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

% ***Pronounced on: 30th October, 2025***

\+ **CRL.A. 1122/2015**

RAVI GOYAL
Son of Late Sh. Vishwanath Goyal,
R/o Flat No.19, Sitaram Apartment,
Patparganj, Delhi-92 .....Appellant

Through: Mr. Sudarshan Rajan, Md. Qamar Ali, Mr. Hitain Bajaj, Mr. Priyanka and Mr. Sambhav Sharma, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION
CBI head office building
5-B, CGO Complex,
Lodhi Road, New Delhi-03 .....Respondent

Through: Mr. Rajesh Kumar, SPP for CBI with Ms. Mishika Pandita & Mr. Changez Ali Khan, Advocates.

\+ **CRL.A. 1124/2015 & CRL.M.A. 33380/2019**

PRADEEP KUMAR
Son of Shri Charan Singh,
R/o H.No. 330, Church Gali,
Fatehpur Beri, New Delhi-74 .....Appellant

Through: Mr. Sudarshan Rajan, Md. Qamar Ali, Mr. Hitain Bajaj, Mr. Priyanka and Mr. Sambhav Sharma, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION

CBI head office building
5-B, CGO Complex,

Lodhi Road, New Delhi-03 ...Respondent

Through: Mr. Rajesh Kumar, SPP for CBI with Ms. Mishika Pandita & Mr. Changez Ali Khan, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The aforesaid two Criminal Appeals under Section 374 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*) read with Section 482 Cr.P.C, have been filed on behalf of **Ravi Goyal (the Contractor) and Pradeep Kumar (the Junior Engineer)**, to challenge the **Judgment dated 09.10.2015 *vide* which both the accused were Convicted** for the offence under Section 120-B read with Section 420/477A of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*) and under Section 13(2) read with under Section 13(1) (d) of Prevention of Corruption Act, 1988 (*hereinafter referred to as 'PC Act*') and the **Order on Sentence dated 26.10.2015**, passed by the learned Special Judge (PC Act), CBI-06, New Delhi in CC No. 12/14.

2. **Ravi Goyal/Accused No. 2**, has been sentenced for the offence under *Section 120B of IPC read with Section 420/477A IPC and Section 13(2) read with Section 13(1)(d) PC Act,* for two years with fine of Rs.15,000/- in default SI for three months; under *Section 420 IPC* for three years with fine of Rs.25,000/- in default SI for four months. **Pradeep Kumar/Accused No.1**, has been sentenced for the offence under *Section 120B IPC read with Section 420/477A IPC* for two years with fine of Rs.15,000/- in default SI

for three months and under *Section 420 IPC* for three years with fine of Rs.25,000/- in default SI for four months; under Section 477A IPC for three years with fine of Rs.25,000/- in default for four months and under Section 13(2) read with Section 13(1)(d) PC Act for three years with fine of Rs.25,000/- in default SI for four months.

3. All the sentences were directed to run concurrently.

4. **Brief facts** are that a Preliminary Enquiry *vide* PE-10(A)/2011 CBI, ACB, was conducted on the basis which the present RC was registered on 29.06.2012 under Section 120B IPC read with Section 420/471 read with Section 468/471A and Section 13(2) read with Section 13(1) (d) of PC Act, 1988 against *Suresh Aggarwal, Rafique-Ul-Islam, Pradeep Kumar*, all Junior Engineers (JEs) of South-I Division of DJB and *Ravi Goyal*, the Contractor along with other unknown persons.

5. The **case of the Prosecution** is that Ravi Goyal, the Contractor (Accused No. 2) had been awarded the Contracts for installation of Tube-Wells for drinking water, at different places under South-I Division by Delhi Jal Board (*for short 'DJB'*). A Contract Agreement (CA) No.46/2009-10 were granted in respect of re-boring of two Tube-Wells situated at **(i)** near Aggarwal Dharmshala, and **(ii)** Truck Market, Chhatarpur Enclave, under the supervision of Executive Engineer (EE) South-I, at the total cost of Rs.8,64,798/-. The Contract was awarded to Ravi Goyal, the Accused No. 2 *vide* **Agreement dated 08.07.2009**.

6. The Contract was looked after by **Pradeep Kumar/Accused No. 1** on behalf of the DJB. The work was also to be supervised by Mr. Himanshu Aggarwal, Assistant Engineer (AE) and Mr. Anil Kumar Sharma, Executive

Manager (EE). According to the Bill of Quantity (BOQ), Ravi Goyal was required to install *Johnson screen Pipes for estimated 40 meters per site.*

7. It was the case of the Prosecution that even though as per the Measurement Book (MB) No.18067, the installation of Johnson screen pipes was mentioned by Accused No.1/Pradeep Kumar (JE), but no Invoices were available on record despite which the payments had been released to Ravi Goyal, the Contractor. Further, during the investigations, both the Tube-Wells were inspected by the expert from NGRI through *Bore-Hole Camera* which could go up to the maximum depth of 152 meters, and it was found that no Johnson pipes were used in the bore-wells.

8. It was further stated that the *Tube-Well in Aggarwal Dharmshala,* Truck Market, Chhatarpur Enclave, was scanned by using *Borehole Camera* upto the depth of 152 meters against the depth of 182.8 meters, as per Strata Chart. Top 89 meters were seen with 200 mm blank casing followed by MS slotted casing from 89-95.3 m and further from 95.3m to 102.7m blank casing. No casing would be seen between 102.7 m to 105.8 m. Well reduction from 200 mm to 150 mm size was seen around 105.8 m. At 100 mm dia bore, 105.8 m to 113.8 m blank pipe followed by *MS slotted casing from 113.8 m to 152 m was observed.* As the maximum length of camera cable is 152 m, it could not go any further. As per the Strata Chart, 60 meters Johnson Pipe was to start from 116.61 meters. The Report clearly indicated that from 113.8 m to 152 m blank and slotted casing was observed, which established that no Johnson pipe between this length, was used. *The Report in respect of this Tube-Well was conclusive regarding non-use of Johnson Pipe.*

9. It was, thus, found that total 60 meters Johnson pipe @ Rs.1669/- per meter was purportedly used. Cost of this Johnson pipe comes to Rs.1,00,140/-. The total amount of this Contract Agreement, had been transferred by DJB in the *Joint Account* held by Ms. Anju Goyal and Ravi Goyal in Allahabad Bank, Anand Vihar Branch (Branch Code-2004).

10. *Mr. Anil Kumar Sharma, Executive Engineer (EE)* prepared the Test Check Report based on the checking up to 10% of the total work made by him in the MB. *Himanshu Aggarwal, Assistant Engineer (AE)* was responsible for 50% checking of the work and the entries in the MB and also prepared the Check Report based on the checking made by him in the respective MB. The checking done by them did not include lowering/installation of Jonhson pipe, which is the subject matter of this case.

