

Deepak Handa Vs. C.B.i.

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Court : Delhi

Decided On : Aug-08-2014

Judge : S. Muralidhar

Appellant : Deepak Handa

Respondent : C.B.i.

Advocate for Pet/Ap. : Mr. R.K. Kohli, Mr. Manoj Ohri, Mr. Mohit Mathur, Mr. Shahrukh Hussain, Mr. Badar Mehmood, Mr. Varun Tankha, Mr. Devendra Dedha, Mr. R.K. Handoo, Mr. Yogesh Sharma, Mr. Harsh Vardhan Sharma, Mr. Rakesh Malhotra

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. No.265 of 2008
Reserved on:

21. t July 2014 Decision on:

8. h August 2014 RAJEEV KUMAR GOYAL @ RAJ KUMAR GOYAL.... Appellant
Through: Mr. R.K. Kohli, Advocate. versus STATE THROUGH C.B.I Through:
Respondent Mr. Manoj Ohri, Special Public Prosecutor WITH CRL.A. No.266 of
2008 L.K.GUPTA Through: versus STATE THROUGH C.B.I. Through:
Appellant Mr. Mohit Mathur, Mr. Shahrukh Hussain, Mr. Badar Mehmood, Mr.
Varun Tankha and Mr. Devendra Dedha, Advocates. Respondent Mr. Manoj
Ohri, Spl. PP WITH CRL.A. No.269 of 2008 DEEPAK HANDA Through:

Appellant Mr. R.K. Handoo with Mr. Yogesh Sharma, Advocates. versus C.B.I. CRL.A. Nos. 265-66,269-70 of 2008 Respondent Page 1 of 40 Through: Mr. Manoj Ohri, Special Public Prosecutor. AND CRL.A. No.270 of 2008 SANJAY RAINA Through: Appellant Mr. Harsh Vardhan Sharma with Mr. Rakesh Malhotra, Advocates. versus C.B.I. Through: Respondent Mr. Manoj Ohri, Special Public Prosecutor. CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

0808.2014 1. These appeals are directed against the common judgment dated 3rd March 2008 passed by the learned Special Judge, Central Bureau of Investigation (CBI) in CC No.31/07 convicting: (i) All the Appellants under Section 120B read with Sections 420/467/468/471 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (PC Act); (ii) Appellant L.K. Gupta for the offence under Section 13 (2) read with Section 13(1) (d) of the PC Act; (iii) Appellants Sanjay Raina, Rajeev Kumar Goyal and Deepak Handa (A-2 to A-4) for the offences under Sections 420/467/468/471 IPC.

2. The appeals are also directed against the order on sentence dated 5th March 2008 whereby: (i) Appellant L.K. Gupta was sentenced to undergo rigorous imprisonment (RI) for three years and to pay a fine of Rs.1 lakh for the offences under Section 13(2) read with Section 13(1)(d) of the PC Act and in default to undergo simple imprisonment (SI) for one year and RI for one year and a fine of Rs.20,000 and in default to undergo SI for three months for the offences under Section 120B read with Sections 420/467/468/471 IPC with both the sentences being directed to run concurrently. (ii) Appellant Sanjay Raina was sentenced to RI for three years and to pay a fine of Rs.40,000 and in default to undergo SI for six months for the offence under Section 420 IPC and an identical sentence for the offences under Sections 467 read with Section 471 IPC and 468 read with Section 471 and RI for one year for the offence under Section 120B read with Sections 420/467/468/471 IPC with all sentences being directed to run concurrently. (iii) Appellant Rajeev Kumar Goyal was sentenced to undergo RI for two years and a fine of Rs.25,000 and in default to undergo SI for three months for each of the offences under Section 420 IPC, Section 467 read with Section 471 IPC and Section 468 read with Section 471 IPC and RI for one year under Section 120 B

read with Sections 420/467/468/471 IPC with all the sentences being directed to run concurrently. (iv) Appellant Deepak Handa was sentenced to undergo RI for two years and to pay a fine of Rs.25,000 and in default to undergo SI for three months for each of the offences under Section 420 IPC, Section 467 read with Section 471 IPC and Section 468 read with Section 471 IPC and RI for one year under Section 120 B read with Sections 420/467/468/471 IPC with all the sentences directed to run concurrently.

3. At the time of admission of appeals on 31 st March 2008, this Court suspended the sentences awarded to each of the Appellants during the pendency of the appeals subject to terms. The Court s informed that the fine amounts have already been paid by the Appellants. Procedure for processing marine claims 4. Before discussing the particular facts of these cases it is necessary to understand how the marine open policy comes to be issued. When goods are transported from one destination to another, the goods are insured for the period during which they are being transported and till they are delivered at the destination. The consignor is usually the person selling the goods and the consignee is the purchaser of the goods. The premium could be paid for, depending on the terms of purchase, by either the consignor or the consignee. The marine open policy covers internal transport of goods by road as well. A cover note is issued by a clerk in the insurance company who is authorised to do so. At that stage the insurer usually submits the proposal and requisite documents. After collection of the premium amount, the policy cover note is issued. When goods are either stolen during transit or damaged or failed to be delivered, a claim is lodged with the branch which issued the policy. The insured gives intimation to the NIC and the Branch Manager appoints a Surveyor, from the approved list for that branch, to assess the loss. The Surveyor then submits a report along with photographs, the proposal certificate and the goods received. A clerk in the concerned NIC Branch then processes the claim and submits it to the Branch Manager for approval. After approval by the Branch Manger, the file goes to the Account Clerk for preparation of the cheque. After the cheque is prepared, it is signed by two authorised signatories one of whom is the Branch Manager. The cheque is then handed over to the insured/claimant. Usually the Surveyors fee is also paid at the same time as the claim is settled. If the right of recovery has been protected by issuance of

