



2025:DHC:9659



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

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

+ **CRL.A. 1142/2015**

SURESH AGGARWAL

Son of Late Sh. Ram Kishan,
R/o C-4/22, 1st Floor,
SDA, New Delhi -16

.....Appellant

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

+ **CRL.A. 1143/2015**

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



2025:DHC:9659



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 **Suresh Aggarwal (Junior Engineer) and Ravi Goyal (the Contractor)**, 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 420/471/477A 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'*).

2. **Brief facts** are that a Preliminary Enquiry *vide* PE-DA1-2011-A-0010 CBI, ACB, Delhi 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.

3. The **case of the Prosecution** is that *Suresh Aggarwal, 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. Tender was accordingly, floated by MCD for installation/Re-boring of Tube-Wells for drinking water, at different places under South-I Division by Delhi Jal Board (*for short 'DJB'*). Ravi Goyal, the Contractor (Accused No. 2) had been awarded the Contracts *vide* Contract Agreement (CA) No.136/2007-08 dated 13.02.2008 in respect of re-boring of two Tube-Wells situated at (i) A-25 Krishna Park, and (ii) C-47 Krishna Park.

4. As per the Bill of Quantity (BOQ), Ravi Goyal/Contractor was required to execute the borewell work by putting size 200 mm MS slotted pipe and 150 mm Johnson screen pipe. Furthermore, as per the BOQ, the cost of 60 m Johnson pipe at the rate of Rs. 1,669/- amounts to Rs. 1,00,140/- and it was the contract requirement. The Measurement Book (MB No. 18444) recorded the installation of Johnson screen pipes. *Suresh Aggarwal, Junior Engineer (JE)* was Engineer-in-charge of site at the time of execution of work. He made the entries in MB as the progress of the work took place according to the Bill of Quantities. He was responsible for 100% checking of the work of installation of assembly of the tube-well for which the Johnson Pipes were used.

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

6. Ravi Goyal, contractor on completion of Work, submitted his Bills along with a photocopy of the Invoice No. BW/307/2007-2008 dated



25.10.2007, issued by M/s Bharti Waters Pvt. Ltd., showing the purchase of 320 m of size 150 mm Johnson pipes, and the corresponding payment was made to M/s Ravi Goyal. The investigations however, revealed that this Invoice was forged and fabricated.

7. Further, during the investigations, borewell at A-25, *Krishna Park*, was got inspected by the expert from National Geophysical Research Institute (NGRI), who used *Bore-Hole Camera* which could go up to the maximum depth of 152 m, whereas the recorded depth in the Strata Chart was 183 m. According to the Strata Chart, 60 m of Johnson pipe was to be installed from a depth of 102.1 m. It was found that the top 97.5 m consisted of 200 mm blank casing, followed by a reduction to 150 mm, after which MS slotted casing was observed up to 152 m, indicating that no Johnson screen pipes were used.

8. The investigations, thus revealed that the Ravi Goyal, Contractor who was supposed to use *slotted screen pipe of make "Johnson"* in the tube-wells; instead used sub-standard screens of comparatively cheaper value. *Suresh Aggarwal, Junior Engineer (JE)* and other officers of MCD, in conspiracy with Ravi Goyal, wrongly recorded that the Work has been executed as per BOQ. Further, by submitting forged bills of Johnson Pipes reflecting purchase of the Pipes from the vendor M/s Bharti Waters Private Limited, sole authorized distributor of Johnson screens, it was confirmed that pipes of inferior quality were used, in contravention of the specifications provided in BOQ.

9. The Chargesheet concluded that *Suresh Aggarwal, JE of DJB along with Ravi Goyal, the Contractor (to whom payments were released), 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.1,00,140/- approximately and corresponding loss to the Government.

10. The sanction for the Prosecution of Suresh Aggarwal, JE was accorded by the Competent Authority.

11. The **Chargesheet** was filed in the Court of learned Special Judge (PC Act), CBI on **16.12.2014**. **Cognizance** was taken on **02.01.2015**.

12. **Charges were framed on 12.02.2015** against **Accused No.1/Suresh Aggarwal (JE)** for the offences under Section 120B read with Sections 420, 471 read with 468, 477A IPC and Section 13(2) read with Section 13(1)(d) of PC Act and also substantive offences of Section 420, 477A IPC and Section 13(2) read with Section 13(1)(d) PC Act.

13. **Accused No. 2/Ravi Goyal (Contractor) was charged** for the offences under Section 120B read with Sections 420, 471 read with 468 IPC, 477A IPC and substantive offences under Sections 420 IPC and 471 read with 468 IPC separately to which both accused pleaded not guilty.

14. The Prosecution in support of its case examined **15 witnesses**, who are as follows:

15. **PW-10, Mr. Anil Kumar, 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-10/A to Ex.PW-10/D. CA is exhibited as Ex.PW-10/E. The Final Bill has been proved as PW-10/E. The details of Payment Order are Ex.PW-10/J. The details of joining and relieving of Accused No.1 is Ex.PW-10/L.



