

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

% Judgment reserved on : 26th August, 2020
Judgment delivered on: 25th March, 2021

+ CRL.M.C.3505/2017 & CRL.M.A.14279/2017, 241/2018 &
242/2018

JAGDISH KUMAR ARORA ... Petitioner

versus

CBI Respondent

Advocates who appeared in this case:

For the Petitioners: Ms. Rebecca John, Senior Advocate with Mr. Harsh Bora,
Advocates.

For the Respondent: Mr. Mridul Jain, Special Public Prosecutor

+ CRL.M.C.3529/2017 & CRL.M.A.14376/2017, 237/2018,
238/2018, 31510/2018 & 31511/2018

RAMAN GUPTA ... Petitioner

versus

CBI Respondent

Advocates who appeared in this case:

For the Petitioners: Mr. Mohit Mathur, Senior Advocate with Mr. Kamal
Budhiraja and Ms. Isha Bhalla, Advocates.

For the Respondent: Mr. Mridul Jain, Special Public Prosecutor

+ CRL.M.C.3605/2017 & CRL.M.A.14702/2017

S. K. CHAUHAN ... Petitioner

versus

CBI Respondent

Advocates who appeared in this case:

For the Petitioners: Ms. Geeta Luthra, Senior Advocate with Mr. Shashi Shankar and Mr. Anshul Duggal, Advocates.

For the Respondent: Mr. Mridul Jain, Special Public Prosecutor

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioners in the respective petitions impugn common order on charge dated 28.07.2017, whereby charges have been framed against the petitioners under Section 120B read with Sections 420 and 471 Indian Penal Code and Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 along with substantive offences.

2. Jagdish Kumar Arora, (Petitioner in Crl. M.C. 3505 of 2017), was the then Executive Engineer (E & M), Delhi Jal Board, S.K. Chauhan, (Petitioner in Crl. M.C. 3605 of 2017), was the then Assistant Engineer (E & M), Delhi Jal Board and Raman Gupta, (Petitioner in Crl. M.C. 3529 of 2017), a private person and was the Proprietor of M/s Metro Projects and Sales Services.

3. It is alleged by the prosecution that on the basis of source information FIR was registered under Section 120 B read with sections 420, 465, 468 and 471 Indian Penal Code and Section 13 (2) read with Section 13 (1) (c) and 13(1) (d) of Prevention of Corruption

Act, 1988 on the allegations that during the period 2009 – 2012, Mr. Jagdish Kumar Arora, the then Executive Engineer (E&M) , Mr. S.K. Chauhan, JE (E&M), SDW-VI DJB and other unknown officers of DJB, hatched a criminal conspiracy with Mr. Raman Gupta, Proprietor of M/s Metro Projects & Sales Services to cause wrongful loss to Delhi Jal Board (DJB) in the matter of purchase of spare parts i.e. machinery/spare parts/pumps and motors etc. of 'Essenpro' make, originally manufactured by M/s Essential Power & Transmission (Pvt.) Limited, 24, Marol Co-op Industrial Estate Limited, M V Road, Andheri (East), Mumbai by using false authorization letter/documents.

4. After investigation, Charge Sheet was filed on 30.06.2016 under Sections 120B read with Sections 420 and 471 Indian Penal Code and Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988.

5. By the impugned order, the Trial Court has directed framing of charges against the Petitioners.

6. It is alleged in the charge sheet that during the period 2009-2012, petitioners hatched a criminal conspiracy to cause wrongful loss to Delhi Jal Board (Delhi Jal Board) in the matter of purchase of spare parts i.e. machinery/spare parts/pumps and motors etc. of 'Essenpro' make, by using false authorization letter/documents.

7. It is alleged that Petitioner Raman Gupta of M/s. Metro Projects

& Sales Services sent letters to the Executive Engineer, SDW (VI), Delhi Jal Board claiming himself to be the sole authorized dealer for spares, renovation and servicing of “Essenpro” make gear boxes.

8. It is alleged that during the period of 2009 to 2012, the original manufacturer M/s. Essential Power & Transmission Pvt. Ltd. had supplied items only to the tune of Rs. 32,56,500/- to M/s. Roltec Marketing Engineers, its authorized representative in Delhi. However, investigation revealed that work orders amounting to Rs. 2,78,86,452/- were awarded to M/s. Metro Projects & Sales Services by the Delhi Jal Board, which caused a huge wrongful loss to the Government exchequer and corresponding wrongful gain to the supplier firm M/s. Metro Projects & Sales Services.

9. Though the FIR mentions only ten work orders, however during investigation it is alleged that total twenty three work orders had been issued to M/s. Metro Projects & Sales Services, for supply of “Essenpro” brand spare parts/ repair work by Delhi Jal Board officials posted at Keshopur Plant, during the years 2009 to 2012.

10. It is alleged by the prosecution that the Sewage Treatment Plants were installed by different companies at different sites of the Delhi Jal Board during the period 1995 to 2000 and “Essenpro” make gear box were approved/ installed by these firms at the time of setting of plants. Since the equipments installed, required regular routine

maintenance as well as break down maintenance, spares were required on continuous basis to run the equipments for uninterrupted operation.

11. It is alleged that investigations revealed that the Executive Engineer in charge was responsible for maintenance of the Sewage Treatment Plant and procurement of spare parts etc. under his supervision. The responsibility of checking, measuring and recording the items of work in a project as per the CPWD manual, irrespective of their cost, was of the Junior Engineer-in-charge of the work.

12. The Junior Engineer was responsible to check 100% correctness of the work; the Assistant Engineer concerned was to check not less than 50% of the work and the concerned Executive Engineer was to test check 10% of the measurements recorded by his subordinates and at least every alternate bill for works at his Head Quarter and at least every 3rd bill for works outside his Head Quarters.

13. It is alleged by the prosecution the spare parts of 'Essenpro' make gear box had been purchased by Delhi Jal Board officials through the firm M/s. Metro Project and Sales Services. It is alleged that M/s. Metro Project and Sales Services was initially authorized, by Mr. K. C. Shah, Marketing Director of M/s Essential Power Transmission Pvt. Ltd. Mumbai (the manufacturer) for two sewage treatment plants (STP) of the Delhi Jal Board at Rithala and Coronation Pillar. The authorisation was to procure tenders, enquiries etc. for spare/gearbox of 'Essenpro' make and for submission of offer

for the same on behalf of company for procurement of orders and execution in the year 2008.

14. It is alleged that investigations further revealed that later, late Mr. Satish Kumar Chanana, Chief Executive and Regional in-charge for Northern Region of M/s. Essential Power & Transmission Pvt. Ltd. the manufacturer, authorized the petitioner Mr. Raman Gupta, Proprietor of M/s. Metro Project and Sales Services for materialization of orders for the Delhi Jal Board on behalf of the company. The officials of Delhi Jal Board used to contact and correspond with Late Mr. Satish Kumar Chanana Proprietor of M/s Roltec Marketing Engineer for supply of “*Essenpro*” make spare parts and also for technical assistance etc.

15. It is alleged that late Mr. Satish Kumar Chanana, on behalf of the manufacturer, furnished rates and terms and conditions for the supply directly, without the knowledge of the manufacturer at Mumbai.

16. It is alleged in the Charge Sheet that the Petitioner Mr. Raman Gupta, Proprietor of M/s Metro Projects & Sales Services supplied spare parts of “*Essenpro make*” without procuring the same from the manufacturer. He provided purchase vouchers of a local firms namely M/s. Metal Craft (India) in case of proprietary items & M/s. Indo Silicon Pvt. Ltd. in case of general items. It is alleged that there was

no subcontract or authorization from the manufacturers or from the Delhi Jal Board to allow the said local firms to supply the spare parts.