notice to the carrier, the Branch Manager can, in his discretion, after settling the claim, appoint a recovery agent. Carriers typically pay 5 to 10% of the claim amount. In case the goods are not damaged but some part of it goes missing before reaching the destination, the insurance company appoints a tracer for tracing the goods. Case of the prosecution 5. Turning to the case of the prosecution, the Appellant L.K. Gupta was a Branch Manager of National Insurance Company Ltd. (NIC), Kapashera Branch during the relevant period i.e. 1995 to 1998. NIC issues various general insurance policies, fire policies, marine policies, medical policies and other miscellaneous policies. During the relevant period, Pushpender Kumar (PW-4) was working as an Assistant in the Kapashera Branch in the underwriting department. He was maintaining the premium register of four departments i.e. fire, marine, motor and miscellaneous. He disclosed in his evidence that between 1995 and 1998, L.K. Gupta was the only person in the Officer Grade in the Kapashera Branch. In other words, there was no Senior Assistant, Double Assistant Administrative Officer during this period. The Kapashera Branch was under the Divisional Office (DO) Gurgaon.

6. The Vigilance Department of the NIC conducted an inquiry/ surprise check at the Kapashera Branch during 1998-99. On a perusal of some of the files it appeared that certain claims were fictitious. The files of 5 to 6 such claims were seized. Mr. A.L. Gambhir (PW8), who was the Assistant Administrative Officer of NIC working in the Vigilance Department, was involved in the inquiry. In his evidence, he stated that after seizing the files, he submitted them to one Mr. A.K. Seth, in-charge of the Vigilance Department of NIC, Delhi Region. He stated that the documents like Power of Attorney, Indemnity Bond, carrier receipts etc. were missing in those files which I had seized.

However, he could not remember the details in the files which he had seized. Importantly, he stated that although he had prepared a seizure memo when he had seized the files, the said seizure memo was not on the record of the learned trial Court. Secondly, although he had submitted an inquiry report to Mr. A.K. Seth, the said report was also not on the trial Court record.

7. It appears that the Vigilance Department itself did not take any further steps, except that Mr. L.K. Gupta was transferred from the Kapashera Branch and in his place, Ms. Geeta Sharma (PW5) joined as Branch Manager on 6th September 1999. It appears that the Anti Corruption Branch (ACB) of the Central Bureau of Investigation (CBI) took over the investigations of the case and registered a first information report (FIR) on 21st August 2001. A search was conducted on 22nd August 2001 in the residential premises of L.K. Gupta and Sanjay Raina. The claim files (Ex.P1 to P7) pertaining to the fictitious claims were seized from NIC under seizure memo (Ex.PW2/A). The chargesheet 8. Pursuant to the investigations conducted, a chargesheet was filed by the CBI on 25th February 2003. The chargesheet listed out seven claims which appeared to have been settled by the Kapashera branch, NIC in an illegal manner. The claims listed in the chargesheet were as under: (i) Claim No.21/96-97-05 and the corresponding policy which was taken on 22nd April 1996 by Sanjay Raina (A2) in the name of M/s. Sonia & Co., 18, Radhey Shyam Park, Delhi-92 by paying a premium of Rs. 2,220 for transportation of central chemicals from anywhere in India to Delhi. A surveyor report was issued by M/s. Z.K. Consultancy Services Pvt. Ltd. (ZKC) with the address as 106B, Cycle Market, Jhandewalan, New Delhi assessing the loss of insured goods as Rs. 27,300. ZKC also submitted a bill of Rs. 1,664 towards survey fee. The survey report and the fee bill were accepted by L.K. Gupta (A1) Branch Manager. The cheques dated 19th August 1996 for Rs. 27,300 and Rs. 1,664 respectively were issued by NIC. Both the cheques were encashed by A2 in his accounts at HDFC Bank and the Bank of India respectively. The survey report of ZKC mentioned the consignors name as M/s. Paras Chemicals Trading Co. (Paras) with the address as 70/1, Janambhoomi Marg, Bombay-400 001. Later, it was found that the address given for Paras in Bombay was nonexistent. The address of the consignee, i.e., M/s. Sonia & Co. was the residential address of the father-in-law of Raj Kumar Goel (Rajeev Kumar Goel) [A3], the co-worker of A2. At the same address, A2 had floated a fictitious firm in the name of Rajeev Kumar & Co. ZKC survey report is dated 4th June 1996. However, the letter of M/s. Sonia & Co., intimating about the loss assessed by the surveyor was dated 31st May 1996. There was no goods receipt, no letter of subrogation, no details of the correspondence between the insured and the transporter. The details of

appointing ZKC as a surveyor were also not available on the file. Although the full claim was paid, no recovery agent was appointed. In the chargesheet it was stated that in claim filed, the insurance agent code was mentioned as 320/3, which pertained to one Rakesh Jain but had been registered in the name of his wife, Poonam Jain (PW-12). When he was questioned, he denied having introduced M/s. Sonia & Co. for obtaining the insurance policy. The address given in the account opening form of M/s. Sonia & Co. was 106B, DDA Commercial Complex, Jhandewalan, New Delhi, which was also the address of ZKC. A2, Sanjay Raina, was both the insured as well as the surveyor in the case. The account opening form of ZKC mentioned the name of the proprietor as Vinod Kaul. The handwriting expert had established that Vinod Kaul and Sanjay Raina were one and the same person. The chargesheet alleged that the entire claim of M/s. Sonia & Co. was processed by L.K. Gupta himself without involving the other subordinate staff in violation of established procedures.