16. **PW-7, Sh. J.K. Tuli, Head Clerk, in the office of EE, South-I, DJB,** has been looking after the work of Tender. He identified his signatures on D-7 (original CA file) and on the Note Sheets (3N) Ex PW-7/A, (4N) Ex PW-7/B and (5N) Ex PW-7/C. NIT No. 40 bearing his signatures is Ex. PW-7/D.

17. **PW-4, Dr. D.V. Reddy, Senior Principal Scientist, National Geophysical Research Institute, Hyderabad (NGRI),** was an Expert who had conducted the Inspection of the Borewell situated at A-25 Krishna Park, under South-1 on 23.09.2013 in the presence of **PW-12, Deputy SP Joseph Krelo.** He prepared his Report dated 02.12.2013, Ex.PW-4/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-4/B. Site Inspection Memo along with the Site Plan prepared by the Investigating Officer was Ex.PW-4/B and Ex.PW-4/C respectively.

18. **PW-5, Mr. Vikas Rath, JE (Civil), Vigilance Department, DJB** furnished the documents, which were seized *vide* Memo, Ex.PW-5/A and Ex.PW-5/B. The Inspection of Borewell at A-25 Krishna Park, was done in his presence along with Sh. K.N. Dhyani, AE and Suresh Aggarwal, JE, the contractor and Mr. Anil Kumar EE by Dr. D.V. Reddy.

19. **PW-6, Mr. Manoj Kumar Rahtor, LDC, DJB,** handed over the payment details to CBI, which were production cum seizure *vide* Memo dated 13.06.2014, which are Ex.PW-6/A and Ex.PW-6/B.

20. **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 in any other Bill given to any other Party.



21. **PW-13, Sh. Rajat Jain, Accountant in M/s Samtel Color Limited** deposed that the original bill i.e. BW/307/2007-2008 could not be produced due to labour issue as lay off by the Management.
22. **PW-11, Smt. Lekha Pawar, Head Draftsman of DJB**, deposed about the checking of the estimates and preparation of Completion Report by JE.
23. **PW-9, 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 and proved various official documents, which are Ex.PW-9/A to Ex.PW-9/F. Pay-Order of first and final Bill is Ex.PW-9/D. The Completion Certificate in regard to the Contract Agreement is Ex.PW/C. The Instructional Order dated 02.11.2004 is Ex.PW-9/F.
24. **PW-8, Sh. Pankaj Kumar, Probationary Assistant Manager from Corporation Bank, Chandni Chowk branch, Delhi** deposed about handing over documents to the CBI *vide* seizure memo Ex. PW-8/A. They pertain to Account Opening Form of Accused, Ravi Goyal and the Bank statement.
25. **PW-2, Dr. Jayadev Sarangi, Member Administration, DJB**, was the competent authority, who gave *Sanction* for prosecution of Accused, Suresh Aggarwal JE (A-1) *vide* Letter Ex.PW-2/A. This Sanction was forwarded *vide* Letter dated 02.12.2014 Ex.PW-3/A for Prosecution Sanction of Suresh Aggarwal, by **PW-3, Mr. Sanjay Gupta, Joint Director (Vigilance), DJB**.
26. **PW-14, Mr. Tika Ram IO**, conducted the investigations and had got registered, the FIR Ex.PW-12/A.
27. **PW-15, Sh. Anand Sarup, Inspector CBI ACB New Delhi** took over by *the further* Investigations in 2014. He proved the FIR, Ex.PW-14/A. He has deposed about the correspondence of PW4, Ex. PW-16/A and the letter



Ex. PW-15/B through which he received the CD (containing videos of wells scanned in Sept. 2013) and its Certificate under Section 65B of Indian Evidence Act.

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

29. *Learned Special Judge on appreciation of the entire Prosecution evidence, found the two Appellants guilty and Convicted and sentenced them vide Order dated 26.10.2015, as under:*

(i) **Suresh Aggarwal/Accused No. 2**, has been sentenced under Section 120B IPC read with (Sections 420, 471, 477A IPC) and Section 13(2) read with 13(1)(d) of PC Act with RI for two years and fine of Rs.15,000/- and in default, SI for three months; under Section 420 IPC with RI for three years and fine of Rs.25,000/- and in default, SI for four months; under Section 477A IPC with RI for three years and fine of Rs.25,000/- and in default, SI for four months; under Section 13(2) read with 13(1)(d) of PC Act under RI for three years and fine of Rs.25,000/- and in default, SI for four months.

(ii) **Ravi Goyal/Accused No. 2**, has been sentenced as under Section 120B IPC read with (Sections 420, 471, 477A IPC) with RI for two years and fine of Rs.15,000/- and in default, SI for three months; under Section 420 IPC with RI for three years and fine of Rs.25,000/- and in default, SI for four months; under Section 471 IPC for RI for three years and fine of Rs.25,000/- and in default, SI for four months.

30. All the sentences were directed to run **concurrently**.



31. *Aggrieved by the said Conviction and Sentence, the present Appeals have been filed by the Appellants, Ravi Goyal and Suresh Aggarwal.*

32. **The grounds of challenge** are that an identical matter of *CBI vs. Rafique-Ul-Islam* was tried simultaneously with this case and the evidence of the witnesses were recorded on the same day, as most of the witnesses were common. 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.