17. It is alleged that total sixteen work orders, for procurement of spare parts and repair work, amounting to Rs.1,85,06,197/- had been executed by the Petitioner Mr. Jagdish Kumar Arora and Mr. S. K. Chauhan, and Mr. S.K Yadav (deceased) the then Assistant Engineer with M/s. Metro Projects & Sales Services for supply of 'Essenpro' brand spare parts/repair work during the period under investigation i.e. 2009 to 2012. All the said work orders, Contract Agreements were signed between the contractor Mr. Raman Gupta, proprietor of M/s. Metro Projects & Sales Services and Delhi Jal Board for execution of work and all the required basic formalities for award of contract were completed before signing the Contract Agreement.

18. It is alleged that on the back side of bills of M/s. Metro Project and Sales Services, Petitioner - Mr. Satish Kumar Chauhan, the then Junior Engineer; Mr. S.K Yadav (deceased) the then Assistant Engineer and Petitioner - Mr. Jagdish Kumar Arora, the then Executive Engineer, have given Completion Certificates mentioning therein that bills have been verified and accepted in all the sixteen work orders. It was also specifically mentioned that the material was entered in the stock book and bills were entered in measurement book and endorsed that "*Nothing is due against the firm*" etc.

19. It is alleged that investigation further revealed that the material was received by Petitioner - Mr. Satish Kumar Chauhan, the then Junior Engineer along with the bills of M/s. Metro Projects and Sales Services.

20. As per the charge sheet, investigations revealed that the authorization letters submitted to the Delhi Jal Board issued by the official representative of the manufacturer i.e. M/s. Essential Power Transmission Pvt. Ltd in favour of M/s Metro Projects & Sales Services were forged in all the cases.

21. It is alleged that the spare parts mentioned in the procurement orders had never been supplied by M/s. Essential Power Transmission Pvt. Ltd. and most of the spare parts were proprietary items and not available in the open market, thereby establishing that duplicate material has been supplied by contractor - Mr. Raman Gupta which was procured from the local market and not from the manufacturer and that too at exorbitant rates. Mr. Raman Gupta had provided purchase voucher of local firms M/s. Metal Craft (India) showing supply by local firm against a proprietary item, which was not available in open market.

22. Mr. S. K. Chauhan, Mr. S.K Yadav (deceased) and Mr. Jagdish Kumar Arora, had cleared the payment to the contractor despite presence of local purchase voucher along with the bill of M/s. Metro Projects & Sales Services. Even in cases where the contractor did not

provide purchase vouchers, payments were cleared. The actual cost of the same spare parts of the work orders, as per the rates provided by the Manufacturer was Rs. 36,27,750/-, but the contractor charged Rs. 1,49,34,106/- (without VAT & job work charges) for the same spare parts.

23. It is alleged that Petitioners had caused a loss of Rs.1,13,06,356/- to the Government exchequer, during the period under investigation and had also used material of inferior quality and did not make any effort to find out from manufacturer about the authenticity of the supply.

24. As per the charge sheet investigations revealed that in 16 work orders, Petitioner - Mr. Satish Kumar Chauhan; Late Mr. S.K. Yadav (accused in Column No.2) the then Assistant Engineer and Petitioner - Mr. Jagdish Kumar Arora dishonestly & fraudulently facilitated the payment to the Petitioner - Raman Gupta and signed on the measurement book, despite the presence of local purchase voucher showing local supply in one case of proprietary items along with the bills of M/s. Metro Projects & Sales Services and also in other cases without proper satisfaction about the duplicate material supplied by contractor.

25. Consequently charge sheet was filed under Section 120B read with Sections 420, & 471 Indian Penal Code & Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988.

26. By the impugned order on charge dated 28.07.2017, the Trial Court has held that there was sufficient material to frame charges against the Petitioners and accordingly charges were framed on 02.08.2017.

27. Aggrieved by the order on charge and the framing of charges, Petitioners have filed these petitions.

28. Ms. Rebecca John, Leaned senior counsel appearing for the Petitioner Mr. Jagdish Kumar Arora (the then Executive Engineer (E & M), Delhi Jal Board, contends that he is innocent and has been falsely implicated. It is submitted that prosecution has failed to substantiate the charge of conspiracy. It is further submitted that the prosecution has failed to substantiate the allegation of forgery of the authorization in favour of M/s. Metro Sales and Services and alleged usage of substandard spare parts.

29. It is submitted that the conspiracy is alleged to have commenced in the year 2009 whereas, the petitioner Jagdish Kumar Arora had joined the concerned division in Delhi Jal Board w.e.f. March, 2011 and before his taking over of charge, M/s. Metro Projects and Sales Services had already been accepted as the dealer of the Manufacturer and the department was corresponding with late Mr. Satish Kumar Chanana as the Manufacturer. It is submitted that he was following the procedure which was already followed.

30. It is submitted that after the request was received for supply of spare parts/ repair by the Foreman, which was put up before him after routing it through the concerned Junior Engineer and Assistant Engineer, a letter was sent through post to the manufacturer M/s. Essential Power Transmission Pvt. Ltd. at its Delhi address inviting for a quote for the spare parts/ repairing. It is submitted that the manufacturer used to send its quotation alongwith the authorization of M/s. Metro Projects and Sales Services as its dealer. It is submitted that only after receiving the quotations from manufacturer and authorization in favour of M/s. Metro Projects and Sales Service, the note was initiated for placing before the competent authority i.e. Superintending Engineer for his approval and after receiving his approval the work order was awarded in favour of the contractor.

31. It is submitted that after the execution of the work, the same used to be verified from the Measurement Book and it used to be forwarded to the Accounts Department only after which the payments were made

32. It is further submitted that the prosecution has failed to even prima facie show knowledge of the petitioner Mr. Jagdish Kumar Arora while verifying the documents in question. It is submitted that the manufacturer had authorized late Mr. Satish Kumar Chanana as their North India Region in-charge and he was fully authorized to take decisions on behalf of the company.

33. It is further submitted that prosecution has failed to establish that Mr. Jagdish Kumar Arora was responsible for forging the signatures of late Mr. Satish Kumar Chanana or that he was acquainted with the signatures of late Mr. Satish Kumar Chanana.

34. Learned Senior Counsel relies upon the decision of the Supreme Court of India in *A. Subair v. State of Kerala (2009) 6 SCC 587* to contend that the primary requisite of an offence under section 13(1)(d) of the Prevention of Corruption Act is proof of a demand or request of a valuable thing or pecuniary advantage from the public servant and in the absence of proof thereof, the offence under the said section cannot be held to be established.

35. Learned senior counsel further contends that there is no material to show any meeting of mind between the accused and as such the charge under section 120B of the IPC is not sustainable.

36. While adopting the arguments of Ms. Rebecca John, Ms Geeta Luthra, learned Senior Counsel appearing for the Petitioner Mr. S.K. Chauhan (the then Assistant Engineer (E & M), Delhi Jal Board), relied upon the statement of Mr. Mahinder Singh the then Chief Engineer and Mr. K.C. Shah, Chairman and Managing Director of Essential Power & Transmission Private Limited to contend that there was no complaint that the equipment was of substandard or not working properly and to further show that detection of duplication of the component was not possible with naked eyes and its genuineness

could only be detected by testing the same at the factory of the manufacturer.

37. It is submitted that there is no material to show that the material supplied was substandard or that there was any loss to the Delhi Jal Board or any gain to the accused.

