



2025:DHC:6154



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

% **Reserved on: 24th April, 2025**
Pronounced on: 28th July, 2025

+ **CRL.A. 1238/2015**

SANJAY KUMAR JAIN

S/o Shri Darshan Lai Jain,
R/o 48/11, MCD Flats,
Bungalow Road, Delhi.

....Appellant

Through: Mr. D.S. Kohli, Mr. Yash Kadyan,
Ms. Mannat Kohli & Mr. Raghav
Kaushik, Advocates

Versus

STATE (THROUGH A.C.B)

.....Respondent

Through: Mr. Yudhvir Singh Chauhan, APP
State with Insp. Bharat

+ **CRL.A. 1254/2015**

C B SINGH

S/o Shri Jhamman Singh,
R/o D-831A, Gali No. 3,
Ashok Nagar, Delhi.

.....Appellant

Through: Mr. D.S. Kohli, Mr. Yash Kadyan,
Ms. Mannat Kohli & Mr. Raghav
Kaushik, Advocates

Versus

STATE

.....Respondent

Through: Mr. Yudhvir Singh Chauhan, APP
State with Insp. Bharat

+ **CRL.A. 1255/2015**

S N GOEL

S/o Shri S. C. Goel,
R/o F-26/69, Sector-7,
Rohini, Delhi.

.....Appellant

Through: Mr. D.S. Kohli, Mr. Yash Kadyan,
Ms. Mannat Kohli & Mr. Raghav
Kaushik, Advocates



Versus

STATE (THROUGH CBI)

.....Respondent

Through: Mr. Yudhvir Singh Chauhan, APP
State with Insp. Bharat

+

CRL.A. 239/2016

THE STATE (NCT OF DELHI)

.....Appellant

Through: Mr. Yudhvir Singh Chauhan, APP
State with Insp. Bharat

Versus

1. **ASHOK KUMAR GUPTA**
S/o Sh. B.S.GUPTA
R/o 26/87, SHAKTI NAGAR,
DELHI- 110007
2. **SATYA NARAYAN GOEL**
S/o SH. S.C.GOEL
R/o F-26/69, SECTOR -7,
ROHINI, DELHI —110085
3. **SANJAY KUMAR JAIN**
S/o SH. DARSHAN LAL JAIN
R/o 48/6, MCD FLATS,
BUNGLOW ROAD, DELHI —110007
4. **CHANDRA BHAN SINGH**
SH. JHAMMAN SINGH
R/o D-83 1A, GALI NO.3,
ASHOK NAGAR, DELHI —110093

.....Respondents

Through: Mr. D.S. Kohli, Mr. Yash Kadyan,
Ms. Mannat Kohli & Mr. Raghav
Kaushik, Advocates for R-2 & 3

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.



1. The aforesaid 03 Appeals arise from the Judgment dated 29.10.2015 whereby the Appellants-Sanjay Kumar Jain, C.B. Singh, S.N. Goel have been convicted for the offence punishable under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act (*hereinafter referred to as the "P.C. Act"*) and Section 420 read with Section 120B of the Indian Penal Code, 1860 (*hereinafter referred to as the "IPC"*); and the **Order on Sentence dated 02.11.2015** whereby the 03 Appellants have been sentenced to undergo imprisonment for 02 years along with fine of Rs.5,000/- under Sections 13(1)(d) and 13(2) IPC while they have been sentenced to 02 years RI along with fine of Rs.10,000/-, each for the offence punishable under Sections 420/120B IPC.
2. **The Criminal Appeal No. 239/2016** has been filed by the **State** for enhancement of the sentence awarded to the 03 Appellants.
3. **Briefly stated** two Work Orders, namely, **Work Order No. 186** dated 10.07.1998 for repair of road in F-Block, Shastri Nagar in CLZ, SH: M/P near F-1 to F-16 and F-47 to Nag Mandir Road **for Rs.33,569/-** and **Work Order No. 535** dated 24.12.1998 for repair of road in Shehzada Bagh in C-120/CLZ, SH: Imp by patch repair on Subhdara Colony to Indralok in C-120, CLZ **for Rs.1,55,000/-**, were awarded to M/s Universal Sanitary Emporium, Delhi of which Ashok Kumar Gupta was the sole Proprietor.
4. According to the Work Orders, the Contractor Ashok Kumar Gupta was required to use fresh Bitumen purchased from Bharat Petroleum/Indian Oil/Hindustan Petroleum as approved by Engineer-in-Chief. It was to be arranged by the Contractor and the fresh receipt in original in proof thereof, was to be submitted to the Municipal Corporation of Delhi (MCD).