33. Furthermore, the allegations of forgery were made against Rafique-Ul-Islam, which are missing against the present Appellant Suresh 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.

34. 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.

35. The **Test Check Report** was prepared on the Spot by ZE and EE Ex.PW-10/K. 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, PW10/DA, which recorded the lowering and installation of Tube Well Assembly to be in position to the satisfaction of the Engineer In charge i/c *Vertical Test*.

36. Moreover, it has been observed in case of *Rafique-Ul-Islam* 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.

37. 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.

38. It is further submitted by the Appellants that the finding of the learned Special Judge that nothing was brought on record to show that the Contractor was working on any Government project or contract requiring the purchase of such a large quantity of Johnson pipes in October 2007, is not sustainable. The Contractor being engaged in borewell and related works, it is quite natural for him to maintain a stock of materials like Johnson pipes for use in his ongoing or forthcoming private or other contractual works. The mere fact that the Invoice reflects the purchase of



320 m of Johnson pipes on 25.10.2007, though the consumption was 60 m in the present borewell at A-25, Krishna Park - does not by itself, establish that the bills were forged or that the pipes were not actually purchased and used. The purchase of materials in bulk for professional purposes, is consistent with the *nature of the Contractor's business* and cannot be treated as evidence of falsification or irregularity.

39. It is submitted that the Strata Chart did not mention Johnson pipes, but only slotted pipes. The mere non-mentioning of the make of the pipe is inconsequential, as Johnson pipes themselves are slotted pipes commonly used in borewell works. The Strata Chart and the MB, both record the use of slotted pipes, which supports the Appellants' contention that Johnson pipes were, in fact, used at the site.

40. Furthermore, there was yet another Strata Chart placed on record where the contractor has shown use of slotted pipes only and the inspection report of Dr. D.V. Reddy also reflects use of Johnson pipes.

41. 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-4/A of Dr. D.V. Reddy, does not tally with the actual duration of the CD. The duration of the recordings is 10 minutes and 14 seconds, as per the FSL Report. However, the duration as per the Report of PW-4/Dr. D.V. Reddy is 4.40 minutes.

42. Furthermore, the FSL Report shows that the CD was of poor quality and no opinion could be afforded on such a CD. Also, 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. Moreover, CD was not sealed at the spot and the evidence based on CD is not reliable. 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.

43. 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. Also, 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.

44. 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.

45. 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. The use of the Expert Report is also not justified in as much as 7 years had elapsed from the installation and in view of the fact that it was not possible to decipher the make of pipes in the said installation due to moss and rust formation in the pipes.

46. The CBI should have got the pipe removed from the installation, to establish that Johnson pipes were not used. 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 and in favour of the Appellant.

47. It is also submitted that the purpose of using Johnson pipes is to ensure the longevity and durability of the borewell. As per the evidence of



PW-10/Sh. Anil Sharma, the average life of a borewell is generally about 5–7 years. However, in the present case, the borewells installed in 2008 have continued to function effectively till date, which clearly indicates that high-quality Johnson pipes were indeed used in the installation, contributing to their extended operational life.

48. It is further submitted that the learned Special Judge has erroneously recorded a finding that Johnson pipes were not used at both A-25, Krishna Park and A-47 (*sic*) site. Significantly, the investigation and inspection by the Expert from NGRI were confined only to the borewell at A-25, Krishna Park, even as per the Charge sheet. Therefore, such an observation regarding C-47 Krishna Park, is wholly unwarranted, in the absence of any evidence.

49. It is submitted that the learned Special Judge has incorrectly held that the genuine Bill bearing the same number as the alleged forged bill, had been issued to *M/s Samtel Color Limited*. The evidence on record clearly indicates that Shri Kamal Kumar Agarwal of M/s Bharti Water Works Pvt. Ltd. was in the practice of issuing two sets of Bills i.e. one for cash transactions and another for cheque payments. The bills relating to cash purchases were not reflected in the Income Tax records, whereas those corresponding to cheque payments, were duly shown.

50. *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-10 and other witnesses, which duly proved the use 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.

Procedure Adopted By DJB For Grant Of Work Order:-

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 in different areas within South-I Division. Works were awarded and the Contractors were supposed to use slotted screen of “Johnson” make in the tube-wells.

54. 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 of various sites, though the evidence was substantially common in all the three cases.

55. Significantly, *vide* Judgment dated 09.10.2015, *Rafique-Ul-Islam and Ravi Goyal* were acquitted on similar Charges in CC No.10/14, while the present Appellants were convicted.



56. The *present case pertains to Contract Agreement (CA) No.136/2007-08 for the two sites namely: A-25, Krishna Park and C-47, Krishna Park, under South-I*. The Tender was invited through NIT No.40, Ex.PW7/D copy of which was sent to the registered Contractors of DJB. PW-7/Sh. J.K. Tuli, who was posted as Head Clerk in the office of EE was looking after the work of Tenders and his duties included inviting Tenders, after receiving the approval File from EE. Eighteen Tenders were received and opened in the years 2005-08. The tender was submitted on 05.02.2008 and that Tender for installation/reboring of Well for the two sites at Krishna Park Area under EE South-I, was awarded to M/s Ravi Goyal. The Contract Agreement (CA) No. 136/2007-08 was executed on 13.02.2008. The Work was to be completed under the supervision of Accused No.1/Suresh Kumar, Junior Engineer (JE), who also remained present at the time of execution of work as the Engineer In charge.