11. *Pradeep Kumar, Junior Engineer (JE)* submitted the basic requirement for boring of a Tube-Well in the area, with justification. He also prepared and submitted the estimate of work. At the time of execution of work, he remained as Engineer-in-charge of site and made the entries in MB as the progress of the work took place according to the Bill of Quantities *(for short 'BOQ')*. He was responsible for 100% checking of the work. The 100% checking of the work done by Pradeep Kumar, JE, alone included the checking of Johnson Pipes and installation of assembly of the tube-well. He was found entirely culpable for the alleged dereliction.

12. The Charge-Sheet thus, stated that *Pradeep Kumar*, JE, during the year 2009-10, had entered into *Criminal Conspiracy with the Contractor, Ravi Goyal to facilitate the Contractor in obtaining pecuniary advantage and to cheat DJB.* He fraudulently and dishonestly made false entries in the

official records *viz* Measurement Book, Completion Report, Final Bill etc., to reflect that the requisite Johnson Pipe as per the Strata Chart, had been used. In furtherance of this criminal conspiracy with the Contractor, Ravi Goyal, Pradeep Kumar, JE also knowingly falsified the accounts and on the basis of false entries made by him in the official records, the payments were released to *Ravi Goyal, Contractor* causing wrongful loss to the Government and corresponding gain to the accused persons.

13. The sanction for the Prosecution of Pradeep Kumar, JE was accorded by the Competent Authority and consequently, the Charge-Sheet was filed in the Court of learned Special Judge (PC Act), CBI **on 16.12.2014. Cognizance was taken on 02.01.2015**.

14. **Charges were framed on 12.02.2015** against ***Pradeep Kumar/Accused No.1, JE*** under Section 120B IPC read with Section 420/471 read with Section 468/477-A IPC and Section 13(2) read with Section 13(1)(d) of PC Act and also the substantive offences thereof. The **Charges against Ravi Goyal/Accused No. 2** were framed under Section 120B read with Section 420/477-A read with Section 13(2) read with Section 13(1)(d) of PC Act, 1988 and Section 420 IPC, to which they both pleaded not guilty.

15. The Contractor was supposed to use slotted screen pipe of Johnson make in the tube-wells but instead they used sub-standard screens (comparatively cheaper) by submitting forged bills from the vendor M/s Bharti Waters Private Limited (sole authorized distributor of Johnson screens) and got the payments released causing pecuniary advantage to themselves and corresponding loss to the government. The payments were

released to the Contractors by the officials of DJB, based on these forged Bills.

16. It is alleged that these Bills were submitted by Ravi Goyal, in terms of the two Contract Agreements, as mentioned above. It was the claim that the *aforesaid JEs of DJB entered into criminal conspiracy with Ravi Goyal, the Contractor, Proprietor of M/s Ravi Goyal and unknown persons, who in furtherance of criminal conspiracy facilitated the use of pipes other than Johnson make pipes, causing pecuniary advantage to themselves to the tune of Rs.21,58,113/- approximately and corresponding loss to the Government Exchequer.*

17. The Prosecution in support of its case examined **13 witnesses**, who are as follows:

18. ***PW-9, Mr. Anil Sharma, Executive Engineer, DJB*** deposed about the procedure of sanctioning, granting of Contract/work Order and the percentage of responsibility of various officers and thereafter, the preparation of the Report along with the requisite documents. He proved the official files of Contract Agreement as Ex.PW-9/A to Ex.PW-9/D. CA is exhibited as Ex.PW-9/F. The Final Bill has been proved as PW-9/G. The strata chart bearing the signatures of JE is Ex.PW-9/H and Ex.PW-9/J. The details of Payment Order are Ex.PW-9/K. The Test Check Report is Ex.PW-9/L.

19. ***PW-10, Smt. Lekha Pawar, Head Draftsman of DJB***, Sector-4, R.K. Puram, New Delhi, deposed about the checking of the estimates and preparation of Completion Report by JE.

20. ***PW-8, Mr. Satya Prakash, Senior Accounts Officer***, deposed about the sanction of estimate of Work and also the Pay-Order of first and final

bill with respect to the Agreement of this Case and proved various official documents, which are Ex.PW-8/A. Pay-Order of first and final Bill is Ex.PW-8/B. The Completion Certificate in regard to the Contract Agreement is Ex.PW8/C. The Instructional Order dated 02.11.2004 is Ex.PW-8/D.

21. ***PW-11, Deputy SP Joseph Krelo*** deposed about the Inspection conducted by PW-5, Dr. D.V. Reddy in the presence of CBI/DJB, Orders and about the preparation of the memos.

22. The most material witness is ***PW-5, Dr. D.V. Reddy, Senior Principal Scientist, National Geophysical Research Institute, Hyderabad*** (NGRI), who had conducted the Inspection of the Borewell near Aggarwal Dharamshala on 21.09.2013 and had prepared his Report dated 02.12.2013, Ex.PW-5/A. He deposed that the *video recording* of the scanning was done through Palm top which was transferred to a CD, which was exhibited as Ex.PW-5/B. Site Inspection Memo along with the Site Plan prepared by the Investigating Officer was Ex.PW-5/B and Ex.PW-5/C respectively.

23. ***PW-4, Ms. Ritika Sethi, Manager in Allahabad Bank***, handed over the Account Opening Form of Ravi Goyal and his Statement of Account to the Investigating Officer, which was seized *vide* Memo, Ex.PW-4/A.

24. ***PW-6, Mr. Vikas Rathi, JE (Civil), Vigilance Department, DJB*** furnished the documents, which were seized *vide* Memo, Ex.PW-6/A and Ex.PW-6/B. The Inspection of Borewell at Aggarwala Dharamshala, was done in his presence along with Mr. Himanshu Aggarwal, AE and Pradeep Kumar, JE, the contractor and Mr. Anil Kumar, Executive Engineer by Dr. D.V. Reddy.

25. ***PW-7, Mr. Manoj Kumar Rahtor, LDC, DJB,*** handed over the payment details to CBI, which were seized *vide* Memo dated 25.03.2014, which are Ex.PW-7/A and Ex.PW-7/B.

26. ***PW-1, Mr. Kamal Kumar Aggarwal, Managing Director of M/s Bharti Waters Private Limited***, deposed that the Ledger Account regarding the material sold to the parties, is maintained and the Invoice has unique number, which cannot be repeated to any other Party.

27. ***PW-2, Dr. Jayadev Sarangi, Member Administration, DJB***, was the competent authority, who gave *Sanction* for prosecution of Accused, Pradeep Kumar JE (A-1) *vide* Letter Ex.PW-2/A.

28. ***PW-3, Mr. Sanjay Gupta, Joint Director (Vigilance), DJB***, forwarded Letter dated 02.12.2014 for Prosecution Sanction of Pradeep Kumar, Ex.PW-3/A.

29. ***PW-12, Mr. Tika Ram IO***, who conducted the investigations and had got the FIR registered Ex.PW-12/A. Subsequent investigations in the year 2014 were taken over by PW-13, Mr. Anand Sarup, Inspector. He deposed about the completion of investigations and filing of the Charge-Sheet.

