

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.577 of 2011**

Parash Nath Sharma S/O Late Deo Nath Sharma R/O Vill-Arang, P.S.-Dinara,
Distt-Rohtas, The Then Junior Engineer, Ghorasahan Branch Canal
Pramandal , Chauradano, Motihari

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 578 of 2011

Arising Out of PS. Case No.-17 Year-1987 Thana- VIGILANCE District- Patna

Devanand Singh S/O Late Digvijay Singh R/O Vill- Ratsar Kala, P.S- Garwar,
Distt.- Ballia, Uttar Pradesh.

... .. Appellant/s

Versus

The State Of Bihar, Through Vigilance Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 577 of 2011)

For the Appellant/s : Mr. Pramod Kumar Singh, Advocate
Mr. Kamlesh Kumar, Advocate

For the Vigilance : Mr. Rana Vikram Singh, Advocate

(In CRIMINAL APPEAL (SJ) No. 578 of 2011)

For the Appellant/s : Mr. Pramod Kumar Singh, Advocate
Mr. Kamlesh Kumar, Advocate

For the Vigilance : Mr. Rana Vikram Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
C.A.V. JUDGMENT**

Date:12-05-2026

Heard learned counsel appearing on behalf of the
appellants and learned counsel for the Vigilance.



2. The appellants have preferred the present criminal appeals against the judgment of conviction and order of sentence dated 04.05.2011 and 07.05.2011 passed by the learned Special Judge Vigilance (North Bihar), Muzaffarpur in Special Case No. 101 of 2002 (arising out of Vigilance P.S. (Patna) Case No. 17 of 1987 whereby and whereunder the accused/appellants have been convicted for the offence punishable under Sections 467, 468, 471, 420, 120B of the Indian Penal Code and Sections 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "P.C. Act") and have been sentenced to undergo Rigorous Imprisonment for the period of ten years along with a fine of Rs.50,000/- under Section 467 of the IPC, Rigorous Imprisonment for seven years with fine of Rs. 50,000/- under Section 468 of the IPC, Rigorous Imprisonment for five years with fine of Rs. 25,000/- under Section 420 of the IPC and Rigorous Imprisonment for seven year with fine of Rs. 25,000/- under Sections 13(1)(d) read with Sections 13(2) of the P.C. Act, 1988 with a direction that all the sentences shall be run concurrently and observed that there is no need to pass separate sentence under Sections 471 and 120B of the IPC.

3. Being aggrieved and dissatisfied with the aforesaid



judgment of conviction and order of sentence, the appellants have preferred the present Appeal before this Court, assailing the impugned judgment primarily on the ground that the learned trial court failed to appreciate the evidence available on record in its proper perspective and has wrongly recorded the conviction of the appellants despite the existence of serious contradictions and deficiencies in the prosecution case.

4. The prosecution case, in brief, is that pursuant to a Government order dated 27.04.1987, the Vigilance Investigation Bureau, Bihar conducted an enquiry into alleged defalcation and misappropriation of Government funds in the repair works of embankments of Ghorasahan Branch Canal and Triveni Canal during the year 1986–87. The enquiry was initiated following complaints raised in a meeting of the 20-Point Programme Committee and a subsequent recommendation by the concerned Minister. It was alleged that repair works were carried out at about 1000 places through different contractors and that large-scale financial irregularities were committed by inflating measurement entries and submitting false bills. Due to practical constraints, the Vigilance team inspected only 13 locations and found that payments had been made far in excess of the actual work done. In the specific work under consideration, against an



estimated amount of Rs. 84,745/-, a sum of Rs. 62,113/- was paid, whereas the actual work executed was assessed at only Rs. 18,699/-, resulting in excess payment of Rs. 43,414/- (Rs. 39,647/- after permissible tolerance). It was thus alleged that the accused persons, namely the Junior Engineer and Assistant Engineer, in conspiracy with others, dishonestly prepared false measurement records and facilitated fraudulent withdrawal of Government money, thereby committing offences under the Indian Penal Code and the Prevention of Corruption Act.

