



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

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*Judgment Reserved on: 24.02.2026*  
*Judgment pronounced on: 10.03.2026*

+ CRL.A. 529/2003

KALI CHARAN & ANR.

.....Appellants

Through: Mr. H.K. Chaturvedi, Adv. for A-1.  
Mr. Himanshu Sethi and Ms.  
Aishwarya Chhabra, Advocate for A-  
2.

versus

UOI & ANR.

.....Respondents

Through: Mr. Rajesh Kumar, SPP for CBI with  
Mr. Changez Khan and Mr. Siddharth  
Shekhar, Advocates for CBI.

**CORAM:**

**HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA**

**JUDGMENT**

**CHANDRASEKHARAN SUDHA, J.**

1. This appeal under Section 374, 386(b)(i) read with Section 482 of the Code of Criminal Procedure, 1973 (the Cr.P.C.) has been filed by accused nos. 1 and 3 (A1 and A3) in C.C.No.11/1986 (New No. 331/1994) on the file of the Court of Special Judge, Delhi, challenging the conviction entered and sentence passed against them for the offences punishable under Section 120-B read



with Section 409 of the Indian Penal Code, 1860 (the IPC) and Sections 5(1)(c) and 5(1)(d) of the Prevention of Corruption Act, 1947 (the PC Act) read with 120-B IPC. A1 has also been convicted under Sections 409 and 201 IPC.

2. The prosecution case is that during the period from August 1981 to March 1982, the accused persons, namely, A1 (Inspector), A2 (Assistant Engineer), A3 (Assistant Engineer), A5 (Mazdoor), being public servants and employees of the Delhi Electric Supply Undertaking (DESU), along with A6 and A4 (since deceased), PW2 (approver) and A8, entered into a criminal conspiracy to dishonestly and fraudulently misappropriate electrical materials belonging to DESU, by withdrawing the same from stores on the basis of forged and false store-issue dockets. It is alleged that 18 forged store issue dockets were prepared and used for this purpose and these dockets were falsely shown as issued from authorised stores, whereas in fact the materials were either drawn from unauthorised stores, or were misappropriated and sold, thereby



causing wrongful loss to DESU and wrongful gain to the accused persons. The total value of the misappropriated material is ₹5,83,019.02/-. It is further alleged that A1, knowing or having reason to believe that the said dockets were forged, used them as genuine, committed criminal breach of trust, and screened himself and other accused from legal punishment by causing the disappearance of material evidence and falsification of records, including manipulation of store and register entries. Hence as per the final report/charge sheet, the accused persons were alleged to have been committed the offences punishable under Sections 120-B, 409, 467, 471 IPC and Sections 5(1)(c) & 5(1)(d) read with Section 5(2) of the PC Act.

3. On 25.03.1985, the law was set in motion on receipt of secret information, based on which crime, RC23/1985-DLI was registered with the Anti-Corruption Branch, CBI, New Delhi, Police Station and investigation into the crime started. On completion of the same, PW16 submitted the charge-sheet/ final



report alleging commission of the offences punishable under the  
aforementioned offences.

4. Ext. PW5/A to PW5/C sanction orders for prosecuting A1,  
A2 and A3 and A5 were accorded by PW5, the then Additional  
General Manager, DESU.

5. On receipt of summons when the accused persons  
appeared before the trial court, the court after complying with the  
formality contemplated under Section 207 Cr.P.C, on 12.11.1990,  
framed a Charge for the offences punishable under Sections 120-B  
read with 409 IPC against A1 to A5 and A7; Sections 5(1)(c), (d)  
and 5(2) of the PC Act against A1 to A3 and Sections 467, 471 and  
201 IPC against A1, which was read over and explained to the  
accused persons to which they pleaded not guilty.

6. On behalf of the prosecution, PW1 to PW17 were  
examined and Ext. PW1/A - B, Ext. PW2/A-B, Ext. PW3/A-H,  
Ext. PW3/J-M, Ext. PW4/A to K, Ext. PW5/A-C, Ext. PW6/A,  
Ext. PW6/A1-A5, Ext. PW7/A-B, Ext. PW7/A-1 to PW7/A-3, Ext.



PW7/B, Ext. PW7/B-1 - B-2, Ext. PW8/A-B, Ext. PW9/A-B, Ext. PW9/B-1 to B-85, Ext. PW9/C, Ext. PW11/A-C, Ext. PW12/DA, Ext. PW13/A, Ext. PW14/A, Ext. PW16/A-B, Ext. PW16/C1-C6, Ext. PW16/D1-D6, Ext. PW16/E1-E6, Ext. PW16/F1-F12, Ext. PW16/G1-G6, Ext. PW16/H1-H6 and Ext. PW16/J1-J5 were marked in support of the prosecution case.

7. After the close of the prosecution evidence, the accused persons were questioned under Section 313(1)(b) Cr.PC. regarding the incriminating circumstances appearing against them in the evidence of the prosecution. The accused denied all those circumstances and maintained their innocence.

8. A1 submitted that the materials taken by the Inspector, including himself, had been entered in the Material at Site(MAS) register showing the consumption of the materials and that the same had been duly entered by him. The MAS register was seized by D.N. Soni, Vigilance Inspector. However, the said register has not been produced before the court. Whenever goods are taken,



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their consumption is shown in the MAS register and the same will be duly verified by the Assistant Engineer and record of the same was being sent to the Executive Engineer. Whenever material is drawn from the store, a statement is sent to the Executive Engineer concerned and the same procedure was followed in the present case also. The lock of his office-cum-store was broken on 01-12-1982 at about 9.30 A.M. and all the documents including the MAS register were taken away by G.P. Goel, Executive Engineer, which fact has been admitted by Govind Prasad (PW6) in his cross-examination. D.N. Soni when examined in RC No. 53/83 in the Court of the Metropolitan Magistrate(MM), Patiala House has also admitted the same. The certified copy of the testimony of D.N. Soni in the said case is Ext. DA. The records were audited on 22-09-1982 by the audit party of DESU and nothing adverse was found in the audit report, nor was any explanation sought from him regarding non-consumption of the materials drawn. He had sent the material drawn statement to the office of the Executive



Engineer after 15 days showing consumption and balance, which is Ext. DC. The record regarding issuance of material, its consumption and balance was duly verified by the Assistant Engineer and the Executive Engineer and no deficiency was ever communicated to him at any time.

8.1. A3 submitted that the Inspector prepared the docket on the basis of the sanctions available in his file, which are also seen by him. However, in the case on hand, the sanction file had not been shown to him either by the Vigilance or by the CBI, nor has the same been produced before the Court. The third copy of the docket, i.e., yellow copy, which is kept in the Zone for record and which is duly checked and verified by the Executive Engineer as well as by the Audit Department was also not shown to him by the Vigilance, the CBI, or the Investigating Officer, nor has the same been produced before the Court. The materials drawn and consumed by Inspector Kali Charan (A1) were entered in the MAS register. The MAS register was seized by the CBI, but it was never



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been shown to him at any stage. The fourth copy of the docket, i.e., the green copy, on the basis of which the material is taken out from the store and which remains in the custody of security guard, has also not been shown to him. The gate pass/the fourth copy that has been shown to him does not bear the signature of the Inspector or the details of the material, or the vehicle number, and therefore the same cannot be looked into. The records of the Zone are periodically checked and verified by higher authorities, including the Assistant Engineer, the Executive Engineer, and other senior officers. He also used to check and verify the records of all staff working under him, and if any deficiency was noticed, the same was recorded in the register for further improvement. An audit of the records was conducted on 22.09.1982 by a team of auditors in respect of all the staff members, including himself and Inspector Kali Charan (A1), but no deficiency was found therein.

