2016 on the file of the Learned II Additional District Judge, for CBI Cases, Madurai vide impugned judgment dated 14.11.2019 is confirmed.

32.2. The sentence of imprisonment passed against the appellant in C.C.No.2 of 2016 on the file of the II Additional District Court for CBI Cases, Madurai, vide impugned judgment dated 14.11.2019, is reduced as stated below ***with condition to deposit further sum of Rs.5,00,000/- (Five Lakhs) as a compensation Railway Department in the name of Deputy Chief Engineer, Construction, Tambaram, Chennai, within a period of fifteen days from today, otherwise trial court sentence of imprisonment will be restored.***

32.2.1. Sentence of Rigorous Imprisonment to undergo 2 years for the offence under section U/s.120-B r/w.420 I.P.C., is reduced into one year and direction to pay a fine of Rs.15,000/- in default to undergo Simple Imprisonment for 6 months is confirmed.

32.2.2.Sentenced to undergo Rigorous Imprisonment for two years under section 420 of IPC is reduced into one year and direction to pay a fine of 10,000/- in default to undergo Simple Imprisonment for 6 months is confirmed.

32.3.**Accordingly, the criminal appeal in Crl.A.(MD).No.390 of 2020 is allowed in the following terms:**

Acquittal under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988, in the impugned judgment in C.C.No.2 of 2016 on the file of the II Additional District Judge, Special Judge for CBI Cases, Madurai, dated 14.11.2019, is hereby set aside. As sequel, the respondent

Nos.1 and 2 are convicted under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988.

32.3.1.Respondent Nos.1 and 2 are sentenced to undergo ***one year rigorous imprisonment*** and to pay ***fine of Rs.25,000/-*** and in default to ***undergo six months simple imprisonment*** for the offence under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988.

32.4. All sentence shall run concurrently

33. Discussion on Sentence of Imprisonment in Crl.A(MD)No. 568 of 2019/ second respondent in Crl.A.(MD).No.390 of 2020/ A2/ S.Srinivasan :

The second respondent appeared in person along with his learned counsel. Both pleaded mitigating circumstances to give minimum sentence of imprisonment under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988, and reduce the sentence imposed against him under Sections 420 of IPC and 120 (b) r/w 420 of IPC ie., He is aged above 74 years with old age aliments. Even during the pendency of the trial, he had undergone heart surgery. His mother is aged about 94 years and his wife is also suffering from various illness. The learned Special Public Prosecutor would submit that there was a planned execution of Criminal Act and as sequel there is a wrongful loss of Rs.20,70,025.00/- (Rupees Twenty Lakhs Seventy Thousand and Twenty Five Only). Therefore, he seeks to confirm the sentence of imprisonment. The Hon'ble Supreme Court in the case of ***Sunita Devi vs. State of Bihar*** reported in ***2024 SCC Online SC 984*** laid a detailed guidelines to consider mitigating and aggravated circumstances to award sentence of imprisonment. This Court considered the said principles and considering the above mitigating circumstance deserves to be considered to reduce sentence. But misappropriated amount is Rs. 20,70,025.00 (Rupees Twenty Lakhs Seventy Thousand and Twenty Five Only). Therefore, this Court in the interest of justice, is inclined to **reduce the sentence of imprisonment** *as stated below with payment of compensation of **Rs.5,00,000/- (Rupees Five Lakhs Only)*** in favour of Railway Department in the name of Deputy Chief Engineer, Construction, Tambaram, Chennai, within a period of fifteen day from today, otherwise trial court sentence of imprisonment will be restored.

Crl.A No.	***Charged proved under Section***	***Sentence passed by the trial Court***	***Sentence passed by this Court***
568/ 2019	U/s.120-B r/w. 420 I.P.C.,	Sentenced to undergo ***2 years*** of Rigorous imprisonment and to pay a fine of Rs. 15,000/- and in default has to undergo R.I., for six months.	Sentenced to undergo ***1 year*** of Rigorous imprisonment and to pay a fine of Rs. 15,000/- and in default has to undergo S.I., for six months.
568/ 2019	U/s.420 I.P.C.,	Sentenced to undergo ***2 years*** of Rigorous imprisonment and to pay a fine of Rs. 10,000/- and in default has to undergo R.I., for six months.	Sentenced to undergo ***1 year*** of Rigorous imprisonment and to pay a fine of Rs.10,000/- and in default has to undergo S.I., for six months.
		The above sentence of imprisonment imposed, shall run concurrently.	