38. Mr. Mohit Mathur, learned Senior Counsel appearing for the Petitioner – Mr. Raman Gupta (the proprietor of the Contractor - M/s. Metro project & Sales Services) additionally submits that the said concern was initially authorized by Mr. K.C. Shah, Marketing Director of M/s. Essential Power Transmission Pvt. Ltd. for two sewage plants (STP) of Delhi Jal Board at Rithala and Coronation Pillar in the year 2008, to procure orders, tenders, enquires etc. for spare parts/gear boxes of 'Essenpro' make on behalf of the manufacturer.

39. He further contends that said concern was authorised by letter dated 18.07.2008 which was issued on the recommendation of late Mr. Satish Kumar Chanana. He submits that admittedly, late Mr. Satish Kumar Chanana, Chief Executive was fully authorized by the manufacturer by letters dated 24.01.2002 & 16.11.2009 to take a decision on behalf of the company for materialization of orders/contract and offer and after sales services etc. and he had full authority to take a decision regarding the business interests of the manufacturer in the Northern Region.

40. He submits that on recommendation of late Mr. Satish Kumar Chanana, M/s. Metro Projects and Sales Services was authorized to work on behalf of the Manufacturer. It is submitted that there was sufficient material to show that Petitioner - Raman Gupta was the authorized dealer of the manufacturer.

41. Learned Senior counsel further submits that the office of Delhi Jal Board used to contact and correspond with late Mr. Satish Kumar Chanana the Regional In-charge – Northern Region for supply of “*Essenpro*” make spare parts and also for technical assistance without directly involving the manufacturer at Mumbai.

42. It is submitted that for each and every requirement of spare part or repairs to be carried out, the Executive Engineer used to send a letter to late Mr. Satish Kumar Chanana asking him to submit the offer along with other terms and conditions, pursuant to which late Mr. Satish Kumar Chanana informed that M/s. Metro Project and Sales Services was their authorized dealer to execute the work order passed by them and also intimated the rates of the spare parts and the cost of the repairs.

43. It is submitted that the alleged forged authorization letters were sent directly from the office of late Mr. Satish Kumar Chanana to Delhi Jal Board through courier. It is submitted that there is no allegation that the letters were received from the Petitioner Mr. Raman Gupta.

44. Learned Senior Counsel further contended that there is no material on record to show that the spare parts supplied were duplicate and no verification was done to show that the spare parts were not genuine.

45. Learned senior counsel submits that conspiracy between the co-accused has to be prior in point of time. He submits that the period in issue is 2009 – 2012 and admittedly the co-accused Jagdish Kumar Arora was not in the concerned seat during the period 2009 – 2011.

46. Learned Senior Counsel relied upon the decision of the Supreme Court in *State of Kerala v. P. Sugathan (2000) 8 SCC 203* to contend that to prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence.

47. Further reliance is placed on the decision in *Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135* to contend that the Trial Judge cannot act as a mere post office or mouth piece of the prosecution and he has to sift and weigh evidence for the limited purpose of finding out whether a prima facie case has been made out.

48. Before examining the merits of the submissions of learned senior counsels for the Petitioners, it would be expedient to examine the legal principles and parameters for framing of charge against an accused and the scope and extent of examination of the material collected by the prosecution during investigation.

49. The Supreme Court in *State (NCT of Delhi) v. Shiv Charan Bansal*, (2020) 2 SCC 290 has laid down that the court while considering the question of framing charges under Section 227 Criminal Procedure Code has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case has been made out against the accused. The test to determine prima facie case would depend upon the facts of each case. If the material placed before the court discloses grave suspicion against the accused, which has not been properly explained, the court will be fully justified in framing charges and proceeding with the trial. The probative value of the evidence brought on record cannot be gone into at the stage of framing charges. The court is required to evaluate the material and documents on record with a view to find out if the facts emerging there from taken at their face value disclose the ingredients constituting the alleged offence. At this stage, there cannot be a roving enquiry into the pros and cons of the matter, the evidence is not to be weighed as if a trial is being conducted.

50. In *Dipakbhai Jagdishchandra Patel v. State of Gujarat*, (2019) 16 SCC 547, the Supreme Court has held that all that is required is that the court must be satisfied from the material available, that a case is made out for the accused to stand trial. A strong suspicion is sufficient for framing charges, which must be founded on some material. The material must be such which can be translated into evidence at the stage of trial. The veracity and effect of the evidence

which the prosecutor proposes to adduce are not to be meticulously judged at this stage, nor is any weight to be attached to the probable defence of the accused at the stage of framing of charges. The court is not to consider whether there is sufficient ground for conviction of the accused, or whether the trial is sure to end in a conviction.

51. The Supreme Court in *State of Maharashtra & ors. v. Som Nath Thapa & Ors*, (1996) 4 SCC 659 held that “If on the basis of materials on record, a Court comes to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently if the Court were to think that the accused might have committed the offence, it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage”.

52. In the present case, the Trial Court has done a very lucid analysis of the material collected during investigation and examined the allegations with regard to each of the bills and observed as under:

| <u>Sr. No.</u> | <u>Details of Bill/Invoice</u> | <u>Observations</u> |
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| 1. | Bill No. 11/546 dated 31.10.2011, amounting to | It is evident from the record that during investigation the manufacturer had not provided the rates of the two items i.e. |

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| <p><i>Rs.9,02,000/- (D46 Page No. 1/15 and (D2 Page No. 23)</i></p> | <p><i>Worm Gear Box Complete H 100 and Worm Gear Box Complete H 125. M/s. Metro Projects and Sales Services claimed that they are authorized dealers of manufacturer M/s. EPTP Mumbai whereas on the other side he had procured this material from local market, itself prima facie showing that the material supplied vide this bill is not procured from the manufacturer. As pointed out, M/s. Metro Projects and Sales Services also failed to provide the vouchers of the manufacturer for proving the facts that they had procured all these material from the manufacturer. Perusal of the document D2 (page no.4) reveals that M/s. Metro Projects and Sales Services was authorized by authorized signatory for M/s. EPTP Ltd. Which letter was sent to the handwriting expert for his opinion and the expert vide his report dated 30.01.2015 opined that Q85 is not the signatures of S.K. Chanana and hence prima facie the authorization letter itself is forged and Mr. S.K. Chanana had not authorized M/s. Metro Projects and Sales Services to execute the work as dealer of the manufacturer. M/s. Metro Projects and Sales Services are the beneficiaries of the work executed. The facts from where they had procured this authorization/ quotations is within the special knowledge of the Proprietor of M/s. Metro Projects and Sales Services namely Mr. Raman Gupta (accused no. 3).</i></p> |
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| 2. | <p><i>Bill No. 11/531 dated 10.10.2011 amounting to Rs.58,800/- which are the rates of manufacturer (D46 Page No.1/15); Rs.4,16,304/- (rate charged by accused no.3 (D3 Page No. 20) causing a loss of Rs.3,57,504/- to Delhi Jal Board.</i></p> | <p><i>The perusal of document D3 (page 20) shows that ES Oil of 50 Ltr. Pack bill was served on Delhi Jal Board and accepted by the official of Delhi Jal Board. It is mentioned in the bill that they have procured material manufactured by 'Esenpro'. However, as per page 18 of D3, the material was not directly procured form the manufacturer but from the Indo Silicon Pvt. Ltd. having tin no. 0730215183 for an amount of Rs.3,72,000/-. Reference in this regard is made to the statement of Harminder Singh (PW9) who had stated that he had not sold the material to M/s. Metro Projects and Sales Services, which apparently shows that the bill in the name of Indo Silicon Pvt. Ltd. is prima facie forged and the accused persons had either not utilized the material at the actual site or they had supplied/ used the material procured from the local market which was not as per the requirement in the order.</i></p> <p><i>The handwriting expert vide his report dated 30.01.2015 opined that Q84 is not the signatures of S.K. Chanana and hence prima facie the authorization letter itself is forged and Mr. S.K. Chanana had not authorized M/s. Metro Projects and Sales Services to execute the work as dealer of the manufacturer. M/s. Metro Projects and Sales Services are the beneficiaries of the work</i></p> |
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| | | <i>executed. The facts from where they had procured this authorization/ quotations is within the special knowledge of the Proprietor of M/s. Metro Projects and Sales Services namely Mr. Raman Gupta (accused no. 3).</i> |
| 3. | <i>Bill No. 11/508 dated 14.07.2011, amounting to Rs.54,500/- which are the rate of manufacturer (D46 Page No. 3/15) Rs.4,70,880/- are the rate charged by accused no.3 (D4 Page No. 24C) Causing a loss of Rs.4,16,380/- to Delhi Jal Board.</i> | <i>The perusal of the document D4 (page 24 C) shows that M/s. Metro Projects and Sales Services had supplied the material make of M/s. Esenpro Pvt. Ltd. for an amount of Rs.4,70,880/- but the rate provided by the manufacturer for the material provided by this bill is Rs.54,500/- and the loss caused to the Delhi Jal Board amounting to Rs.4,16,380/-. The Proprietor of M/s. Metro Projects and Sales Services had failed to provide the voucher of the manufacturer/ the person/ firm from whom he had procured the material mentioned in this bill at page 24 C of D4. This prima facie shows that M/s. Metro Projects and Sales Services claimed that they are authorized dealers of manufacturer M/s. EPTP Mumbai whereas on the other side he had procured this material from local market, which shows that the material supplied vide this bill is not procured from the manufacturer. M/s. Metro Projects and Sales Services also failed to provide the vouchers of the manufacturer for confirming that they had procured all these materials from the manufacturer. The handwriting expert vide his report dated 30.01.2015</i> |