9. On behalf of the accused persons, DWs. 1 and 2 were examined.



10. On consideration of the oral and documentary evidence on record and after hearing both sides, the trial court *vide* the impugned judgment dated 02.08.2003 held A1 and A3 guilty of the offences punishable under Section 120-B read with 409 IPC, Sections 5(1)(c) and 5(1)(d) of the PC Act read with Section 120-B IPC. A1 has also been found guilty of the offences punishable under Sections 409 and 201 IPC. A5 and A8 have been acquitted of the offences charged against them. A2, A4, A6 and A7 died during the pendency of the proceedings. *Vide* order on sentence dated 05.08.2003, A1 and A3 have been sentenced to undergo rigorous imprisonment for a period of three and half years for the offence punishable under Section 120B read with Section 409 IPC and rigorous imprisonment for a period of three and half years for offences punishable under Section 5(1)(c) and 5(1)(d) read with Section 120B IPC on each count and fine of ₹5,000 on each count and in default of payment, rigorous imprisonment for six months. A1 has also been sentenced to rigorous imprisonment for three and



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half years and fine of ₹5,000 and in default of payment, rigorous imprisonment for six months for offence punishable under Section 409 IPC and rigorous imprisonment for one year and fine of ₹1,000 and in default of payment, rigorous imprisonment for four months for the offence punishable under Section 201 IPC. The sentences have been directed to run concurrently. Aggrieved, A1 and A3 have come up in appeal.

11. It was submitted by the learned counsel for appellant no. 1/A1 that the prosecution proceeded on an erroneous assumption that the MAS Register was withheld or was caused to disappear by A1. However, D.N. Soni, Vigilance Inspector when examined as PW16, in another case, namely, RC No. 52/83, admitted that the MAS Register had in fact been seized by him from the Zone 421 store room of A1 and later handed over to the CBI in the said case. PW10 in this case was summoned to bring the original records in RC 52/83 and the MAS Register. But PW10 deposed that the entire records had been destroyed. D.N. Soni was never examined in this



case. In such circumstances, A1 could not have been found guilty of the offence punishable under Section 201 IPC.

11.1. It was further submitted that the deposition of D.N. Soni, Vigilance Inspector, namely, Ext. DA, constitutes a contemporaneous judicial record and is admissible under Sections 74, 76, and 77 of the Indian Evidence Act, 1872 (IEA), as it is a certified copy of a public document. Ext. DA is not relied upon as a substantive piece of evidence to prove the truth of its contents, but is relied upon by A1 to probabalise his defence version that the MAS Register had been seized by the vigilance authorities themselves. This defence version stands corroborated by the testimony of PW6 and DW2, who have admitted that the lock of the store-cum-office of A1 was broken at the instance of the Executive Engineer and that registers and papers had been taken away.

11.2. The learned counsel for A1 further submitted that the ingredients of Section 201 IPC are not satisfied, as the prosecution



has failed to prove that A1 caused the disappearance of any evidence with the intention of screening himself or any other co-accused from legal punishment. In absence of proof of such an intention and overt act, the conviction under Section 201 IPC cannot be sustained.

11.3. Lastly, it was submitted that the charge of dishonest misappropriation under Section 409 IPC has also not been proved. No recovery was effected from A1, and the departmental audit dated 22.09.1982 found nothing adverse against him. Moreover, PW2, the approver, failed to identify A1 in court, thereby further weakening the prosecution case and entitling A1 to the benefit of doubt. Reliance has been placed on the dictum in **Raja Naykar v. State of Chhattisgarh (Crl.A. 902/2003)**, wherein it was held that suspicion, however strong, cannot take the place of proof beyond reasonable doubt

12. It was submitted by the learned counsel for appellant no. 2/A3 that a complaint dated 01.12.1982 was filed by the latter



against A1 alleging the commission of embezzlement. The fact that a complaint had been filed by A3 is admitted by PW12. This shows the *bona fides* of A3, who is in fact, a whistleblower who informed the DESU and the police about the illegalities committed by A1. According to the learned counsel, “*the intention to sign dockets was bona fide act i.e., to merely identify the Insp. as per chain of responsibilities*”. A3 neither had the authority to finalise material requirements nor any role in determining quantities. The prosecution failed to establish that A3 signed the dockets with any dishonest intention. It was also submitted that A3 only signed 11 dockets, i.e., Exts. PW9/B-1 and PW9/B-19 to B-24 and that the earlier 07 dockets were signed by the A2, the then Assistant Engineer.

12.1. The learned counsel for A3 pointed out that an application dated 14.12.2001 was filed by A3 seeking recall of PW12 for cross-examination. But the same was rejected. This caused serious prejudice to A3, particularly in the light of the



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contradictions in PW12's testimony. He further submitted that no vicarious liability is attributable to A3. A3 never visited the store or physically received any goods. No security guard, storekeeper, or official has ever stated that any material had been handed over to him. The prosecution failed to establish any entrustment of goods to A3. The materials on record clearly show that the stores remained under the domain of the Stores Department and once the material was issued, the same went under the control of the Inspector, who alone was responsible for their accounting. There is no evidence that A3 ever had custody, control, or dominion over the material in any capacity. None of the alleged purchasers including PW2 or the beneficiaries of the sold material has identified A3 and hence the charge of misappropriation was never proved.

12.2. It was further argued that the departmental proceedings initiated against A3 culminated in his exoneration with no role attributed to him in any procedural lapse or illegal act. Even



otherwise, all procedural lapses cannot be construed as illegal acts without any corroborative evidence. The case is entirely based on circumstantial evidence, only because A3 signed in the dockets, it is alleged that he has also been part of the conspiracy.

12.3. The prosecution has failed to prove the case beyond reasonable doubt and therefore, the appellant is clearly entitled to the benefit of doubt. Reliance has been placed on the dictums in **S.V.L. Murthy v. State, (2009) 6 SCC 77, N Raghavander v. State of Haryana (2021) 18 SCC 70, PS Rajya v. State of Bihar (1996) 9 SCC 1 and Kali Ram v. State of HP (1973) 2 SCC 808.**

13. The learned Additional Special Public Prosecutor submitted that the evidence on record conclusively establishes that A1 prepared 18 dockets and, with the signatures of the Assistant Engineers, succeeded in obtaining materials from Jangpura Store in complete violation of the prescribed procedure. Materials could be drawn only from the store of the Zone concerned after verification of the specimen signature of the Assistant Engineer,



which were admittedly not available at the Jangpura Store. The very act of drawing material from an unauthorised store, in huge and unjustified quantities, clearly establishes dishonest intention and conspiracy among the accused persons.

13.1. It was further submitted that the prosecution proved misappropriation through direct or circumstantial evidence. The testimony of PW1, PW7 and PW8 prove that materials were in fact drawn from the Jangpura Store. The transportation of goods is proved through PW3. A1 himself admitted withdrawal of materials in his statement under Section 313 Cr.P.C. Once the material was withdrawn based on the dockets signed by the Assistant Engineer, dominion and control over the goods vested in the appellants, making them accountable for its utilisation. The failure to return scrap material, non-entry of materials in the relevant registers, and absence of any explanation regarding utilisation, fully establish criminal breach of trust and misappropriation.

13.2. The charge of conspiracy under Section 120-B IPC



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stands proved through a chain of circumstances, as direct evidence of conspiracy is rarely available. Reliance was placed on **State of M.P. vs. S.B. Johari and Ors. (2000)2 SCC 57** and **Kehar Singh v. State (Delhi Administration) (1988) 3 SCC 609**. For the argument that minor inconsistencies do not affect the core of the prosecution case and criminal cases are to be judged on the totality of evidence and not on isolated or trivial contradictions, reliance has been placed on **Bharuda Brogin Haarjibhai vs. State of Gujrat AIR 1983 SC 753**, **State of U.P vs. Anthony AIR 1985 SC 48**, and **Inder Singh vs. State (Delhi Administration) AIR 1978 SC 1091**.