5. The ***case of the Prosecution*** was that Ashok Kumar Gupta, the Contractor used *substandard unauthorised Bitumen* for execution of the Work Orders. The Appellants- S.N. Goel, Junior Engineer (JE), Sanjay Kumar Jain, Assistant Engineer (AE) and C.B. Singh, Executive Engineer (EE), respectively in Division No. XVI, Civil Lines Zone, Municipal Corporation of Delhi (MCD), entered into criminal conspiracy with M/s Universal Sanitary Emporium, Delhi through its Proprietor Ashok Kumar Gupta, and passed the bills and released the payments to Ashok Kumar Gupta thereby causing pecuniary gain to him and loss to MCD in discharge of their official duties by corrupt means. By clearing the bills of Rs.1.75 Lacs without any Invoices from authorised Oil Company of Government of India, these bills were passed and payments released to Ashok Kumar Gupta dishonestly by the 03 Officers of MCD; thereby they all committed offence punishable under ***Sections 420/120B IPC and also committed offence punishable under Sections 13(1)(d) read with Section 13(2) PC Act.***

6. On completion of investigations, Chargesheet was filed in the Trial Court. Charges were accordingly, framed on 08.04.2011 against the Appellants punishable under ***Section 13(1)(d) read with Section 13(2) PC Act and Section 420 read with Section 120B IPC.***

7. Prosecution examined total 22 Prosecution witnesses in support of its case.

8. ***PW-1 ASI K.L. Meena*** registered the FIR Ex. PW-1/A.

9. ***PW-3 ACP Rajender Singh Manku*** deposed about the registration of FIR against the Appellants and Ashok Kumar Gupta on the basis of information received from reliable sources. Investigations were duly carried



out and the requisite information and statement of the witnesses were recorded.

10. **PW-6 Pradeep Sharma**, the Tender Clerk in the year 1998-99 proved the copy of the Work Order No. 186 dated 10.07.1998 along with the bills, which were Ex.PW-6/A and Ex.PW-6/B, collectively.

11. **PW-7 Narender Kumar Sharma**, the Tender Clerk in the year 1998-99 proved the copy of the Work Order No. 535 dated 24.12.1998 along with the bills, which were Ex.PW-7/A and Ex.PW-7/B, collectively.

12. **PW-8 HC Krishna Dasan** deposited the exhibits/signature samples of the Appellants in FSL, Rohini.

13. **PW-9 Vinay Kumar Tyagi** was the witnesses to the signature samples of the Appellants taken by the IO.

14. **PW-10 Loknath Sahu** was the witness to the arrest of the Appellants.

15. **PW-11 Khazan Singh**, the **Accounts Clerk/UDC** produced the copy of the Work Order No. 186 dated 10.07.1998 and Work Order No. 535 dated 24.12.1998, which were exhibited as Ex.PW-6/A and Ex.PW-6/B and Ex.PW-7/A and Ex. PW-7/B, respectively. **PW-12 Nirmal Bansal**, Audit Officer deposed that the Work Orders were opened on 06.05.1998 and the tender file bears his signatures. **PW-13 Ramesh Kumar Behl**, Accountant in MCD in the year 1998-99, deposed that the Work Orders Ex. PW-6/A and Ex. PW-6/B and Ex. PW-7/A and Ex. PW-7/B bear his signatures. He also testified that he was shown the Measurement Book (MB) registered Ex. PW-13/A and MB Book Ex. PW-13/B, which bears his signatures on the passing of the bills as an Accountant.

16. **PW-14 Rajni Narula** produced the posting Orders of the Appellants Sanjay Kumar Jain and C.B. Singh as Ex.PW-14/A and Ex.PW-14/B and



that of S.N. Goel as Ex.PW-14/D. **PW-15 Anand Singh Chauhan** produced the posting and transfer Orders of S.N. Goel, which are Ex.PW-15/A and Ex.PW-15/B, respectively.

17. **PW-16 Sajjan Kumar**, Chief Refinery Coordinator (CRC) in Mathura Oil Refinery deposed that letter Ex.PW-16/B was received in his office from Insp. S.S. Sandhu seeking information as to whether M/s Universal Sanitary Emporium, Delhi had purchased Bitumen from their refinery for execution of Work Orders No. 186 and 585 during the period 10.07.1998 to 31.03.1999. The reply Ex.PW-16/A was given stating that on verification of the records, *no such customer master was found*. Thus, as per their record, no supply of Bitumen had been made from their refinery to M/s Universal Sanitary Emporium, Delhi.

18. **PW-17 Pushkar Raj**, Head Clerk, Vigilance Department, MCD handed over the files of Tender and Accounts of two Work Orders to the IO, which was seized *vide* memo Ex.PW-17/A.

19. **PW-18 K.S. Mehra**, accorded sanctions for prosecution of the 03 Appellants.

20. **PW-19 Ashok Drabu**, who was posted as Executive Engineer in MCD, on 20.07.2004, deposed that pursuant to the letter of IO, he forwarded Original MB/Register No. 1766 Ex.PW-13/A and MB/Register No. 1769 Ex.PW-13/B pertaining to Work Orders No. 254/257 dated 07.08.1998 and Work Order No. 535 dated 24.12.1998 to the IO *vide* forwarding letter Ex.PW-19/A.