(ii) The second transaction, as per the chargesheet, involved claim No.44/95-96/04 and the corresponding policy taken by Raj Kumar Goel (A3) in the name of Rajeev Kumar & Co. on 7th November 1994 for transporting chemicals again from Paras in Mumbai to Rajeev Kumar & Co. in New Delhi. The address of Rajeev Kumar & Co. was the same as that of M/s Sonia & Co. In the file, there was no survey report. L.K. Gupta had passed the claim for Rs. 20,800 and a cheque in that name was issued on 19th September 1995. It was encashed by A3. No details of appointment of any recovery agent were available in the file. However, a bill for the fee of the recovery agent in the name of Vinod Kaul was found in the file. The address of Vinod Kaul is the residential address of Sanjay Raina (A2). The fee of the recovery agent in the sum of Rs. 705 was paid by NIC by a cheque dated 29th March 1996. The name of the transporter was shown as Narang Road Carriers with the address being that of Gali No.3, Aruna Park, Shakarpur, Delhi-110092 and no such carrier existed at that address. Sanjay Raina made the payment towards recovery by a cheque dated 26th March 1996, when, in fact, it had to be made by Narang Road Carrier. The address of the consignee, as already noted, was that of the father-in-law of A3. Paras was a fictitious firm. Again, it was alleged that L.K. Gupta had himself passed the claim without involving any subordinate staff. The signature of A3 in the account opening form of Rajeev Kumar & Co. was

confirmed by the handwriting expert. (iii) The third claim was claim No.21/95-96/07 and the corresponding policy taken by Deepak Handa (A4) in the name of M/s. Silk Screen with the address 61F, Ber Sarai, New Delhi on 13th December 1995 for transporting chemicals bought from M/s. L.A. Marketing Agency, Mumbai. A claim was lodged on 29th September 1995. The transporter was shown as Gagan Road Carriers with the same address as that of Narang Road Carriers, i.e., Gali No.3, Aruna Park, Shakarpur, Delhi 110 092. The surveyor was same ZKC, which was the same Surveyor used for that of M/s. Sonia & Co. A4 was the brother-in-law of A2, Sanjay Raina. Pushpender Kumar (P4) stated that he processed the claim filed and passed the claim of Rs. 20,080 by a cheque dated 20 th October 1995. The claim contained the letter of subrogation and photocopy of the goods received. M.I. Thomas (PW1) deposed in Court that no such firm like M/s. L.A. Marketing Agency was a tenant at the address given for the said firm. PW12, Ms. Poonam Jain, also stated that her husband, Rakesh Jain, an insurance agent, had never dealt with a company by the name of Silk Screen. The cheque was credited to the account of M/s. Silk Screen. Vinod Kaul was shown as a recovery agent but he was not in the list of approved recovery agents. ZKC was not a surveyor empanelled for the Kapashera Branch, NIC. (iv) The fourth claim was 97-98/01 and the corresponding policy taken by Sanjay Raina on 21st April 1997 in the name of M/s. Sarthak Enterprises, the address of which was no different from that of M/s. Silk Screen. This was for transporting cardboard papers from Bombay to Delhi. A claim was filed on 13th May 1997. The surveyor was again ZKC appointed by L.K. Gupta. ZKC submitted a report dated 20 th May 1997 assessing the loss as Rs. 46,300 and a bill for Rs. 2,594 towards the survey fee. Both the amounts were passed together by L.K. Gupta for the payment of Rs. 46,300 and a cheque for that amount dated 13th June 1997 and another cheque of the same date for Rs. 2,594 were issued and encashed by Sanjay Raina. As noted earlier, the address of M/s. Sarthak Enterprises was the same as that of M/s. Silk Screen which belonged to A4, the co-brother of A2. The account of M/s. Sarthak Enterprises was introduced by A4, a proprietor of Silk Screen. The Consignor was M/s. Topaz Card Manufacturing Co. and the carrier was shown as Bullet Road Carriers. The address was that of one Prem Gambhir (PW-6) who denied having issued any goods receipt. The agent code pertained to Shalini Gupta (PW-26) who

denied having introduced M/s. Sarthak Enterprises. Shalini Gupta was the wife of Dr. Vijay Kumar Gupta, the brother-in-law of L.K. Gupta. Although the full amount claimed was paid, no recovery agent was appointed. L.K. Gupta processed the claim without informing the subordinate staff. (v) The fifth claim was claim No.97-98/10 and the corresponding policy which was taken by Sanjay Raina in the name of SKW & Co. on 29th April 1998. The address of SKW & Co. was the same as the fictitious firm, i.e., Narang Road Carriers and Goel Road Carrier. The policy was for covering transport of ball bearing from Bombay to Delhi. The name of the consignor is not available on the file. The transporter was shown as M/s. Bullet Road Carriers. ZKC was again appointed as the surveyor and submitted a bill for Rs. 1,500 towards the survey fee. The claim amount was Rs. 47,840. L.K. Gupta passed the claim for Rs. 49,304, which included the survey fee and one consolidated cheque was issued for the said amount on 14 th July 1998, which was encashed by Sanjay Raina. The recovery agent was shown to be Rakesh Modgil and the amount to be deposited of Rs. 3,451 was arranged by A2 himself in the name of M/s. Webers India, which was a fictitious firm. Rakesh Modgil was not paid the recovery agents fee. He was not given anything to show that he has been appointed as a recovery agent or that he recovered any amount from the transporter. The agent code 310/20 belonged to Ashish Kumar Jain who was registered as an insurance agent in the name of Riti Arora. He denied having introduced SKW & Co. The address of SKW & Co. was also the same as that of ZKC. Here again, the claim was stated to have been processed and passed by L.K. Gupta without involving the subordinate staff. (vi) The sixth claim 98-99/12 and the corresponding policy was taken by Sanjay Raina on 22nd September 1998 in the name of Abha International, the address of which again being Aruna Park, Shakarpur, Delhi by paying a premium of Rs. 1,232. The consignor was shown as L.A. Marketing Agency, a fictitious firm. The transporter was shown as M/s. Nishant Transporter, which was again a non-existent firm. The surveyor was R.K. Goel (A3) and he submitted a report dated 14th October 1998 assessing the loss as Rs. 47,500. The claim was recommended by Jagdish Kumar Meena (PW9). (vii) The seventh claim 69/96 also pertained to Abha International and the corresponding policy was taken by Sanjay Raina on 4 th December 1996. The claim was filed on 13th December 1996 for Rs. 28,180. The consignor was L.A.