30. ***PW-13, Sh. Anand Sarup, Inspector CBI ACB New Delhi.*** On 18.02.2014, Investigations were transferred from PW-12, to him on the orders of Sh. DK Barik, SP, CBI , ACB New Delhi.

31. The Statement of both the Accused have been recorded under Section **313 Cr.P.C.** in which they both pleaded false implication.

32. *Learned ASJ on appreciation of the entire Prosecution evidence, found the two Appellants guilty and Convicted and sentenced them*

accordingly. Aggrieved by the said Conviction and Sentence, the present Appeals have been filed.

33. Essentially, ***the grounds of challenge*** are that in an identical matter of *CBI vs. Rafique-Ul-Islam tried simultaneously with this case* and the evidence of the witnesses recorded on the same day as much of the witnesses were common, *Rafique-Ul-Islam,* JE, who was involved with the Contractor in installation of the Borewell, has been acquitted on the same day on the similar evidence. It is submitted that the Arguments in the three cases were heard on successive dates. The Judgment has also been passed on the same day with the little distinction that *Rafique-Ul-Islam* has been acquitted while the present Appellants have been convicted. The findings in the case of *Rafique-Ul-Islam* establish the innocence of the Appellant in the present Case and they are also entitled to be acquitted.

34. Furthermore, the allegations of forgery were made against Rafique-Ul-Islam, are missing against the present Appellant and they stand on a better footing. Furthermore, in the case of *Rafique-Ul-Islam*, learned Special Judge, concluded that it would not be safe to rely upon the testimony of Dr. D.V. Reddy despite which the same has been relied upon against the two Appellants in this case. Different findings in the two cases on the same Report, has prejudicially effected the outcome of the two cases.

35. Furthermore, in the connected case of *Rafique-Ul-Islam*, it was observed that in terms of Instructional Order dated 06.09.2000, it was imperative for the Finance Officer to ensure verification of the procurement of original Bills, etc. but conspicuously, there is no reference to this Instructional Order, in the present Case. Moreover, it has been observed in Rafique-Ul-Islam Case that the Senior Officers cannot escape liability

merely because they are holding senior positions and more particularly, Zonal Officers, who had personally supervised the material and the Work and had also issued the Satisfaction Certificate. However, again these findings are not mentioned in the present Case.

36. The ***Test Check Report*** was prepared on the Spot by ZE and EE, Ex.PW-9/L. The said Test Check Report and the other documents, show that the ZE and EE being the Senior most Officers in the Department, had taken special precaution to ensure installation of Johnson Pipes by personally checking it. These findings of the learned Special Judge directly come to the rescue of the Appellants as the Test Checks conducted by the ZE and EE established that it was Johnson pipe that were used by the Contractor. This also finds corroboration from the BOQ at Serial No. 12, which recorded the lowering and installation of Tube Well Assembly to be in position to the satisfaction of the Engineer Incharge i/c *Vertical Test*.

37. PW-9, Anil Sharma also deposed that the Contractor had executed the work in accordance with the Work Contract. This testimony also establishes that the Johnson pipes had been used by the Contractor.

38. Reliance is placed on *State of M.P. vs. Sheetla Sahai & Ors*., (2009) 8 SCC 617 wherein the Apex Court has discouraged the process of selective prosecution. No reason has been given by the Prosecution as to why ZE and EE, were not prosecuted even when they were responsible for the installation of Johnson Pipe in the borewell.

39. It is further submitted that lot of emphasis had been laid on the installation of Borewell at *Ghitorni* for which no conclusive Report could be obtained by the CBI in regard to use or non-use of Johnson Pipes, to convict the Appellant. The present case pertains to installation of a borewell at

Aggarwal Dharmshala and not at *Ghitorni* and the reference to the said Judgment was absolutely irrelevant. Such procedure is alien to criminal jurisprudence and the conviction of the Appellants are liable to be set-aside.

40. It is further contended that the learned Special Judge has relied upon the Bills for purchase of Johnson Pipes, to convict the Appellant. However, these Bills were not proved as per law and have been placed on record by co-Appellant, Ravi Goyal in his Statement under Section 313 CrPC. These documents were not placed on record by the Prosecution nor were they proved in accordance with law and thus, could not form the basis for conviction. No explanation was called from the Appellants in regard to the aforesaid documents/Bills to make it a foundation for conviction of the Appellants. Additionally, the Bills do not even prove anything against the Appellants. The Bills show purchase of 110 meters of Johnson Pipe by the Contractor, admittedly 60 meters of Johnson pipe was used in the installation of borewell at Aggarwal, Dharamshala. The use of 60 meters out of 110 meters of Johnson pipe, is established from these Invoices.

41. Moreover, these Bills have been reflected in the Account Books in the relevant year and is supported by Tax Returns of Ravi Goyal. There was no reason to disbelieve the Bills to convict the Appellants. Therefore, convicting the Appellants for non-use of 120 meters, would be beyond the charges as were framed against them.

42. Furthermore, the Bills have been wrongly disbelieved by the learned Special Judge by stating them to be of earlier year, while the procurement price for the subsequent year was much higher. It is stated that the Contractors generally buy the basic raw material required by them whenever

they have money. The purchase of Johnson pipes in the earlier financial year is, therefore, immaterial.

43. It is incorrectly observed that the Contractor had billed for Johnson pipes at a price lower than the procurement price. As per the Contract, Work Order and Bill form would establish that the price of the Johnson pipe was agreed to be the price in the contract plus 42.50% i.e., the contract price which the Contractor would be entitled to. The pricing of the goods is decided on the basis of the entire contract value. Therefore, despite the particular raw material being purchased by the Contractor at a higher price, would not dissuade the Contractor from selling it at a lower price provided he makes an appropriate profit when the entire contract value is seen. The conviction of the Appellant is bad in law.

44. It is further contended that testimony of Dr. D.V. Reddy cannot be used even for corroboration as his evidence is inadmissible. The duration mentioned in the Report Ex.PW-5 of Dr. D.V. Reddy, does not tally with the actual duration of the CD. The duration of the recordings is 13 minutes and 58 seconds while the duration is 24 minutes as per the FSL Report. Strangely, no witness/expert from nearby area have not been called as expert witnesses and no explanation is forthcoming as to why the expert was called from Hyderabad, by CBI.

45. Moreover, Dr. D.V. Reddy does not qualify to be an expert, for which reliance is placed on *State of Himachal Pradesh vs. Jai Lal & Ors*., (1999) 7 SCC 280.

46. The CBI should have got the pipe removed from the installation to establish that Johnson pipes were not used in the installation. However, no such exercise was undertaken. The presumption under Section 114(g) of the

Evidence Act, would be applicable and an adverse inference ought to have been drawn against the CBI in favour of the Appellant. The Report of Dr. D.V. Reddy is based upon CD, which has not been proved by producing the Certificate under Section 65-B of the Evidence Act.