21. **PW-20 S.S. Sandhu** was the IO, who had conducted the investigations by collecting the requisite documents and recording of the statements. **PW-21 SI Kirori Lal Meena** and **PW-22 Insp. Santosh Kumar**



Singh were the subsequent IO, who conducted the investigations and thereafter, filed the Chargesheet in the Court.

22. The statement of the Appellants were also recorded under **Section 313 Cr.P.C. in which, they denied all the incriminating evidence.** They examined 05 witnesses in their defence.

23. **DW-1 Pradip Kapoor** who was posted as Technical Officers in the year 1998-1999 has deposed as to the quality of the material used and the required tests conducted in the MCD Lab. **DW-2 Ram Niwas**, who was posted as LDC, Maintenance deposed regarding the Bill register pertaining to the year 2004-2005 to 2006-2007 of Appellant CB Singh. **DW-3 J.B. Bhatia** who retired as Executive Engineer had deposed with regards to the technical specifications of the projects. **DW-4 S. Venkataramanan** who was posted as Accounts officer has deposed with regards to the record pertaining to difference of pay of Appellant CB Singh. **DW-5 Kiran Sharma**, who was posted as Head Clerk has deposed with regards to the Pay Bill Register for the Appellant SB Singh.

24. The Ld. Special Judge considered the entire Prosecution evidence and concluded that the Prosecution had successfully proved that the Bitumen of the quality specified in the Work Order, had not been used by Ashok Kumar Gupta, Contractor despite which the payment of the submitted Bills, was cleared by the Appellants, who were the JE, AE and EE, respectively in the MCD Department and *thereby convicted them under the charged Sections and also sentenced them accordingly.*

25. ***Aggrieved by the said conviction, the aforesaid three Appeals have been preferred by the Appellants wherein the conviction and sentence has been challenged on the grounds*** that the Judgment dated 29.10.2015 is



based on inferences and presumptions and not on any cogent evidence. Pertinently, the alleged incriminating evidence have not even been put to the Appellants under Section 313 Cr.P.C., which has caused serious prejudice to them. The requirement of sanctions under Section 197 Cr.P.C. has also been ignored as the law mandates that the sanctions be granted only if the facts alleged against public servant, has nexus to the discharge of their official duties.

26. The Prosecution has failed to justify the basis on which it has been concluded that wrongful loss to the extent of Rs.1.75 Lacs has been caused to MCD when in fact the total bill value, which stood released to the Contractor was of Rs.1,77,662/-, out of which the tentative cost of Bitumen was Rs.39,275/-. No basis has been given on which it has been concluded that a loss of Rs.1.75 Lacs, was caused.

27. Furthermore, it has emerged in the evidence that it was not the duty of the Appellants to pass the Bills or in any manner, require the release of the payment to the Contractor. In the absence of any cogent evidence, conviction of the Appellants for committing misconduct in permitting passing of Bills or release of payments, is unjustified.

28. The Ld. Special Judge has committed a grave illegality in holding that the preliminary enquiry was conducted by the IO before the registration of the case. It is asserted that bare perusal of Ex.PW-3/A, exposes the frivolity of the version of the informant; in fact, the manner in which false averments have been made during the cross-examination, the Appellant has been successfully impeached the creditworthiness of the witnesses. The Ld. Special Judge was unjustified in returning or finding the guilt of the Appellants, which is contrary to the settled principles of law.



29. It is submitted that the evidence of the Prosecution was required to be meticulously examined, which the Ld. Special Judge has failed to do. The findings of guilt as returned by the Ld. Trial Court are completely unsubstantiated by any document or ocular evidence.

30. ***There is no offence proved by the Prosecution against the Appellants and they are entitled to be acquitted.***

31. The ***Prosecution in the Status Report*** has reiterated the investigations carried out by IO and also that the Appellants have been rightly convicted and sentenced for the offences. ***It is accordingly prayed that the present Appeal be dismissed.***

32. The ***written submissions have also been filed*** on similar lines as the grounds raised in the Appeal. Reliance has been placed on Central Bureau of Investigation, Hyderabad v. K. Narayana Rao (2012) 9 SCC 512, wherein, the Apex Court has observed that an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence. Similar view has been taken by the Apex Court in P.K. Narayanan v. State of Kerala (1995) 1 SCC 142 and Sherimon v. State of Kerala AIR 2012 SC 493.

33. Reliance has also been placed on State of Kerala v. P. Sugathan and Anr. (2000) 8 SCC 203, wherein the Apex Court has observed that for proving the offence of criminal conspiracy, it is important to show that all means adopted and illegal acts done, were in furtherance of the object of conspiracy hatched.

34. The Appellants has also placed reliance on P. Sirajuddin etc v. State of Madras (AIR 1971 SC 520), wherein it was observed that whenever a



public servant is charged with the acts of dishonestly which amounts to serious misdemeanour or misconduct of the type of alleged in the case of first information is lodged against him, there must be some suitable Preliminary Enquiry into the allegations by a responsible officer. The same has been reiterated by the Apex Court in Ashok Tshering Bhutia v. State of Sikkim, AIR 2011 SC 1363.