57. During the execution of the work, Suresh Kumar JE conducted 100% Test check and maintained 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.

58. At the outset, it is pertinent to observe that the work was completed in the present case on 05.03.2008, while on some Complaint received after about 5 years in DJB, the source of which has not been disclosed by the Prosecution, a 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 and on what basis it was claimed that the Work had not been executed properly.

59. The PE Report was an important document to show the facts in the Complaint *prima facie* merited registration of FIR in 2012, after almost 5 years of completion of Project, especially when no Complaints whatsoever were ever received, more so in regard to the quality of Pipes or the execution of the Work.

60. *Be as it may*, on the basis of the conversion of PE-10(A)/2011, CBI, ACB, Delhi into RC, the present case was registered on 29.06.2012 (**FIR, Ex.PW14/A**) and the investigation was entrusted to **PW-14/Sh. Tika Ram**. He collected the documents and recorded the statements of the witnesses. 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.

61. *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.*

62. Significantly, the bore-well had been functioning continuously and efficiently since its installation in 2008 till the date of inspection in September 2013, without any complaint regarding quality of water or malfunctioning. ***The absence of any such complaints over five years strongly undermines the Prosecution's case.***

63. The questions for determination of the guilt of the Appellants, are two-fold - ***firstly***, whether *the requisite Johnson Pipes were not used at the site, as per the Work Order No. 415 dated 21.02.2008 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. 415 dated 21.02.2008 and Bill of Quantity?

64. Before considering the Prosecution case on merits, it is pertinent to observe that **Work Order No. 415 dated 21.02.2008, Ex.PW7/J** pertained to re-boring of two tube-wells: *C-47, Krishna Park ; A-25, Krishna Park under South-I*, in regard to which the charges were framed.

65. The Contract Agreement (CA) No. 136/2007-08 pertained to re-boring of two tube-wells: This is evident from the Chargesheet as well as the Work Order No. 415 dated 21.02.2008 (Ex.PW7/J), the Sanction Order (Ex.PW2/A), the Measurement Books, the Strata Charts (Ex.PW10/G for A-25 and Ex.PW10/H for C-47), the Completion Report Ex.PW9/E and the Final Bill. The payment was released to the contractor for the Work executed at both these sites.

66. The Bill of Quantities (BOQ), Ex.PW10/DA, also specifies the requirement of pipes of “*Johnson make*” with detailed measurements.

67. However, the Expert inspection by PW4/Dr. D.V. Reddy conducted on 23.09.2013, which is the primary basis for the Prosecution’s allegation that Johnson pipes were not used, was ***confined solely to the bore-well at A-25, Krishna Park***. The Report (Ex.PW4/A), the video recording (Ex.PW4/B), and the Site Inspection Memo all relate exclusively to this one site. Conspicuously, there is ***no mention whatsoever in the entire***



Chargesheet or trial record of any inspection having been conducted at the second bore-well at C-47, Krishna Park.

68. *The investigation, without any explanation for the omission of the C-47 Krishna Park site, renders the Prosecution case incomplete and insufficient to sustain a conviction for offences relating to the entire Contract Agreement.*

69. Now, essentially there are **two aspects** which need to be answered by the Prosecution: ***firstly***, *Whether the Johnson pipes, as per the Work Order, were not used by the Contractor and the pipes installed were of inferior quality? And **secondly**, Whether the Report of PW4/Dr. D.V. Reddy establishes the non-use of the pipes of make Johnson?*

(a) **Whether the Johnson pipes as per the Work Order were not used by the Contractor?**

70. The first material witness examined is **PW10/Anil Kumar**, who was EE in South-I Division of DJB from March, 2006 to 18.08.2009, had 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. Furthermore, the entries are made in the MB with respect to checking and inspection of material at the spot by the officials.

71. From the testimony of PW10, it is evident that 100% responsibility of getting the work executed is of the JE (who is Pradeep Kumar/Accused No.1 in the present case) whereas the responsibility of checking 50% of the work executed lies with the AE and 10% with the EE.



72. Further, it emerges from the testimony of **PW-10/Sh. Anil Kumar** that that the JE is responsible for checking the material every time physically brought at the site for execution of the work/contract. Sometimes AE also visits the spot to check the material and also EE comes to the sport and checks the material occasionally.

73. **PW10/Anil Kumar**, further explained that the entries are made in the MB after 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 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.

74. PW-10 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 admitted in his cross-examination that the Entries are made by JE in the MB as per the progress of the work being executed at the site. There are entries made by the JE and are counter-signed by AE with respect to the material brought at the site as well as usage of the same.* 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.