Marketing Agency, a fictitious firm. The transporter was shown as M/s. Narang Road Carriers, also a fictitious firm. The surveyor was ZKC, which submitted the survey report dated 30th December 1996. The entire claim was lodged and a cheque for Rs. 28,180 was issued which was encashed by Sanjay Raina. The missing documents included the goods receipt, the letter of subrogation, the details of appointment of surveyor, the details of the recovery agent appointed, copy of the marine policy and the entry regarding the claim. The charges framed 9. By an order dated 11th August 2003, the Special Judge framed the charges against the accused. Since there have been considerable arguments on the question of charge, it is important to set out the charges themselves in extenso. They read as under:

I, Prem Kumar, Special Judge, CBI, New Delhi, do hereby charge you accused L K Gupta, Branch Manager, NIC, Kapashera, New Delhi,

2) Sanjay Raina r/o 269-C, Dilshad Garden, Delhi,

3) Deepak Handa r/o B-1/33-2, Safdarjung Enclave, Delhi-29 and

4) Rajeev Kumar Goel r/o no.18, Radhey Shyam Park, New Delhi, as under: That during 1995-1998, LK Gupta Branch Manager, NIC, Kapashera, New Delhi entered into and executed criminal conspiracy with Sanjay Raina, Deepak Handa and Rajeev Kumar Goel and abused his official position as public servant and passed six fictitious marine claims in favour of those bogus claimants private firms/companies on the basis of forged, false claim documents, purported to be genuine by accused mentioned above which were received by accused persons fraudulently and cheated the NIC Ltd. in the garb of the following firm companies:

1.

2.

3.

4. 5.

6. M/s. Sonia & Co. Claim No.21/11-0004/124/96 M/s. Silk Screen Claim No.21/95-96/07 M/s. Sarthak Enterprises Claim No.97-98/01 M/s. SKW & Co. Claim No.97-98/10 M/s. Abha International Claim No.96-97/08 M/s. Abha International Claim No.98-99/12 and thus committed offences punishable u/s 120 B r/w 420, 467, 468 and 471 IPC and within my cognizance. Secondly, that you LK Gupta Branch Manager, NIC, Kapashera Branch, New Delhi, abused your official position as a public servant during 1995-98 and passed fraudulently all bogus marine claims in favour of the above mentioned 6 fictitious firms/companies in order to obtain illegal gratification and allowed NIC to be cheated by other accused persons and committed offence of criminal misconduct punishable u/s 13(2) r/w 13(1)(d) and 15 of P.C. Act, 1988 and within my cognizance. Thirdly, that you Sanjay Raina, Deepak Handa and Rajeev Kumar Goel submitted respective false marine claims after forging documents with intention to cheat NIC and received payments through cheques for your respective fictitious firms in order to cheat NIC and thereby cheated NIC to the tune of Rs. 2.6 lacs as per details given in the charge sheet and thereby committed offences u/s 420, 467, 468 and 471 IPC and within my cognizance. And I hereby direct that you all be tried by this court on the said charge.

10. It is seen that there are three main charges - the first concerns the offence of criminal conspiracy with which all the accused have been charged. It clubs all the seven transactions discussed hereinbefore and charges the accused for the offence under Section 120B read with Sections 420, 467, 468 and 471 IPC.

11. The second charge pertains exclusively to A1, L.K. Gupta. He is charged with having abused his official position as a public servant during 1995-98 and passed fraudulently the bogus marine claims in respect of the seven transactions in order to obtain illegal gratification and allow NIC to be cheated by other accused persons, thereby committing the offence punishable under Section 13 (2) read with 13 (1) (d) and Section 15 of the PC Act.

12. The third does not pertain to A1, L.K. Gupta, at all. It pertains to the other three accused, A2, A3 and A4. They are charged for having committed the offence under Sections 420, 467, 468 and 471 IPC for submitting false marine claims after

forging the document with an intention to cheat NIC and receiving payments through cheque on behalf of fictitious firms, thereby cheating NIC to the tune of Rs. 2,60,000. Misjoinder of charges 13. One of the submissions urged by all the counsel for the appellants concerns the misjoinder of charges. In sum, it is submitted that under Section 219 Cr PC, only three offences of the same kind in a year could be clubbed together for a single charge, whereas, in the present case, six distinct acts/offences have been clubbed together, thus causing serious prejudice to the accused. It is pointed out that the first and third charges framed against accused A2, A3 and A4 comprise six distinct acts/offences having distinct facts and each constitutes a distinct offence for which a separate trial had to be conducted. It is further pointed out on behalf of A2 and A3 that the learned trial Court erred in resorting to Section 223(d) of the Cr PC which deals with misjoinder of persons and not of offences. Reliance is placed on the decisions in *Mainpal v. State of Haryana* (2010) 10 SCC130 and *S.K. Nabijan v. Emperor* AIR1947 Patna 212 to urge that the misjoinder of charges has resulted in serious prejudice and consequent mistrial and, therefore, the impugned judgment of the learned trial Court is unsustainable in law.

14. Mr. Manoj Ohri, learned Special Public Prosecutor for the CBI has placed reliance on the decision in *Willie (William) Slaney v. State of Madhya Pradesh* AIR 1956 SC116 and *Kamalanatha v. State of T.N.* (2005) 5 SCC194 and submitted that the substance of the charge was explicit and left no room for confusion. He submitted that the Appellants had failed to show what prejudice was caused to each of them. He demonstrated, in the form of a chart, that there were many common elements in these seven transactions, involving more or less the same persons and, therefore, there was nothing illegal in clubbing all the offences under the same charge.

