



2026:CGHC:14691

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment Reserved on 19/03/2026

Judgment Delivered on 30/03/2026

CRA No. 130 of 2002

1 - M. R. Malik (Dead) Through LR.

1.1 - (A) Smt. Shyamali Mallik W/o Late Shri M.R. Mallik Aged About 72 Years R/o Mahendra Karma Ward No. 42, Jagdalpur, District Bastar, Chhattisgarh.

1.2 - (B) Miran Mallik S/o Late Shri M.R. Mallik Aged About 54 Years R/o Mahendra Karma Ward No. 42, Jagdalpur, District Bastar, Chhattisgarh.

1.3 - (C) Smt. Kakoli Gondli D/o Late M.R. Mallik Aged About 52 Years W/o Shri Amresh Gondli, R/o Ayodhya Bypass, Eco Green City, House No. 118, Opposite International School, Bhopal, Madhya Pradesh.

1.4 - (D) Smt. Konika Ray D/o Late M.R. Mallik Aged About 50 Years W/o Sanjay Kumar Ray, R/o F-6, Dubey Colony, Near Sai Mandir, Mova Raipur, District Raipur, Chhattisgarh.

2 - B. S. Mourya (Dead) Through LR.

2.1 - (A) Shravan Mourya S/o B.S. Mourya, Aged About 29 Years R/o Deng Para, Barda, Jagdalpur, District- Bastar (C.G.)

3 - T. K. C. Bose (Dead) Through LR.

3.1 - (A) Smt. A. Bose W/o Late Shri T.K.C. Bose, Aged About 79 Years R/o House No. 400, Vrindavan Colony, Jagdalpur, District Bastar (C.G.)

3.2 - (B) Anil Kumar Bose S/o Late Shri T.K.C. Bose, Aged About 53 Years R/o House No. 547, Street 6/b, Shanti Nagar, Vaishali Nagar, Supela, Bhilai, District Durg (C.G.)

3.3 - (C) Anita G. Nair W/o Shri G.Nair, Aged About 54 Years R/o House No. 400, Vrindavan Colony, Jagdalpur, District Bastar (C.G.)

3.4 - (D) Smt. Anita Menon W/o Shri Rajesh Menon, Aged About 47 Years R/o House No. 400, Vrindavan Colony, Jagdalpur, District Bastar (C.G.)

4 - K.R.C. Pille (Dead) Through LRs.

4.1 - (A) Prema Kumari W/o Late Shri K.R.C. Pillai Aged About 63 Years R/o Manakku Kizhakkethil, Niranam Vadakkumbhagom P. O. Thriuvalla, Kadapara, Pathanamthitta, Kerala.

4.2 - (B) Manjush Chandran S/o Late Shri K. R. C. Pillai Aged About 40 Years R/o Manakku Kizhakkethil, Niranam Vadakkumbhagom P. O. Thriuvalla, Kadapara, Pathanamthitta, Kerala.

4.3 - (C) Mahesh Chandran S/o Late Shri K. R. C. Pillai Aged About 37 Years R/o Manakku Kizhakkethil, Niranam Vadakkumbhagom P. O. Thriuvalla, Kadapara, Pathanamthitta, Kerala.

4.4 - (D) Lakshmi C W/o Arun Kumar R Aged About 36 Years D/o Late Shri K.R.C. Pillai, R/o Aykanadathu House, Nalkalikkal, P.O. Aranmula, Kidangannur, Aranmula, Pathanamthitta, Kerala.

5 - P. L. Billare S/o Bhaiyalal Billare Aged About 45 Years Accountant, Office Of The Chief Medical Officer, Kanker, District Kanker Chhattisgarh

6 - G. R. Sambhalkar (dead)

7 - C. Banerjee S/o Mukund Lal Banerjee, Head Clerk, T. B. Hospital Shayiband, Raipur Chhattisgarh

8 - M. P. Pandey S/o Late D. P. Pandey Aged About 47 Years Upper Division Clerk, Office Of The Leprosy Unit Bastar, Jagdalpur Chhattisgarh

9 - S. R. Dewangan S/o Chandu Ram Dewangan Aged About 44 Years Accountant, Office Of The Chief Medical Officer, Jagdalpur Chhattisgarh

.Appellant(s)

Versus

State Of Chhattisgarh Through Special Police Establishment, Lokayukt Bhopal
M. P.

Respondent(s)

(Cause-title taken from Case Information System)

For Appellant(s)	:	Mr. Prafull N. Bharat, Senior Advocate along with Mr. Keshav Dewangan, Mr. Vikash A. Shrivastava and Mr. Alok Kumar Dewangan, Advocates
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For Respondent(s) : Mr. Anand Gupta, Dy. GA

Hon'ble Shri Bibhu Datta Guru, Judge

C A V Judgment

The present appeal is directed against the judgment of conviction and order of sentence dated 28/01/2002 passed by the learned Additional Sessions Judge & Special Judge (under Section 3 of the Prevention of Corruption Act, 1988), Jagdalpur, District Bastar (C.G.) in Special Case No. 4/1994, whereby the appellants have been convicted and sentenced as under:-

Conviction	Sentence
Section 420 of the I.P.C read with Section 120 B of the IPC	Two years rigorous imprisonment and fine of Rs. 1000/- with default stipulation.
Section 467 of the IPC read with Section 120 B of the IPC	Two years rigorous imprisonment and fine of Rs. 1000/- with default stipulation.
Section 468 of the IPC read with Section 120 B of the IPC	Two years rigorous imprisonment and fine of Rs. 1000/- with default stipulation.
Section 471 of the IPC read with Section 120 B of the IPC	Two years rigorous imprisonment and fine of Rs. 1000/- with default stipulation.
Section 13(1)(d) of the Prevention of Corruption Act.	Two years rigorous imprisonment and fine of Rs. 1000/- with default stipulation.
The sentences were directed to run concurrently.	