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| | | <p><i>opined that Q79 is not the signatures of S.K. Chanana and hence prima facie the authorization letter itself is forged and Mr. S.K. Chanana had not authorized M/s. Metro Projects and Sales Services to execute the work as dealer of the manufacturer. M/s. Metro Projects and Sales Services are the beneficiaries of the work executed. The facts from where they had procured this authorization/quotations is within the special knowledge of the Proprietor of M/s. Metro Projects and Sales Services namely Mr. Raman Gupta (accused no. 3).</i></p> |
| 4. | <p><i>Bill No. 11/510 dated 15.07.2011 amounting to Rs.2,32,500/- which are the rate of manufacturer (D46 Page No. 1/15) Rs.4,42,000/- are the rate charged by accused no.3 (D6 Page No. 22) thereby causing loss of Rs.2,09,500/- to Delhi Jal Board.</i></p> | <p><i>The perusal of document D6 (page 27) shows that vide letter dated 19.06.2011 the quotations of the manufacturer were provided and the material was supplied by M/s. Metro Projects and Sales Services vide his bill dated 26.07.2011 amounting to Rs.4,42,000/-. The material was received by the Officials of Delhi Jal Board without any voucher of the manufacturer/ the person/ firm from whom the material mentioned in the bill was procured. The handwriting expert vide his report dated 30.01.2015 opined that Q83 is not the signatures of S.K. Chanana and hence prima facie the authorization letter itself is forged and Mr. S.K. Chanana had not authorized M/s. Metro Projects and Sales Services to execute the work as dealer of the manufacturer. M/s. Metro Projects and Sales Services are the beneficiaries of</i></p> |

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| | | <i>the work executed. The facts from where they had procured this authorization/ quotations is within the special knowledge of the Proprietor of M/s. Metro Projects and Sales Services namely Mr. Raman Gupta (accused no. 3).</i> |
| 5. | <i>Bill No. 12/551 dated 15.11.2011 amounting to Rs.5,02,415/- which are the rate of manufacturer (D46 Page No. 5, 6 & 7/15) Rs.14,74,250/- are the rate charged by accused no.3 (D7 Page No. 42C, 43C & 44C) causing loss of Rs.9,71,835/- to Delhi Jal Board.</i> | <i>The perusal of the note sheet file D7 shows that the work was assigned to M/s. Metro Projects and Sales Services being sole dealer of M/s EPTP Ltd. for Delhi region for EPTP Ltd. In note dated 11.08.2011 it is specifically mentioned that the quotations were provided by the manufacturer vide its letter 28.07.2011, which letter does not bear the genuine signatures of S.K. Chanana (as opined by the expert). This bill produced by M/s. Metro Projects and Sales Services is at page 44/C to 42/A and the Proprietor of M/s. Metro Projects and Sales Services has failed to provide the vouchers of the manufacturer/ the persons/ firm from whom he had procured the materials mentioned in his above mentioned bill. The handwriting expert vide his report dated 30.01.2015 opined that Q71 is not the signatures of S.K. Chanana and hence prima facie the authorization letter itself is forged and Mr. S.K. Chanana had not authorized M/s. Metro Projects and Sales Services to execute the work as dealer of the manufacturer. M/s. Metro Projects and Sales Services are the beneficiaries of the work</i> |

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| | | <i>executed. The facts from where they had procured this authorization/ quotations is within the special knowledge of the Proprietor of M/s. Metro Projects and Sales Services namely Mr. Raman Gupta (accused no. 3).</i> |
| 6. | <i>Bill No. 12/562 dated 03.12.2011 for Rs. 1,50,000/- which are the rate of manufacturer (D46 Page No. 2/15) Rs.21,60,000/- are the rate charged by accused no.3 (D8 Page No.22) thereby causing loss of Rs.20,10,000/- to Delhi Jal Board).</i> | <i>The perusal of the note sheet file D8 shows that the work was assigned to M/s. Metro Projects and Sales Services being sole dealer of M/s. EPTP Ltd. for Delhi region for EPTP Ltd. In the note dated 15.10.2011 it is specifically mentioned that the quotations were provided by the manufacturer vide its letter dated 20.09.2011, which letter does not bear the genuine signatures of S.K. Chanana (as opined by the handwriting expert). The bill produced by M/s. Metro Projects and Sales Services is at page 22 and the Proprietor of M/s. Metro Projects and Sales Services has failed to provide the vouchers of the manufacturer/ the persons/ firm from whom he had procured the materials mentioned in his above mentioned bill. The handwriting expert vide his report dated 30.01.2015 opined that Q86 is not the signatures of S.K. Chanana and hence prima facie the authorization letter itself is forged and Mr. S.K. Chanana had not authorized M/s. Metro Projects and Sales Services to execute the work as dealer of the manufacturer. M/s. Metro Projects and Sales Services are the beneficiaries of the work executed. The facts from where</i> |