75. **PW10/Anil Kumar (EE)**, further admitted that the ZE had signed on **Test Check Report**, Ex.PW10/K about the existence of Johnson Pipes at the site. Pertinently, he also deposed that as per the *Strata Chart*, 55 m and 60 m Johnson Pipe was used in the Tube-wells at C-47, Krishna Park and A-25, Krishna Park, respectively.



76. The most significant document in proof of the execution of the work that is relied by the Prosecution, is the **Measurement Book (MB), Ex.PW10/C**. It records in detail the work done and the quantities of the items that were used. *Measurement Book No.18444 for A-25, Krishna Park site clearly records installation of 60 m of Johnson make pipe, which is in accordance with the Strata Chart for the said site.* Furthermore, the Measurement Book also records the use of 55 m of Johnson pipe for the C-47, Krishna Park site. *This MB has been cross-checked and counter-checked by all the three officials i.e. EE, ZE and JE.*

77. The testimony of PW-10 confirms the genuineness of the entries recorded in the MB, which were made regularly and contemporaneously with the execution of the work at the site. The Prosecution has failed to prove that these entries were false or fabricated. There is no evidence to suggest that the signatures of the AE or EE were obtained fraudulently, or that these officers were involved in making any false entries.

78. Furthermore, the **Completion Report, Ex.PW9/E** was prepared was signed by EE, ZE and JE. It stated that the *actual date of start of Work Order is 28.02.2008 and the work was completed on 05.03.2008*, for both the sites. The Completion Report duly recorded the quantity of each of the item along with rate and units with the amount. Therein also, it was indicated that Johnson pipe had been used in respect of Work Order No.415 dated 21.02.2008, which pertained to C-47, Krishna Park and A-25, Krishna Park.

79. These documents i.e. MB Book and the Completion Report, were prepared contemporaneously and signed by multiple levels of DJB officials



including the JE, AE, ZE, and EE, and consistently record the use of Johnson pipes with specific measurements.

80. The **Strata Chart of bore-well at A-25, Krishna Park, Ex.PW10/G** and Strata Chart of bore-well at *C-47, Krishna Park, Ex.PW10/H*, while prepared alongside the Completion Report mentions that “*blind and slotted pipes*” were inserted in the bore-wells. These Strata Charts have been signed by the ZE, EE, JE concerned and form part of the official record.

81. The Prosecution has not disputed the authenticity of these Strata Charts or suggested that they were fabricated or tampered. The absence of specific mention of the Pipes being of Johnson make, in the Strata Charts is significant, particularly when the entire case rests on the allegation that Johnson pipes were not used. It is well-settled that Johnson pipes are, by their very nature, slotted pipes designed for bore-well applications. Therefore, the reference to “slotted pipes” in the Strata Charts is consistent with, and does not contradict, the use of Johnson make pipes. No adverse inference can be drawn against the Appellants merely on account of the non-specification of the brand name in the Strata Chart, especially when it is so recorded in the MB and the Completion Report.

82. From the evidence of prosecution witnesses and the documents proved by the prosecution, i.e. essentially the Measurement Book along with Test Check Report and the Completion Report along with Strata Chart, it is established that *there is no cogent evidence to show that Johnson Pipes had not been used for execution of the work as per the Work Order.*



(b) Inspection Conducted By Dr. D.V. Reddy during the Investigations:-

83. The Prosecution has tried to discredit the use of Johnson pipes also by relying on the expert evidence of PW4/Dr. D.V. Reddy, which is in respect of only one site i.e. A-25, Krishna Park. No explanation is forthcoming as to why the second site was not got inspected from the Expert.

84. Before considering the evidence of PW-4, it would be relevant to refer to the testimony of **PW-10/Sh. Anil Kumar** who had deposed that he was associated with the CBI team headed by PW-12/Sh. Joseph Krelo along with the Accused No.1/Suresh Aggarwal (JE), K.N. Dhayni (AE) and the Accused No.2/Ravi Goyal (Contractor) and had accompanied Dr. D.V. Reddy for the inspection of the site at A-25, Krishna Park, on 23.09.2013.

85. PW-10 admitted that the average life of bore-well is about 5-7 years. He further deposed that the bore-well was functional when the inspection was done by the Expert, after registration of the case. The Bore-well was functional when the inspection was done by the Expert on 23.09.2013, after registration of the case.

86. This admission itself shakes the very foundation of the entire case of Prosecution of making an effort to assert that the Work Order duly executed successfully in A-25, Krishna Park was not in accordance with the Work Order, and its endeavor to somehow find corroboration from the evidence of the Expert to assert otherwise.

87. The reference is now made to the testimony of expert **PW4/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.

88. 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 by him, in the present case. He used Bore-Hole camera methos to ascertain the make of Pipes used, the efficacy of which shall be considered subsequently.

89. As per the Report of ***Dr. D.V. Reddy Ex.PW4/A dated 02.12.2013, the inspection at A-25 Krishna Park was conducted on 23.09.2013***. 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 183 m. Top 90 m is shown with 200 mm dia. Blank pipes followed by 12.1 m MS slotted pipe. Bore well diameter changed from 200 to 150 mm at ~ 102 m. At 150 mm dia bore initially about 60 m of slotted pipe is indiacted followed by 21.75 m of blank pipe is shown. However, type of slotted pipe (Johnson or MS) used in the well is not mentioned in the Strata Chart.