1. In the trial there were ten accused. The present appeal has been preferred by the accused No.2 to 10 whereas accused No.1 Dr. R.K. Sen, the then CMHO (Chief Medical & Health Officer) has not preferred any appeal against his conviction. However, from the material available on record, this Court learnt

that he died on 6.9.2003.

2. It is pertinent to note that during the pendency of the proceedings, accused No. 2 M.R. Malik, accused No. 3 B.S. Morya, accused No. 4 T.K.C. Bose and accused No. 5 K.R.C. Pille (appellants No.1 to 4) expired and are now represented through their legal representatives. Accused No. 7 G.R. Sambhalkar (appellant No.6) has also expired; the appeal in his respect stands abated vide order dated 15.09.2021. Accused No.6, 8, 9 and 10 (appellants No.5, 7, 8 and 9) are alive.

3. The present case arises out of allegations that the accused persons, during the period from July 1979 to May 1985, while being posted as public servants in the office of the District Family Welfare and Health Department, Jagdalpur, District Bastar, entered into a criminal conspiracy and, in furtherance thereof, committed offences punishable under Sections 120B, 420, 409, 467, 468 and 471 read with Section 34 of the Indian Penal Code, 1860, as well as under the provisions of the Prevention of Corruption Act, 1988.

Case of the prosecution :

4. The prosecution case is that Dr. R.K. Sen (died) (A1) was posted as Chief Medical and Health Officer in Jagdalpur, District Bastar. During his tenure, the co-accused M.R. Malik (Cashier) (A2), B.S. Morya (Accountant) (A3), T.K.C. Bose (Accountant) (A4), K.R.C. Pille (Accountant) (A5), P.J. Billare (Accountant) (A6), G.R. Sambhalkar (Accountant) (A7), C. Banerjee (Head Clerk) (A8), M.C. Pande (Upper Division Clerk) (A9) & S.R. Dewangan (Accountant) (A10) were working in the office of CMHO or between July 1979

and May 1985 under the supervision of A1. It is further alleged that three sweepers namely; Jaysingh, Lalmani, and Mayaram were appointed at different primary health centres on a temporary basis. However, instead of posting them at their designated places of work, A1 engaged them as domestic servants at his residence from July 1979 for about one year. Thereafter, all three sweepers left the job. It is the case of the prosecution that despite their departure, A1 in conspiracy with the other accused persons (A2 to A10), continued to prepare false salary bills in their names from July 1979 until May 1985 and fraudulently withdrew their salaries from the office. It is further alleged that forged thumb impressions of the said sweepers were affixed on the salary bills, even though they were literate and capable of signing. In this manner, the accused persons, by entering into a criminal conspiracy, fraudulently withdrew a total amount of Rs. 42,040.35 in the names of the said sweepers without any actual work being performed, thereby committing criminal acts and misappropriating government funds.

5. Upon completion of investigation and after obtaining requisite sanction for prosecution, the charge-sheet was filed before the competent court. The learned Special Judge framed charges against the accused persons under the aforesaid provisions, to which they pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution examined as many as 29 witnesses. After closure of prosecution evidence, the statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure, wherein they denied the allegations and pleaded their innocence, however, did not lead any defence evidence.

7. The learned trial Court after appreciating the oral and documentary evidence available on record proceeded to convict the appellants herein for the aforementioned offence and sentenced them as mentioned herein-above against which this appeal has been preferred by the appellants herein questioning the impugned judgment of conviction and order of sentence.

Contentions of the parties :

8. (i) Learned senior counsel appearing for the appellants/A2 to A10 would submit that the conviction of the appellants under Sections 420, 467, 468, 471 read with Section 120-B IPC and Section 13(1)(d) of the Prevention of Corruption Act is wholly unsustainable in law and on facts, as the prosecution has failed to establish the essential ingredients of the alleged offences. For an offence of forgery under Sections 467, 468 and 471 IPC, it is incumbent upon the prosecution to prove the creation of a false document within the meaning of Section 463 IPC with intent to cause damage or injury and its use as genuine; however, there is no evidence on record to show that the appellants either prepared or forged any document, and in the absence of such foundational proof, the question of using any forged document does not arise. Likewise, the offence under Section 420 IPC is not made out, as there is no material to establish deception or inducement by the appellants leading to delivery of property.

(ii) Learned senior counsel would further submit that the charge under Section 13(1)(d) of the Prevention of Corruption Act also fails, as there is no evidence to show that the appellants obtained any pecuniary advantage for themselves or for any other person by corrupt or illegal means or by abusing

their official position. The prosecution case stands completely demolished by its own witnesses, who have categorically admitted that all entries and withdrawals were duly certified and countersigned by A1 the competent authority, and that the appellants, being subordinate officials, merely acted under his directions without any independent role. It has also come on record that the contingency registers and relevant accounts were prepared by other officials, particularly PW-18 Pradeep Kumar Banik, and not by the appellants; that the alleged beneficiaries have not furnished any specific or reliable evidence regarding the period of employment or receipt of salary; that for certain periods no salary was withdrawn at all, thereby falsifying the prosecution case; and that the material documents relied upon are merely carbon copies, without production of originals, rendering them legally inadmissible.