13.3. In conclusion, it was submitted that the prosecution has proved all ingredients of the charged offences beyond reasonable doubt and hence no ground for an interference by this Court is made out.

14. Heard both sides and perused the materials on record.

15. The only point that arises for consideration in the present



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appeal is whether there is any infirmity in the impugned judgment calling for an interference by this Court.

16. At the risk of repetition, I refer to the prosecution case. A1 Kalicharan, A2 Ratan Lal Garg, A3 Darshan Singh and A5 Sukhbir Singh were employed in the erstwhile DESU and were posted in Zone No.421 (Shakti Nagar Zone) at Baghkare Khan office during the period from 04.08.1981 to 31.03.1982. A1, during the said period, was working as Inspector and looking after the work of street lighting in Shakti Nagar Zone of DESU. A2 and A3 were working as Assistant Engineers in the aforesaid zone. A5 was working as Mazdoor in the said zone. While so, A1, A2, A3 and A5 are alleged to have entered into a criminal conspiracy with A4 Vijay Kumar, the store keeper of the store of DESU in Jangpura (Nizamuddin Zone) to misappropriate large quantity of electrical materials belonging to DESU and in pursuance of the conspiracy, defrauded DESU of lakhs of rupees by fraudulently and dishonestly drawing electrical materials such as fluorescent



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tubes, MPMV lamps, trapodore cables, bulbs etc. from Jangpura store on the basis of forged and manipulated indent dockets. A1 during the aforesaid period prepared 18 dockets on different dates for drawing electrical items mentioned therein. Seven of the said dockets were signed by A2, who, for some time during the aforesaid period was posted as Assistant Engineer, Shakti Nagar Zone (Zone No.421). A2, in his capacity as Assistant Engineer, was to sign the docket as authorising officer before any materials could be issued to the Inspector on the basis of the dockets. Out of the 18 dockets prepared by A1, seven were signed by A2 and the remaining 11 dockets were signed by A3, who was also posted as Assistant Engineer in Zone No.421. On the basis of the aforesaid 18 dockets, A1 got huge quantities of electrical goods valued at ₹5,83,019.02/- issued from the Jangpura store of DESU, which was within the area of Nizamuddin Zone, where A4 was posted as Storekeeper, instead of getting them from the store at Bhargarh, which was the store of Zone no.421. Thereafter, with the help of



A5 Sukhbir Singh who was posted as mazdoor in zone No.421 during the aforesaid period, sold the materials to private persons, namely, A6 Gopal Verma, A7 Gulab Chand, A8 Arvind Kumar Gupta and one Naresh Kumar (the approver, who was examined before the trial Court as PW2). Thus, the accused persons are alleged to have defrauded DESU to the tune of ₹5,83,019.02/-.

17. Naresh Kumar, initially one of the accused persons involved in the conspiracy and one among the persons who were alleged to have purchased the electrical items from A1, was granted pardon by the Metropolitan Magistrate (MM). Neither side has a case that the mandatory formalities contemplated under the relevant provisions of law had not been complied with by the magistrate before tendering pardon to him. Therefore, I am not going into the said details. The materials on record show that Naresh Kumar, an accomplice, was tendered pardon who accepted the same on condition that he would reveal all what he knew about the crime. Naresh Kumar when produced before the magistrate



concerned, gave a confession statement, which has been marked as Exhibit PW2/A.

18. Exhibit PW2/A, the confession, of the said Naresh Kumar reads thus:-In 1977-78, he was doing business of sale and purchase of electrical goods with Gulab Singh (A7). In 1981, they used to meet at Gopal Verma's (A6) shop. Sukhbir Singh (A5) along with Inspector Kali Charan (A1) of DESU approached them and stated that they would procure electrical goods from Jangpura Store, and that there was no risk involved as the Assistant Engineer and Storekeeper were also in league with them. From August 1981 to March 1982, they stole electrical goods from the Jangpura Store approximately 17 to 18 times. The items included stoves, fans, mixers, and trapodore cables etc. The material was transported using a tempo bearing registration number DHL- 8468. The goods were unloaded at the godown of Arvind Kumar Gupta (A8) at Shakarpur. The sale proceeds were given to Kalicharan (A1) and Sukhbir Verma (A5).



18.1. The said Naresh Kumar was examined by the prosecution as PW2. PW2 when examined deposed thus:- During the year 1981-1982, he was doing business in electrical goods along with Gulab Chand (A7) and Gopal (A6) under the name and style of Syndicate Electrics, situated at 1764, Kucha Lattu Shah, Dariba Kalan. He had been carrying on the said business with Gulab Chand (A7) since 1977. Inspectors of DESU used to sell goods to Gulab Chand (A7). It was mainly Kalicharan (A1) who used to come to sell the goods. He knew Sukhbir Singh (A5), who used to accompany Kalicharan (A1). They used to take bulbs, tubes, chokes and cables from Kalicharan (A1) and others. According to PW2, at times Gulab Chand (A7) and at times he himself used to go to Jangpura Store, where they would meet Kalicharan (A1) and Sukhbir Singh (A5) and the latter would take out goods from the store and hand over the same to them. They would thereafter bring the goods to their shop.

18.2. During the examination-in-chief of PW2, the



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prosecutor is seen to have submitted that the witness, being an approver, was suppressing the true facts. It was pointed out that the witness intentionally failed to identify A1, A5 and A6 though they were present in Court. PW2 had also not disclosed the name of A8, who was also present in Court. Hence, the Prosecutor sought permission to take appropriate action against PW2 in accordance with law. On such submission being made, the trial court adjourned the further examination of PW2.

18.3. PW2 is seen recalled and examined further on 23.01.1998. On further examination by the prosecutor, PW2 deposed that the goods purchased by him from the Inspectors of DESU were handed over to one Guptaji (A8), who was not present in Court. It was Gulab Chand (A7) who used to deal with the Inspector, DESU, whose name is Kalicharan (A1).PW2 further deposed that Gulab Chand (A7) used to call him to Shakarpur and at times to Laxmi Nagar to take delivery of the goods and sometimes goods were also delivered at Ajmeri Gate. The goods



were procured from Jangpura or Srinivas Puri. He used to wait on the main road where Gulab Chand (A7) would bring the goods in a tempo. He used to take the goods from Gulab Chand (A7) and deliver it to Guptaji (A8). PW2 deposed that Gulab Chand(A7) had informed him that the goods were being obtained from the DESU store. Gulab Chand (A7) used to give money to Kalicharan (A1) and Sukhbir (A5). PW2 admitted that Ext. PW2/A, his confession, had been recorded by the MM and that he had signed the same. PW2 admitted that pardon was granted on condition that he made a true disclosure of the facts within his knowledge. He also admitted that his statement recorded by the MM had been read over to him and the same is correct.