ARGUMENT ON BEHALF OF THE APPELLANTS

5. Learned counsel for the appellants submitted that the prosecution case, as per the allegation made in the F.I.R., is based on vague and generalized allegations of misappropriation in canal repair works at about 1000 places during the year 1986–87, however, only 13 places were arbitrarily selected for inspection on a sample basis, rendering the very foundation of the prosecution case doubtful. It is submitted that the appellants were concerned only with a limited stretch between R.D. 171.600 to 174.200, for which estimates were duly prepared, approved by competent authorities, and work orders were issued in accordance with PWD Code. The Measurement Book was regularly maintained and payments were made through proper



channel, without any deviation. It is contended that the entire prosecution case hinges upon a subsequent measurement conducted after about four months during the rainy season, which inherently renders the assessment unreliable due to possible soil erosion, a fact acknowledged by the prosecution itself by applying a 20% tolerance factor.

6. Learned counsel further submitted that the sole basis of conviction, i.e., the comparative measurement chart (Ext. 6), is wholly unreliable and inadmissible, as it is not prepared in accordance with prescribed technical procedure, is made on plain paper allegedly in pencil, and does not bear signatures of the appellants, members of the vigilance team, or even its author. It has been submitted that P.W.1 is not a technical expert and his evidence is hearsay on the core issue of measurement; P.W.2 is merely a formal witness; and the entire case rests upon P.W.3, whose testimony is riddled with contradictions, including admission of absence of rules for tolerance, delay in measurement, lack of proper records, and inability to explain methodology. It is further submitted that even the trial court, in paragraph 18 of the impugned judgment, has noticed that the measurement lacked proper records and appeared to be “table work”, thereby seriously undermining the



prosecution case.

7. Learned counsel further submitted that the appellants have already been exonerated in departmental proceedings on identical allegations, wherein it has been found that the measurement was not conducted in a proper and scientific manner, which supports the innocence of the appellants. It is submitted that there is complete absence of *mens rea*, as all acts were performed in accordance with departmental procedure, and there is no evidence of dishonest intention, wrongful gain, or conspiracy. The prosecution case is entirely based on circumstantial evidence without any direct proof, and at best raises suspicion. In this regard, learned counsel has placed his reliance is placed on *C. Chenga Reddy & Ors. vs. State of A.P.*, reported in *(1996) 10 SCC 193*, to submit that suspicion, however strong, cannot take the place of proof and the impugned judgment of conviction and sentence is unsustainable in law and is liable to be set aside, and the appellants be acquitted of all charges.

ARGUMENT ON BEHALF OF THE VIGILANCE

8. Learned counsel appearing on behalf of the Vigilance Department submitted that the prosecution has successfully established the charges against the appellants beyond all reasonable doubt through cogent, reliable, and duly



corroborated documentary, as well as, oral evidence. It is contended that the vigilance inquiry conducted in the matter revealed large-scale defalcation and misappropriation of government funds in the execution of canal repair works in the district of East Champaran, wherein, huge amounts were withdrawn despite the works either not being executed or being grossly exaggerated. Learned counsel further submitted that the Measurement Books, vouchers, agreements, payment records, and technical inspection reports conclusively proved deliberate falsification and fabrication of official records for facilitating illegal withdrawal of public money. It was argued that the appellants, being the concerned Engineer and a public servant entrusted with official responsibility, played an active and decisive role in recording false measurements, certifying incomplete or non-existent works, and enabling illegal disbursement of payments to the contractor. The entries in the Measurement Books bearing the signature of the appellants clearly fixed their responsibility and established their involvement in the offences punishable under the Indian Penal Code as well as the Prevention of Corruption Act.

9. Learned counsel further submitted that the oral testimonies of the Vigilance Officer, seizure witnesses, and



other prosecution witnesses fully corroborated the documentary evidence and clearly established a systematic and well-orchestrated conspiracy amongst the accused persons for siphoning off public funds. It is further contended that the discrepancies detected during technical evaluation were substantial, deliberate, and indicative of clear criminal intent and abuse of official position. Learned counsel argued that the learned trial court, after meticulous appreciation of the entire evidence on record, had rightly recorded the judgment of conviction and order of sentence and that no perversity or illegality existed warranting interference by this Hon'ble Court in appellate jurisdiction. It is further submitted that offences involving corruption, manipulation of official records, and misappropriation of public funds strike at the root of public administration and public confidence in governance and therefore deserve a strict approach.