(iii) According to the learned counsel, even the Investigating Officer has admitted that the appellants were bound to follow the directions of A1 and there is no evidence of any independent culpable intent on their part. Furthermore, the charge of criminal conspiracy under Section 120-B IPC is not made out, as there is no evidence of any agreement or meeting of minds between the appellants and the co-accused to commit any illegal act, and mere compliance with official instructions cannot constitute conspiracy. In view of the settled legal position that bald allegations are insufficient, that discharge of official duty does not constitute criminal liability in the absence of *mens rea*, and that conspiracy and criminal misconduct must be proved by cogent and reliable evidence, it is evident that the prosecution has failed to prove its case beyond reasonable doubt, and the conviction of the appellants, being based on

conjectures and surmises, is liable to be set aside.

(iv) Learned Senior Counsel appearing for the appellants would next submit that the allegations against the appellants are based on bald and omnibus statements. It is contended that no specific role has been attributed to these appellants in the alleged conspiracy and, therefore, the proceedings against them ought not to have been sustained. It is further submitted that unless there is cogent evidence linking these accused persons with the alleged conspiracy to cause loss to the public exchequer, they cannot be prosecuted; however, no such tangible material is available on record in the present case. Learned Senior Counsel also submits that the trial Court has failed to consider the material evidence essential for proving the alleged offences against the appellants and has recorded the conviction without any clear and specific findings regarding their role in the commission of the offence, thereby rendering the impugned judgment unsustainable in the eyes of law.

(v) Learned counsel further submits that the allegation against the accused persons under Section 13(1)(d) of the Prevention of Corruption Act pertains to committing criminal misconduct by abusing their position as public servants to obtain pecuniary advantage. It is contended that no evidence has been adduced to establish what pecuniary advantage, if any, was obtained by the accused persons. Therefore, the essential ingredients required to attract the said provision have not been proved, and the conviction under the said Section is not sustainable in law. In support of his contention, learned senior counsel would place reliance upon the decisions rendered by the Supreme Court in the matters of *A. Sivaprakash v. State of Kerala*, reported in (2016) 12 SCC 273,

C.K. Jaffer Sharief v. State (through CBI), reported in ***(2013) 1 SCC 205***, S. ***Arul Raja v. State of Tamil Nadu***, reported in ***(2010) 8 SCC 233***, ***Surendra Kumar and Anr. V. State of U.P.***, reported in ***AIR OnLine 2021 SC 238***, ***Surendra Nath Pandey v. State of Bihar and Anr.***, reported in ***(2020) 18 SCC 730 & Sharanappa v. State of Karnataka***, reported in ***(2018) 17 SCC 88***.

9. While supporting the impugned judgment learned counsel for the State would submit that the learned trial Court has rightly appreciated the evidence on record. It is contended that the material on record sufficiently establishes that the appellants, in furtherance of a criminal conspiracy, facilitated preparation of false bills and withdrawal of government funds, thereby causing loss to the State exchequer. It is thus submitted that the conviction does not call for any interference.

10. I have heard learned counsel for the parties at length perused the material available on record.

Analysis :

11. The primary question that arises for consideration in the present appeal is - whether the prosecution has been able to prove beyond reasonable doubt that the appellants, in furtherance of a criminal conspiracy, committed offences punishable under Sections 420, 467, 468, 471 read with Section 120-B IPC and Section 13(1)(d) of the Prevention of Corruption Act ?

12. Before advertng to the evidence on record, it is necessary to briefly notice the essential ingredients of the offences alleged. To establish offences under Sections 467, 468 and 471 IPC, the prosecution must prove the creation

of a false document and its use as genuine. Similarly, for Section 420 IPC, deception and inducement are sine qua non. For Section 120-B IPC, there must be evidence of an agreement to commit an illegal act, and under Section 13(1) (d) of the Prevention of Corruption Act, it must be shown that the accused obtained pecuniary advantage by corrupt or illegal means or by abusing their position.

13. PW-17, Laxmi Dodke (Accountant) in the office of CMHO, Jagdalpur, has deposed that she had been working in the office at Jagdalpur since the year 1973, initially on a lower division post and was subsequently promoted to the post of Upper Division Clerk and thereafter to the post of Accountant. She stated that during the relevant period, Dr. R.K. Sen was posted as Chief Medical and Health Officer. She further deposed that after the merger of the District Family Welfare Office and the Chief Medical and Health Office, she continued to handle cash-related work. She stated that one Pradeep Banik (PW-18), who was working in the department, used to collect salary amounts and bills of certain employees, namely Jai Singh, Mayaram and Lalmani, on the pretext of delivering the same to the Chief Medical Officer. She deposed that on one occasion, she handed over the salary bills and cash pertaining to the said employees to Pradeep Banik, who returned the bills on the following day bearing signatures of the concerned employees. She further stated that on subsequent occasions also, Pradeep Banik demanded the salary amounts of the said employees, but she objected and insisted that the employees should personally come to the office to receive their salary. However, she was called by Dr. Sen to his chamber, who directed her to hand over the salary bills and amounts, assuring that the same would be delivered to the concerned