18.4. The Prosecutor is seen to have sought the permission of the trial court to “*cross examine*” PW2 as he failed to identify the accused persons. Permission was granted by the trial court. On further examination by the prosecutor, PW2 deposed that he was not able to recollect the full name of Guptaji to whom the goods



were delivered and stated that his name was either Arvind Gupta or Anil Gupta. PW2 denied that A1, A5, A6, A8 who were present in Court, were the same persons whom he had earlier named and that he was intentionally not identifying them in Court. However, PW2 admitted that they used to sell the goods to Arvind Kumar Gupta (A8). He further admitted that Kalicharan (A1) and Sukhbir (A5) had approached them and represented that the latter would arrange electrical goods from Jangpura DESU store and that there was nothing to fear as the Assistant Engineer, Stores, was in league with them. PW2 also admitted that during the years 1981 and 1982, they had purchased electrical goods from Jangpura DESU Stores, including tubes, mercury bulbs, chokes and cables. The goods were transported in tempo bearing registration No. DLH 8468 and were delivered at the godown of A8 at Shakarpur and Ajmeri Gate. The money received from Arvind Kumar Gupta (A8) was paid to Kalicharan (A1) and Sukhbir (A5). PW2 denied that he was deliberately not identifying the accused persons in



order to help them.

18.5. PW2, in his cross-examination, deposed that he does not recollect the exact date when Sukhbir (A5) had approached them. PW2 further deposed that Gupta used to make payments of different amounts, sometimes ₹10,000/-, sometimes ₹5,000/- and at other times about ₹ 20,000/-. PW2 denied the suggestion that he had never made any payment to Sukhbir (A5).

19. It is clear from the testimony of PW2 that he has violated the terms on which pardon had been granted to him. Section 308 Cr.P.C. deals with the procedure to be followed when a person to whom pardon is tendered fails to comply with the conditions of the pardon. Sub-section (1) to Section 308 Cr.P.C. says that if the public prosecutor certifies that in his opinion, the approver has either by wilfully concealing anything essential or by giving false evidence has not complied with the condition on which the tender was made, such person can be tried for the offence in respect of which the pardon was so tendered or for any other offence of



which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence. The first proviso says that such a person shall not be tried jointly with any of the other accused. But he shall be tried separately. The CBI for reasons best known to them has not taken any action against PW2 despite the fact that he did not fully stand by his confession while he was examined before the court. When an accomplice is tendered pardon, his status from that of an accused changes to that of a prosecution witness. But the moment he fails to stand by the terms of grant of pardon, he ceases to be a witness and his status reverts back to that of an accused. Despite the fact that PW2 was also part of the conspiracy and played an important role in the crime and despite PW2 breaking the terms and conditions as per which he was tendered pardon, is roaming around free without the CBI taking any action whatsoever against him for reasons best known to them.

20. The principle of tendering pardon to an accomplice is to



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unravel the truth in a grave offence so that the guilt of the other accused persons concerned in the commission of the crime could be brought home. The object of Section 306 Cr.PC. is to allow pardon in cases where heinous offence is alleged to have been committed by several persons, so that, with the aid of the evidence of the person granted pardon, the offence may be brought home to the rest. Under Sections 306 and 307 Cr.PC., the court concerned is empowered to tender pardon to an accomplice on the condition of his making full and true disclosure of the entire circumstances within his knowledge related to the crime. An accomplice who has been granted pardon under section 306 or 307 Cr.PC. gets protection from prosecution. When he is called as a witness for the prosecution, he must comply with the condition of making a full and true disclosure of the whole of the circumstances within his knowledge concerning the offence and to every other person concerned, whether as principal or abductor, in the commission thereof and if he suppresses anything material and essential within



his knowledge concerning the commission of crime or fails or refuses to comply with the condition on which the tender was made and the public prosecutor gives a certificate under Section 308 Cr.P.C. to that effect, the protection given to him can be lifted.

21. I have already referred to the confession of PW2 as well as his testimony before the court. PW2 was not cross examined by A1 and A3. But PW2 failed to identify A1 and A3 before the court. However, he admitted that his confession recorded by the MM is true and correct. PW2 has no case that his confession was involuntary or made under threat, coercion or under any other vitiating circumstances. He also does not have a case that the same was made without understanding the consequences of the same. On the other hand, PW1 categorically admitted the statements recorded by the MM are true and correct. A confession, when proved is, certainly a substantive piece of evidence on which conviction can be based. The question is what is the evidentiary



value of the confession of PW2 in the light of his failure to identify A1 and A3 in the court. In this context I refer to the dictum of the Apex Court in **Mrinal Das v. State of Tripura 2011 KHC 4813: AIR 2011 SC 3753**, wherein it has been held that though a conviction is not illegal merely because it proceeds on the uncorroborated testimony of an approver, yet the universal practise is not to convict upon the testimony of an accomplice unless it is corroborated in material particulars. The evidence of an approver does not differ from the evidence of any other witness say in one particular aspect, namely, that the evidence of an accomplice is regarded *ab initio* as open to grave suspicion. If the suspicion which attaches to the evidence of an accomplice is not removed, that evidence should not be acted upon unless corroborated in some material particulars; but if the suspicion attaching to the accomplice's evidence be removed, then that evidence will be acted upon even though uncorroborated, and the guilt of the accused may be established upon the evidence alone.



21.1. In this context, I also refer to Section 133 of the IEA along with Illustration (b) to Section 114. As per Section 133, an accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Illustration (b) to Section 114 IEA says that the court may presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars. Dealing with the scope and ambit of the above said two provisions, the Apex Court in **Bhiva Doulu Patil v. State of Maharashtra, AIR 1963 SC 599**, held that both the Sections are part of one subject and have to be considered together. The combined effect of Section 133 and Illustration (b) to Section 144 has been stated thus:

*“According to the former, which is a rule of law, an accomplice is competent to give evidence and according to the latter, which is a rule of practice it is almost always unsafe to convict upon his testimony alone. Therefore, though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal, yet the courts will, as a matter of practice, not accept the*



evidence of such a witness without corroboration in material particulars”.

(Emphasis Supplied)

22. It is thus clear that once the evidence of the approver is held to be trustworthy, it must be shown that the story given by him, so far as an accused is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt. Insistence upon corroboration is based on the rule of caution and is not merely a rule of law. Corroboration need not be in the form of ocular testimony of witnesses and may even be in the form of circumstantial evidence.

23. The aforesaid being the position of law, I shall now consider the other pieces of evidence relied on by the prosecution to prove the case. I will first deal with the conviction of A1 under section 201 IPC. The trial court found that the MAS register which contains the details of the materials drawn from the store was removed/destroyed by A1 for the purpose of screening himself and the co-accused from the crime. A1 relies on the testimony of one



D.N. Soni, Inspector, Vigilance who was examined as PW16 in another case, namely, RC No. 52/83 on the file Court of Metropolitan Magistrate, Patiala House Courts, New Delhi. D.N. Soni in the said case deposed that the MAS register among other documents were seized by him and handed over to the CBI in R.C. NO. 52/83. The certified copy of the testimony of D.N. Soni was produced and marked as Ext DA., which document according to the learned counsel for A1, being a public document, is admissible under Sections 74, 76 and 77 of the IEA. According to the learned counsel for A3, the said testimony is admissible under Section 80 of the IEA. I disagree with the arguments advanced by A1 and A3.

24. In this context, I refer to the dictum of the Apex Court in **Bishwanath Prasad v. Dwarka Prasad 1974 KHC 374: (1974) 1 SCC 78**. In the said case, the question was whether the plaint schedule property was the self-acquired properties of the first defendant or whether they were joint family properties. There was also a question as to whether the shop situated in a particular plot



belonged to the first defendant or whether it formed part of the joint family properties. The first defendant relied on the depositions of the plaintiff and defendant no. 8 as well as the written statement filed by the plaintiff in an earlier suit between the parties, as admission of the nature of the property. The courts below relied on the written statement and deposition in the earlier suit as admission on part of the plaintiff in the subsequent suit and held that the properties were not joint family properties. A contention was taken up before the Apex Court that the deposition of the plaintiff and the written statement had not been confronted to the plaintiff when he was in the witness box in the subsequent suit and that no opportunity had been granted to explain the admissions. In the said context, the Apex Court held thus:

*“There is a cardinal distinction between a party who is the author of a prior statement and a witness who is examined and is sought to be discredited by use of his prior statement. In the former case, an admission by a party is substantive evidence if it fulfils the requirements of Section 21 of the Evidence Act. In the latter case, a prior statement is used to discredit the credibility of*



the witness and does not becomes substantive evidence. In the former, there is no necessary requirement of the statement containing the admission having to be put to the party because it is evidence proprio vigore in the latter case, the court cannot be invited to disbelieve the witness on the strength of a prior contradictory statement unless it has been put to him, as required by Section 145 of the Evidence Act.”