35. Reliance has also been placed on State of Goa v. Babu Thomas, 2005 (8) SCC 130, wherein the Apex Court has held that **Sanction** issued by the incompetent Authority is a fundamental error which invalidates the cognizance as without jurisdiction. The same view has been taken by this Court in G.S. Matharoo v. CBI, CrI M.C. 2695/2010. Similar reliance has also been placed on C.B.I. v. Ashok Kumar Aggarwal, 2014 CRI.L.J. 930 and Nanjappa v. State of Karnataka, MANU/SC/0788/2015.

36. ***The State in its Appeal No. 239/2016 has sought enhancement of the sentence*** on the ground that the Appellants are public servant, who are found guilty of misuse of their Office position in conspiracy to cause pecuniary gain to the Contractor, Ashok Kumar Gupta. It has not been appreciated that huge loss has been caused to MCD/public at large.

37. Reference has been made to State of Madhya Pradesh vs. Shambhu Dayal, (2006) 8 SCC 693 wherein it had been noted that the corruption committed by the public servants has become a gigantic problem. The Coordinate Bench of this Court in State vs. Vishal S Yadav & Anr., in Cr. Appeal no. 958/2008, observed that sentencing justice is the facet of social justice, even as redemption of a crime-doer in the aspect of restoration of a whole personality.



38. Reliance has also been placed on Shyam Narain vs. State (NCT of Delhi), (2013) 7 SCC 77 wherein it has been emphasized that it has to be borne in mind that primarily sentencing for an offence has a social goal. It must make the Accused realise that the crime committed by him, has not only created a dent in his life but also a concavity in the social fabric.

39. Likewise, the Apex Court in Shailesh Jasvantbhai vs. State of Gujarat, (2006) 2 SCC 359, held that in operating the sentencing system, law should adopt corrective machinery or deterrence based on factual matrix. Similar observations have been made in Gopal Singh vs. State of Uttarakhand, (2013) 7 SCC 545, Sevaka Perumal vs. State of T.N., (1991) 3 SCC 471, Raj Bala vs. State of Haryana & Ors. in Criminal Appeal no. 1049-1050 of 2015, State of Chattisgarh vs. Bhugdev & Ors., 2001 (3) MPHT 116 CG.

40. ***It is, therefore, prayed that the sentence as awarded to the 03 Appellants may be enhanced.***

41. **Submissions heard and the record perused.**

42. This case indeed is indeed intriguing as it has its genesis in the information received through ‘reliable sources’ on 25.05.2004 by ACP Rajender Singh Manku, who was Inspector in Anti Corruption Branch, that M/s Universal Sanitary Emporium, Delhi had been awarded two Work Orders of a total amount of Rs.2 Lacs in the year 1998 by the Engineers, Division XVI of MCD, Delhi wherein as per the terms and conditions of the Work Order, Contractor was to purchase *fresh Bitumen* from one of the authorized oil companies of Government of India and the fresh Receipts in original were to be submitted to the Department as proof of purchase.



However, no such Receipt of any order was placed on record thereby reflecting that the Bitumen of specified standard had not been utilized.

43. M/s Universal Sanitary Emporium, Delhi submitted bills of Rs.1.75 Lacs without any documentary proof, which was cleared by the Government officials of MCD by abusing their official position and causing pecuniary benefit to the Contractor, Ashok Kumar Gupta.

44. Consequently, the present FIR was registered against the 03 Appellants namely, Sanjay Kumar Jain, SN Goel and CB Singh as well as Ashok Kumar Gupta, Proprietor, M/s Universal Sanitary Emporium, Delhi.

45. The first striking fact is that the information was received after about six years in the year 2004 for the work completed in the year 1998-99. There was no cogent basis on which the said allegations were made and were not supported apparently by any document as the same have not been placed on record by PW-3 ACP Rajender Singh Manku, who got the FIR Ex.PW-1/A registered through PW-1 ASI K.L. Meena, the duty Officer.

46. Though PW-3 ACP Rajender Singh Manku in his testimony has claimed that *prima facie* cognizable offence of cheating and abuse of the official position of the MCD officials were made out, but it not understandable as to how and on the basis of some *uncorroborated information*, after about six years, , the PW-3 got this insight of registering the FIR in the first place.

47. He in his cross-examination, states that he made enquiry prior to registration of the case, but such alleged *enquiry* does not find its way to the Chargesheet and is not placed on record. He further admits that he did not conduct any physical verification of the fact as to whether the roads for which contract was given, were laid, he was also not able to state if there



was any Complaint in regard to the executed work. He himself did not verify whether Bitumen was used at the site or not. He also did not find out the process or manner in which Bitumen was to be received at the end of MCD. He also did not come across any Measurement Book during his enquiry, despite being aware that such MBs are maintained by MCD. He was also unable to state if during his enquiry, he came across the Laboratory Test carried out by the Department for the quality and quantity of Bitumen used in the laying of roads.