15. The Court finds that the learned trial Court has, in para 21 of the judgment, noticed the above submission but has rejected it by relying upon Sections 223 (d) and 464 Cr PC and the decision in *S.K. Nabijan v. Emperor*.

16. A perusal of the relevant provisions shows that Section 218(1) Cr PC states that for every distinct offence, there shall be a separate charge and every such

charge will be tried separately. The proviso envisages that nothing in sub-section (1) shall affect the operation of Sections 219, 220, 221 and 223. Under Section 219 (1), a person may be charged and tried by one trial for a maximum of three offences which have to be of the same kind and committed within a space of twelve months. Section 223 is under the heading persons may be charged jointly.

The clauses in Section 223 talk of persons who may be charged and tried together and not what kinds of offences could be clubbed together. The proviso makes it clear that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in Section then such persons may apply to the learned trial Court that they should be tried together. In the present case, no such application was made by any of the accused that they should be tried together. In fact, the contention of the Appellants throughout has been that these distinct offences ought not to have been clubbed together under one charge. Interestingly, the provisions beginning with Section 218 and ending with Section 224 are under a separate sub-heading B under Chapter 17 titled joinder of charges.

17. In respect of the corresponding provisions under the Cr PC1898 the Supreme Court in Willie (William) Slaney v. State of Madhya Pradesh explained the effect of an error, irregularity or omission in the framing of charges. However, it must be remembered that the decision in that case was not based on misjoinder of charges. The case there turned on the failure to frame a specific charge. In Birichh v. State of Bihar AIR 1963 SC1120 the Supreme Court interpreted the provisions of charge as occurring in Cr PC1898 and explained that if the joinder of charges was contrary to the provisions of the Code, it would be a misjoinder of charges. Section 537 of Cr. PC1898 prohibits the revisional or appellate court from setting aside the finding, sentence or order passed by a court of competent jurisdiction on the ground of such a misjoinder unless it has occasioned a failure of justice.

This was reiterated in the State of Andhra Pradesh v. Cheemalapati Ganeswara Rao AIR19631850. It was emphasised that unless the accused persons were embarrassed in their defence with the result that there was a failure of justice, the conviction could not be set aside by the learned trial Court.

18. In *State of West Bengal v. Laisal Haque* (1989) 3 SCC166 there were sixteen accused persons, including the Respondent, Laisal Haque (LH) along with 26 others charged, who had been charged for rioting, causing death under Sections 147, 302 and 324, both read with Section 149 IPC. LH was separately charged under Section 302 IPC simpliciter for having caused death of the sole deceased. While the trial Court convicted LH under Sections 148 and 302 IPC and acquitted some other accused, the High Court reversed the conviction on the ground that the defect in the framing of charge had occasioned failure of justice. Inter alia, the High Court found that the charge was a "rolled up charge" and the evidence had been discussed separately under the different heads of charges framed against each of the persons. The Supreme Court reversed the order of the High Court pointing out that there was no fundamental defect in the framing of the charges. It was found covered under Section 221, which was an exception to Section 219 Cr PC. Reliance was also placed both on Sections 215 and 464 Cr PC. Referring to the decision in *Willie (William) Slaney v. State of Madhya Pradesh*, it was held that the test laid down therein that the main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself was satisfied in the case.

19. Indeed, Section 215 Cr PC states that no error in stating either the offence or the particulars required to be stated in the charge shall be regarded as a material error unless the accused was in fact misled by such error or omission and it has occasioned the failure of justice.

20. Section 464 (1) states that the finding, sentence or order of a competent jurisdiction would not be invalidated only on the ground that there was error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court failure of justice has in fact been occasioned thereby.

21. No doubt, the seven claims relating to the six firms have common features as regards the claims of the fictitious firms and the persons involved. Nevertheless, there is merit in the contention that these are distinct offences and they could not

have been simply clubbed together for the simple charge. However, that brings forth the question whether this was a curable irregularity. The legal position has been summarised by the Supreme Court in *Kamalanatha v. State of T.N.* in para 50 as under:

50. It is clear from the aforesaid decisions that misjoinder of charges is not an illegality but an irregularity curable under Section 464 or Section 465 Cr PC provided no failure of justice had occasioned thereby. Whether or not the failure of justice had occasioned thereby, it is the duty of the court to see, whether an accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself.

22. In *Mainpal v. State of Haryana*, the legal position was summarised in para 17 as under:

17. The following principles relating to sections 212, 215 and 464 of the Code, relevant to this case, become evident from the said enunciations: (i) The object of framing a charge is to enable an accused to have a clear idea of what he is being tried for and of the essential facts that he has to meet. The charge must also contain the particulars of date, time, place and person against whom the offence was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged. (ii) The accused is entitled to know with certainty and accuracy, the exact nature of the charge against him, and unless he has such knowledge, his defence will be prejudiced. Where an accused is charged with having committed offence against one person but on the evidence led, he is convicted for committing offence against another person, without a charge being framed in respect of it, the accused will be prejudiced, resulting in a failure of justice. But there will be no prejudice or failure of justice where there was an error in the charge and the accused was aware of the error. Such knowledge can be inferred from the defence, that is, if the defence of the accused showed that he was defending himself against the real and actual charge and not the erroneous charge. (iii) In judging a question of prejudice, as of guilt, the courts must act with a broad vision and look to the substance and not to the technicalities, and their

main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself.