(Emphasis supplied)

25. D.N. Soni, has admittedly not been examined in the case on hand. Had he been examined in this case, then his testimony in the other case could have been brought in evidence by resorting to Section 145 of the IEA. But the testimony of D.N. Soni cannot be used to discredit the testimony of the other prosecution witnesses examined in this case.

26. Reference was also made to the testimony of PW6 and DW2. PW6 does not say that it was D.N. Soni who took away the MAS register from the office of A1, but it was PW12. DW2 deposed that during 1981-82, he was working as Regular Mazdoor in Zone No. 421. He worked under Kali Charan Inspector (A1). On 01.12.1982, the Executive Engineer, Goyal (PW12) broke the lock



of the office of Kali Charan, Inspector (A1), through one Itwari Lal, a blacksmith, at about 10:00 - 10:30 AM. The Executive Engineer, G.P. Goyal (PW12), took away three files and two registers with him from the office of Kali Charan (A1). PW12 when cross examined by A1 denied having broken the lock of the office cum store of the latter on 01/12/82 at about 09:30 AM or that, at his instance, the same had been broken open. A1 does not have a consistent case as to who exactly had taken away the MAS register.

27. Be that as it may, PW6, a loyal prosecution witness, has a case that the relevant MAS register was taken away by PW12. The prosecution has no case that PW6 is deposing falsely. DW2 also supports this version of PW6. DW2 was virtually not cross examined on this aspect. Therefore, the testimony of DW2, along with the testimony of PW6, raise doubts regarding the MAS register alleged to have been kept away or destroyed by A1. That being the position, it can only be concluded that the evidence



against A1 for commission of the offence under Section 201 IPC is unsatisfactory. In such circumstances, the trial court could not have arrived at a finding of guilt of A1 for commission of the offence under Section 201 IPC.

28. Now coming to the evidence relied on to prove the remaining offences for which the trial court has found A1 and A3 guilty. The procedure for issue of materials from the store is spoken to by PW 12 as well as DW1. According to PW12, the docket is filled up by the Inspector as per the requirement conveyed by his field staff. The Inspector signs the docket both at the time of indenting and at the time of receipt of material. After filling up the docket, the Inspector presents it before the Assistant Engineer for authorisation. The Assistant Engineer signs it as the Authorising Officer. Without such authorisation, materials cannot be taken out from the store. The Store Keeper issues the material from the store and signs at the time of issuance. If some material is not available in the store or if a substitute material is required, the



same has to be authorised again by the Assistant Engineer. The Inspector can draw materials on the authorisation of the Assistant Engineer of his Zone. The signature of the Assistant Engineer is kept by the Store Keeper in the main store.

28.1. PW12 deposed that he knows A1, who was working as Inspector in Zone 421 under A3, Zonal Assistant Engineer. PW12 when shown docket Nos. 1161, 1026, 1234, 1369, 1897, 1948, 1302, 2100, 2222, 2217, 2252, 2431, 2470, 2331, 2177, 2288, 2291 and 2263, deposed that the items mentioned in the dockets were not required in such huge quantities within such a short period. In docket Nos. 1026 and 2217, the store mentioned is “*BG II/Jungpura*”, which is not correct as per procedure. PW12 explained that materials for the Zones in Shakti Nagar are to be drawn from BG store, situated in District Shakti Nagar, whereas Jungpura is situated in Nizamuddin District in South Delhi. Therefore, it was not proper to mention the names of both stores in the same docket. PW12 further deposed that docket No. 2222 has



not been prepared correctly as the name of the store has not been mentioned. It is essential to specify the name of the store in the docket. In docket No. 1234, the name of BG II Store has been struck off and Jungpura had been added. Such alteration is not proper unless authenticated by the Authorising Officer of the docket.

28.2. PW12 further deposed that LTPVC cables of smaller size are ordinarily used for street lighting. However, in docket Nos. 2470, 2291 and 2263, cables of 150 sq. mm and 300 sq. mm size are mentioned, which are not generally used for street lighting. Such cables would not ordinarily be desirable for street lighting unless they were required for some other work and duly authorised by the Assistant Engineer. Zone IV had been divided into three parts, namely, Zone No. 421, Zone No. 422 and Zone No. 423. PW12 was shown docket Nos. 2263 dated 30.03.1982, 2291 dated 05.03.1982, 2431 dated 26.03.1982, 2177 dated 15.02.1982, 2100 dated 03.02.1982, 2288 dated 05.03.1982, 2252 dated 27.02.1982,



2470 dated 31.03.1982, 1026 dated 04.08.1981, 2217 dated 19.02.1982, 2222 dated 19.02.1982, 2631 dated 15.03.1982 and 1234 dated 10.09.1981, all of which bore the stamp of Zone No. 4 (D IV). Since District IV and Zone No. 4 had ceased to exist in the year 1980 after bifurcation of District 4 and the corresponding Zones, the stamps appearing on the said dockets are invalid. It was the responsibility of the Store Keeper to verify all entries in the docket before issuing material. PW12 further deposed that the Authorising Officer, i.e., the Assistant Engineer, should have ensured that the correct stamp was used after his signature.

28.3. PW12 deposed that docket Nos. 2263, 2291, 2431, 2177, 2100, 2288, 2252, 2470, 2217, 2222 and 2631 were signed by A3 and docket Nos. 1302, 1026, 1161 and 1234 were signed by A2. In the said dockets, the stamp is of Zone IV. PW12 further deposed that the primary responsibility of the Store Keeper of the store from where the material was issued, was to verify all columns of the docket, check all relevant aspects before issuing



material, as well as to ensure the genuineness of the docket, verify the signatures of the Authorising Officer and consider the quantity of material before issuance.

28.4. PW12, in his cross-examination, admitted that the Inspector fills up the docket after verifying the requirement of the area. He further admitted that the Assistant Engineer signs the docket as Authorising Officer after examining the requirement of the area, the quantity mentioned and other relevant columns of the docket. PW12 deposed that the Store Keeper of the main store, keeps the specimen signatures of the Authorising Officer. However, in the case of a District Sub Store, signatures of Assistant Engineers of other districts are not maintained. He deposed that sub stores function under the administrative control of a particular Executive Engineer of the district and cater only to the requirements of that district. The main store issues material to sub stores of the district as well as to indenting Inspectors. PW12 further deposed that in case of emergency, material can be



obtained from another store if duly authorised. Specimen signatures of the Authorising Officer are attested and signed by the Executive Engineer. Normally, the specimen signature proforma is sent to the Executive Engineer, Store Maintenance, Rajghat. He further deposed that an Inspector cannot obtain material from another store in addition to what is mentioned in the docket, as material of a sub district store is issued by the Assistant Engineer Incharge of that sub store for use in his district only. PW12 deposed that, to his knowledge, he is unaware as to whether the dockets were sent to Jungpura Store as he had not seen the yellow colour copies of the dockets, as those copies are retained by the Inspector.