48. It is clearly evident from his testimony that though *firstly* he claimed that there was a *reliable source* through which he got the information about improper release of money to the Contractor, Ashok Kumar Gupta for the work done about 06 years back but *secondly*, his alleged enquiry was also an eyewash as he never did anything to first confirm even *prima facie* any truth in the allegation before getting the FIR registered. Clearly, there was no authentic information or any evidence even *prima facie* to show that the Work Orders were not executed by Ashok Kumar Gupta in accordance with the terms of the Work Orders. Be that as it may, the case of the Prosecution may be considered on its own merits.

49. Admittedly, it is not in dispute that M/s Universal Sanitary Emporium, Delhi through its Proprietor Ashok Kumar Gupta, was awarded two Work Orders for execution of road work for a total amount of Rs.2 Lacs in the year 1998 by the Division XVI of MCD. The details of the two Work Orders are as under: -

S. No.	Work Order with date	Name of the Work
1.	186 dated 10.07.1998	R/R cut made by MTNL Deptt. In F-Block, Shastri Nagar in C-120/CLZ Sh. M/P near



		F-1 to F-16 and F-47 to Nag Mandir Road.
2.	535 dated 24.12.1998	R/R cut made by MTNL Deptt. In Shahzada Bagh in C-120/CLZ Sh. Imp to Road by patch repair on Subhadra Colony to Inderlok in C-120/CLZ.

50. The two Work Orders No. 186 dated 10.07.1998 and Work Order No. 535 dated 24.12.1998, Ex.PW-7/A and Ex.PW-7/B, respectively have been proved by PW-6 Pradeep Kumar, Tender Clerk and PW-7 ACP Narender Kumar Sharma, Tender Clerk, respectively.

51. As per the terms and conditions of the Work Orders, the Contractor, Ashok Kumar Gupta was to purchase fresh Bitumen from one of the authorized oil companies of Government of India viz. IOC, HP and BP. Further, the conditions stated that the fresh receipt in original be submitted to the Department of MCD as proof of purchase of fresh Bitumen from any of the authorized Companies.

52. According to the Prosecution, there was cheating done by Ashok Kumar Gupta insomuch as he failed to use fresh Bitumen for the road repair as was specifically provided under the Work Orders. The sole basis for claiming cheating, conspiracy and misconduct are that the Bitumen used was not as per the specification of the Tender. Further allegations of the Prosecution were that no Receipts were produced by Contractor, Ashok Kumar Gupta about him having purchased fresh Bitumen from any of the authorized Company of Government of India in proof thereof, was furnished to the MCD, despite which the 03 Appellants in conspiracy with him, cleared his bills amounting to Rs.1.75 Lacs.



53. The sole material witness for proving this fact is **PW-16 Sajjan Kumar, DGM, IOCL, Bombay**. He has deposed that on 24.06.2004, he was posted as Chief Refinery Coordinator (CRC) in Mathura Refinery Terminal, Mathura and a Letter dated 15.06.2004 Ex. PW-16/B was received from the PW 20 Inspector S.S. Sandhu, IO requiring a confirmation as to whether “*M/s Universal Sanitary Emporium, Delhi had purchased any quantity of Bitumen from your Oil Refinery between 10.07.1998 and 31.01.1998 or otherwise*”. If so, the details of the same along with the copies of relevant Cash Memos or Gate Pass be supplied to his Office through the bearer of the Letter.

54. The *Reply dated 24.06.2004 Ex. PW-16/A* was given by PW-16 wherein it was stated that as the matter pertains to the period 19.07.1998 to 31.03.1999, and extensive checking of the record room, was required. On verification of the available records pertaining to this period, it was noticed that no such customer by the name of M/s Universal Sanitary Emporium, Delhi was available in their Customer Master (sic). This response led PW-20 S.S. Sandhu to conclude that no supply of Bitumen had been made to the above party from out Refinery Terminal of IOCL.

55. PW-16 in his cross-examination, admitted that he cannot say regarding the status of M/s Universal Sanitary Emporium, Delhi and whether it was a Proprietorship concern or a Company. He made certain pertinent admissions that he was also not able to say if Invoice No. 0167348 was the Invoice *vide* which Bitumen was supplied by IOC to the customer as this number was not reflected in the aforesaid Letter Ex.PW-16/B.

56. What thus, emerges is that the PW 20 Insp. S.S. Sandhu, IO, during the investigations, had tried to confirm if the fresh Bitumen had been



purchased in the year 1998-99 by Ashok Kumar Gupta through IOCL for which purpose, he wrote the letter Ex. PW-16/B. Interestingly, as has also emerged from the cross-examination of Ex. PW-16, the Letter merely sought a confirmation that if any fresh Bitumen during the relevant period, was sold to M/s Universal Sanitary Emporium, Delhi. Admittedly, the Invoice number with which PW-16 Sajjan Kumar was confronted, was never indicated in the said Letter.