47. Reliance is placed on *Ankur Chawla vs. CBI*, MANU/DE/2923/2014 and *P.V. Anwar vs. P.K. Basheer*, (2014) 4 SCC OnLine 739.

48. Furthermore, the FSL Report shows that the CD was of poor quality and no opinion could be afforded on such a CD. Moreover, CD was not sealed at the spot and the evidence based on CD is not reliable. Moreover, there was *Geophysical Method* to examine metals underground, but it was not used by the Expert to see the metals and to ascertain the quality of the pipes, which were underground. Moreover, the Inspection has been conducted after seven years of installation, which cannot be held conclusive to decipher the make of pipes in the said installation because of most moss and rust formation in the pipes. The camera could not measure the thickness of the pipes despite which the same has been recorded by the Expert.

49. *In the end,* it is submitted that the entire evidence on record clearly establishes the use of Johnson Pipes. This is corroborated by the fact that the supervision of the installation was supervised by Executive Engineer. There is a mention about use of Johnson Pipes in BOQ which is followed by the satisfactory Report given by the EE and ZE. PW-9 and other witnesses, duly proved the use of Johnson Pipes.

50. The Execution Engineer, who has recorded his satisfaction, has pertinently not been cited as a witness merely to conceal the evidence regarding the use of Johnson pipes. Furthermore, the MB entries have not

been established to have been made falsely, corroborate the installation of Johnson Pipes.

51. *It is, thus, submitted that the impugned Judgment convicting the two Appellants, is liable to be set-aside.*

52. **Written Submissions** have been filed on behalf of the Appellants, as well as the CBI wherein essentially, the contentions as raised in their rival pleadings have been reiterated.

Submissions heard and the record perused.

<u>Procedure Adopted By DJB For Grant Of Work Order:-</u>

53. The **case of the Prosecution** is that during the year 2006 to 2010 South-1 Division of DJB installed Tube-Wells for drinking water requirements of the area through different Contract Agreements with M/s Ravi Goyal of which Ravi Goyal was the sole proprietor.

54. The ***present case pertains to Contract Agreement No.46/2009-10***. The Tender was invited through NIT, copy of which was sent to the registered Contractors of DJB and the same was also placed on the web site of Delhi Jal Board. The bids were received from various Agencies and after following the due procedure of tender, the Contract Agreement No.46/2009-10 which is the subject matter of the present case, was awarded to Ravi Goyal being the L-1.

55. The Contract Agreement dated 08.07.2009, Ex.PW9/F was signed between Executive Engineer of the Division of DJB and Ravi Goyal on behalf of M/s Ravi Goyal. The **Work Order No.113 dated 08.07.2009, Ex.PW9/E** was issued in favour of M/s Ravi Goyal by the Executive

Engineer, South-1 which included General Conditions, Special Conditions, Safety Clauses, Bill of Quantity, etc.

56. The work was executed by M/s Ravi Goyal between 07.09.2009 till 11.01.2010. During the execution of the work, JE conducted 100% Test check and made the record of the measurements in the Measurement Book (MB). The Assistant Engineer (AE) and Zonal Engineer (ZE) who were responsible to conduct 50% of the Test check of the work, so executed. The Executive Engineer (EE) was responsible for 10% of the work executed by the Contractor and checked by the Junior Engineer (JE). The Measurement Book was duly signed by all the three Officers.

Discrepancy regarding change of Site:-

57. As per the **Work Order, Ex.PW9/E**, there was re-boring of two Tube-Wells situated at ***(i)*** *near Aggarwal Dharamshala, 100-foot road and* ***(ii)*** *Truck Market, Chhatarpur Enclave* was to be carried out, under South-1 Division. Pertinently, the **Sanction Order, Ex.PW2/A** is the first document of relevance which records that the Contract was for two Bore-Well for a total cost of Rs.8,64,798/-, but the Sanction Report itself records that during investigation it was found that out of the two Tube-Wells, only one tube-well located at near *Aggarwal Dharamshala, 100-foot road* was examined by Dr. D.V. Reddy by using *bore-hole camera*.

58. In the entire investigations and the Report of the Expert, PW5/Dr. D.V. Reddy there is only one inspection carried out of the bore-well near *Aggarwal Dharamshala, 100-foot road* and there is no inspection ever carried out of the bore-well at *Truck Market, Chhatarpur Enclave, South-1 Division.*

59. Apparently, there was some indication in the MB, Ex.PW9/C that under Work Contract No.113 there was change of site from *Truck Market, Chhatarpur* to *Ghitorni* with an endorsement that *change of site* is approved by the Competent Authority which is attached. However, in the entire Chargesheet as well as the Sanction Report, there is absolutely no mention of this site at *Ghitorni*. Moreover, there is no inspection by the Expert carried out of the bore-well as *Ghitorni*. Therefore, though apparently there was some change of site of one bore-well, in the absence of any Order from the Competent Authority, any Inspection Report, or any investigations in this regard, **the Charges against the Respondents are confined solely to the execution of work in respect of the borewell at *Aggarwal Dharamshala.***

60. Pertinently, the entire case of the Prosecution to support the execution of the work rests only on the MB, the Bills including the Final Bill and the Report of Expert, PW5/Dr. D.V. Reddy.

61. Before proceeding to examine the merits of the present Appeals, it is pertinent to note that three Criminal Cases were tried together by the learned Special Judge (PC Act), CBI-06, New Delhi, being CC No. 11/14 *[the present case involving Suresh Aggarwal (JE) and Ravi Goyal (Contractor)]*; CC No.10/14 [*involving Rafique-Ul-Islam (JE) and Ravi Goyal (Contractor)*], and CC No.12/14 *[involving Pradeep Kumar (JE) and Ravi Goyal (Contractor)].* Although the three cases pertain to three different contract agreements for different sites, the evidence is substantially common across all three cases.

62. Significantly, *vide* Judgment dated 09.10.2015, *Rafique-Ul-Islam and Ravi Goyal* were acquitted on similar Charges, while the present Appellants

were convicted. Given that the factual matrix, the nature of allegations, the evidentiary foundation, and even the expert witness, PW4/Dr. D.V. Reddy are similar, *it becomes imperative for this Court to now undertake a detailed analysis of the evidence to ascertain the outcome in the present case of conviction of the two Appellants.*

63. The **questions to determine** herein, is two-fold - ***firstly,*** *the requisite Johnson Pipes were not used at the site, as per the Work Order No. 113 dated 08.07.2009 and Bill of Quantity;* and ***secondly,*** *whether the Invoice / Bill submitted by Respondent No.2/Ravi Goyal (Contractor) on the basis of which the payment was released to him, was forged.*

I. ***Whether the requisite Johnson Pipes were not used at the site, as per the Work Order No. 113 dated 08.07.2009 and Bill of Quantity?***

64. In this regard, essentially there are two aspects which needs to be answered by the Prosecution: ***firstly,*** *whether the Johnson pipes, as per the Work Order, were used by the Contractor or the pipes installed were of inferior quality? And* ***secondly,*** *Whether the Report of PW5 / Dr. D.V. Reddy establishes the non-use of the pipes of make Johnson ?*

Whether the Johnson pipes as per the Work Order were used by the Contractor?