33.1.Further, this Court is inclined to award sentence of one year rigorous imprisonment for the offence punishable under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 with fine of Rs.25,000/- and in default to undergo simple imprisonment for six months.

34. Accordingly the Crl.A.(MD) No.568 of 2019 is partly allowed in the following terms :

34.1.Conviction passed against the appellant in C.C.No. 2 of 2016 on the file of the Learned II Additional District Judge, for CBI Cases, Madurai vide impugned judgment dated 14.11.2019 is confirmed.

34.2. The sentence of imprisonment passed against the appellant in C.C.No.2 of 2016 on the file of the II Additional District Court for CBI Cases, Madurai, vide impugned judgment dated 14.11.2019 is reduced as stated below ***with condition to deposit further sum of Rs.5,00,000/- (Five Lakhs) as a compensation Railway Department in the name of Deputy Chief Engineer, Construction, Tambaram, Chennai, within a period of fifteen days from today, otherwise trial court sentence of imprisonment will be restored.***

34.2.1. Sentence of Rigorous Imprisonment to undergo 2 years for the offence under section U/s.120-B r/w.420 I.P.C., is reduced into one year rigorous imprisonment and directed to pay a fine of Rs.15,000/- in default to undergo Simple Imprisonment for 6 months is confirmed.

34.2.2.Sentenced to undergo Rigorous Imprisonment for two years under section 420 of IPC is reduced into one year and direction to pay a fine of 10,000/- in default to undergo Simple Imprisonment for 6 months is confirmed.

34.3.**<u>Accordingly, the criminal appeal in Crl.A.(MD).No.390 of 2020 is allowed in the following terms:</u>**

Acquittal under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988, in the impugned judgment in C.C.No.2 of 2016 on the file of the II Additional District Judge, Special Judge for CBI Cases, Madurai, dated 14.11.2019, is hereby set aside. As sequel, the respondent Nos.1 and 2 are convicted under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988.

34.3.1.Respondent Nos.1 and 2 are sentenced to undergo ***one year rigorous imprisonment*** and to ***pay fine of Rs.25,000/-*** and in default to undergo ***six months simple imprisonment*** for the offence under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988.

34.4. All sentence in Crl.A.(MD).Nos.390 of 2020, 568 of 2019 and 588 of 2019 shall run concurrently

35.After passing the sentence of imprisonment, the learned counsel for the respondent seeks for an interim suspension of the sentence of imprisonment. Considering the mitigating circumstances and this Court also directed to pay their respective compensation within a period of fifteen days from today, this Court is inclined to suspend the sentence of imprisonment up to 15.04.2025. The appellants in Crl.A.(MD).No.554 of 2019, 568 of 2019 and 588 of 2019 are directed to surrender before the trial Court on 16.04.2025. If the appellants in Crl.A.(MD).Nos.554 of 2019, 568 of 2019 and 588 of 2019, failed to surrender on 16.04.2025, CBI is hereby directed to secure and produce before the trial Court to undergo the remaining period of imprisonment imposed by this Court after deducting the period already undergone by themselves under Section 428 of Cr.P.C.

Consequently, connected miscellaneous petition is closed.

36. List these case on 17.04.2025 for "reporting compliance"

24.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
sbn

Note: Issue order copy on 24.03.2025

To

1. The II Additional District Judge for CBI Cases,
   Madurai.

2. The Special Judge for CBI Cases,
   Madurai.

3. Inspector of Police,
   SPE,CBI, ACB, Chennai.

4. The Special Public Prosecutor,
   Central Bureau of Investigation,
   Anti Corruption Branch, Madurai.

5. The Section Officer,
   Criminal Section(Records),
   Madurai Bench of Madras High Court, Madurai.

K.K.RAMAKRISHNAN,J.

sbn

Pre-delivery judgment made in
CRL.A(MD).Nos.554, 568 and
588 of 2019 & 390 of 2020
and
Crl.M.P.(MD).No.4804/2024

04.03.2025
&
24.03.2025