10. Learned counsel appearing on behalf of the Vigilance has placed strong reliance upon the judgment rendered by the Hon'ble Supreme Court in case of ***Kehar Singh & Ors. v. State (Delhi Administration)***, reported in ***1988 (3) SCC 609***, wherein it has been categorically held that the essence of the offence of criminal conspiracy lies in the agreement



between the parties and such agreement can be inferred from the surrounding circumstances and conduct of the accused persons. It has been submitted that direct evidence of conspiracy is seldom available and the same is generally established through a chain of circumstances indicating concerted action and common design.

11. Learned counsel for the Vigilance has further relied upon the judgment of the Apex Court in case of *State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru* reported in (2005) 11 SCC 600, to contend that while appreciating evidence relating to conspiracy, the cumulative effect of the proved circumstances is required to be considered rather than examining each circumstance in isolation. It has been argued that the conduct of the accused persons and the documentary evidence available on record clearly establish their conscious participation in the illegal acts resulting in wrongful loss to the Government exchequer.

ANALYSIS AND CONCLUSION

12. Heard the parties.

13. The appellant, being a public servant, was entrusted with the duty to act in the interest of the State, it has been alleged that instead he misused his position to facilitate illegal



gain. Such acts not only cause financial loss but also undermine public trust in the system and erode the integrity of governance. It is well settled that offence of this nature, involving corruption and misuse of official position, strike at the very root of public administration and, therefore, deserve to be dealt with sternly and with strict approach. I have perused the lower court records and proceedings and also taken note of the arguments canvassed by learned counsel appearing on behalf of the parties.

14. The learned trial court, on the basis of materials as collected during the course of investigation, passed the judgment of conviction and order of sentence dated 04.05.2011 and 07.05.2011 for the offences under Section Sections 467, 468, 471, 420, 120B of the Indian Penal Code and Sections 13(1)(d) read with Section 13(2) of the P.C. Act, 1988.

15. During the trial, the prosecution has examined altogether five witnesses, namely:

- 1) **P.W.1 – Arun Kumar Singh “Veenit”** (Informant, Inspector of Police, Vigilance Investigation Bureau, Patna)
- 2) **P.W.2 – Abdul Gaffar** (Then Accountant, Motihari Treasury)
- 3) **P.W.3 – Parmeshwari Pd. Sinha** (Retired Executive Engineer – Technical Expert)



- 4) **P.W.4 – Shambhu Nath** (Retired Chief Engineer – Formal Witness)
- 5) **P.W.5 – Ram Nath** (Typist – Formal Witness)

16. The prosecution has also relied upon following documents exhibited during the course of trial:-

- 1) **Ext. 1** – Measurement Book
- 2) **Ext. X** – Voucher (for identification)
- 3) **Ext. X/1** – Work Order (for identification)
- 4) **Ext. X/2** – Agreement (for identification)
- 5) **Ext. 2** – Written Report (by informant)
- 6) **Ext. 3** – Formal FIR
- 7) **Ext. 4** – Cheque issued to contractor
- 8) **Ext. 5** – Seizure List
- 9) **Ext. 6** – Comparative Chart (Technical Report)
- 10) **Ext. 7** – Sanction Order (dated 25.09.2000)
- 11) **Ext. 7/1** – Sanction Order (dated 19.04.2001)

17. The provisions of Sections 420, 467, 468 of the IPC and Sections 13(1)(d) read with Section 13(2) of the P.C. Act, 1988 are reproduced hereinafter as follows : -

"Section 420. Cheating and dishonestly inducing delivery of property.—

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable



security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 467. Forgery of valuable security, will, etc.—

Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 468. Forgery for purpose of cheating.—

Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either de-scription for a term which may extend to seven years, and shall also be liable to fine.

Prevention of Corruption Act, Section 13. Criminal misconduct by a public servant.

- (1) A public servant is said to commit the offence of criminal misconduct,-

(a)if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or

(b)if he intentionally enriches himself illicitly during the period of his office.

Explanation 1. - A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

Explanation 2. - The expression "known sources of income" means income received from any lawful sources.] [Substituted by Act No. 16 of 2018, dated 26.7.2018.]



(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine."