57. The only fact which emerges from the testimony of PW-16 Sajjan Kumar is that no Bitumen was supplied to the Proprietorship Firm but was not in a position to say if it was given in the individual name of Contractor Ashok Kumar Gupta. The surest way to disprove that the fresh Bitumen was not supplied to him was to confirm whether the Invoice was in fact, issued in the name of Ashok Kumar Gupta or whether the said Invoice was a genuine document pertaining to the IOCL. Neither there has been any verification sought of the Invoice number nor has the same been provided. In the absence of there being no evidence to confirm the authenticity of the Invoice Bill, there can be no presumption that no fresh Bitumen was purchased by Ashok Kumar Gupta for execution of the two Work Orders.

58. This aspect assumes significance in the light of the testimony of PW-13 Ramesh Kumar Behl, who was the Accountant in MCD in the year 1998-99 and on the requisition of the IO, had produced the Tender File and Bills of Work Order No. 535 dated 24.12.1998, which is Ex. PW-7/A and Ex. PW-7/B, collectively. File And Documents pertaining to Work Order No. 186 dated 10.07.1998 Ex. PW-6/A and Ex. PW-6/B, collectively. He further deposed that he was shown MB No. 1766/CLZ Ex. PW-13/A and MB No.



1769/CLZ Ex. PW-13/B to the IO, which bear his signatures on the Bills cleared by him as an Accountant.

59. He in his cross-examination, explained that the details of work done including procurement of Bitumen, rubber and stone, laying of road and also measurement of road, is done and reflected in the MB. Further, the Invoice Number is also reflected in the Measurement Book (MB) as is seen at Mark DA on Ex. PW-13/B and Receipt No. 0167348 dated 05.10.1998 at Mark DA on Ex. PW-13/B, was received from IOC. The Bitumen was received from IOC on 09.10.1998. The payment had been released only on completion of work to the satisfaction of MCD. He further deposed that he had passed the Bills only after checking the Invoices and the quantity mentioned in the MB and tallying the same. He admitted in his cross-examination that he never visited the site and did not verify in any manner in which Bitumen was unloaded at the site. He did not verify what was the process or the manner in which Bitumen was received. He did not lift any sample from the site for checking in respect of quality and quantity.

60. In this regard, it is pertinent to refer to the testimony of PW-20 S.S. Sandhu, retired ACP, who was the Inspector at the relevant time and had carried out investigations in the present case. He also admitted that he had only sought information from IOC, Mathura Refinery through letter Ex. PW-16/B if any Bitumen as supplied to M/s Universal Sanitary Emporium, Delhi and received a response in the negative. It is evident that no information *vide* the Invoice number which was available on record and found mention in MB Book, had been sought by him. He also admitted that the MB Ex. PW-13/A and Ex. PW-13/B were seized by him during the investigations. He admitted that even though Invoice number was mentioned



at Entry No. 4 Mark DA in Ex. PW-11/DA, he never tried to get the said Invoice checked. He did not recollect if he had got this Invoice checked.

61. The MB Ex. PW-13/A and Ex. PW-13/B pertaining to the two Work Orders had been seized by the IO during the investigations. PW-13 Ramesh Kumar Behl in his cross-examination has explained that MB have the details of the work done including procurement of Bitumen, rubber and stone, laying of road and measurement of the work done in all. He also admitted that the Invoice number was reflected in the MB *vide* which Bitumen was received from IOC on 09.10.1998.

62. The Appellants in their defense, had examined ***DW-1 Pradeep Kumar, Dy. Director (Technical), Quality Control Department, NDMC, Delhi***, who deposed that he was posted in MCD as Lab Assistant in 1985 and promoted to the post of Technical Assistant in the year 1989 and was promoted as Technical Officer in Municipal Lab in the year 1996. In 2012, he was promoted as Dr. Director (Technical) Quality Control Department. He explained that MCD has set up by a Lab for conducting independent Test for verification of material used for execution of different work. The tests are conducted in respect of different Tenders awarded by MCD, to various Contractors. During his tenure, he conducted various test of Bituminous work, stone aggregate, bricks, sand and CC Cubes. For the purpose of testing, samples are required to be lifted in the presence of one authorized representative of Municipal Lab, from the actual site of execution of work. He further deposed that in the year 1998-99, there were around 7-8 Technical Officers posted in the Technical Lab along with him.

63. The Municipal Lab is not connected to any Division and is an independent verifying Agency of Municipal Corporation. The witness was



shown the Lab Test Report bearing Proforma No. 1083 (Mark DE/Ex.DW1/D1) and Report bearing Proforma No. 46270 in the file Ex.PW-7/B. He admitted that Proforma No. 1083 is the Lab Test Report of premix bearing signatures of Technical Officer Brahamanand, which he could identify as he had worked with him. As per this Report, the sample of which the Test was conducted, was found to be in conformity with specifications.