65. According to **Work Order No. 113 dated 08.07.2009, Ex.PW9/E,** the Contract Agreement pertained to re-boring of two tube-wells: *(i) near Aggarwal Dharamshala, and (ii) Truck Market, Chhatarpur Enclave,* duly signed by EE. However, as established above, the present case is strictly

confined to only one site i.e. the bore-well near Aggarwal Dharamshala, 100-foot road. The second site at Truck Market, Chatterpur Enclave was never inspected by the expert, and no cogent evidence has been led by the Prosecution regarding execution of work at that site. ***Therefore, the culpability of the Appellants, if any, must be assessed solely on the basis of work executed at Aggarwal Dharamshala.***

66. **PW9/Anil Kumar,** who was EE in South-I Division of DJB from March, 2006 to 18.08.2009, had deposed about the procedure and the responsibility of the persons involved in preparing the Running/Final Bill/Completion Report in consonance with the MB. He explained that it is the Contractor who submits the Purchase Vouchers and the Strata Chart to JE. The Purchase Vouchers are required to be checked/signed by JE/AE. The Strata Chart is checked and signed by JE/AE as well as by EE and both these documents are required to be enclosed with the Bill, whether it is running or a Final Bill. At the time of Final Bill, the Contractor is also required to submit Certificate i.e. the Diploma or the Degree of the person who was engaged by him for day-to-day supervision of the work to be conducted at the site. The Certificate that the items have been used as per the Work Contract, is also required to be submitted by the Contractor.

67. **PW9** has admitted in his cross-examination that entries in the MB are not made unless the material is physically verified at the site and found to be in conformity with the Bill of Quantities. He has further admitted that when material is found proper as per the Bill of Quantities, only then is it entered in the MB and execution of work commences.

68. The only document in proof of the execution of the work that is relied by the Prosecution is the **Measurement Book, Ex.PW9/C.** It records in

details the work done and the quantities of the items that were used. Measurement Book No.18067 at Page 90 at Item 9 clearly records installation of 60 m of Johnson 150 mm slotted pipe, which is in accordance with the Strata Chart for the said site. *It had been cross-checked, counter-checked and MB specifically records that the work has been executed under Executive Engineer, South.*

69. Significantly, **PW9/Anil Kumar (EE)** has deposed that the JE is responsible for checking the material brought at the site for execution of work/contract, every time physically. Sometimes, AE also visits the spot to check the material. Likewise, EE also comes to the spot to check the material, but occasionally. The entries are made in the MB with respect to the checking and inspection of the material at the spot by the officials. When the material is proper as per the Bill of Quantity, then only it is entered in the MB and not otherwise. Only after the satisfaction of the JE about the material, execution of the work starts.

70. PW-9 has further explained that the JE and AE tallied the material with the purchase vouchers and make endorsement on the Purchase Vouchers and the Work Order Number is also mentioned. He further admitted that the entries made by JE are counter-signed by AE with respect to the material brought at the site as well as usage of the same. On conclusion of the work, the Certificate is issued by JE/AE and EE by stating that the work has been done as per Work Orders.

71. He further admitted that the ZE had signed on **Test Check Report** about the existence of Johnson Pipes at the site which is Ex.PW9/L.

72. The testimony of PW-9 fully establishes the authenticity of the entries made in MB which are made contemporaneously with the Work being

executed on the spot, on regular basis. Prosecution has not demonstrated that these entries in the MB are false or fabricated. No evidence has been led to show that the signatures of AE and EE were obtained fraudulently, or that these senior officers were complicit in making false entries.

73. Furthermore, a **Completion Report, Ex.PW8/C** was prepared after the Work was executed on 19.07.2009 wherein the quantity of each of the item along with rate and units with the amount, was duly recorded. Therein also, it was indicated that Johnson pipe had been used in respect of Work Order No.113 which pertained to *Aggarwal Dharamshala* and *Truck Market, Chhatarpur*. This Completion Report was signed by Executive Engineer, S-I and also by SE, South.

74. The Strata Charts, Ex.PW9/H and Ex.PW9/J prepared in respect of the bore-well at Aggarwal Dharamshala clearly indicate the installation of 60 m of Johnson pipe. These Strata Charts have been signed by the ZE and EE concerned and form part of the official record. The Prosecution has again, not disputed the authenticity of these Strata Charts.

75. From the documents that were seized by the I.O. i.e. essentially the Measurement Book, *there is no cogent evidence to show that Johnson Pipes had not been used for execution of the work as per the Work Order/ Strata Chart.*

<u>Inspection Conducted By Dr. D.V. Reddy during the Investigations:-</u>

76. The Prosecution has tried to discredit the use of Johnson pipes essentially by relying on the expert evident of PW5/Dr. D.V. Reddy.

77. Before considering his testimony, it is pertinent to observe that the work was completed on 19.07.2009, while the Inspection has been carried

out by Dr. Reddy on 21.09.2013 i.e. after about 4 years on some complaint that was received in DJB on which Preliminary Enquiry was conducted, though the findings of Preliminary Enquiry are not on record. It is also not borne out as to who was the person or the Agency who claimed that the Work not been executed properly.

78. The PE Report was an important document to show the facts in the Complaint *prima facie* merited registration of FIR in 2012, after almost four years of completion of Project, especially when no Complaints whatsoever were ever received, especially in regard to the quality of Pipes. *The commencement of investigations and registration of FIR itself rests on slippery ground and needs overwhelmingly strong basis to establish the truthfulness of the allegations.*

79. Be as it may, after the **FIR, Ex.PW12/A** was registered on 29.06.2012, investigation was entrusted to **PW-12/Sh. Tika Ram.** He deposed the FIR was registered on the basis of a Preliminary Enquiry. However, he does not remember if there was anything incriminating found in the inquiry. Furthermore, there was no clarity regarding the seizure of Purchase Vouchers and Instructional Order.

80. Significantly, the bore-well had been functioning continuously and efficiently since its installation in July 2009 till the date of inspection in September 2013, without any complaint regarding quality of water or malfunctioning. ***The absence of any complaint during these four years is a telling circumstance that factors against the Prosecution case.***

81. In 2013, the investigation was transferred to PW-11/Deputy SP Joseph Krelo, who arranged for the inspection of the bore-well by PW-5/Dr. D.V. Reddy on 21.09.2013. Thereafter, on 18.02.2014, the investigation was

transferred to PW-13/Inspector Anand Sarup, who took over the case from PW-12.