Observation

The well as scanned on 23.09.2013 using borehole camera and measured the present depth as > 152 m. Top 97.5 m is seen with 200 mm blank casing. Well reduction



from 200 mm to 150 mm seen at 97.5 m. At 150 mm dia, MS slotted casing started and continued up to 152 m. As the Camera cable length is only 152 m we could not go further.”

90. **PW4/Dr. D.V. Reddy** deposed that the inspection took about half an hour. He could not specify whether the place of the bore-well was residential area or not. He also stated the *pumping assembly* was not taken out from the bore-well in his presence.

91. The *most significant aspect* which emerges from the testimony of PW4/Dr. D.V. Reddy is his admission that Johnson pipe is made of metal with special alloy and 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 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. He categorically stated that after such deposit, the type of pipe used cannot be found.

92. These admissions become significant in the light of testimony of **PW-10/Sh. Anil Kumar** who had 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, which happens more speedily in metal than PVC pipes, due to which it is difficult to identify the make and



type of the pipe used in the bore-well. The Johnson pipe is made up of metal.

93. As noted above, the inspection has been carried out after 5 years of the installation and admittedly there was sedimentation and moss deposit in the pipes, which could not have possibly enable PW4/Dr. Reddy to make any assessment about the make of the Pipes used.

94. PW4/Dr. D.V. Reddy explained the methodology adopted by him for carrying out the inspection. In the Report Ex.PW4/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.”



95. Dr. D.V. Reddy further deposed 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.

96. PW- 4/Dr. D.V. Reddy also admitted that if the ground water is dirty, the visibility of the camera would be low. *Considering that the inspection itself was conducted after a span of more than 5 years, no categorical conclusion could have been drawn that whether the pipes were of make Johnson, only on inspection through Bore-Hole camera.*

97. 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 were already some previous recordings in his camera. He stated that due to creation of new file for each and every occasion it was not harmful, so he could not show the recording to anyone. He could not depose if he stated to anyone that there was a Johnson pipe buried inside, at the time of inspection when he had put his camera inside the bore-well in the open area.



98. Pertinently, at the time of inspection he was accompanied by PW10/Anil Kumar (EE) along with other officials of DJB and I.O. Joseph Krelo. Even though as per the testimony of PW4/Dr. Reddy, 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.PW4/A pertained to the A-25, Krishna Park site.

99. 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 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.PW4/A.

100. Therefore, in the absence of corroboration of the Report of PW4/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.

101. Moreover, the CD was sent for its examination to FSL. The **FSL Report Mark PW-15/1** stated that the CD was not having the required video quality and hence, *no opinion on the same could be offered. This again creates a doubt about the quality of the Camera and the recording*



made by Dr. Reddy and it is a highly unreliable piece of evidence, and not much reliance can be placed on the same.

102. ***To sum up***, it is quite clear that PW4/Dr. DV Reddy is not an expert in pipe identification or metallurgy. He admits that the inspection was conducted after 5 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, PW4 did not use available *geophysical methods* to identify buried metals.

103. ***In view of these fundamental deficiencies, the expert testimony of PW-4 cannot be considered reliable. Its evidentiary value stands weakened and cannot be used to discredit the official records duly prepared and verified by DJB officers. The lack of proper methodology and corroboration further reduces its evidentiary value.***

104. In cases involving allegations of substandard work or material, an inspection of the site, serves as a crucial piece of corroborative evidence. There is nothing on record to suggest that any inspection was conducted by PW-4 for the site at C-47, Krishna Park. Moreover, the Report, Ex.PW4/A is also silent on this aspect. ***Thus, the Prosecution's case suffers from a major gap due to its failure to either inspect the bore-well at C-47, Krishna Park or produce any inspection report for that site on record.***

105. It is also significant to note that after the completion of boring work in March, 2008, the site got handed over to DJB. There is not an iota of evidence that since 2008 till the date of inspection in September 2013, there



were no repair work or replacement of any part of the pipes already installed, were undertaken by DJB. *Therefore, after a gap of 5 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 2008.*

106. ***In conclusion***, the substantive evidence, including the Measurement Books and the Completion Certificate, does not prove that the Contractor failed to use Johnson pipes as specified in the Work Order or that there was any collusion between Ravi Goyal, Contractor and Suresh Aggarwal, JE. The site inspection was carried out not only by the JE but also by the AE and EE, in accordance with DJB norms and established practice. Moreover, the expert evidence is unreliable and fails to establish the alleged non-use of Johnson pipes. There is no conclusive or cogent evidence to suggest “non-use” of Johnson pipes, which is an essential requirement in criminal cases where the prosecution must prove its case beyond reasonable doubt.

107. There is no material to indicate any conspiracy between the Appellants to substitute inferior pipes while claiming payment for Johnson pipes. Therefore, the Prosecution has miserably failed to disprove that no Johnson Pipes were used by the Appellant in execution of the work.

108. 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 ?

109. 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.