64. Likewise, the Proforma Report No. 46270 Ex.DW-1/D2 was deposed to be pertaining to stone aggregate Test Report, which had his signatures at Point A. The Test Report mentions conducting of “*Crushing Test*” and “*Impact Test*”, which were conducted to ascertain the quality of material and whether it was in conformity with technical requirements. As per the Report, the samples were found to be in conformity with technical specifications.

65. The witness was also shown the Proforma No. 1072 Ex. DW-1/D3 and Report; Proforma No. 32192 and 32189 Ex. DW-1/D4 and Ex. DW-1/D5, respectively. The Report bearing Proforma No. 1072 was the “*Bituminous Extraction Test*”, which was found to be in conformity with the technical specifications. It was explained that the sample is put in bitumen extraction machine to take out binder content of Bitumen from the sample. Likewise, Proforma No. 32192 and 32189 pertained to *Stone Aggregate Test Report* in relation to metalling work, which had the signatures of H.L. Mendiratta, Technical Officer. As per the Test Reports, the samples were in conformity with the requirements.

66. In his cross-examination, though he admitted that the samples were not lifted in his presence and that the Test were not conducted by him or that



the contents of the Report were not filled by him, but the Reports Ex. DW-1/D2 had his signatures. The contents of these Proforma Reports though were already filled in, but was signed by him.

67. The testimony of DW-1, therefore, corroborate that at the time of execution of work, the samples of Bitumen were taken from the site and they were independently tested by the Department and were found to be in order. ***These facts are correspondingly reflected in the Measurement Book,*** which interestingly was collected during the investigations but pertinently not referred to be Inspector S.S.Sandhu, revealing not only the lackadaisical investigations done by him but also reflect complete malafide with liitle regard to the impact on the career of three Appellants.

68. The other material witnesses are ***DW-3 J.B. Bhatia***, a retired Executive Engineer, MCD, who deposed that during his service tenure in MCD from the year 1972 till October, 2011, he had dealt with construction of bridges, buildings, road work and parking, etc. in regard to road work, he had been associated with execution of work in the nature of “*metalling, premix and dense carpets*”. The ingredients required for execution of metalling job are stone aggregates of various sizes, red bazri, moorum and earth. Bitumen is required for execution of premix work. Ingredients of premix are stone aggregates, stone dust and bitumen.

69. ***DW-3 J.B. Bhatia***, further deposed that the Invoice is a document submitted by the Contractor, Ashok Kumar Gupta in lieu of his claim for storing Bitumen at site i.e. for quality and quantity of the Bitumen. The claim of the Contractor, Ashok Kumar Gupta is not binding on the Department. The officials of MCD have to check independently the quality and quantity of the material brought at site. After independent examination,



the record entries are made in the MB/Register. In the event of any difference/variation in respect of the entries in the Invoice and the actual measurement made at site, the measurement made at site would prevail over the Invoice and the same shall be recorded in the MB. For the preparation of bill as well as for payment in respect of execution of work, the Invoice is of no significance. The payment is made according to the actual work executed at the site. The bill has to be accompanied with the MB and Test Reports. The custodian of the accounts file is Accounts Clerk in Accounts Division.

70. The CPWD Manual reflects the duties of the Engineer regarding the inspection of work in paragraph 5.11.1 and 7.33.2, photocopies of which are Ex. DW-3/DA and Ex.DW-3/DB, respectively. A Circular dated 24.05.2001 was circulated by MCD in respect of *dense carpet work* wherein it was stated that the Contractor shall be responsible for the correctness and genuineness of all the documents. This Circular finds mention in the sanction Ex.PW-22/DA in the letter dated 23.06.2008 filed by the Prosecution. He further deposed that if the work is executed as per the technical qualifications i.e. quality and quantity, then there is no loss to MCD.

71. From the testimony of these two defence witnesses DW-1 and DW-3, it emerges that the Invoice *vide* which the Bitumen is purchased by the Contractor is only with an objective of verifying the quality and quantity of the Bitumen. The sample of Bitumen is taken from the site before the execution of the work and is tested in the MCD Lab. Furthermore, there is a constant monitoring of the work as it progresses and the quantity and the quality of the work executed at the site is correspondingly reflected in the MBs. In the present case, the MB are Ex. PW-13/A and Ex. PW-13/B,



which show that there is detailed description of the amount of work that had been executed. As has already been mentioned, it also contains a reference to Invoice No. 0167348 *vide* which the Bitumen was purchased by the Contractor. Sample Bitumen was taken and it was tested in MCD Lab and was found to be of requisite quality.

72. The evidence was led by the Prosecution, itself establishes that the Bitumen had been purchased from IOCL and was of the requisite quality and was duly utilised for execution of the work. The documents of the Prosecution as contained in the Work Order Files Ex-6/A & 6/B and Ex-7/A & 7/B along with the MB, itself prove that Bitumen of specified quality and in the stated quantity, was used for completion of the Work Orders. There is no evidence whatsoever to show that the work was not done in accordance with the specifications of the Work Order.