23. In the present case, there are indeed certain common features in all the cases, which would be discussed in greater detail hereinafter. There is no doubt that the accused knew what the charges against each of them were and were able to defend themselves by engaging counsel and there was a full-fledged trial where there was an adequate opportunity to examine the witnesses and to lead defence evidence. For all practical purposes, there was indeed a fair trial. The accused knew what they have been tried for. The main facts sought to be established against each of them were explained to them fairly and clearly and they were given a fair chance to defend themselves.

24. In the circumstances, it is not possible to accept the submission of learned counsel for the Appellants that on account of the misjoinder of charges, there was any failure of justice. In the considered view of the Court, the present case squarely falls within the ambit of Section 464(1) Cr PC and only on the ground of misjoinder of parties this Court is not persuaded to set aside the conviction of the Appellants. Handing over of files by the Vigilance Department 25. The next contention advanced by the Appellants concern the seizure and preservation of files by the Vigilance Department of NIC and their subsequent entrustment to the CBI. It is stated that with there being a clear admission by PW8 that the seizure memo and the inquiry report prepared by the Vigilance Department not being in the judicial file at the time of trial, the burden was on the NIC to show what had happened to the documents found missing in the files seized. According to learned counsel for the Appellants, unless the seizure memo prepared by the Vigilance Department of NIC was made available, it would not be possible to know what papers existed when such seizure took place and if the files were not preserved in a tamper proof environment, then the Appellants would have the benefit of Section 114(g) of the Indian Evidence Act, 1872 and would be able to contend that an adverse inference ought to be drawn that the documents were kept back by the Prosecution would have, in fact, enured to the benefit of the accused.

26. The evidence of PW8 is relevant in regard to the above submission. He was part of the Vigilance Department which conducted the surprise check. He states that I have prepared the seizure memo. I seized the files from National Insurance Company Limited, Kapashera Branch. I had seized the files from the Branch Manager but the seizure memos are not on record.

He further states these files which were seized by me remained in the custody of the Vigilance Department. There is no procedure in the Vigilance Department to prepare the handing over memo.

He clarifies that the files remained in the custody of the Vigilance Department.

He adds that he had prepared the inquiry report which he submitted to Mr. A.K. Seth but that my report is not on the judicial file.

He states that I had not given the details of the missing documents in the seized files to the officials of NIC, Kapashera.

27. In his examination-in-chief, PW-8 clarified that he found certain claims to be fictitious because certain papers were not available in the file.

He later clarifies in the same examination-in-chief that the documents like Power of Attorney, Indemnity Bond, carrier receipts etc. were missing in those files which I had seized.

At this stage, it must also be noted that it is stated in the evidence of PW9 that he processed the claim in Ex.P6 of M/s. Abha International and that all the papers in the said filed were recommended by him to be in order. PW9 himself being involved in the process of claim in Ex.P6 was, however, not proceeded against by the CBI.

28. Whether all the papers were in the file or not is the only aspect of the matter in these cases. It may be that in considering the conduct of L.K. Gupta, who had passed the claims, it would have to be shown by the Prosecution that the papers in the files were already missing when he passed the claims. If not, he would have the benefit of doubt since the failure to ensure that the files were kept in a tamper

proof environment would enable him to take a defence that although the papers were available in the file, they were somehow not found when the CBI was handed over those files. However, there is another aspect of the matter which involves claims being made on behalf of fictitious firms with fictitious consignors and road carriers. There, it does not matter much that some of the papers may have gone missing as long as there is enough evidence on record to show that the claims were made on behalf of fictitious firms with the transporter and consignor also being fictitious.

29. Consequently, while it is true that there is nothing to indicate that the files seized by the Vigilance Department remained with it in a tamper proof environment till they were handed over to CBI, no adverse inference is possible to be drawn against CBI qua all the accused, but at best, against L.K. Gupta, who is the person who is supposed to have checked all the papers in the file before approving the claims for payment.

30. The Court now proposes to consider the case concerning each of the claims in seriatim also proposed to adopt the same approach. The role of each of the accused will also be discussed. Claim of M/s. Sonia & Co.

31. The facts of this claim have already been noticed earlier. The Court would like to only focus at this stage on the evidence that has been adduced. The relevant witnesses as far as this claim is concerned, are Pushpender Kumar (PW4), Geeta Sharma (PW5), Poonam Jain, the wife of Rakesh Jain (PW12), Y.T. Bamne, the Enforcement Officer (PW-31) and the defence witnesses H.K. Sharma, Dy. GM, NIC (DW4), P.K. Jain (DW6) and Arun Jain (DW7).

32. PW4 stated that the cheque for Rs. 27,300 in favour of M/s. Sonia & Co. was signed by him at point A and by L.K. Gupta at point B. He highlighted that he had signed the cheque after LK Gupta had. He admits in his cross-examination that there was a lot of pressure of work and that after the transfer of R.P. Gupta who was working in the Kapashera Branch, and who was processing all types of claims, no other Senior Assistant joined and that there was no officer, except L.K. Gupta, to pass the claim between 1995 and 1998. The file of this claim was Ex.P1 and when it was shown to Geeta Sharma (PW5), she stated that it did not contain

the goods receipt and the letter of subrogation. However, it contained the surveyors report. The details of appointment of surveyor were not available. For this claim, the insurance agent, who introduced the insured, was Poonam Jain, the wife of Rakesh Jain (PW13), who was working as an insurance agent in her name. She stated that her husband never dealt with M/s. Sonia & Co.. PW-13 deposed likewise. H.K. Sharma (DW-4) proved that ZKC was not in the list of approved surveyors. Likewise, DWs 6 and 7 stated that they had not heard of ZKC.