employees. She stated that, though she was not in agreement with such a practice, she did not raise further objection and handed over the salary and bills accordingly. She further deposed that despite her insistence, the said employees did not come to collect their salaries personally and that she later came to know that they were not attending office duties. She stated that even thereafter, salary amounts continued to be drawn in their names. She also deposed that she was not responsible for preparation of salary bills, which were prepared by the accounts section, though the disbursement of salary was made through her. She stated that she could not recall the bill numbers due to lapse of time. She further stated that Dr. Sen had informed her that the said employees were working at his residence and Pradeep Banik had also conveyed the same to her. She admitted that there was no departmental order permitting disbursement of salary outside the office, and that she had handed over the amounts only on the instructions of Dr. Sen. She also stated that she had raised objections regarding such payment but did not lodge any formal complaint with higher authorities. She further deposed that during the Lokayukta enquiry, her statement was recorded and she had submitted her explanation through the Chief Medical Officer. In her cross-examination, she admitted that she had not independently verified whether the said employees were actually working and that she had acted on the directions of her superior officers. This witness further deposed that she does not know as to on which date A1 was posted as CMHO at Jagdalpur. She further deposed that in the year 1984, Dr. P. Agrawal, Surgeon, had issued orders regarding the procedure for withdrawal and disbursement of bills in the office. She further deposed that she had knowledge of only one person, namely Santosh, who was working under the said doctor and who used

to visit the office every month to collect his salary. She further deposed that as per the orders of A1, other persons used to prepare bills, and on the basis of such bills, she used to decide whether payment was to be made to the three employees or not. She further deposed that unless any information was received to the effect that a particular employee was not working, the bills used to be typed under her directions in accordance with the prescribed procedure.

14. PW-18, Pradeep Kumar Banik (PW-18), Lower Division Clerk in the office of the CMHO, Jagdalpur, has deposed that he knew the accused persons as well as the concerned employees, namely Jai Singh, Laxman and Mayaram. He stated that he was working as an Assistant to PW-17, Laxmi Dodke, who was discharging cashier duties. He further deposed that on the instructions of A1, Dr. R.K. Sen, he collected the salary amounts and bills pertaining to the said three employees for the months of August and September and handed over the same to Dr. Sen. He stated that on the following day, Dr. Sen returned the bills to him, which, he, in turn, handed back to PW-17, Laxmi Dodke. He further stated that PW-17 had objected that the concerned employees should personally come and receive their salary, as was the usual practice in the office. Thereafter, according to him, the payment of salary to the said employees was discontinued. He has deposed that he prepared the entries after perusing the bills contained at pages 1 to 69 of the Contingency Payment Register (Ex.P-33) and further stated that on the said register, he obtained the counter-signatures of Dr. Sen. He further deposed that he was initially appointed as a cook and was later promoted to the post of Lower Division Clerk on 02.04.1985. Prior to his promotion, he was working as a cook at Maharani Hospital, Jagdalpur, and from the year 1983, he was entrusted with making entries in the salary/payment

register of the District Family Welfare Office on the basis of bills. He clarified that he used to enter only the name of the payee and the amount payable as per the bills, and that the actual disbursement of salary and obtaining of signatures on revenue stamps were carried out by the cashier, namely PW-17, Laxmi Dodke. He denied that he ever made payments personally or obtained signatures from the employees. He further admitted that in respect of the month of September, 1984, the payment register did not reflect the dates of payment, although such dates were mentioned in the bills. He also stated that the payment register was required to be separately maintained due to audit objections, and that in the said register, all relevant columns were to be duly filled. He further admitted that the payment register for the said period did not bear the signatures of the Drawing and Disbursing Officer. He further deposed that his statement was recorded by the Lokayukt Police, though he was unable to recall the exact date and stated that his statement was recorded only once. He further stated that the statement was recorded by the police on the basis of records and not by him, and that his signatures were not obtained on the said statement. He denied having been called upon to furnish any explanation in the matter. He reiterated that he was working under oral instructions of Dr. Sen while assisting the cashier and making entries in the register. He further deposed that prior to his appointment, he had come to Jagdalpur from West Bengal and was appointed without any formal advertisement by Dr. R.K. Sen. He denied the suggestion that he had made any false statement before the Lokayukt for securing his employment.

In his cross-examination, he admitted that he could not state whether the concerned employees continued to work with Dr. Sen till the stoppage of their

salary, however, he categorically stated that except Dr. Sen, none of the other accused persons had any role in the withdrawal or payment of salary to the said employees, and that the salary was withdrawn on the instructions of Dr. Sen, while other officials performed their duties in accordance with their respective postings.

15. PW-22, Jai Singh, Cook deposed that he has been working at Maharani Hospital, Jagdalpur since the year 1983 and is educated up to Class VIII. He stated that, at the relevant time, he was drawing a salary of Rs. 315/- approx. per month. He further deposed that whenever his salary was disbursed, he used to sign and receive the same and had never received any payment by affixing his thumb impression. He also stated that he was not appointed to any other post. In his cross-examination, he stated that after his appointment, he regularly received his salary every month upon signing the payment register and that no part of his salary was ever withheld.