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| | | <i>they had procured this authorization/ quotations is within the special knowledge of the Proprietor of M/s. Metro Projects and Sales Services namely Mr. Raman Gupta (accused no. 3).</i> |
| 7. | <i>Bill No. 11/541 dated 31.10.2011 for Rs.2,28,890/- which are the rate of manufacturer (D46 Page No. 4/15) Rs.9,39,000/- are the rate charged by accused no.3 (D9 Page No. 21C) thereby causing loss of Rs.7,10,110/- to Delhi Jal Board.</i> | <i>The perusal of the note sheet file D9 shows that the work was assigned to M/s. Metro Projects and Sales Services being sole dealer of M/s EPTP Ltd. for Delhi region for EPTP Ltd. and in note dated 15.09.2011 it is specifically mentioned that the quotations were provided by the manufacturer vide its letter dated 12.09.2011, which letter does not bear the genuine signatures of S.K. Chanana (as opined by the handwriting expert). This bill produced by M/s. Metro Projects and Sales Services is at page 21/C and the Proprietor of M/s. Metro Projects and Sales Services has failed to provide the vouchers of the manufacturer/ the persons/ firm from whom he had procured the materials mentioned in his above mentioned bill. The handwriting expert vide his report dated 30.01.2015 opined that Q73 is not the signatures of S.K. Chanana and hence prima facie the authorization letter itself is forged and Mr. S.K. Chanana had not authorized M/s. Metro Projects and Sales Services to execute the work as dealer of the manufacturer. M/s. Metro Projects and Sales Services are the beneficiaries of the work executed. The facts from where</i> |

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| | | <i>they had procured this authorization/ quotations is within the special knowledge of the Proprietor of M/s. Metro Projects and Sales Services namely Mr. Raman Gupta (accused no. 3).</i> |
| 8. | <i>Bill No. 12/571 dated 22.12.2011 for Rs.80,040/- which are the rate of manufacturer (D46 Page No. 2/15) Rs.4,39,300/- are the rate charged by accused no.3 (D10 Page No. 19) thereby causing loss of Rs.3,59,250/- to Delhi Jal Board.</i> | <i>The perusal of the note sheet file D10 (page 22) shows that the work was assigned to M/s. Metro Projects and Sales Services being sole dealer of M/s. EPTP Ltd. for Delhi region for EPTP Ltd. In the note dated 04.11.2011 it is specifically mentioned that the quotations were provided by the manufacturer vide its letter dated 20.10.2011 which letter does not bear the genuine signatures of S.K. Chanana (as opined by the handwriting expert). This bill produced by M/s. Metro Projects and Sales Services is at page 19 and the Proprietor of M/s. Metro Projects and Sales Services has failed to provide the vouchers of the manufacturer/the persons/firm from whom he had procured the materials mentioned in his above mentioned bill. The handwriting expert vide his report dated 30.01.2015 opined that Q88 is not the signatures of S.K. Chanana and hence prima facie the authorization letter itself is forged and Mr. S.K. Chanana had not authorized M/s. Metro Projects and Sales Services to execute the work as dealer of the manufacturer. M/s. Metro Projects and Sales Services are the beneficiaries of the work</i> |

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| | | <i>executed. The facts from where they had procured this authorization/ quotations is within the special knowledge of the Proprietor of M/s. Metro Projects and Sales Services namely Mr. Raman Gupta (accused no. 3).</i> |
| 9. | <i>Bill No. 13/609 dated 21.02.2012 for Rs.3,50,000/- which are the rate of manufacturer (D46 Page No. 4/15) Rs.22,77,600/- are the rate charged by accused no.3 (D11 Page No. 32C) thereby causing loss of Rs.19,27,600/- to Delhi</i> | <i>The perusal of the note sheet file D11 shows that the work was assigned to M/s Metro Projects and Sales Services being sole dealer of M/s EPTP Ltd. for Delhi region for EPTP Ltd. In the note dated 04.11.2011, it is specifically mentioned that the quotations were provided by the manufacturer vide its letter dated 20.10.2011, which letter does not bear the genuine signatures of S.K. Chanana (as opined by the handwriting expert). This bill produced by M/s. Metro Projects and Sales Services is at page 32/C and the Proprietor of M/s. Metro Projects and Sales Services has failed to provide the vouchers of the Jal Board. manufacturer/the persons/ firm from whom he had procured the materials mentioned in his above mentioned bill. The handwriting expert vide his report dated 30.01.2015 opined that Q74 is not the signatures of S.K. Chanana and hence prima facie the authorization letter itself is forged and Mr. S.K. Chanana had not authorized M/s. Metro Projects and Sales Services to execute the work as dealer of the manufacturer. M/s. Metro Projects and Sales Services are the beneficiaries of the work</i> |

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| | | <i>executed. The facts from where they had procured this authorization/ quotations is within the special knowledge of the Proprietor of M/s. Metro Projects and Sales Services namely Mr. Raman Gupta (accused no. 3).</i> |
| 10. | <i>Bill No. 13/638 dated 12.03.2012 for Rs.1,15,195/- which are the rate of manufacturer (D46 Page No. 3/15) Rs.4,74,800/- are the rate charged by accused no.3 (D12 Page No. 20C) thereby causing loss of Rs.3,59,605/- to Delhi Jal Board.</i> | <i>The perusal of the note sheet file D12 shows that the work was assigned to M/s. Metro Projects and Sales Services being sole dealer of M/s EPTP Ltd. for Delhi region for EPTP Ltd. In the note dated 24.01.2012, it is specifically mentioned that the quotations were provided by the manufacturer vide its letter dated 09.01.2012 which letter does not bear the genuine signatures of S.K. Chanana (as opined by the expert). This bill produced by M/s. Metro Projects and Sales Services is at page 20/C and the Proprietor of the M/s Metro Projects and Sales Services has failed to provide the vouchers of the manufacturer/the persons/firm from whom he had procured the materials mentioned in his above mentioned bill. The handwriting expert vide his report dated 30.01.2015 opined that Q80 is not the signatures of S.K. Chanana and hence prima facie the authorization letter itself is forged and Mr. S.K. Chanana had not authorized M/s. Metro Projects and Sales Services to execute the work as dealer of the manufacturer. M/s. Metro Projects and Sales Services are the beneficiaries of the work executed. The facts from where they had</i> |

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| | | <i>procured this authorization/ quotations is within the special knowledge of the Proprietor of M/s. Metro Projects and Sales Services namely Mr. Raman Gupta (accused no. 3).</i> |
| 11. | <i>Bill No. 13/642 dated 12.03.2012 for Rs.1,83,630/- which are rate of manufacturer (D46 Page No. 7/15) Rs.6,03,700/- are the rate charged by accused no.3) (D13 Page No. 28C) thereby causing loss of Rs.4,20,070/- to Delhi Jal Board.</i> | <i>The perusal of the note sheet file D13 shows that the work was assigned to M/s. Metro Projects and Sales Services being sole dealer of M/s EPTP Ltd. for Delhi region for EPTP Ltd. In the note dated 27.01.2012, it is specifically mentioned that the quotations were provided by the manufacturer vide its letter dated 30.12.2011, which letter does not bear the genuine signatures of S.K. Chanana (as opined by the handwriting expert). This bill produced by M/s. Metro Projects and Sales Services is at page 28/C and the Proprietor of M/s. Metro Projects and Sales Services has failed to provide the vouchers of the manufacturer/the persons/firm from whom he had procured the materials mentioned in his above mentioned bill. The handwriting expert vide his report dated 30.01.2015 opined that Q76 is not the signatures of S.K. Chanana and hence prima facie the authorization letter itself is forged and Mr. S.K. Chanana had not authorized M/s. Metro Projects and Sales Services to execute the work as dealer of the manufacturer. M/s. Metro Projects and Sales Services are the beneficiaries of the work executed. The facts from where they had procured this authorization/</i> |