73. It may also be observed that there is no evidence whatsoever to suggest that the Invoice submitted by the Contractor, Ashok Kumar Gupta was fake or fabricated or that there was any connivance *inter se* the Contractor, Ashok Kumar Gupta and the Appellants in using inferior material or clearing the Bills inappropriately for causing a benefit to the Contractor and corresponding loss to MCD.

74. It is also significant to observe that as per the charge, the loss of Rs.1.75 Lacs had been caused to MCD. However, from the MB and the Bills including the bill Ex. 6/A, it is evident that for the first Work Order No. 186 dated 10.07.1998, the quantity of Bitumen required to be used was worth of Rs. 8025/-. The quantity of Bitumen required and utilised for the second Work Order No. 535 dated 24.12.1998 was worth of Rs. 12088/-. ***The total Bitumen quantity in the two Work Orders as upto Rs. 20,113/-.***



75. Even if the entire case of Prosecution is accepted that the Bitumen was not purchased from IOCL or that it was of inferior quality, then too it was only a small component of the material utilised for completion of work aside from labour and other execution charges. By no stretch of imagination, can be said that there is any loss of Rs.1.75 Lacs caused to MCD.

76. In this regard, it is also pertinent to observe that there was no complaint whatsoever about the quality of work by any Agency, when this secret information was received by PW 20 Insp. S.S. Sandhu in the year 2004. As already noted above, this secret information had no basis or any legs to stand on.

77. The falsity of so-called secret information, is also evident from the fact that an enquiry was conducted by PW 20 Insp. S.S. Sandhu and had sought the comment from the office of Chief Engineer, who had responded *vide* letter dated 06.07.2004 Ex. PW-22/DA wherein it was clarified that M/s Universal Sanitary Emporium had bought the required quantity of Bitumen and submitted the Invoices in token of procurement from the authorized Company. The work had been satisfactorily completed in the year 1998 and the payment had been made accordingly to the respected Contractor Firms.

78. It was further stated in detail that in the year 1999, on receipt of Complaint, the Vigilance Department which had all the records pertaining to these Works from Division, forwarded them to CBI to enquire into the matter. Detailed investigations were conducted by CBI and no discrepancy was found on the part of Engineers of MCD and the same was send back to MCD to deal with these cases departmentally.



79. With the approval of the then Commissioner, a Committee was constituted under the Chairmanship of R.K. Meena, the then Chief Engineer, N.K. Sandhu and H.D. Seekri as Members and P.K. Jain, as Member Secretary. After deliberations, the Committee came to a conclusion that the officials of MCD were not responsible for the correctness/genuineness of the documents submitted by the Contractor for which the Contractor alone was responsible in terms of Circular No. D/67/E.E. (P)III/F2 dated 24.05.2001. it was further stated that as far as the responsibility of the Engineers of MCD was concerned, it was restricted to the execution of the work done and not to ascertain the correctness/genuineness of the documents submitted by the Contractor for which responsibility solely lies with the Agency/Contractor producing them in token of the proof of purchase of Bitumen from an authorized oil company.

80. The Committee Report dated 24.05.2001 had also been annexed Ex. PW-22/DA wherein also it was considered that the copy of the Circular was annexed along with the Report. From this document i.e. Ex. PW-22/DA with which PW-20 S.S. Sandhu was confronted, further reflects that the enquiry that was conducted by him before registration of FIR which also pointed that there was no case of cheating or of corruption, as was sought to be made out. PW 20 ACP S.S. Sandhu despite having found in his enquiry that there was no offence made out, has chosen to register this FIR against the officials of MCD/Appellants as well as against the Contractor Ashok Kumar Gupta (who has since died).

81. The entire evidence even if admitted *in toto*, lead to an inevitable conclusion of there was no offence committed by the Appellants. The Ld. Special Judge fell in error in concluding that there was any conspiracy *inter*



se the Appellants and the Contractor Ashok Kumar Gupta, who cheated the Department of Rs.1.75 Lacs.

82. Furthermore, there is no an iota of evidence that the Appellants had demanded or received any amount whatsoever as Commission or that they have indulged in any kind of corrupt practice. They in their hierarchy, had merely endorsed the Running bills, which were duly supported with the Invoices and the MBs, which had been ultimately cleared by the Accounts Department.

83. At no point, is there any evidence to reflect that any of the Appellants cleared the file with an ulterior motive of getting an undue enrichment. There is no offence whatsoever punishable under Section 13(1)(d) read with Section 13(2) PC Act and Section 420 read with Section 120B IPC, proved against the Appellants.

Conclusion:

84. In view of the aforesaid judgment, ***the Appeal Nos. bearing CRL.A. 1238/2015, CRL.A. 1254/2015 and CRL.A. 1255/2015 filed by Appellants are allowed and Appellants Sanjay Kumar Jain, C.B. Singh, S.N. Goel, are hereby acquitted.***

85. ***The Appeal No. CRL.A. 239/2016 filed by the State for enhancement of the sentence is without any merit and is hereby, dismissed.***

**(NEENA BANSAL KRISHNA)
JUDGE**

JULY 28, 2025
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