16. PW-8, Jai Singh, deposed that he knew Dr. R.K. Sen and had performed tasks such as wood handling, stitching books, and other related work under his direction. He stated that he was brought to Dr. Sen by Maya Ram, where discussions regarding the scope of work took place with Dr. Sen's wife. He was assured by Dr. Sen's wife a salary of Rs.150/- per month. He worked at Dr. Sen's residence for about two months and received the agreed salary. Thereafter, he discontinued working at Dr. Sen's residence. He stated that he had studied up to Class III and knew how to sign his name. This witness further deposed that while he was employed, two other temporary workers, Lal Meen and Mayaram, were also engaged in similar work at Dr. Sen's residence.

17. PW-19, Laxman Pandey, Ward Boy, deposed that he knew all the accused persons, who were officials in the Health Department. He stated that he was appointed in the Health Department in 1974. He further deposed that in 1974, he had worked at the bungalow of the Chief Medical Officer, and thereafter served under the Additional Civil Surgeon before returning to work at Maharani Hospital. He deposed that he initially received a salary of Rs. 140/- per month, which increased over time in accordance with departmental provisions. He further deposed that he regularly received departmental allowances and his salary by signing the payment register and that he never received any payment by affixing his thumb impression. In cross-examination, he deposed that he had never received his salary by affixing his thumb impression in the office payment register, that his appointment in the Health Department, Jagdalpur, was in 1974 at the clerical level, and that he had been continuously serving in the department since then. He further deposed that Dr. R.K. Sen had never personally disbursed his salary or authorized his payments.

18. PW-21, Laxman, Ward Boy in Ayurved Hospital deposed that he knew the accused persons, who were officials in the Health Department. He stated that he was appointed in 1983 at Health Department, where he initially received a salary of Rs. 155/- per month, which he received from the CMHO office. He further deposed that he studied up to Class V and knew how to sign his name. He stated that he personally received his salary and never relied on anyone else for the same. He deposed that in 1983, he had also worked at Dr. Sen's bungalow, where he, along with Sukh Singh and Naresh Kashyap, performed household work as directed by A1. In cross-examination, he deposed that he has personally received his salary and that Dr. Sen never personally

handed over his salary to him.

19. PW-26, Lalman Pandey, deposed that he had worked at Maharani Hospital for about 20–22 years. He stated that his first appointment was as a sweeper. He further deposed that he knew how to sign his name and that he always received his salary by signing the respective salary bills. He clarified that he had never received any payment by affixing his thumb impression. In cross-examination, he deposed that Shri Gopal Pandey, who was working as a subordinate officer in the Health Department, had facilitated his employment. He stated that he could not provide details of the work performed by other employees, namely Lalman, Laxman, and Jai Singh, in the department. He further deposed that from the time of his appointment until retirement, he personally received his salary every month, and no one else ever received it on his behalf. He reiterated that he had never received any salary for himself or on behalf of anyone else by affixing a thumb impression.

20. PW-7, Lalmani, deposed that he knew the accused Dr. R.K. Sen. He stated that he was brought from Kalipur to work at Dr. Sen's residence. At that place, he was instructed by Dr. Sen's wife regarding the work to be performed. He further deposed that he agreed to work and was promised a monthly salary of Rs. 150/- for his services. He worked there for about one year and received the agreed salary. He stated that he had studied up to Class VII and knew how to sign his name. He further deposed that the work caused him difficulty, and he fell ill, after which he left the place and returned home. He also stated that he performed porter duties there and continued to perform such duties subsequently.

In cross-examination, he deposed that he was brought from his home to Jagdalpur Rest House, where his statement was recorded by a senior officer in civilian clothes. He further deposed that his statement was taken on a blank sheet, after which his signatures were obtained on both sides of the paper, and he was then sent back home in a jeep. He confirmed that he had worked at Dr. Sen's bungalow in Lalbagh as a domestic worker and that his engagement was supervised by Dr. Sen's wife, who paid him Rs. 150/- per month. He further deposed that due to severe illness, he had to leave the work and return home.

21. PW29, M.C. Sharma deposed that at the relevant time he was posted as an Inspector in the Lokayukta Office and was working under Superintendent of Police, Madangopal Pandey. In the year 1985, he was assigned the investigation of the case relating to Dr. R.K. Sen and others, and he conducted the investigation under the directions of his superior officer. He stated that, as per instructions, he summoned officials of the Health Department, including accountants and other staff, to the Jagdalpur Rest House and, based on the information provided by them, prepared a panchnama regarding the sweepers Jai Singh, Mayaram and Lalmani (Exhibit P-40), bearing his signatures. During investigation, he seized documents (Exhibit P-2, documents 1 to 18) from Yamuneshwar Pandey (Accountant) and other officials in the presence of witnesses and prepared a seizure memo. He further stated that the documents were later returned on Supurdnama (Exhibit P-3). He referred to entries in the cash book (Exhibit P-43), particularly page 71 and other pages (Exhibits P-44, P-45, P-46, P-47), which contained entries relating to payment of salary to the said sweepers. He recorded the statements of several persons, including Jai Singh (resident of Kodekursi), who stated that he had worked for about three