18. All the accused have also been charged of committing the offence under section 13 (1) (d) of the Prevention of Corruption Act 1988. The relevant portions of section 13 which provide for criminal misconduct by a public servant read as under:

"13. Criminal misconduct by a public servant.- (1) A public servant is said to commit the offence of criminal misconduct,-

...(d) if he,-

...(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public advantage; or (2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which shall may extend to seven years and shall also be liable to fine."

19. Section 13 in general lays down that if a public servant, by corrupt or illegal means or otherwise abusing his position as a public servant obtained for himself or for any other person any valuable thing or pecuniary advantage he would be guilty 'criminal misconduct'. Clause (2) thereof speaks of the punishment for such misconduct. The ingredients of Sub-clause (iii) of Section 13 (1) (d) contemplate that a public servant who while holding office obtains for any person any valuable thing or pecuniary advantage without any public interest would be



guilty of criminal misconduct. Sub section (2) of section 13 provides for the punishment for such criminal misconduct. Minimum sentence is prescribed under Section 13(2) of the 1988 Act and a public servant who abuses his position as such for obtaining for himself or for any other person any valuable thing or pecuniary advantage cannot be punished for a term of imprisonment, which is less than for the duration of one year. For convicting the person under Section 13(1)(d), there must be evidence on record that accused 'obtained' for any other person any valuable thing or pecuniary advantage without any public advantage.

20. Section 19 of the P.C. Act, 1988 provides for obtaining the sanction for prosecution accorded against the appellants. The prosecution has relied upon Sanction Orders dated 25.09.2000 and 19.04.2001, which were duly proved and marked as Ext. 7 and Ext. 7/1 respectively through P.W.4 and P.W.5. P.W.4, being the retired Chief Engineer, proved the sanction order and identified the signature of the competent authority, whereas P.W.5, the typist of the Law Department, deposed regarding preparation of the sanction order under the instructions of the competent authority and proved the same. From the evidence available on record, it appears that the



sanction orders were issued by the competent authority after due consideration of the materials collected during investigation and upon application of mind to the facts and circumstances of the case. The sanction orders having been duly exhibited and proved in accordance with law, and there being no substantive challenge to the competency of the authority granting sanction.

Whether Conspiracy and Common Intention Established?

21. That the acts of the appellants cannot be viewed in isolation, as it has to be clearly demonstrate whether the material on record prove a concerted and coordinated course of conduct involving the engineers and the contractor, marked by fabrication and manipulation of records at multiple levels and a collective endeavor to siphon off government funds. The manner in which false measurements were recorded, documents were prepared and verified, and payments were facilitated establishes clear meeting of minds and prior concern among the accused persons. In such circumstances, the chain of events unmistakably points towards a well-orchestrated scheme, thereby fully attracting the ingredients of criminal conspiracy punishable under Section 120(B) of the Indian Penal Code.

22. In case of *Kehar Singh & Ors. v. State (Delhi Administration)*, reported in *1988 (3) SCC 609*, the Hon'ble



Supreme Court, while quoting Russell on Crimes, observed as under:

"The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se enough"

23 . In case of **Ram Narayan Popli v. CBI**, reported in **(2003) 3 SCC 641**, the Apex Court observed as under:

"...Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment..."

24. Similarly, in case of **State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru**, reported in **(2005) 11 SCC 600**, it was held that as under :

"101. One more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable doubt. Lastly, in regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the



parties must be conscious and clear enough to infer their concurrence as to the common design and its execution."

25. In case of ***Yogesh @ Sachin Jagdish Joshi v. State of Maharashtra***, reported in ***(2008) 10 SCC 394***, it was reiterated that:

"23. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement."

Whether allegation can be said to be only codal violation?

26. The Hon'ble Supreme Court in the case of ***C. Chenga Reddy v. State of A.P.***, reported in ***(1996) 10 SCC 193***, in para no. 22 held that "mere disregard of relevant provisions of the Financial Code as well as ordinary norms of procedural behaviour of government officials and contractors, without conclusively establishing, beyond a reasonable doubt, the guilt of the officials and contractors concerned, may give rise to a



strong suspicion but that cannot be held to establish the guilt of the accused." I find it gainful to quote paragraph no. 22, which, *inter alia*, is as under:

"22. On a careful consideration of the material on the record, we are of the opinion that though the prosecution has established that the appellants have committed not only codal violations but also irregularities by ignoring various circulars and departmental orders issued from time to time in the matter of allotment of work of jungle clearance on nomination basis and have committed departmental lapse yet, none of the circumstances relied upon by the prosecution are of any conclusive nature and all the circumstances put together do not lead to the irresistible conclusion that the said circumstances are compatible only with the hypothesis of the guilt of the appellants and wholly incompatible with their innocence. In Abdulla Mohd. Pagarkar v. State (Union Territory of Goa, Daman and Diu) [(1980) 3 SCC 110 : 1980 SCC (Cri) 546] under somewhat similar circumstances this Court opined that mere disregard of relevant provisions of the Financial Code as well as ordinary norms of procedural behaviour of government officials and contractors, without conclusively establishing, beyond a reasonable doubt, the guilt of the officials and contractors concerned, may give rise to a strong suspicion but that cannot be held to establish the guilt of the accused. The established circumstances in this case also do not establish criminality of the appellants beyond the realm of suspicion and, in our opinion, the approach of the trial court and the High Court to the requirements of proof in relation to a criminal charge was not proper. That because of the actions of the appellants in breach of codal provisions, instructions and procedural safeguards, the State may have suffered financially, particularly by allotment of work on nomination basis without inviting tenders, but those acts of omission and commission by themselves do not establish the commission of criminal offences alleged against them. We may reiterate that once the report, Ex. P-11, is ruled out of consideration as inadmissible, then it is not safe to rely on the mere impressions of the witnesses to hold the appellants guilty of the offences alleged against them. The prosecution has failed to establish that in 1979-80,



no work of jungle clearance in the Gandipalem Project Division was undertaken and that false and fabricated documents were prepared with a view to misappropriate government funds. The prosecution has not even been able to establish that less work of jungle clearance was undertaken but payment was shown to have been made for excessive work and some amount out of the payments made for the work was thus misappropriated by the appellants in connivance with the contractors. The conviction and sentence imposed against the appellants (which had been reduced by the High Court to a token sentence) under the circumstances cannot be sustained and we accordingly accept the appeal and set aside their conviction and sentence. Fine paid by the appellants shall be refunded to them.

27. The judgment of *C. Chenga Reddy (supra)* was referred by the Apex Court in the case of *A. Sivaprakash Vs State Of Kerela* reported in *2016 (12) SCC 273*.

Whether procedural irregularities can erase the criminality where dishonest conduct exist?

28. It must in this regard be emphasized that an act of breach of trust simpliciter involves a civil wrong of which the person wronged may seek his redress for damages in a civil court but a breach of trust with *mens rea* gives rise to a criminal prosecution as well, however, in case of *Palanikar v. State of Bihar* reported in *(2002) 1 SCC 241*, it has been accordingly held that “the most essential ingredient of proof of criminal breach of trust, therefore, is misappropriation with a dishonest intention. Breach of trust simplicitor is not an offence as is it not



associated with intention which is dishonest. The term dishonestly defined in Section 24 IPC means doing anything with the intention of causing wrongful gain to one person or wrongful loss to another. So the offence is completed when misappropriation of the property has been made dishonestly. Accordingly, even a temporary misappropriation falls within the ambit of the said offence.”

29. In the case of ***Dalpat Singh v. State of Rajasthan*** reported in ***[AIR 1969 SC 17]***, while interpreting an analogous provision in the unamended Prevention of Corruption Act, the Apex Court opined that :

"The ingredients of the offence under section 5 (1) (d) are: (1) that the accused should be a public servant, (2) that he should use some corrupt or illegal means or otherwise abuse his position as a public servant, (3) that he should have obtained a valuable thing or pecuniary advantage, and (4) for himself or any other person"

30. The provision of the P.C. Act, 1988 makes it clear that if the elements of any of the three sub-clauses are met, the same would be sufficient to constitute an offence of “criminal misconduct” under Section 13(1)(d) as held by the Apex Court in case of ***Rajiv Kumar v. State of U.P., (2017) 8 SCC 791***, which *inter alia* is as under:

“10.“A perusal of the above provision makes it clear that if the elements of any of the three sub-clauses are met, the same would be



sufficient to constitute an offence of “criminal misconduct” under Section 13(1)(d). Undoubtedly, all the three wings of clause (d) of Section 13(1) are independent, alternative and disjunctive. Thus, under Section 13(1)(d)(i) of the PC Act obtaining any valuable thing or pecuniary advantage by corrupt or illegal means by a public servant in itself would amount to criminal misconduct. On the same reasoning under Section 13(1)(d)(ii) of the PC Act “obtaining a valuable thing or pecuniary advantage” by abusing his official position as a public servant, either for himself or for any other person would amount to criminal misconduct”

31. The law makes it clear that mere violation of departmental procedures, financial codes, or administrative instructions, howsoever serious, cannot by itself give rise to criminal liability unless accompanied by clear proof of *mens rea* and dishonest intention. The law permits that even the circumstances brought on record may raise suspicion regarding the manner in which the work was executed and payments were processed, but such suspicion, however, strong, cannot take the place of proof. The prosecution has, therefore, have been able to establish guilt beyond reasonable doubt that the alleged excess payment was the result of any criminal conspiracy or intentional act of fraud?

32. From the perusal of records, the statements of the prosecution witnesses are as under:

1) **P.W.1 – Arun Kumar Singh “Veenit”**

(Informant)-This witness, being the informant and Vigilance



Inspector, deposed that pursuant to the Government order, an enquiry was conducted regarding misappropriation of Government funds in canal repair works during 1986–87. He stated that large-scale irregularities were detected and approximately Rs. 1.5 crores were defalcated. He further deposed that during inspection of selected sites, it was found that inflated bills were prepared and payments were made in excess of actual work done. He proved the written report (Ext. 2), formal FIR (Ext. 3), and identified relevant documents including the Measurement Book (Ext. 1). In cross-examination, he admitted that he was not a technical expert and that the findings were based on the report of technical officer. He also could not specify the exact amount of defalcation.

2) **P.W.2 – Abdul Gaffar (Accountant)**-This witness deposed regarding the procedure of payment from the Treasury and proved that a cheque was issued in favour of the contractor Bhagwat Mahto. He identified the cheque (Ext. 4) and the seizure list (Ext. 5). However, he admitted in cross-examination that the cheque was not issued in his presence and that he had no personal knowledge of the contractor or the transaction. His evidence is formal in nature, limited to proving the mode of payment.



3) **P.W.3 – Parmeshwari Pd. Sinha (Technical Expert)**- This witness, a retired Executive Engineer, deposed that he conducted measurement of the canal work in presence of vigilance officials. He stated that upon measurement, the actual work done was only worth Rs. 18,699/-, whereas a much higher amount had been claimed and paid. He prepared and proved the comparative chart (Ext. 6) and also identified the Measurement Book (Ext. 1). He further stated that excess payment of Rs. 43,414/- was detected, which came to Rs. 39,647/- after applying tolerance. In cross-examination, he admitted that there was no formal provision for granting 20% tolerance, that the measurement was conducted after lapse of time and during rainy season, and that complete technical records were not available. He also admitted that the report did not bear signatures of all concerned officials. Despite these admissions, he maintained that excess payment had been made.

4) **P.W.4 – Shambhu Nath (Formal Witness)**-This witness, a retired Chief Engineer, deposed only with regard to sanction for prosecution. He proved the sanction order (Ext. 7) and identified the signature of the competent authority. His evidence is purely formal and does not relate to the occurrence.

5) **P.W.5 – Ram Nath (Formal Witness)**- This



witness, a typist in the Law Department, deposed that he prepared the sanction order under instructions of the competent authority. He proved the sanction order (Ext. 7/1) and identified the signature of the officer concerned. His evidence is also formal in nature.

33. On the basis of materials surfaced during the trial, the appellants/accused were examined under Section 313 of the Cr.PC by putting incriminating circumstances/evidences surfaced against him, which he denied and shows his complete innocence.

Whether role of the appellants is established?