28.5. PW12 admitted that he had not seen the file containing the requirements given by the field staff regarding the actual withdrawal of articles from the store. According to him, he was not required to see the same. PW12 denied that, being the Executive Engineer, he was duty-bound to examine the file of requirements



of articles submitted by the Field Officer. The Inspectors prepare and maintain their records from the yellow copy of the docket. He admitted that he had not seen the copy of the docket pertaining to the present case and that he had never demanded a copy of the docket from the Vigilance Department or from the Administration of DESU. He further deposed that the entries are made in the MAS register maintained by the Inspectors concerned. He admitted that he had never seen or checked the MAS register of A1 and had never called for or examined the same. According to PW12, the MAS register is checked by the Audit Department. He admitted that during Asiad 1982, there were general instructions regarding proper maintenance and supply of street lighting. PW12 deposed that no statement regarding verification of materials drawn was received from the Accounts Section, Rajghat, during the period from 1981 to 1982. PW12 denied that the lock of the office cum store of A1 was broken at his instance or in his presence on 01.12.1982 at about 9.35 A.M. According to him, A3, Assistant



Engineer, had lodged a complaint against A1 at Lawrence Road Police Station against A1. The MAS register is checked by the Assistant Engineer Incharge of the Zone and by the Audit Department. He was unable to recollect having received any complaint against A1 regarding maintenance of the MES register and admitted that he never checked the MAS register of A1. PW12, when asked whether he had made any statement in RC No. 52/83 in the Court of the MM to the effect that he is unaware of the process regarding using dockets, answered that he was unable to recall the same. PW12 was unable to recall having received any complaint from A1 regarding breaking or removal of tube lights by antisocial elements. According to him, in such an event the Assistant Engineer of the Zone was authorised to lodge a complaint with the police.

29. DW1 also deposed regarding the manner in which materials are issued from the store. According to him, the material from the Store is drawn by the Inspector through a docket book



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filled as per requirement and authorised by the Assistant Engineer concerned. After verification of the Assistant Engineer's signature by the Store In-charge, the material is handed over to the Inspector. Specimen signatures of the Assistant Engineers are circulated to all the Stores by the Executive Engineer from time to time. The docket book consists of five copies: two retained by the Store Keeper, one by the Store Security, and two by the Inspector, of which the yellow copy is kept on record for audit purposes. Material is issued only against valid sanction, which can be granted only by an officer not below the rank of the Executive Engineer. In the case of street-lighting material, details of the quantity drawn are intimated fortnightly to the Executive Engineer concerned with copies to the Commercial Branch. Normally, the material is drawn from the Sub-Store under the charge of the Executive Engineer concerned. However, in emergencies, material may be drawn from another Sub-Store with the consent of both Executive Engineers. Internal and external audits are conducted



annually. Inspectors can be deputed to carry out the work of street-lighting as well as for their maintenance. A maintenance register is maintained for recording material usage and is checked randomly by the Assistant Engineer, Executive Engineer, and even by the Superintending Engineer. Maintenance and street-lighting accounts are maintained separately. Account No. 421-M pertains to Maintenance Account.

30. The fact that A1 was Inspector and A3, the Assistant Engineer of zone number 421 is not disputed. The prosecution relies on the testimony of PW6 to PW9 and PW 11 to prove the case that A1 had in fact, drawn substantial quantity of electrical items from the Jungpura store with the knowledge and connivance of A3. PW1 in Ext PW4/J 164 statement stated thus: He has been employed with DESU since 1971 as a Security Guard. In 1982, he was posted at the Jungpura Store, which belonged to DESU. The key of the store remained in the custody of the storekeeper, Vijay Kumar (A4). Vijay Kumar (A4) used to prepare dockets and issue



materials to the Inspector. At the gate, the docket was shown to him, and he permitted the material to pass in accordance with the docket. On 26.03.1982, Inspector Kalicharan (A1) handed over one docket to him at the gate. After counting the materials, he allowed it to pass. A1 was accompanied by another person.

31. PW1 when examined deposed that he was posted as Security Guard at Rajghat Power House since 1971. During the period 1981 -1982, he was on duty at Jungpura Store. There were only electrical goods stored at Jungpura Store and whenever any article was required to be taken out, it was the duty of the security guard to check the same before permitting the same to be taken out. The identity card of the person taking out the articles would also be checked. As per Ext. PW1/A docket dated 26.03.1982, the original of which is Ext. PW4/B, it was A1 who had taken the articles based on the docket. It was Vijay Kumar (A4) who was the Store Keeper at the relevant time. PW1 identified the signature of A4. PW1 was unable to identify the signature of A1 in Ext.



PW1/B. PW1 further deposed that five copies of the docket were prepared, out of which one copy was received by him, two copies were affixed in the docket book, one copy was retained by the Store Keeper, and one copy was retained by the Store Costing. PW1 also deposed that no entry pertaining to the articles was made in the *roznamcha*.

32. PW6 deposed that during 1981 -1982, he was working as Senior Clerk in Zone No. 421, DESU, Shakti Nagar, New Delhi. A3 was the Assistant Engineer under whom he was working. PW3 deposed that he could identify the initials of A1 and A3 as he had seen them writing and signing in the course of the discharge of their official duties. A1 was working as Inspector in the same zone and was looking after street lighting. PW6 deposed that it was his duty to forward all papers received from the office of the Executive Engineer to the Inspectors. He used to issue stationery and also issue dockets. He used to maintain a register in which the dockets issued by him were duly entered. In 1981 - 1982, the



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stationery register of DESU was in his custody in which he used to make entries regarding the issuance of docket books and other stationery. He used to obtain the signature of the person concerned to whom the docket book was issued. The dockets were issued to the Inspectors. PW6 when shown the photocopy of the entry of the Stationery Register, Document No. 16, made in Page 3, wherein entry regarding issuance of docket book No. 1186 was made, deposed that there appeared to be some other figure after the figure 474, which was not clearly visible to him due to his failing eye sight, as he had undergone an eye operation in February 1999. The zerox copy of the stationery register is Ext. PW6/A (The original was stated to have been weeded out as per the testimony of PW10).PW6 admitted that the entry at Page 3, namely, Ext. PW6/A, is in his handwriting. However, PW6 deposed that the signature of the recipient against the said entry was not clearly visible to him. PW6 admitted that on 11.12.1981, he had issued docket book No. 1184 containing docket No. 473, which was



received by A1. He identified the signature of A1 in Ext. PW6/A-2. PW6 also admitted that he had made the entry regarding issuance of docket book No. 221 containing docket No. 8761 along with other items, which were received by A1 as per Ext. PW6/A. He also deposed that docket book No. 1251 was a returned docket earlier issued to A1 and that docket book No. 3948 containing docket No. 157881 was issued to A1, and that both the entries were made by him. PW6 further deposed that the entries regarding docket book No. 1251 (returned docket earlier issued to A1) and docket book No. 3948 containing docket No. 157881 issued to A1 are collectively Ex. PW6/A-4 (Colly). PW6 deposed that the entry regarding issuance of docket book No. 55 containing docket No. 2161, which was received by A1, was made by him and is Ex. PW6/A-5 on page 5 of Ex. PW6/A.

32.1. PW6 further deposed that during the period 1981-82, Zone 421 was under District Shakti Nagar. The office of Zone 421 was situated at Bagh Kare Khan, Chander Shekhar Azad Colony.