110. *The Prosecution's case regarding forgery rests on the theory that Invoice No. BW/307/2007-08 dated 25.10.2007 submitted by Ravi Goyal (Ex.PW1/D) is a forged document because the same Invoice number had been genuinely issued to one M/s Samtel Color Ltd. on 26.03.2008 (Ex.PW1/B).*

111. The testimony of PW-10/Sh. Anil Kumar is significant as he explained about the procedure and the responsibility of the persons involved in preparing the Running/Final Bill/Completion Report in consonance with the MB. He deposed that the JE prepares running/final bill, Completion Report in consonance with the MB. 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. The Certificate that the Contractor has not used any infrastructure/item of DJB exclusively of the water used during



installation of tube-wells, is to be given by the contractor and also enclosed with the bill at the time of payment, otherwise, 1% recovery will be made from the bill.

112. PW-10/Sh. Anil Kumar further deposed that the responsibility to verify the purchase voucher from the vendor, is of the Accounts department. After the conclusion of work, the Certificates were issued by JE, AE and EE stating that the work has been done as per the Work Order. Without the Certificates, the payments are not released by the accounts department to the contractors. However, the JE and AE do not verify the purchase voucher submitted by the vendor. The Bill is forwarded for payment to the Accounts Department only after recording the satisfaction in the MB by signing the MB, Strata Chart, Completion Report and Test Check Report signed by JE, AE and EE.

113. The Prosecution had examined **PW1/Kamal Kumar Aggarwal** Managing Director of M/s Bharti Water Pvt. Ltd., to prove that they had not sold the Johnson Pipes to Ravi Goyal. He deposed that their Company is the sole distributor of Johnson Pipes since the year 2004. Since the inception of M/s Bharti Waters Pvt. Ltd., PW-1 is one of its Director along with his brother, Sanjay Kumar Aggarwal. He further deposed that they used to maintain the Ledger regarding the material sold to the parties. He explained that the Invoice Number is unique and it cannot be repeated for any other party and there cannot be two Invoices for the same number. He further deposed that he had not given any details of the sale purchase during the year 2007-08 to CBI, since it was not asked. The genuine Bill is entered in the Sale Tax record of the Company, but it was not handed over to CBI.



114. Significantly, while PW1/Kamal Kumar Aggarwal denied the suggestion that cash transactions with respect to the sale of Johnson Screen Pipes to Ravi Goyal, had been deliberately not entered in the statement of account to dishonestly evade sales tax, but at the same time he could not state whether the Bill, *Ex.PW1/D (Invoice number BW/307/2007-08 in favour of M/s Ravi Goyal)* was ever verified by DJB from the Company at any point in time. Pertinently, he then stated that the purchase of Johnson Pipe vide Bill No. BW/307/2007-08 dated 25.10.2007 was purchased and reflected in the accounts of Ravi Goyal. PW1 also deposed that the certified copy of Ledger account of Ravi Goyal was seen by him in his Ledger account from 01.04.2007 to 31.03.2008 as well as 01.04.2008 to 31.03.2009, and bears his signatures, Ex.PW-1/C. He also stated that Ex.PW1/C is the genuine Statement of Account issued by their Company and was generated from the computer on his instructions. Although he denies the suggestion that the Statement of Account is a false document, but states that the purchase of Johnson pipe vide Bill No. BW/307/2007-08 dated 25.10.2007 of M/s Bharti Waters Pvt. Ltd. is Ex.PW1/D, was in fact, reflected in the accounts of Ravi Goyal. This Invoice No. BW/307/2007-08 dated 25.10.2007 described the product purchased as ‘*Strainer Filter in Pipe Form LCG Water Well Screen Size 150 mm dia (make - Johnson)*’, Quantity of 320 m @ 2180 per unit and total amount of Rs. 6,97,600.00.

115. The testimony of PW-1 **Kamal Kumar Aggarwal**, thus, established the genuineness of the Invoice of purchase of Johnson Pipes by Ravi Goyal.

116. PW-1 pertinently, deposed that he has seen the *Invoice number BW/307/2007-08 in favour of M/s Samtel Color Ltd.*, which is the genuine Invoice issued by the Company, Ex.PW1/B. However, **PW13/Sh. Rajat**



Jain, who was the accountant with M/s Samtel Color Limited, who asserted that purchases were made by M/s Samtel Color Limited *vide* a Bill bearing the number BW/307/2007-08, *could not produce the original bill itself* though he produced his records as Ex.PW13/A.

117. Evidently, there is some discrepancy with regard to the original bill. However, the Prosecution did not subject the disputed Invoice to any examination, nor did it produce the original Invoice Book or the full Ledger of M/s Bharti Waters Pvt. Ltd. to demonstrate any tampering in the sequence of Invoices. **PW13/Sh. Rajat Jain** himself could not produce the original bill allegedly issued to M/s Samtel Color Ltd. There is no explanation by PW13/Rajat Jain as to how he got the photocopy of the Invoice Ex.PW13/A and why he was unable to produce the original copy of the same in the Court.