82. The reference is now made to the testimony of **PW5/Dr. D.V. Reddy** who deposed that he is M.Sc. (Geology and M.Sc. (Tech), Hydrology from Osmania University, Hyderabad and has done PhD in ground water investigation from NGRI and works as Senior Principal Scientist as NGRI, Hyderabad. He had 30 years of experience in ground water studies in different Hydrogeology environment. The witness is an expert in Hydrogeology environment, *but does not state that he had any expertise in identification of the pipes used in the bore-wells.* This is significant in the light of his admission that he has not done any study in the area of South and South-West Delhi regarding boring and re-boring, but has a *broad idea about Strata determination/Geology.* He further deposed that there existed ***Geo-physical method*** to identify the metals buried in the ground, but significantly, was not used in the present case.

83. As per the Report of Dr. D.V. Reddy Ex.PW5/A, the inspection near *Aggarwal Dharamshala* was conducted on 21.09.2013. He stated that the execution of the work was to be done as per Strata Chart. The relevant part of the Report is reproduced as under:-

> *"**Description as per the Strata Chart***
>
> *As per the strara chart, the bore well depth is about 164.8 m. Top 72.8 m is shown with 200 mm dia. Blank pipes followed by 12.4 m MS slotted pipe and further 6.0 m blank pipe. Bore well diameter changed from 200 to 150 mm at ~90 m. At 150 mm dia bore initially about 6 m blank pipe (with little overlap into the 200 mm pipe at the top) followed by 7.6 m MS slotted pipe and below 50 m of Johnson type screen pipe is shown.*

Observation

The well as scanned on 21.09.2012 using borehole camera and measured the present depth as about 123m. Top 58.5 m is seen with 200 mm blank casing followed by well reduction from 200 mm to 150 mm size. From 58.5 to 71 m, 150 mm blank pipe followed by MS slotted casing up to 121 to 123 m. If necessary, well may be cleaned with air compressor to find out its total depth and casing below.

84. The most significant aspect which emerges from the testimony of PW5/Dr. D.V. Reddy is his admission that metal pipes corrode relatively faster than PVC pipes. In PVC pipes there is no corrosion, but it may break in pieces. If the water is salty, the corrosion would be faster in the iron pipes. In Delhi, in some of the areas water is salty. He could not say whether the water of the said area was salty or not because it was not checked by him. He further admitted that Johnson pipe is made of metal with special alloy. He further admitted that if the water is salty, there would be some deposit inside the metal pipe over a period of time and *after such deposit, the type of the pipe cannot be found out.* Moreover, during the period of five years, rust and moss formation happens inside the pipe of the bore-well.

85. PW5 denied the suggestion that due to moss formation the type and nature of pipe could not be ascertained from the camera used by him. He admitted that over a period of five years, rust and moss formation develop inside the pipes. He admitted that there was rust formation above the water and below the water. He denied the suggestion that his findings are against the law of sedimentation.

86. PW-9/Sh. Anil Kumar also admitted in his cross-examination that due to hard water there is possibility of formation of rust and moss and corrosion of the pipe over a period of time due to deposit of rust and moss formation it is difficult to identify the make and type of the pipe used in the bore-well. He was unable to state about the mechanism whereby the quality of pipe used in bore-well can be ascertained after 4-5 years.

87. As noted above, the inspection has been carried out after 4 years of the installation and admittedly there was sedimentation and moss deposit in the pipes, which could not have possibly enabled the PW5/Dr. Reddy to make assessment of the make of the pipe installed at the site. It is also pertinent to observe that he has admitted that if the ground water is dirty, the visibility of the camera would be low.

88. Dr. D.V. Reddy has further deposed in his testimony that *he came to the conclusion that the pipes so installed were not Johnson screen pipes as the pipes found on the site were not wire-meshed around the pipe; rather it was MS slot which contains about 1 mm hole size of few cms long.* He, however, also admitted that there was no provision in his camera to measure the thickness of the pipe. On what basis did he derive the conclusion that the Pipe was *MS slot with a 1mm hole size*, becomes a suspect; rather it shows that his Report was conjectural and not based on any scientific analysis by using appropriate methodology.

89. PW5/Dr. D.V. Reddy explained the methodology adopted by him for carrying out the inspection. In the Report Ex.PW5/A, he has explained it as under:-

*"**Procedure***

To achieve the objective of estimation of depth of the bore wells and length and type of casing used in the well, a simple methodology is used. A simple underwater camera, called Borehole Camera is used for the study. This camera has been manufactured by M/S Energy Management Systems, Bengaluru. The simple underwater camera with 600 TV lines connected through a long cable to the external device (palm top) for viewing and recording picture wherever the camera is focused. Around the camera 12, LEDs (of very high brightness) are fixed for focusing the light in the water at an angle of 60 degree. The camera can view up to 300 m deep. The cable attached to the camera has graduation, wherever necessary voice recording can be made with reference to depth and other information. In this procedure, the said camera is inserted in the bore-hole with the help of cable and gradually the scanning of the entire bore-hole is done. The scanning is simultaneously viewed and recorded/stored in an outside device. The video recording is recorded in MP4 format and the file can be viewed and transferred to any video system/computer."

90. In his testimony, it is explained by him that on the said date he had inspected 4-5 bore-wells and had used the same camera including his Palm Top and Memory Card for each inspection. On each and every occasion, the camera created a new file with time. He deposed that it was required to show the *Camera Recording System* to anyone that there was no previous recording. He denied that he did not show the camera to anyone because there was already some previous recording in his camera at that time. However, he stated that there were some previous recordings in his camera but due to creation of new file for each and every occasion it was not harmful, and so he did not show the same to anyone. He further mentioned

that he could not explain when he was putting up his camera inside the bore-well in the open area to anyone that there was a Johnson pipe buried inside.

91. Pertinently, at the time of inspection he was accompanied by PW6/Vikas Rathi (JE) and PW9/Anil Kumar (EE). Even though as per the testimony of PW5/Dr. Reddy himself, 4-5 inspections were conducted by him by using the same camera and laptop, but neither were those recordings shown to any person who had accompanied him nor is there any authentication that the particular recording on the basis of which he gave his Report, Ex.PW5/A pertained to this particular bore-well near *Aggarwal Dharamshala, 100-foot road*. No copy of recording or the CD was obtained on the spot and was also not given by Dr. Reddy along with his Report. There was no copy of CD obtained by the I.O. at the relevant time. *The credibility of this CD as containing the authentic recording of the site inspection, becomes questionable, having been obtained subsequently and not at the time of inspection.*

92. **PW13/Sh. Anand Sarup, I.O.** deposed that after obtaining the recording of site inspection in the CD, he sent it for examination to FSL. The **FSL Report, Mark P3/1** recorded that there were 9 MP files pertaining to 7 CBI cases and the final result on examination, was that *each of these video recordings were not having the required video quality for video examination in the existing system available in the Laboratory and* ***hence, no opinion could be offered.***

93. The entire emphasis of the Prosecution case was on this Inspection. However, the best way of corroborations of the observations made by Dr. D.V. Reddy in his Report was from the CD Report but unfortunately, no Report could be given by FSL as they were found to be not of required

quality. It makes it difficult to comprehend that when the CD itself was not giving the clear picture, how could it be a basis for Dr. Reddy to give his observations as recorded in the Report, Ex.PW5/A.