A1 was working as Inspector (Street Light). A2 (since deceased) and A3 were the Assistant Engineers in the zone. Darshan Singh (A3) was the -in -charge of the Zone. He was shown docket No. 1026 marked Q-32B, which was duly signed by A2. PW6 deposed that docket Nos. 1161, 1284, 1302, 1369, 1897 and 1948 were all signed by A2. According to him, docket Nos. 2100, 2217, 2222, 2231, 2252, 2431 (Ext. PW1/B), and 2470 were signed by A3. A3 had also signed docket Nos. 2263, 2291, 2288, 2177 and 2100.

33. PW7 deposed that during the year 1981-82, he was working as a security guard in DESU at Nizamuddin District Office, where the Jungpura Store was situated. His duty was to check the material issued by the Inspector, DESU, to the party concerned. He knew A1 who used to come to the Jungpura Store for taking electric goods.

34. PW8 deposed that in the year 1981, he was working as a Security Guard at the Jangpura Store. His duty was to check the materials going out of the store after it had been issued by the



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proper authority and to ensure that the materials being taken out was the same as mentioned in the docket issued to the party concerned. He knew A1, who used to take electric goods from the store in a tempo or three-wheeler. PW8, in his cross-examination, admitted that there was no written proof in the attendance register maintained by him showing that A1 had received electric goods from the office on any particular date. He also admitted that in order to take goods out of the store, a gate pass was required.

35. PW9 deposed that in February- March 1982 he was transferred to Jangpura. A ledger register used to be maintained by the Store Keeper for the purpose of recording receipt and issuance of electrical items. The entries in the register regarding issuance and receipt were made on the basis of dockets available with the Inspector concerned. The entries were made either by the store keeper himself or by the Store Clerk concerned working under the former. The clerk used to make entries in the register under the instructions of the store keeper. PW9 identified Ext. PW9/A store



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ledger. PW9 also identified ledger register of Jangpura DESU Store for the period from 1981 to 1982, that is, Ext. PW9/B. The entries relating to the aforesaid dockets in Ext. PW9/B ledger pertain to Zone 421. The Executive Engineer or the Assistant Engineer concerned issues the docket to the Inspector concerned, specifying the material to be obtained or received from the store. By issuance of such document, the Executive Engineer or Assistant Engineer authorises the Inspector to receive the material from the store. The docket operates as an authorisation issued by the Executive Engineer or Assistant Engineer concerned to the Inspector to obtain the materials from the store of DESU as mentioned therein. The ledger remains in the charge and custody of the store keeper. After handing over the materials to the Inspector, the Store Keeper makes an entry regarding the supply of the material in the ledger. A4 was the Store Keeper of Jangpura Store, DESU, during the period from 1981 to 1982. The entries in the ledger Ex. PW9/B were made by A4.



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35.1. PW9, in his cross-examination, admitted that entries relating to all zones of a district are recorded in the ledger. The entries made in the ledger are checked in due course. However, the same are not signed by the Inspecting Officer. PW9 admitted that he has no personal knowledge of the entries made in the ledger. The Executive Engineer issued the docket to the Inspector concerned. The Inspector concerned fills up the docket. The requirement of material to be mentioned in the docket is ascertained by the Assistant Engineer and or the Executive Engineer. The material is received from the store by the Inspector concerned. The person who indents the material and the person who receives the same is one and the same. PW9 further deposed that once a docket is authorised by the Chief Engineer or Assistant Engineer, it is not changed and there are no chances of alteration. He denied that the contents of the indent can be changed. With regard to Indent Nos. 1302, 2100, 2470, 1026, 2222, 1161, 2231 and 1234, wherein certain 'cuttings' appeared on the items



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mentioned therein, he deposed that such '*cuttings*' indicate that the items were not issued from the store. PW9 deposed that, to his knowledge, the name of the store will be mentioned in the indent and if the store is not named therein, the Store Keeper would not issue material on the basis of such indent. PW9 deposed that an indent can be issued for more than one store. However, the name of the store in an indent cannot be changed. If the name of the store is scored out on the docket, the material cannot be issued. In docket No. 1234, the name of Store Bahadurgarh, near Azad Market is seen scored off, and the name of the store at Jungpura has been incorporated. PW9 further deposed that the date of issue of the docket is required to be mentioned at the time of its issuance. The quantity of material is always mentioned in the docket itself and is not filled by the store clerk. If the required quantity mentioned in the docket is not available in the store, the available quantity will be supplied and the quantity actually supplied will be mentioned. Any '*cutting*' in the docket should be



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signed by the Executive Engineer. The Assistant Engineer or Executive Engineer are not required to sign the docket in the presence of the store keeper. The signature of the Assistant Engineer and Executive Engineer can be compared and ascertained by the store keeper with the specimen signature available with the latter. PW9 was unable to recollect whether the specimen signature of A3 was available with the Store Keeper. He further deposed that he did not have any occasion to see the specimen signature of A3.

36. The report of PW11, the handwriting expert marked as Ext. PW11/B shows that the entries in the relevant documents concerned were in fact made by A1, A2, A3, A4 and A5.

37. An argument was advanced that though an application for recalling PW12 for the purpose of cross examination by A3 was filed, the same was dismissed by the trial court causing considerable prejudice to the latter as he lost his valuable right of cross examination. No explanation is forthcoming as to why PW12 was never cross examined by A3 when the other co-accused



exercised their right of cross examination of the witness. So it appears to be not a case of denial of opportunity, but a case of not availing the said right.

38. The fact that A1 was the Inspector and A3, the Assistant Engineer of Zone No. 421; the procedure that is spoken to by PW12 and DW1 regarding issuance of materials from the store and the fact that 18 dockets were prepared by A1 are not disputed. The fact that A1 was the Inspector looking after the work of street lighting in Shakti Nagar zone of DESU during the period from 04.08.1981 to 31.03.1982 and that he had prepared 18 dockets on different dates for drawing electrical items mentioned therein, is not disputed. Likewise, A3 was the Assistant Engineer during the aforesaid period and was posted in Shakti Nagar Zone (Zone no.421). It was his duty to sign the dockets as the authorising officer before any material could be issued to the Inspector. The fact that 11 dockets were signed by A3 in his capacity as authorising officer is admitted. The testimony of PW12 that the



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materials could have been drawn only from the store at Bhargarh, the store in Zone No. 421, is not disputed. The fact that the electrical goods were in fact drawn from the Jungpura Store, which comes within the Nizamudin Zone, is also not disputed. PW12 and DW1 have deposed that, if necessary, materials can be drawn from a store situated in other zones, provided the authorising officer, who is the Executive Engineer, approves the same. Neither A1 nor A3 has a case that such a procedure had been followed. It is also true that PW12 and DW1 has deposed that in case of emergencies also, such drawing of materials from stores in different zones is permissible. But here again, the authorisation of the authority concerned is required. Neither A1 nor A3 has a case that the authority concerned in both zones had authorised A1 to draw materials from the store situated at Jungpura. It has also come out from the materials on record that after the dockets are prepared by the Inspector, the same will have to be authorised by the Assistant Engineer. The storekeeper is supposed to verify the signature of



the Assistant Engineer, the authorised officer, with the specimen signature available at the store. A3 was an Assistant Engineer of Shakti Nagar zone, that is, Zone no. 421. Therefore, his specimen signature would have been available at the store of that Zone. Nobody has a case that the specimen signature of A3 was available at Jungpura Store, which is situated in the Nizamudin zone. A4, who died during the pendency of the proceedings, was the storekeeper of Jungpura Store. There is no case for A1 or A3 that the specimen signature of A3 was also available at Jungpura Store with A4, and that it was after verification that the items had been issued by A4.