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| | | <i>quotations is within the special knowledge of the Proprietor of M/s. Metro Projects and Sales Services namely Mr. Raman Gupta (accused no. 3).</i> |
| 12. | <i>Bill No. 14/663 dated 22.03.2012 for Rs.3,50,000/- which are the rate of manufacturer (D46 Page No. 4/15) Rs.22,77,600/- are the rate charged by accused no.3 (D14 Page</i> | <i>The perusal of the note sheet file D14 shows that the work was assigned to M/s. Metro Projects and Sales Services being sole dealer of M/s EPTP Ltd. for Delhi region for EPTP Ltd. In the note dated 27.01.2012, it is specifically mentioned that the quotations were provided by the manufacturer vide its letter dated 24.12.2011. This bill produced by M/s. Metro Projects and Sales Services is at page 20/C and the Proprietor of No. 20C) thereby causing loss of Rs.19,27,600/- to Delhi Jal Board. M/s. Metro Projects and Sales Services has failed to provide the vouchers of the manufacturer/the persons/firm from whom he had procured the materials mentioned in his above mentioned bill. M/s. Metro Projects and Sales Services are the beneficiaries of the work executed. The facts from where they had procured this authorization/ quotations is within the special knowledge of the Proprietor of M/s. Metro Projects and Sales Services namely Mr. Raman Gupta (accused no. 3).</i> |
| 13. | <i>Bill No. 13/646 dated 19.03.2012 for Rs.1,96,305/- which</i> | <i>The perusal of the note sheet file D15 shows that the work was assigned to M/s. Metro Projects and Sales Services</i> |

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| | <p>are the rate of manufacturer (D46 Page No. 7/15) Rs.7,87,100/- are the rate charged by accused no.3 (D15 Page No. 30C) thereby causing loss of Rs.5,90,795/- to Delhi Jal Board.</p> | <p>being sole dealer of M/s EPTP Ltd. for Delhi region for EPTP Ltd. In the note dated 15.02.2012, it is specifically mentioned that the quotations were provided by the manufacturer vide its letter dated 24.01.2012 which letter does not bear the genuine signatures of S.K. Chanana (as opined by the handwriting expert). This bill produced by M/s. Metro Projects and Sales Services is at page 30/C and the Proprietor of M/s. Metro Projects and Sales Services has failed to provide the vouchers of the manufacturer/ the persons/ firm from whom he had procured the materials mentioned in his above mentioned bill. The handwriting expert vide his report dated 30.01.2015 opined that Q77 is not the signatures of S.K. Chanana and hence prima facie the authorization letter itself is forged and Mr. S.K. Chanana had not authorized M/s. Metro Projects and Sales Services to execute the work as dealer of the manufacturer. M/s. Metro Projects and Sales Services are the beneficiaries of the work executed. The facts from where they had procured this authorization/ quotations is within the special knowledge of the Proprietor of M/s. Metro Projects and Sales Services namely Mr. Raman Gupta (accused no. 3).</p> |
| 14. | <p>Bill No. 14/695 dated 09.06.2012 for Rs.1,45,775/- which</p> | <p>The perusal of the note sheet file D16 shows that the work was assigned to M/s. Metro Projects and Sales Services</p> |

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| | <p>are the rate of manufacturer (D46 Page No. 8/15) Rs.6,51,800/- are the rate charged by accused no.3 (D16 Page No. 21C) thereby causing a loss of Rs.5,06,025/- to Delhi Jal Board.</p> | <p>being sole dealer of M/s. EPTP Ltd. for Delhi region for EPTP Ltd. In the note dated 27.04.2012 it is specifically mentioned that the quotations were provided by the manufacturer vide its letter dated 06.04.2012, which letter does not bear the genuine signatures of S.K. Chanana (as opined by the handwriting expert). This bill produced by M/s. Metro Projects and Sales Services is at page 21/C and the Proprietor of M/s. Metro Projects and Sales Services has failed to provide the vouchers of the manufacturer/ the persons/ firm from whom he had procured the materials mentioned in his above mentioned bill. The handwriting expert vide his report dated 30.01.2015 opined that Q81 is not the signatures of S.K. Chanana and hence prima facie the authorization letter itself is forged and Mr. S.K. Chanana had not authorized M/s. Metro Projects and Sales Services to execute the work as dealer of the manufacturer. M/s. Metro Projects and Sales Services are the beneficiaries of the work executed. The facts from where they had procured this authorization/ quotations is within the special knowledge of the Proprietor of M/s. Metro Projects and Sales Services namely Mr. Raman Gupta (accused no. 3).</p> |
| 15. | <p>Bill No. 11/532 dated 10.10.2011 for Rs.77,700/- which</p> | <p>The perusal of the note sheet file D17 shows that the bill produced by M/s. Metro Projects and Sales Services is at</p> |

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| <p><i>are the rate of manufacturer (D46 Page No. 1/15) Rs.7,99,680/- are the rate charged by accused no.3 (D17 Page No. 20) thereby causing loss of Rs.7,21,980/- to Delhi Jal Board.</i></p> | <p><i>page 20 and the Proprietor of M/s. Metro Projects and Sales Services has failed to provide the vouchers of the manufacturer/ the persons/ firm from whom he had procured the materials mentioned in his above mentioned bill. M/s. Metro Projects and Sales Services are the beneficiaries of the work executed. The facts from where they had procured this authorization/ quotations is within the special knowledge of the Proprietor of M/s. Metro Projects and Sales Services namely Mr. Raman Gupta (accused no. 3).</i></p> |
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53. Trial Court has further found that total 16 (Sixteen) work orders for the procurement of spare parts and repair work amounting to Rs.1,85,06,197/- (Rs. One Crore, Eighty Five Lacs, Six Thousand One Hundred Ninety Seven only) were issued by Petitioners – Mr. Jagdish Kumar Arora and Mr. Satish Kumar Chauhan and the then Assistant Engineer Mr. S. K. Yadav (expired) in favour of Petitioner – Mr. Raman Gupta claiming to be the authorized dealer of M/s. Essential Power and Transmission (Pvt.) Ltd. for supply of “Essenpro” make spare parts/ repair work.

54. With regard to the 16 work orders the finding of the Trial Court based on material produced by the prosecution is as under:

1. *Work order 70 dated 13.10.2011, contract agreement number 65/1112, Bill No. 546, Book No.11 amounting to Rs.9,47,100/- dated 31.10.2011 for procurement of transmission units for PST and FST, Nitholi under*

Keshopur Plant, SWDVI. The authorization letter for this work issued from the office of authorized representative of M/s EPTP Ltd. was forged and the local purchase vouchers of worm gearbox H100 and H125 of Metal Craft India and not of the authorized manufacturer of the proprietary items which are not available in the open market.

2. *Work order no. 65 dated 26.09.2011, contract agreement number 62/1112, Bill No. 531 Book No.11 amounting to Rs.4,99,565/- dated 10.10.2011 for procurement of gear oil for aerators at STP Nilothi. The authorization letter for this work issued from the office of authorized representative of M/s EPTP Ltd. was forged and the local purchase vouchers of M/s Indo Silicon Pvt. 3/7, Block C, Ashok Vihar, Delhi showing purchase of ES Oil 50 Litres was received from the supplier by the accused Satish Kumar Chauhan and the purchase vouchers produced by the accused Raman Gupta was forged to show the material as “essenpro” make even when the ES Oil is an outsourced item of the manufacturer and is easily available in the open market.*
3. *Work Order No.29 dated 04.07.11, Contract Agreement (C.A) No. 26/1112, M. No.309/14, regarding procurement of spares for gear boxes at STP, Nilothi for Rs.4,94,424/- dated 14.07.11, (Authorization found forged).*
4. *Work Order No.13 dated 17.06.11, Contract Agreement (C.A) No. 14/1112, (CBI/ M.No. 115/14), regarding Improvement of aerator units by servicing and alignment of housings at 40 MGD STP Nilothi Plant for Rs.8,93,871/- dated 15.07.11, (Authorization found forged) Job work.*
5. *Work Order No.33 dated 11.07.2011, Contract Agreement (C.A) No. 30/1112, (CBI/M.No. 117/14),*

regarding Procurement of half rigid couplings between aerators and agitators at STP Nilothi for Rs. 4,97,250/- dated 26.07.11, (Authorization found forged).