94. Therefore, in the absence of corroboration of the Report of PW5/Dr. D.V. Reddy by his CD that was prepared by him also raises a doubt whether the assessment of Dr. Reddy an Expert that Johnson pipes were not used can be considered to be conclusive evidence against the Appellants.

95. ***To sum up***, it is quite clear that PW5/Dr. DV Reddy is not an expert in pipe identification or metallurgy. He admits that the inspection was conducted after four years, by which time deposits had formed and once deposits form, pipe type cannot be determined. Furthermore, the camera used, had no mechanism to measure thickness or identify materials and the video quality was so poor that FSL could not offer any opinion. Moreover, there is no authentication that the video pertained to the specific bore-well in question. Lastly, PW5 did not use available *geophysical methods* to identify buried metals.

96. In light of these multiple and fundamental flaws, the purported expert evidence of PW5 cannot be relied upon for purposes of corroboration to discredit the official records prepared and verified by DJB officials.

97. It is also significant to note that after the completion of boring work in July, 2009, the site got handed over to DJB. There is not an iota of evidence that since 2009 till the date of inspection, there were no repair work or replacement of any part of the pipes already installed, were undertaken by DJB. *Therefore, after a gap of four years with no such cogent evidence of the site not been tampered, no conclusive finding can be given about non-use of Johnson Pipes.* Even if for the sake of arguments, it is accepted that

the Report of Dr. Reddy had correctly concluded that Johnson pipes had not been used, then too the possibility of the same being changed by the staff of DJB over these years, cannot be ruled out. *No evidence, whatsoever, has been led by DJB to state that the site had not been repaired ever after the re-boring work was completed in July, 2009.*

98. In this backdrop of Inspection done after almost four years, raises question of the credibility and reliability of the expert evidence, which in any case is only corroborative.

99. ***To conclude,*** the substantive evidence by way of Measurement Books and Completion Certificate do not establish that the Johnson pipes were not used by the Contractor as per the specifications of Work Order or that there was any connivance between the Contractor Ravi Goyal and Pradeep JE. This is more so as the Site inspection was conducted not only by JE but also AE and EE, as per the norms and the practice of DJB. Also, the Expert evidence also is not reliable to show that there was non-use of Johnson Pipes. *There is no cogent evidence to show any connivance between the two Appellants or that they connived to not use the Johnson pipes but installed inferior pipes but claimed the bills for the Johnson pipes.*

100. Therefore, the Prosecution has miserably failed to disprove that no Johnson Pipes were used by the Appellant in execution of the work.

101. However, now it is now imperative to examine the ***second limb*** of the Charge.

II. ***Whether the Invoices submitted for payment were forged and fabricated ?***

102. The next aspect on which the Prosecution has relied heavily to assert that no Johnson pipes were used, is the Bill of Procurement of Johnson Pipes.

103. The Prosecution had examined **PW1/Kamal Kumar Aggarwal** Managing Director of M/s Bharti Water Pvt. Ltd., who deposed that their Company is the sole distributor of Johnson Pipes since the year 2004. He further deposed that he maintained the Ledger regarding the material sold to the parties. Invoice Number is unique and it cannot be repeated for any other party. There cannot be two Invoices for the same number. Pertinently, despite being the custodian of records and the person best positioned to verify transactions, PW1 has not produced any copy of any Invoice or Ledger to establish whether any sale was made to the Appellant/Contractor or not.

104. Furthermore, it has emerged in the testimony of **PW9/Anil Kumar** that the entries in the MB are not made unless the material is checked and the Purchase Vouchers are produced by the Contractor. Despite this, the Purchase Vouchers that were admittedly submitted at the time of verification in the MB and were subsequently verified and the copy of which forwarded to Accounts Branch for preparation of the Final Bill, has not been annexed with the Chargesheet. Moreover, the Purchase Vouchers/Invoice has not been produced by the Prosecution to prove that there was no purchase of Johnson Pipes ever made by the Contractor.

105. The burden of proving that forged or fabricated Invoices were submitted lies squarely on the Prosecution. This burden cannot be discharged by mere allegations. The Prosecution must produce positive evidence - either the allegedly forged invoices themselves, or credible testimony from the Supplier to establish that no sale was made. In the present case, neither has been done. PW1/Kamal Kumar Aggarwal, the authorized sole Distributor of Johnson pipes, has not stated that no sale was made to the Contractor; he has also not produced any records. This falls far short of discharging the burden of proof beyond reasonable doubt.

106. *Interestingly, this* ***Purchase Voucher/Invoice*** *was produced by Ravi Goyal (the Appellant herein) in his Statement under Section 313 Cr.P.C which is* ***Mark DA***. The learned Trial Court has disbelieved this Invoice solely on the ground that it was dated 25.09.2008 *vide* which 110 m of Johnson Pipe was purchased. Pertinently, this Invoice was neither produced nor proved by PW1/Kamar Kumar Aggarwal who was the Managing Director of M/s Bharti Waters Pvt. Ltd.

107. The copy of the Invoice of M/s Bharti Waters Pvt. Ltd. issued in his name is questioned on the sole ground that it shows purchase of Johnson Pipes on 25.09.2008, while the present Agreement had been executed subsequently, on 08.07.2009.

108. However, the learned Trial Court has fallen in error in not appreciating that the Ravi Goyal in the name of his Firm, was engaged in the work of similar kind. Such contractors routinely undertake multiple Projects and maintain inventory of essential materials required for their business. It is neither unnatural nor uncommon for such contractors to purchase material in advance, particularly specialized items like Johnson pipes, knowing the

nature of the work they regularly undertake and which may require use of such specialized items in future projects.

109. The fact that the Invoice is dated prior to the execution of this particular Contract Agreement does not, *ipso facto*, render it false or irrelevant. The prosecution has failed to adduce any cogent evidence to prove that no Johnson Pipes were purchased by the Appellant *Ravi Goyal.*

110. The Invoice on the other hand, makes the defence of the Contractor of having purchased the Johnson pipes and being in possession of them to be used in this Project, probable and the benefit of the same has to be necessarily extended to the Appellant.

111. PW9/Anil Kumar has further admitted that he had seen some of the material on the spot as recorded in the Check Test Report. He had gone to the spot near *Aggarwal Dharamshala, 100-foot road*. He has further admitted that 10% of the Contract amount had been deducted at the time of making the final payment which is retained as a security for liability which may be detected within a period of six months.

112. He further admitted that the security got released to the Contractor after six months, thereby corroborating that *there was no fault found in the execution of the work.*

113. If inferior pipes had been used instead of Johnson pipes as alleged, it is unlikely that no complaint or defect would have arisen during the six-month defect liability period. The release of the security deposit clearly indicates that the DJB was satisfied with the quality of the work. Not only has the Prosecution failed to produce positive evidence of fabrication of Invoices, but the evidence on record and the testimony of PW9 supports the

defense of the Appellants that Johnson pipes were indeed purchased and used.