39. The circumstances under which A1 had prepared a docket for electrical goods and drawn the same from Jungpura Store has not been clarified or specified. A1 has a case that as the Asiad games was going on, there was instructions from the higher authorities concerned to do the works without any delay and as quickly as possible. PW12 was admittedly the then Executive



Engineer. When PW12 was examined, such a stand is never seen taken up by A1. A3 also has no explanation as to why he authorised the drawing of electrical materials from a store outside his zone. He does not have a case that he was empowered to authorise such drawing of materials from the Jungpura Store. A3 cannot shrug away his responsibility by saying that he had merely signed the dockets and that it was the responsibility of A1, the Inspector, as well as the Store Keeper, to see that the materials were issued as per the necessity or need. The materials could be drawn, or the Store Keeper was entitled or empowered to release the goods from the store, only when the docket was approved or authorised by the Assistant Engineer. A3 was admittedly the Assistant Engineer at the relevant period of time. That being the position, he was certainly responsible for checking the indent docket prepared by A1 before authorising or signing it.

40. It has also come out in the testimony of PW12 that a huge quantity of electrical items had been drawn from Jungpura Store



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by A1 which could have been only with the active connivance of A3 and A4. PW12 deposed that such a huge quantity was not required during such a short period of time. This aspect of the testimony of PW12 has also not been discredited. The justification given by A1 while questioned under Section 313(1)(b) Cr.P.C. for drawing such huge quantity, is that the same was required as the Asiad Games was going on. But, PW12, the then Executive Engineer, has no such case. Such a case was not put to PW12 also. It is true that there are no materials on record to show the actual value of the materials that was drawn from the Jangpura store. However, neither A1 nor A3 has a case that the electrical materials were not of the value of ₹5,83,019.02/- or that it was a much lesser figure. The materials on record show that the electrical goods worth nearly ₹6 lakhs had been taken from Jungpura Store by A1 based on the dockets that were authorised by A3. The value of the articles stated to be ₹5,83,019.02 is not a small figure by any standards during the period 1981-1982. The goods are alleged to



have been sold by A1 and A5 to A6 to A8. As noticed earlier, A5 and A8 have been acquitted by the trial court. No appeal has been filed against the same. A2, A4, A6 and A7 died during the pendency of the proceedings.

41. The evidence regarding the sale of these goods to A6 to A8 is the confession of PW2, which confession is admitted to be true by the latter. The confession of PW2 coupled with the remaining evidence on record, to which I have already referred to in detail, does substantiate the prosecution case. I do not find any reasons to discard the testimony of the prosecution witnesses. A1 and A3 do have a case that the MAS register, if produced before the court, would have shown the details of consumption of the materials. Even in the absence of the MAS register, it is difficult to believe that such a huge quantity was required for the period. The trial court, in paragraph 54 of the impugned judgment, refers to the quantity that was drawn from the Jungpura Store. On the basis of the 18 dockets prepared by A1, 3335 metres of PVC LT trapodore



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cables, 10160 fluorescent tubes, 1331 MPMB lamps, 1100 tube starters and 450 chokes were issued from the Jungpura Store. The quantity drawn is also not disputed by A1 and A3.

42. It was also argued by the learned counsel for A3 that in the disciplinary proceeding initiated, A3 has been exonerated and therefore A3 is liable to be acquitted in the present case also. In support of the argument reference was made to dictum in **P.S. Rajaya v. State of Bihar, (1996) 9 SCC 1**. In the said case, the short question that arose for consideration was whether the State was justified in pursuing the prosecution against the appellant therein under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 notwithstanding the fact that on an identical charge the appellant was exonerated in the departmental proceedings in the light of a report submitted by the Central Vigilance Commission and concurred by the Union Public Service Commission. The appellant was an Inspector in the Income Tax Service. His wife was a teacher in the Central School



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at Bokaro steel city. She was allotted on long lease a plot at Bokaro in the year 1980 for a sum of ₹20,000/- by the Steel Authority of India Limited (SAIL). As per the terms and conditions imposed by SAIL, shops in the ground floor and residence at first floor were constructed by the appellant with his earnings as well as the earnings of his wife. The construction was strictly under the supervision and on the drawings supplied freely by SAIL township authority. Subsequently the building was valued by SAIL township engineer at ₹4.75 lakhs. The appellant in the meanwhile got promotion and was functioning as Income Tax Officer, A Ward, Dhanbad from 1981 to 1985. In the course of the discharge of his duties, he impounded the books of accounts of certain business people who complained to the local M.P., who in turn complained about the appellant to the Minister of Finance with a request to transfer the appellant and to order for a CBI enquiry. Accordingly, an FIR was lodged on 9-4-1986 and the appellant's residence and office were raided on 11-4-1986.



However, nothing worth mentioning was found. Ultimately a charge sheet was filed on 31-7-1989 showing the assets of the appellant consisting of cash, immovable property (house) and jewellery. The estimated savings for the check period (1973 to March 1986) was arrived at in the sum of ₹6,30,000/- and on that basis it was alleged that the assets were disproportionate to the extent of ₹3,57,439.00/-.

42.1. The appellant aggrieved by the charge being taken cognizance of by the Special Judge challenged the same by moving the Patna High Court under Section 482 Cr.P.C. The High Court by order dated 03.08.1990 allowed the petition and remitted the matter back to the Special Judge directing him to get a preliminary enquiry conducted by higher authority of the appellant or do it himself before taking cognizance of the matter. The Special Judge took cognizance of the matter and wanted to proceed further. Aggrieved, the appellant again moved the High Court under Section 482 Cr.P.C. for quashing the cognizance of charge.



This time the High Court dismissed the petition holding that the issues raised before it had to be gone into in the final proceedings and those could not be raised at the preliminary stage. The appellant aggrieved by the order of the High Court filed the appeal by special leave. The Apex Court took note of the harassment that the appellant was subjected to for years together and after referring to in detail the various orders passed against the appellant therein and the number of times he had to approach the Court at various levels, found the charge in the departmental proceedings and in the criminal proceedings to be one and the same. The findings rendered in the departmental proceedings and the ultimate result of it was not disputed. It was held that if the charge which was identical could not be established in a departmental proceedings and in view of the admitted discrepancies in the reports submitted by the valuers, there was nothing further to proceed against the appellant in criminal proceedings. The Apex Court after considering almost all the earlier decisions dealing with the



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guidelines relating to the exercise of the extraordinary power under Article 226 of the Constitution or the inherent powers under Section 482 of the Cr.P.C. for quashing an FIR or a complaint, held that the case could easily be brought under more than one head given without any difficulty. **On the peculiar facts of the case, it was held that the criminal proceedings initiated against the appellant should not be pursued.** The appeal was allowed quashing the criminal proceedings.

43. The aforesaid dictum cannot be applied to the facts of the present case. In the said case, there were absolutely no materials on record to make out even a prime face case against the appellant therein. Hence, in such circumstances, it was held that the criminal proceeding was liable to be quashed. That apparently is not the situation in the case on hand. I have already referred to in detail the materials available on record. The testimony of the prosecution witnesses has not been discredited in any way. Therefore, I find no reason(s) to disbelieve them.



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44. The trial court has referred to various decisions of the Apex Court to conclude that the offence of breach of trust and conspiracy have been made out from the materials on record. No arguments were addressed on the said aspect. No arguments were advanced on the quantum of sentence also.

45. In the light of the aforesaid discussion, the appeal is partly allowed. A1 is acquitted under Section 235 (1) Cr.P.C. for the offence punishable under Section 201 IPC. The conviction and sentence of the appellants, namely, A1 and A3 for the remaining offences by the trial court is confirmed.

46. The appeal is disposed of as aforesaid.

47. Application(s), if any, pending, shall stand closed.

**CHANDRASEKHARAN SUDHA  
(JUDGE)**

**MARCH 10, 2026/mj**