years and received salary for the said period. He also recorded statements of various persons namely; Laxman son of Dukaru, Dhurwa village Pushval, Laxman s/o Vasudev Pandey R/o Karitgao, Laxman S/o Sukhram Mahra, and Laxman S/o Jagannath Mahra. Laxman son of Dukaru, stated that he had worked as a sweeper at a Primary Health Centre for about two months and received salary for the same. Laxman Pandey stated that he was working at the residence of the District Health Officer and was receiving salary, and continued to be in service at the time his statement was recorded. Laxman, son of Sukhram Mahra, stated that he worked as a ward boy at Maharani Hospital during 1983–84 and was still in service at the relevant time. Laxman son of Jagannath Mahra, stated that Mayaram had worked under the District Health Officer at Jagdalpur. Jai Singh further stated that he had been working as a gardener at Maharani Hospital for about 30 years and had been receiving salary regularly. Another witness, Vasudev Thakur, stated that Jai Singh was posted as a sweeper at a Primary Health Centre and produced a bill relating to payment. This witness further deposed that Mayaram, son of Ramanand, resident of village Kalipur, stated in his statement that he had worked at the residence of Dr. R.K. Sen and had received salary for about 11 months. The witness further referred to the contingency payment register (Article A-2) and stated that on page 1, a person named Laxman had signed in the relevant column indicating receipt of salary in the capacity of a ward boy, and similar signatures were found on page 3. He further stated that on page 1 itself, a person named Laxman (Sweeper) had affixed his thumb impression in token of receipt of salary. On page 14, in the relevant portion, Lalman (Sweeper) had signed on behalf of Laxman and received payment, below which Laxman

Pandey had signed for receipt of his salary, and further below, Laxman (Sweeper) had affixed his thumb impression. On page 16, Laxman (Sweeper) had affixed his thumb impression, and Mayaram had also affixed his thumb impression in token of receipt of salary as a sweeper. On page 21, Laxman (Sweeper) had affixed his thumb impression for receiving salary, and similarly, Jai Singh (Sweeper) and Mayaram had also affixed their thumb impressions indicating receipt of salary. On page 22, Laxman (Sweeper), Jai Singh (Sweeper), and Mayaram had similarly affixed thumb impressions in token of receipt of salary. Further, on page 24, Laxman had received salary in the capacity of a ward boy, and on page 25, Laxman had signed for receipt of salary as a ward boy, whereas in another entry on the same page, Laxman (Sweeper) had affixed his thumb impression in token of receipt of salary.

This witness has further deposed that he had seized a total 51 bills, as per Ex.P.1, from Yamuneshwar Prasad Pandey (Accountant) at the Circuit House. The seizure memo was prepared in four pages and duly signed. He deposed that the said bills were sent to the Fingerprint Expert for examination (Ex.P.123). As per report, the thumb impression Specialist Inspector had informed that the disputed Fingerprint were considered unfit for Examination and hence comparison was not possible.

In cross examination, this witness admitted that The witness admitted that, except Dr. R.K. Sen, all other accused persons were subordinate employees working under him. He further admitted that it was obligatory for the other accused persons to comply with the directions issued by Dr. R.K. Sen and that the office work was being carried out by them in accordance with his

instructions.

22. Upon a careful and holistic appreciation of the entire oral and documentary evidence on record, this Court finds that the substratum of the prosecution case rests upon the allegation that false salary bills were prepared in the names of certain sweepers and amounts were withdrawn without actual work being performed. However, a closer scrutiny of the evidence led by the prosecution reveals significant inconsistencies and gaps which go to the root of the matter.

23. In this backdrop, the evidence on record clearly establishes that the acts relating to preparation, processing, and disbursement of the alleged salary payments were carried out under the directions and supervision of A1, Dr. R.K. Sen, who was the competent authority at the relevant time. The material witnesses, particularly PW-17 and PW-18, have consistently deposed that they acted in compliance with his instructions and had no independent role in the execution of the transactions in question. The evidence further demonstrates that the functioning of the office, in this regard, was entirely dominated by A1, under whose authority the subordinate staff operated without exercising any independent discretion. At best, the appellants can be said to have mechanically carried out official instructions in the ordinary course of their duties. Significantly, there is no cogent or reliable evidence on record attributing any specific overt act to the present appellants (A2 to A10), nor is there any material to establish their culpable intent or active participation in the alleged offences. The allegations against them remain general and omnibus in nature, without any substantive evidentiary foundation. Mere compliance with the

directions of a superior officer, in the absence of proof of *mens rea* or wrongful gain, cannot fasten criminal liability upon them.

24. This position is further reinforced by the testimony of the material witnesses, particularly PW-17 and PW-18, who have consistently deposed that the withdrawal and disbursement of salary amounts were undertaken strictly under the directions of A1, Dr. R.K. Sen, and that they had no independent role in preparation, processing, or disbursement of the bills in question. Their evidence clearly reflects that they were functioning within the administrative framework of the office and were required to act in accordance with the instructions issued by the competent authority.

25. PW-29, the Investigating Officer, has primarily proved the seizure of documents and entries in the registers, and his testimony remains largely formal in nature. Significantly, he has not attributed any specific overt act to the present appellants (A2 to A10). On the contrary, he has admitted in his cross-examination that the appellants were subordinate officials working under A1 and were duty-bound to comply with his directions, and that the office work was carried out in accordance with such instructions. Further, the statements recorded during the course of investigation, as deposed by PW-29, indicate that the alleged beneficiaries had, in fact, worked for certain periods and received salary. This aspect assumes significance, as it substantially weakens the prosecution case that the payments were wholly fictitious or made without any work being performed, thereby creating a serious dent in the substratum of the prosecution story.