6. *Work Order No.68 dated 05.10.11, Contract Agreement (C.A) No. 64/1112, M. No.301/14, regarding improving of aeration units by servicing and procurement and replacement of shaft agitator and coupling/internal parts of helical gear boxes model No. EPAHD4SP at 40 MGD Nilothi STP for Rs.24,96,193/dated 15.11.11, (Authorization found forged) Job work.*
7. *Work Order No.84 dated 05.1.11, Contract Agreement (C.A) No. 78/1112, M.No.121/14, regarding procurement of impeller and hollow shaft for aeration plant at STP Nilothi under Keshopur plant for Rs.24,30,000/- dated 03.12.11, (Authorization found forged)*
8. *Work Order No.71 dated 13.10.11, Contract Agreement (C.A) No .67/1112, M.No.303/14, regarding procurement of wheels and half rigid coupling of Essenpro make model no. EPAHD4, at STP Nilothi for Rs.9,85,950/- dated 311011, (Authorization found forged).*
9. *Work Order No.86 dated 29.11.11, Contract Agreement (C.A) No. 81/1112, M. No.123/14, regarding procurement of oil distribution accessories for transmission units at STP Nilothi for Rs. 4,94,212/- dated 22.12.11, (Authorization found forged) Procurement case.*
10. *Work Order No.87 dated 29.11.11, Contract Agreement (C.A) No. 82/1112, M. No.304/14, regarding procurement of transmission units of surface aerator at 40 MGD, STP Nilothi for Rs.22,95,821/- dated 21.02.12, (Authorization found forged).*

11. *Work Order No.138 dated 10.02.12, Contract Agreement (C.A) No. 127/1112, M. No.310/14, regarding procurement of intermediate pinion and rolling wheels and seals for EPAHD/4SP model gear at STP Nilothi for Rs.4,98,540/- dated 12.03.12, (Authorization found forged) Procurement case.*
12. *Work Order No.140 dated 10.02.12, Contract Agreement (C.A) No. 129/1112, M. No.305/14, regarding Refurbishment of Aeration unit comprising Aerators and Agitator for EPAHD 4SP 40 MGD STP Nilothi for Rs.7,87,446/- dated 12.03.12, (Authorization found forged).Job work.*
13. *Work Order No.142 dated 16.02.12, Contract Agreement (C.A) No.133/1112, M. No.306/14, regarding procurement of transmission units of surface aerator at aeration units at 40 MGD, STP Nilothi for Rs.22,95,821/-dated 22.03.12, (Authorization found forged).*
14. *Work Order No.149 dated 23.02.12, Contract Agreement (C.A) No. 138/1112, M. No.307/14, regarding renovation of transmission units at Aeration Plant for EPAHD 4SP Model gear units at STP Nilothi for Rs.9,92,964/- dated 19.03.12 (Authorization found forged).*
15. *Work Order No. 9 dated 28.4.12, Contract Agreement (C.A) No. 07/1213, M. No.311/14, regarding Improvement the functioning of Agitator and Aerator of Essenpro make at STP Nilothi for Rs.9,75,480/- dated 09.06.12. (Authorization found forged).*
16. *Work Order No.32 dated 11.07.2011, Contract Agreement (C.A) No. 29/1112, (CBI/M. No. 116/14), regarding Procurement of gear motors with worm gear type vertical at grit chamber at Nilothi STP for Rs.8,99,640/- dated 10.10.11 (Authorization not attached) Procurement case.*

55. The record of investigation *prima facie* shows that M/s. Essential Power Transmission Pvt. Ltd. Mumbai, the manufacturer, had not provided the rates of some of the items. M/s. Metro Projects and Sales Services, though claimed themselves to be authorized dealers of M/s. Essential Power Transmission Pvt. Ltd. Mumbai, procured material from the local market and not from the manufacturer.

56. The letters, by which M/s. Metro Projects and Sales Services was allegedly authorized by late Mr. Satish Kumar Chanana, were opined by the handwriting expert as not bearing the signatures of late Mr. Satish Kumar Chanana and thus *prima facie* forged. M/s. Metro Projects and Sales Services are the beneficiaries of the work executed based on alleged forged authorisation.

57. Further, some of the parts were not procured directly from the manufacturer but from Indo Silicon Pvt. Ltd. M/s. Metro Projects and Sales Services claimed to have supplied material of “Essenpro” make for an amount of Rs. 4,70,880/- but the rate provided by the manufacturer for the material provided by the said bill was Rs.54,500/- thereby a loss was caused to the Delhi Jal Board of Rs.4,16,380/-.

58. Petitioner – Mr. Raman Gupta i.e. the Proprietor of M/s. Metro Projects and Sales Services failed to provide vouchers of the

manufacturer/the person/firm from whom he had procured some of the material. Further, some material was received by the Officials of Delhi Jal Board without any voucher of the manufacturer/ the person/ firm from whom the material mentioned in the bill was procured.

59. Investigation has revealed that work was assigned to M/s. Metro Projects and Sales Services claiming to be the sole dealer of M/s. Essential Power Transmission Pvt. Ltd. Mumbai for Delhi region. Letters dated 28.07.2011, 12.09.2011, 20.09.2011, 20.10.2011, 24.12.2011, 30.12.2011, 09.01.2012 , 24.01.2012 by which the quotations were provided by the manufacturer, as per the handwriting expert do not bear the genuine signatures of late Mr. Satish Kumar Chanana.

60. As per the prosecution, during the period of 2009 to 2012, the original manufacturer M/s. Essential Power & Transmission Pvt. Ltd. had supplied items only to the tune of Rs. 32,56,500/- to M/s. Roltec Marketing Engineers, its authorized representative in Delhi. However, work orders amounting to Rs. 2,78,86,452/- were awarded to M/s. Metro Projects & Sales Services by the Delhi Jal Board, *prima facie* causing a huge wrongful loss to the Government exchequer and corresponding wrongful gain to the supplier firm M/s. Metro Projects & Sales Services.

61. Direct beneficiary of the forged authorisation letters and forged quotations is M/s. Metro Projects and Sales Services whose proprietor

is the Petitioner Mr. Raman Gupta.

62. Investigation has shown that repeatedly spare parts had been received without the requisite vouchers of the manufacturer/ the person/ firm from whom the material mentioned in the bills was procured. Parts were received, entered in the measurement books, bills processed for payment and payments released, without ensuring compliance of the requisite procedures prescribed by the Instructional Orders.

63. As per the prosecution there was non compliance of the Instructional Order dated 07.03.2002 which stipulates that the department will release the payment only after written confirmation accepting the supply order along with a copy of the order, duly stamped and signed has been received by the Executive Engineer from the manufacturer.

64. As per the prosecution, the letters seeking confirmation were deliberately written to the Delhi office and not to the Mumbai office which *prima facie* was an indication of a conspiracy between the accused persons.