34. In the present case, the trial court held that although some discrepancies and deficiencies were pointed out in the evidence of prosecution witnesses, particularly with respect to the technical measurement and absence of complete records, such inconsistencies were not sufficient to discredit the prosecution case in its entirety. No witness was formally declared hostile, though P.W.1 admitted lack of technical expertise and P.W.3 made certain admissions regarding methodology and delay in measurement. The trial court relied primarily upon the Measurement Book (Ext. 1), the comparative chart (Ext. 6), and the testimonies of P.W.1 and P.W.3, which, in



its view, sufficiently established that payments were made in excess of actual work done. The learned trial court concluded that the accused persons, being responsible public servants, had dishonestly facilitated false measurement and excess payment, thereby causing wrongful loss to the Government. Accordingly, the charges were held to be proved beyond reasonable doubt, and the accused persons were convicted and sentenced under the relevant provisions of the Indian Penal Code and the Prevention of Corruption Act.

35. It is well settled that in cases involving financial irregularities and abuse of official position, culpability can be inferred from a complete chain of surrounding circumstances. The testimony of the informant (P.W.1), which is based on the report of a technical officer, remains consistent with the prosecution case and is duly corroborated by documentary evidence, as well as, the technical findings on record. Further, the evidence of P.W.3 clearly demonstrates that the amount paid was substantially disproportionate to the work actually executed, thereby, establishing the case of excess payment made by manipulating the measurement book. The fact that the inspection was conducted after some lapse of time or in absence of certain complete records does not materially affect the



prosecution case, particularly when the essential findings regarding inflated payment remain intact. The admissions made by P.W.3 regarding tolerance norms or procedural aspects are not of such magnitude as to demolish the prosecution case, but rather constitute minor discrepancies which do not go to the root of the matter.

36. It is a settled principle of law that documentary evidence, particularly official records, stands on a higher footing than oral testimony, and unless successfully rebutted by cogent evidence, the same cannot be lightly discarded. In the present case, the appellant has failed to furnish any plausible explanation or rebuttal to discredit the said documents.

37. The present case rests substantially on documentary evidence, which includes:

(i) Measurement Books (MB entries) clearly reflecting inflated and exaggerated quantities of work;

(ii) Vouchers, agreements, and payment records demonstrating release of government funds in excess of actual execution;

(iii) Technical inspection and examination reports which conclusively highlight material discrepancies between the



recorded work and the work actually executed.

38. These documents, being official records prepared and maintained in the regular course of public duty, enjoy a presumption of correctness and authenticity. The entries therein have been duly proved in accordance with law and remain unshaken in cross-examination.

39. Accordingly, the documentary evidence on record conclusively establishes the tampering of records, illegal withdrawal of funds, and consequent misappropriation, thereby fully supporting the prosecution case.

40. The cumulative effect of the oral and documentary evidence clearly points towards deliberate inflation of measurements and wrongful disbursement of Government funds, in which the appellants, being a responsible official, had a direct role. I find that the prosecution has successfully established, through circumstantial evidence, the allegation of excess payment and misappropriation in canal repair works against the appellants. The material on record of the case reveals that the present is not a case where the conviction and sentence imposed against the appellants don't establish the amount paid to the contractor, the appellants were not in connivance with him for illegal financial gain.



41. Based on the material, which has come in course of trial and the principle settled by the Apex Court as referred hereinabove, I find that the chain of circumstances so far as the present appellants are concerned, duly stands established to convict them under Sections 467, 468, 471, 420, 120B of the Indian Penal Code and Sections 13(1)(d) read with Section 13(2) of the P.C. Act, 1988. However, while affirming the conviction of the appellants *vide* judgment of conviction and order of sentence dated 04.05.2011 and 07.05.2011 respectively, the substantive sentence is reduced to rigorous imprisonment for a period of two years considering the fact that an excess payment of Rs. 43,414/- (Rs. 39,647/- after permissible tolerance) was defalcated by the present appellants, which nevertheless caused substantial pecuniary loss to the Government and other accused persons are also equally responsible for the same. It is further directed that the period of custody already undergone by the appellants during investigation, inquiry and trial, shall be set off against the aforesaid sentence in terms of Section 468 of the BNSS which corresponding to Section 428 of the Code of Criminal Procedure. In case the appellants have not undergone the modified period of custody as mentioned above, they shall be



taken into custody forthwith to serve out the remaining part of the sentence.

42. Accordingly, the present appeals stand partly allowed.

43. Office is directed to send back the lower court records along with a copy of the judgment to the learned District Court forthwith.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	
CAV DATE	21.04.2026
Uploading Date	12.05.2026
Transmission Date	12.05.2026