26. The employees namely Jai Singh (PW22), Jai Singh (PW8), Laxman

Pandey (PW19), Laxman (PW21), Lalmani (PW7), who were working in the house/bungalow of A1, have been examined. They have not stated the exact period for which they worked in A1's bungalow or the period for which they received their salaries. All these witnesses have only said that they were paid for the time they worked and that they signed the relevant register while receiving their salaries. In absence of clear evidence about the period of work, presumption cannot be drawn that the salary was withdrawn inspite of the fact that they had not worked that period. On the basis of mere presumption, the conviction of the appellants is not sustainable. Even the prosecution failed to show any evidence of what specific acts were done by A2 to A10 that would make them liable for offences under Sections 420, 467, 468, and 471 read with Section 120-B IPC, and Section 13(1)(b) of the Prevention of Corruption Act.

27. The documentary evidence relied upon by the prosecution, particularly the contingency registers (Article A-2), merely reflects entries relating to payment of salary, either through signatures or thumb impressions. At the highest, such entries may give rise to suspicion regarding procedural irregularities in the mode of disbursement; however, suspicion alone cannot form the basis of a criminal conviction.

28. It is well settled that to bring home a charge under Sections 467, 468, and 471 of the IPC, the prosecution must establish, by cogent and reliable evidence, the creation of a false document within the meaning of Section 463 IPC and its subsequent use as genuine. In the present case, the prosecution has failed to adduce any expert evidence or other reliable material to demonstrate that the signatures or thumb impressions appearing on the documents were forged or

fabricated. There is also no evidence to show that the appellants were involved in the preparation of any such false document. Similarly, the essential ingredients of the offence under Section 420 IPC, namely deception and dishonest inducement leading to delivery of property, are conspicuously absent. There is no material on record to indicate that the appellants had deceived any authority or induced the delivery of funds by fraudulent means. In the absence of proof of these foundational facts, the conviction under the aforesaid provisions cannot be sustained.

29. In the matter of **Sharanappa** (supra) the Supreme Court observed thus at para 11 :

11A perusal of the judgments of the trial Court as well as the first appellate Court and also the subsequent judgment of the High Court makes it clear that unfortunately, none of the Courts has looked into the material which is very important to prove the guilt and there is no clear finding about the alleged commission of offence by the present appellant. Without going into the role of the appellant-accused, the Courts have awarded conviction to the appellant as if he had colluded with the other accused in sanctioning the loan as shown in Exhibits P-40 to P-43. In our opinion, the appellant-accused has no role in sanctioning the loan or entering into the agreement with the owners of the land Accused 1 and 2. He discharged his duties as Block Development Officer and only on the basis of the report submitted by Junior Engineer (Accused 6), who was the competent person in submitting and recommending the issue of cheques

in question. The appellant has merely sanctioned those cheques based on the factual and verification report furnished by the Junior Engineer.....

30. The charge under Section 13(1)(d) of the Prevention of Corruption Act also does not stand proved. In order to attract the said provision, it must be established that the accused, being a public servant, obtained for himself or for any other person any pecuniary advantage by corrupt or illegal means or by abusing his official position. In the present case, there is a complete absence of evidence to show that the appellants derived any pecuniary benefit or facilitated the same for any other person through corrupt or illegal means. The prosecution has not placed on record any material to demonstrate either wrongful gain to the appellants or corresponding loss to the State attributable to their individual acts. Mere participation in routine official work, carried out under the directions of a superior officer, cannot by itself be construed as criminal misconduct within the meaning of the Act, particularly in the absence of proof of dishonest intention or abuse of position.

31. In the matter of **A. Sivaprakash** (supra) the Supreme Court held that in respect of allegation on accused under Section 13(1)(d)(ii) of committing criminal misconduct by abusing his position as public servant in obtaining pecuniary advantage for himself no evidence has been led to establish as to what kind of pecuniary advantage was obtained by accused and as such mandatory ingredients to implicate the accused under the said provision not proved and therefore, the charge not established beyond reasonable doubt.

32. The Supreme Court in the matter of **C.K. Jaffer Sharief** (supra) held

thus at paras 14 to 17 :

“14. Section 13(1)(d) of the Act may now be extracted below:

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

(a)-(c) xxx xxx xxx

(d) if he-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) xxx xxx xxx xxx

A bare reading of the aforesaid provision of the Act would go to show that the offence contemplated therein is committed if a public servant obtains for himself or any other person any valuable thing or pecuniary advantage by corrupt or illegal means; by abusing his position as public servant or without any public interest. The aforesaid provision of the Act i.e. Section 13 (1) (d) are somewhat similar to the offence under Section 5 (1) (d) of the Prevention of Corruption Act, 1947.

15. Adverting to the facts of the present case it has already been noticed that the only allegation against the appellant is that he

had prevailed upon RITES and IRCON to take the four employees in question on "deputation" for the sole purpose of sending them to London in connection with the medical treatment of the appellant. It is also alleged that neither RITES nor IRCON had any pending business in London and that none of the four persons had not (sic) performed any duty pertaining to RITES or IRCON while they were in London; yet the to and fro air fare of all the four persons was paid by the above two public sector undertakings. On the said basis it has been alleged that the appellant-accused had abused his office and caused pecuniary loss to the two public sector undertakings by arranging the visits of the four persons in question to London without any public interest. This, in essence, is the case against the appellant-accused.