33. DW-4 in his cross-examination produced the panel of surveyors for the Gurgaon Division for marine claims. He received this information by a letter dated 13th September 2007 from the Dy. GM of the Delhi Region office. This happened in between his examination-in-chief on 10th September 2007 and his cross-examination on 21st September 2007. It is not known how this witness was able to obtain a document, without permission of the learned trial Court, in between two hearings and even marked it as an exhibit. Be that as it may, the letter itself only encloses the copy of the panel of surveyors in the Gurgaon divisional office for the year 1992.

The enclosed panel itself simply gives the names under the title Marine, without specifying the year of empanelment. At best, it tells the reader what the empanelled surveyors for the year 1992 were. There is nothing to indicate that for the relevant years 1995-98, ZKC was not an approved surveyor. There is evidence to show that ZKC was perhaps a licensed surveyor. This part of the evidence is significant as far as the role of LK Gupta is concerned, as it is not possible to show that he deliberately named ZKC as a surveyor knowing that it was not empanelled.

34. However, as regards accused No.2, Sanjay Raina, the situation is different. The evidence is clear that Sanjay Raina was the proprietor of M/s. Sonia & Co. and held himself out as Vinod Kaul, the proprietor of ZKC. In other words, the insured and the surveyor was the same person. The evidence of PW31, the postman from Mumbai, proved that there was no company at the given address for Paras. So, Paras was a fictitious firm. No address of the transporter, Rahul Road Lines, was available in the file. Sanjay Raina himself encashed the cheques in question. On behalf of Sanjay Raina it was submitted that, in the absence of

examination of the Directors of ZKC, or the documents qua their identities or signatures, the mere report of the Central Forensic Science Laboratory (CFSL) showing the similarity between the signatures of Vinod Kaul and Sanjay Raina, did not hold significance. Secondly, it was submitted that, in the absence of a money trail, it could not be said that there was any conspiracy amongst the accused persons.

35. The evidence of the handwriting expert, Ramesh Chandra (PW30) is significant in this regard. The detailed reasons for his opinion (Ex.PW30/P) adequately proves that the writing of the so-called Vinod Kaul are identical to that of Sanjay Raina. The opinion is a detailed one. The cross-examination of this witness by the counsel for Sanjay Raina has not yielded much. The said evidence clearly corroborates the documentary evidence available on file which shows that it was Sanjay Raina who was the proprietor of M/s. Sonia & Co. and it is he who submitted the claims and encashed the payment.

36. On the aspect of the conspiracy between the accused persons qua this claim, the Prosecution seeks to show a conspiracy between L.K. Gupta and Sanjay Raina. There is no substantive evidence to show that there was an agreement between the two of them for performing an illegal act. As explained in John Pandian v. State (2010) 14 SCC129 there must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of the offence and where the factum of conspiracy is sought to be inferred even from circumstances giving rise to a conclusive or irresistible inference of crime between the two or more persons to commit an offence.

It was held that a few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy.....The circumstance relied for the purpose of drawing an inference should be prior in point of time then the actual commission of the offence in furtherance of the alleged conspiracy.

37. The evidence on record in the present case does not appear to be sufficient to conclude that there was a criminal conspiracy between L.K. Gupta and Sanjay Raina as a result of which the payment was made of the entire claim amount to

Sanjay Raina. However, what is certain is that Sanjay Raina submitted documents knowing fully well that they were fabricated and on the basis of fresh documents wrongfully obtained for himself the claim amount from NIC. Therefore, as far as A2 is concerned, qua this claim, the offences under Sections 420/467/468/471 IPC can be said to have been proved beyond reasonable doubt.

38. As regards the role of LK Gupta, the Court is not satisfied from the evidence placed on record that he knowingly abused his office as a public servant to facilitate the settlement of the claim and making payment to Sanjay Raina. As pointed out by the Supreme Court in *State of Madhya Pradesh v. Sheetla Sahai* (2009) 8 SCC617 the mere fact that L.K. Gupta may have made an error of judgment in passing the claim would not satisfy the ingredients of the offence under Section 13(1) (d) read with Section 13 (2) of the PC Act. It is a fact that this is not a case of demand of illegal gratification by L.K. Gupta. It is also not a case where the presumption under Section 20 of the PC Act is attracted. It is not shown that there was any pecuniary advantage to L.K. Gupta himself. While it is true that he was the branch manager and himself processed the claim, the evidence of PW4 itself shows that he was the only person at that point in time entrusted with the responsibility, with the other positions remaining vacant. He was possibly overworked and it is possible that he may not have been in a position to realise that Vinod Kumar and Sanjay Raina were the same persons (the fact which has been established only during the investigation and with the help of forensic evidence) or that Paras was a fictitious firm. In the circumstances, the Court is prepared to give the benefit of doubt to L.K. Gupta in respect of this and other claims which would be discussed hereafter.

Claim of M/s. Silk Screen 39. The facts of this case have also been discussed earlier. PW1 has demonstrated that the Consignor, M/s. L.A. Marketing Agency did not exist at the address at 164, Modi Street, Mumbai. PW-3 has proved that she did not rent out her premises to M/s. Goyal Road Lines and that she was the owner of the premises and living there since 1992. Although learned counsel for the Appellants argued that during her deposition, PW-3 did not specifically refer to living at Gali No.3, Aruna Park, Delhi but only gave her address as A-143, Gali No.3, Aruna Park, Shakarpur, Delhi, the Court is of the view that nothing much turns on this aspect. There is nothing to show that the address A-143, Aruna Park, Shakarpur, Delhi is different

from A-143, Gali No.3, Aruna Park, Shakarpur, Delhi. There is no cross-examination of this witness on that aspect. She clearly states that she does not know Sanjay Raina. The same address has been used for M/s. Abha International, M/s. Goyal Road Lines and M/s. SKW & Co. She did not know these firms. During her cross-examination, she denied that for some time, some portion of her premises was rented to M/s. Goyal Road Lines and Sanjay Raina. Nothing has been elicited from her in her cross-examination by learned counsel for Sanjay Raina.