<u>Payments to the Contractor/Ravi Goyal as per the Work Order:-</u>

114. The procedure for finalization of the Bill is explained by **PW10/Lekha Pawar** who has deposed that he was working as Head Draftsman, Grade-I in the office of Executive Engineer, South-I from February, 2003 to January, 2012. The general duty of the Draftsman is to check the estimates as recommended by EE, on the basis of daily Schedule of Rates, CPWD in civil works and planning circulated rates. In the case of boring of tube-wells, estimate was prepared by JE along with advance justification before opening of Tender on the basis of market rates which are made available on the direction of EE.

115. PW-10 has further deposed that he had checked the estimates pertaining to the case file of CA No. 46/2009-10 on 23.05.2008 on the basis of planning circulated and approved rates. The said estimate Ex.PW8/A giving the rates was duly signed by Himanshu Aggarwal ZE/AE, Executive Engineer at point A as well as his signatures at point C. He had also reviewed advanced justification prepared by Usha Arora Draftsman-III on 09.03.2009 on the basis of approved market rates, which were available, on the direction of EE, South-I, DJB which was reviewed by ZE recommended by EE and approved by SE of the Division which is Ex.PW9/O.

116. The other duty of Draftsman is to check the *Completion Report* prepared by JE. The estimated quantities are checked from the Bill of Quantity and the actual quantities are checked from MB which is duly verified by JE/ZE/EE and Accounts personnel He had also checked the

Completion Report under his writing as per recordings of MB which were duly verified by JE/ZE/AE/Accounts Personnel of the concerned Division and SE approved the Completion Report, Ex.PW8/C.

117. The testimony of PW10 establishes that the preparation and processing of bills in DJB follows a multi-tier verification process. The estimates are checked by the Draftsman, reviewed by the ZE, recommended by the EE, and approved by the SE. Similarly, the Completion Report is checked against the MB and verified before final approval. This elaborate system of checks and balances is designed precisely to prevent any irregularities or fraudulent claims. *In the present case, all these procedural safeguards were duly followed, as is evident from the documentary evidence on record.*

118. **PW-7/Manoj Kumar Rathor**, LDC in DJB deposed that he handed over the EFT documents regarding the payment to M/s Ravi Goyal, to CBI which were seized from him *vide* Production-cum-Seizure Memo dated 25.03.2014, Ex.PW7/A (D8). He deposed that he has also seen the copy of EFT No.49 dated 01.01.2010 regarding the payment details of Ravi Goyal, ExPW7/B.

119. PW7/Manoj Kumar Rathor further deposed that DJB follows the CPWD Manual and Specifications, although he does not have the complete knowledge about the same. He deposed that he has complete knowledge regarding the issuance of Instruction Order/Directions. The payments are processed and released by the Accounts Department in accordance with the Instructional Order and the payments are released only after checking if all these documents. He further deposed that they received the documents, including the Bill and had checked the same arithmetically and thereafter.

prepared the pay-order. He denied that the Accounts Department is also responsible to verify the genuineness if the bill/purchase voucher. He, in his cross-examination, confirmed that the payment is released as per the Bill of Quantity furnished/signed by the JE/ZE/EE.

120. **PW8/Satya Prakash, Senior Accounts Officer**, North Circle in DJB has also explained the procedure for approval and disbursement of payments after the execution of Work. He has deposed that the estimate of the Work technically/administratively is sanctioned by the concerned EE and in case estimate less than Rs. 10 lakhs, it is put to the accountant for financial clearance. The duty of the accountant was also to check whether the estimate is approved by the competent authority or not. The accountant after verification and approval of estimate by the competent authority and subject to availability of budget, gives his financial concurrence. After said financial concurrence of the accountant, the file of estimate of work is returned to the concerned EE/Division. The file again comes to the Accountant in circle after opening of Tender and acceptance of rates of lowest bidder by EE. It is at this stage that the Accountant is required to check whether the rates are within the justification and to check final work number and availability of the budget.

121. Furthermore, PW8 deposed that the documents received from the Accounts section are that bill forms, Completion Report, Test Check Report, Purchase Vouchers or store items and Strata Chart, etc. for releasing the payments to the Contactor. He deposed that he had seen all the documents and formalities, which were in order, before signing the Pay Order. He deposed that if there is any discrepancy in the document relating to the accounts section, then an objection is raised and file is returned to EE for

removal of said objections. In this case, he had not put any objections before signing. PW8 further deposed that he has seen the Pay-Order Ex.PW8/B of the first and final bill of Rs.8,96,485/- pertaining to this Contract Agreement, which was released to the Contractor, ***since everything was in order***.

122. The next material witness is **PW2/Dr. Jayadev Sarangi**, Member Administration, DJB deposed that he is the Competent Authority to appoint as well as remove JEs of the DJB. He clarified that the Bill is first certified by the JE about the work and on the basis of the same, EE proceeds further. He also deposed that he had gone through the Test Check Report which was part of the documents furnished for Sanction. He has also seen the Completion Report. As per his knowledge, the payments have been released to the contractors.

123. Lastly, it has to be noted that **PW13/Inspector Anand Sarup I.O.** categorically deposed that he did not enquire from the Accounts Department of DJB about the verification of the Bills / Purchase Voucher in question.

124. ***To conclude***, the evidence of PW7/Manoj Kumar Rathor and PW8/Satya Prakash establishes that the payment process in DJB involves approval by the Accounts Department. The documents submitted by the technical wing - including the Bill, Completion Report, Test Check Report, Purchase Vouchers, and Strata Chart - all are examined by the Accounts officials to ensure procedural compliance and arithmetical accuracy. Only after such verification is the Pay Order signed and payment released.

125. In the present case, *both PW7 and PW8 have confirmed that all documents were in order and no discrepancy or objection was raised by the Accounts Department.*

126. Thus, no credible evidence could not be adduced to create any suspicion about the manner in which the entries concerning the installation of Johnson pipes were recorded, authenticated, and verified by DJB officials.

127. Thus, it is concluded that the Prosecution has failed to prove its case through unimpeachable evidence, beyond any reasonable doubt. The offence of forgery and the ingredients of offence under Section 420 IPC are not made out or proved and Prosecution has failed to establish its allegations against both the accused persons beyond doubt. Similarly, the charge of abusing the official position by corrupt and illegal means to provide gains to the contractor under Section 13(1) (d) of the PC Act, also has not been proved.

Conclusion:-

128. In view of the aforesaid discussion, it is established that the Prosecution has not been able to prove beyond reasonable doubt that the Johnson Pipes as per the Work Order No.113/2009 had not been used by the Contractor Ravi Goyal while executing the Work Order or that there was any connivance/conspiracy between him and Junior Engineer Pradeep Kumar in using of sub-standard material or claiming money on the basis of forged Invoice.

129. The impugned Judgment of Conviction and Order on Sentence is hereby set aside. **The Appellants are hereby acquitted.**

130. The present Petition is accordingly disposed of, along with pending Applications(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 30, 2025
RS/Va