65. Based on the material produced by the Prosecution, trial court has held that, there is sufficient material on record to show that during the period 2009 – 2012 all the accused i.e. Petitioner Mr. Jagdish Kumar Arora, Executive Engineer (E&M) and Petitioner – Mr. Satish Kumar Chauhan, Junior Engineer (E&M), SDQVI, Delhi Jal Board

entered into a criminal conspiracy with Petitioner – Mr. Raman Gupta Proprietor of M/s. Metro Projects and Sales Services to cause wrongful loss to Delhi Jal Board by using false authorization letter/ documents.

66. Based on material produced, Trial Court has found that Petitioner – Mr. Jagdish Kumar Arora being the Executive Engineer (In-charge) was responsible for the maintenance of sewage treatment plant and procurement of spare parts etc.. All items of work in a project, as per the CPWD Manual, were to be measured and recorded by the Petitioner – Mr. Satish Kumar Chauhan Junior Engineer of the work under the supervision of the Executive Engineer. The Junior Engineer was responsible to check 100% correctness of the work and the Executive Engineer was required to check 10% of the measurements recorded by his subordinates.

67. Trial Court has further *prima facie* found that the quotations/ authorization letters issued by the official representative of the manufacturers i.e. M/s. Essential Power Transmissions Pvt. Ltd. to Delhi Jal Board were forged in all the cases. Further, that there is sufficient material to *prima facie* show that Petitioner – Mr. Raman Gupta had supplied duplicate material at exorbitant rates, procured from local market, without procuring the same from the manufacturer and further provided purchase vouchers of local firm M/s. Metal Craft India against a proprietary item which was not available in the open market.

68. Further, there is material on record to show that the spare parts i.e. Input Pinion, Input Wheel, Out Put Wheel, Out Put Pinion, Top cover, pedal aerator (fan), Hollow shaft for pedal, input coupling etc. of 'Essenpro' make gear boxes shown to have been used, were not supplied by the manufacturer M/s. Essential Power Transmission Pvt. Ltd.

69. Trial Court has further *prima facie* found that, in furtherance of the criminal conspiracy, Petitioners – Mr. Satish Kumar Chauhan and Mr. Jagdish Kumar Arora had cleared the payment to the Petitioner – Mr. Raman Gupta despite him producing vouchers of local purchase for some material and not producing any purchase vouchers for other material.

70. The Judgment in *A. Subair v. State of Kerala (supra)* relied upon by Ms. Rebecca John, Leaned senior counsel appearing for the Petitioner Mr. Jagdish Kumar Arora is not applicable to the facts of the present case for the reason that the said judgment is in an appeal against conviction. Whereas the present case is at the stage of framing of charge.

71. Further, in the present case, there is an allegation of substantial loss to the exchequer in as much as the cost of spare parts supplied by the manufacturer to its authorised representative in Delhi – M/s. Roltec Marketing Engineers is Rs. 32,56,500/- as against the amount of Rs. Rs. 2,78,86,452/- charged to the Delhi Jal Board. There is

prima facie material to show substantial loss to the Delhi Jal Board from the said procurement.

72. As far as proof of demand or request of a valuable thing or pecuniary advantage from the public servant is concerned that is a matter of trial. Where there is prima facie material to show substantial loss to the exchequer in the execution of a contract, grave suspicion arises against the Petitioners of having committed the alleged offence.

73. The judgment in the case of *State of Kerala v. P. Sugathan (supra)* is also not applicable to the facts of the present case as it was passed in an appeal arising out of an order of conviction and the present case is at the stage of framing of charge. Further, it may be noted that criminal conspiracies are hatched in secrecy and there is a great possibility of the prosecution not being able to obtain direct evidence at the time of filing of charge sheet and has to rely upon circumstantial evidence. Where there is *prima facie* evidence of substantial loss to the exchequer in the execution of the works, prescribed procedures for placing of orders and receiving of materials not being followed and forgery of authorisation, grave suspicion of criminal conspiracy would arise, necessitating framing of a charge of criminal conspiracy.

74. The Supreme Court in *State (NCT of Delhi) v. Shiv Charan Bansal*, (2020) 2 SCC 290 relying upon the judgment in *R. Venkatkrishnan v. CBI* (2009) 11 SCC 737 held that “A criminal

conspiracy is generally hatched in secrecy, and it is difficult, if not impossible, to obtain direct evidence. The manner and circumstances in which the offence has been committed, and the level of involvement of the accused persons are relevant factors. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in the general conspiracy, to accomplish the common object.”

75. Further, relying on the judgment in *State (NCT of Delhi) v. Navjot Sandhu (2005) 11 SCC 600*, the Supreme Court further held that *“Conspiracy is mostly proved by circumstantial evidence by taking into account the cumulative effect of the circumstances indicating the guilt of the accused, rather than adopting an approach by isolating the role played by each of the accused. 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.”*

76. In *Kehar Singh v. State (Delhi Admn.) (1988) 3 SCC 609* the Supreme Court held that *“the most important ingredient in the offence of conspiracy is an agreement between two or more persons to do an illegal act. The prosecution will have to rely upon circumstantial evidence. The court must enquire whether the persons are independently pursuing the same unlawful object or whether they have come together for the pursuit of the unlawful object. The offence of conspiracy requires some kind of physical manifestation of the*

agreement. However, the same need not be proved, nor is it necessary to prove the actual words of communication. It is sufficient if there is a tacit understanding between the conspirators for the execution of the common illegal object. In cases of criminal conspiracy, better evidence than acts and statements of co-conspirators is hardly ever available.”

77. As *prima facie* noticed hereinabove, procurements have been made at exorbitant rates, spare parts received without the requisite vouchers, entered in the measurement books, bills processed for payment and payments released, without ensuring compliance of the requisite procedures prescribed by the Instructional Orders.

78. Further the Judgement in *Dilawar Balu Kurane v. State of Maharashtra*, (*supra*) relied upon by learned senior counsel for the Petitioner also does not further the case of the petitioners as the Supreme Court in the said case has held that though the Court cannot act merely as a post office or a mouthpiece of the prosecution, but the Court has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

79. The Supreme Court has further held that while considering the question of framing of charges, the judge has the undoubted power to sift and weigh the evidence for the limited purpose of finding out

whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial.

80. As noticed hereinabove, there is prima facie material to show substantial loss to the exchequer in the execution of the works, prescribed procedures for placing of orders and receiving of materials not being followed and forgery of authorisation which gives rise to grave suspicion.

81. There is also no merit in the contention of learned senior counsel appearing for Mr. Raman Gupta that as the co-accused Mr. Jagdish Kumar Arora was not in the seat prior during the period 2009 – 2011, the charge of conspiracy could not be framed. The allegation of the prosecution is with regard to several bills during the period 2009 – 2012. Even if Mr. Jagdish Kumar Arora was not in the relevant seat between 2009 – 2011, he was certainly in the seat after 2011 and has dealt with and processed some of the bills in question. Even if there was no criminal conspiracy prior to Mr. Jagdish Kumar Arora coming into position but there is *prima facie* material to show that he has handled some of the impugned bills and transactions and the circumstances give rise to grave suspicion of his involvement in the conspiracy.

82. Looked at from any angle, there is no infirmity in the finding returned by the Trial Court that grave suspicion arises against the petitioners warranting framing of charges under Sections 120B read with Sections 420 and 471 Indian Penal Code and Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 along with substantive offences.

83. I find no merit in the Petitions. The Petitions are accordingly dismissed.

84. It is clarified that the observations hereinabove shall not amount to an expression of opinion on the merits of the allegations against the petitioners.

85. Order *Dasti* under the signatures of Court Master.

SANJEEV SACHDEVA, J

March 25, 2021

HJ