16. *A fundamental principle of criminal jurisprudence with regard to the liability of an accused which may have application to the present case is to be found in the work Criminal Law by K.D. Gaur. The relevant passage from the above work may be extracted below:*

"Criminal guilt would attach to a man for violations of criminal law. However, the rule is not absolute and is subject to limitations indicated in the Latin maxim, actus non facit reum, nisi mens sit rea. It signifies that there can be no crime without a guilty mind. To make a person criminally accountable, it must be proved that an act, which is forbidden by law, has been caused by his conduct, and that the conduct was accompanied by a legally blameworthy attitude of mind. Thus, there are two components of every crime, a physical element and a mental element, usually called actus reus and mens rea respectively."

17. *It has already been noticed that the appellant besides working as the Minister of Railways was the head of the two public sector undertakings in question at the relevant time. It also appears from the materials on record that the four persons while*

*in London had assisted the appellant in performing certain tasks connected with the discharge of duties as a Minister. It is difficult to visualise as to how in the light of the above facts, demonstrated by the materials revealed in the course of investigation, the appellant can be construed to have adopted corrupt or illegal means or to have abused his position as a public servant to obtain any valuable thing or pecuniary advantage either for himself or for any of the aforesaid four persons. If the statements of the witnesses examined under Section 161 CrPC show that the aforesaid four persons had performed certain tasks to assist the Minister in the discharge of his public duties, however insignificant such tasks may have been, no question of obtaining any pecuniary advantage by any corrupt or illegal means or by abuse of the position of the appellant as a public servant can arise. As a Minister it was for the appellant to decide on the number and identity of the officials and supporting staff who should accompany him to London if it was anticipated that he would be required to perform his official duties while in London. If in the process, the rules or norms applicable were violated or the decision taken shows an extravagant display of redundancy it is the conduct and action of the appellant which may have been improper or contrary to department norms. But to say that the same was actuated by a dishonest intention to obtain an undue pecuniary advantage will not be correct. That dishonest intention is the gist of the offence under Section 13(1)(d) is implicit in the words used i.e. corrupt or illegal means and abuse of position as a public servant. A similar view has also been expressed by this Court in *M. Narayanan Nambiar v. State of Kerala* while considering the provisions of Section 5 of the 1947 Act.*

33. The allegation of criminal conspiracy under Section 120-B IPC also remains unsubstantiated. It is trite law that to establish a charge of conspiracy, the prosecution must prove the existence of an agreement or meeting of minds

between two or more persons to commit an illegal act or a legal act by illegal means. Such an agreement must be established either by direct evidence or by circumstances which unerringly point towards a common design.

34. In respect of the allegation of criminal conspiracy levelled against the appellants herein is concerned, the Supreme Court in the matter of **Surendra Kumar** (supra) held that conspiracy is a matter of inference and inference must be based on solid evidence. It further held that in case of any doubt the benefit must inevitably go to the accused.

35. In the present case, no such evidence has been brought on record. There is neither any direct material nor any circumstantial evidence to indicate that the appellants had entered into any agreement with A1 or with each other to commit the alleged offences. The evidence, at best, shows that the appellants acted in discharge of their official duties and in compliance with the directions of their superior officer. Such conduct, in the absence of any material indicating a shared criminal intent, cannot be elevated to the level of a criminal conspiracy.

36. In essence, the entire prosecution case revolves around the role attributed to A1, under whose authority and supervision the alleged acts were carried out. No independent or specific role has been assigned to the present appellants, nor has any material been brought on record to establish their culpable intent or conscious involvement in the alleged illegal acts.

37. In view of the foregoing analysis, this Court is of the considered opinion that the prosecution has failed to establish the charges against the appellants

(A2 to A10) beyond reasonable doubt. The evidence on record, at best, creates suspicion; however, it is well settled that suspicion, howsoever strong, cannot take the place of legal proof.

38. The appellants, being subordinate officials, acted in compliance with the directions of their superior officer, namely Dr. R.K. Sen (A1), and there is no evidence to indicate any independent involvement, dishonest intention, or wrongful gain on their part. The essential ingredients of the offences alleged have not been proved, and the conviction recorded by the learned trial Court cannot be sustained.

39. Accordingly, the conviction of the appellants (A2 to A10) under Sections 420, 467, 468, 471 read with Section 120-B of the IPC and Section 13(1)(d) of the Prevention of Corruption Act is unsustainable in law and is hereby set aside.

40. The appeal is, therefore, **allowed**. The impugned judgment of conviction and order of sentence are hereby set aside, and the appellants are acquitted of all the charges.

41. The appellant No. 5, 7, 8 & 9 are reported to be on bail. Their bail bonds shall remain in force for a further period of six months in terms of Section 437-A of the Cr.P.C. (481 of Bharatiya Nagarik Suraksha Sanhita (BNSS)). The Registry is directed to transmit the trial Court record forthwith for necessary information and follow up action.

Sd/-

(Bibhu Datta Guru)
Judge

HEAD NOTE

To establish a charge of conspiracy, the prosecution must prove the existence of an agreement or meeting of minds between two or more persons to commit an illegal act or a legal act by illegal means. Such an agreement must be established either by direct evidence or by circumstances which unerringly point towards a common design.