118. *The Prosecution was unable to produce any positive evidence - either the allegedly forged Invoice or credible testimony from the Supplier, to establish that no sale was made.* The burden of proving that forged or fabricated Invoices was squarely on the Prosecution. In the absence of cogent evidence, the allegation of fabrication rests on mere conjecture and suspicion.

119. Furthermore, the learned Special Judge has observed that the original of Invoice, Ex.PW1/D was not produced during trial and that despite Instructional Orders dated 06.09.2000, Ex.PW9/D1 and 02.11.2004, Ex.PW9/F mandating verification by the Finance Officer, there is no evidence that Bill Ex.PW1/D was actually verified. *However, this observation actually undermines the Prosecution's case.* If the said Instructional Orders mandated verification by the Finance Officer and such



verification was not done, the responsibility lies with the Finance Officer and Accounts Department and not with the JE or contractor. Moreover, PW10/Sh. Anil Kumar admitted there is no standard procedure requiring the technical wing to verify purchase vouchers from vendors. The Invoice bears endorsements of JE and ZE and payment was released through official channels after multi-tier scrutiny.

120. The learned Special Judge has placed strong reliance on the fact that the Invoice, Ex.PW1/D is dated 25.10.2007 while the tender was submitted on 05.02.2008 and so, it is difficult to believe the purchase of pipes would have been made four months before submission of the tender.

121. However, the learned Special Judge fell 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.

122. ***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*.

123. The defence of the Contractor of having purchased the Johnson pipes through the Invoice dated 25.10.2007 and being in possession of the pipes which were used in this Project, is probable and the benefit of the same has to be necessarily extended to the Appellant.



124. **PW-10/Sh. Anil Kumar (EE)** *also* deposed that 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. He 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.*

125. 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 PW10 supports the defense of the Appellants that Johnson pipes were indeed purchased and used.*

126. The Prosecution has failed to discharge its burden of proving that the invoices submitted by the contractor were forged or fabricated. The evidence on record, including the admissions of PW1, the verification by DJB officials, and the satisfactory completion of work, all support the defence version that Johnson pipes were genuinely purchased and used in execution of the Project. Accordingly, the allegation of forgery is unsupported by evidence and cannot be sustained. The benefit of doubt must, therefore, be extended to the Appellants.

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

127. The procedure for finalization of the Bill is explained by **PW11/Smt. Lekha Pawar** who has deposed that she 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.

128. **PW-10/Sh. Anil Kumar** had deposed that he had checked the estimates pertaining to the case file of CA No. 136/2007-08, Ex.PW10/E which was in respect of two tube wells. He reviewed the estimate which was checked by Usha Arora Draftsman-III on 19.12.2007 on the basis of planning circulated/approved rates. He identified his signatures on the Completion Report, Ex.PW9/E which was also checked by the Draftsman as per the recordings of the MB which were duly verified by JE, ZE, EE/Accounts personal of the concerned division and DE approved the Completion Report.

129. 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.

130. **PW-6/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 13.06.2014, Ex.PW6/A (D14). He deposed that he had seen the payment



details along with the attested copies of cash book which was prepared by him as per the original cash book (D-15), duly authenticated by EE (Ex.PW6/B) which was also signed by him.

131. **PW-6** stated that he has complete knowledge regarding issuance of *Instructional Orders/Direction* from the department, time to time. The payments are processed and released by the Accounts Department in according 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 of 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.

132. **PW9/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.

133. **PW-9** further deposed that he had seen the Pay-Order of the first and final bill of the Contract Agreement through which payment of Rs.8,26,697/- was made to the Contractor, Ex.PW9/D. It had seen the signature of PW-9 himself as well as PW-10/EE.

134. Furthermore, PW9 deposed that the documents received from the Accounts section are 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.

135. The next material witness is **PW2/Dr. Jayadev Sarangi**, Member Administration, DJB deposed that he is the Competent Authority to appoint as well as relieving of the 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.

136. Lastly, it has to be noted that **PW15/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.

137. **To conclude**, the evidence of PW6/Manoj Kumar Rathor and PW9/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.

138. Both PW6/Manoj Kumar Rathor and PW9/Satya Prakash have confirmed that *all documents were in order and no discrepancy or objection was raised by the Accounts Department.*

139. 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.

140. The learned Special Judge held that “*wrongful loss*” was caused to the government, even though the bore-wells are still working and providing water for consumption and the purpose of installation of re-boring stands fulfilled. DJB had received functional bore-wells that have been operational since without any complaint regarding water quality or yield. PW10/Sh. Anil Kumar (EE) admitted that the average life of a bore-well is 5-7 years. The fact that these bore-wells have functioned throughout their expected life, clearly establishes that no loss was caused. If inferior pipes had been used, the bore-wells would have failed long ago.

141. Thus, it is concluded that the Prosecution has failed to prove its case 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.



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Conclusion:-

142. 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, 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, Suresh Aggarwal in using of sub-standard material or claiming money on the basis of forged Invoice.

143. The Impugned Judgment of Conviction dated 09.10.2015 and Order on Sentence dated 26.10.2015 is hereby, set aside. **The Appellants are hereby acquitted.**

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

**(NEENA BANSAL KRISHNA)
JUDGE**

**OCTOBER 30, 2025
RS/Va**