40. PW4 admits to having signed the claimed cheque along with L.K. Gupta. It has been proved that the consignor is ZKC, which is none other than Sanjay Raina who projected himself as Vinod Kaul. PWs 12 and 13 proved that neither of them introduced Silk Screen.

41. The role of Sanjay Raina, as far as this claim is concerned, has been proved beyond reasonable doubt. However, as far as Deepak Handa is concerned, the Prosecution has been able to show that he is, no doubt, the brother-in-law of Sanjay Raina and he did accept the cheque issued in his name by NIC and deposited it in his account. However, as far as the claim opening form and other related document is concerned, the signatures thereon are not shown to match his signatures. The evidence of PW-30, the handwriting expert, shows that he, in fact, gave no opinion on the questioned writing Q-22. He also did not consider whether Deepak Handa, who gave the sample signatures (S-7) also wrote the questioned writings Q-23, 24, 25, 26 and 27. There is merit in the contention of Mr. Handoo, learned counsel for Deepak Handa that the Prosecution has not been able to prove his role in the making of the claim itself. On the documents submitted to the NIC, the writings of Deepak Handa are not shown to exist. What the Prosecution has, however, been able to prove is that he accepted the cheque of Rs. 20,080 drawn in favour of M/s. Silk Screen and deposited it in his account. This one act does make him a party to the offence of cheating under Section 420 IPC since he knew that he was not owing any money whatsoever by NIC. If, indeed, as he submits, he submitted no claim to NIC, there is no reason for him to accept such cheque and then proceed to deposit it in his account. His close relation to Sanjay Raina does make them both party to a conspiracy under Section 120-B IPC as

well.

42. As regards L.K. Gupta, for the reasons already discussed in relation to Claim No.1, the Court is not satisfied that there was any meeting of minds of L.K. Gupta, Sanjay Raina and Deepak Handa, or that L.K. Gupta knowingly facilitated the commission of crime by Sanjay Raina and Deepak Handa. There is no evidence to show that either of them corresponded with L.K.Gupta at any point in time. The evidence is insufficient to return a finding of guilt against L.K. Gupta either for the offence under Section 120-B qua this claim or Section 13 (1) (d) read with Section 13 (2) of the PC Act.

43. The resultant position is that the offences committed by Sanjay Raina qua this claim under Section 120-B IPC read with Sections 420/467/468/471 have been proved beyond reasonable doubt. As far as A4, Deepak Handa is concerned, the offences under Section 120-B IPC and Section 420 have been proved beyond all reasonable doubt. The offence qua this claim vis-a-vis L.K. Gupta has not been proved. Claim of M/s. Sarthak Enterprises 44. The first relevant witness for this claim is PW-4 who proved that both he and L.K. Gupta had signed the cheque claim amount of Rs. 46,300. PW-6 was the owner of Bullet Road Carriers. However, he pointed out that the company was closed in 1996. He neither transported the goods nor received any letter on the letter head of Sarthak Enterprises. He denied his signature on the letter showing the name of the Consignor as M/s. Topaz Card Manufacturing Co. PW-11 was the owner of M/s. Topaz Card Manufacturing Co. in Mumbai. The letter pad Ex.PW11/A did not pertain to his shop. He clearly stated that it was a forged bill and that the telephone number and the Sales Tax number were also incorrect. He had never dealt with a firm by that name. The proprietor of this firm is Sanjay Raina. It is clear that he accepted the cheque amount and deposited it in his account. The mere fact that the account opening form of this firm was introduced by Deepak Handa is not sufficient to make him part of the conspiracy. The consignor is ZKC and this is one other case where the insured is also the consignor.

45. For the reasons already discussed, in this case again, there is no evidence to show any conspiracy under Section 120-B IPC between L.K. Gupta, Sanjay Raina

and Deepak Handa. However, the evidence is sufficient to prove the guilt of Sanjay Raina for the offences under Sections 420/467/468/471 IPC. The evidence is insufficient to return a finding of guilt against L.K. Gupta for any of the offences he has been charged with qua this claim. The evidence is also insufficient for returning a finding of guilt against A4. Claim of M/s. Rajeev Kumar & Co.

46. The consignor of this claim was Paras, a fictitious firm. The transporter was M/s. Narang Road Carriers and its address was proved to be fictitious by PW-3. ZKC was the consignor which shows the involvement of Sanjay Raina. The address of the father-in-law of A3 was also the address of M/s. Sonia & Co. The other factor that is clear is that the claim amount was encashed by Rajeev Kumar Goyal. The recovery agent was none other than Vinod Kaul @ Sanjay Raina. The recovery payment was also made by Sanjay Raina. A fee for effecting the recovery was paid by Sanjay Raina. The evidence of DW-8 shows that a person cannot be appointed as a recovery agent in his own claim.

47. PW-30 has proved that Rajeev Kumar Goyal and Raj Kumar Goyal are not different persons. A-3 opened an account No.2510 in the name of Raj Kumar Goyal.

48. In the absence of any clear evidence showing the involvement of L.K. Gupta, other than the fact that he passed the claim, there is nothing to show that he was part of the conspiracy involving A2 and A3. Their roles in the offences under Section 120-B read with the substantive offences under Sections 467/468/471 IPC have been proved by the Prosecution beyond reasonable doubt. However, the evidence against LK Gupta is insufficient to find him guilty for the offences he has been charged with qua this claim. Claim of M/s. SKW & Co.

49. As far as this claim is concerned, PW-3 has proved that there was no such firm as SKW & Co. at A-143, Aruna Park, Shakarpur, Delhi. Sanjay Raina was the proprietor of this firm as well. Therefore, the firm itself was fictitious. Here again, the name of the transporter was shown as Bullet Road Carriers. The evidence of PW-6 shows that his carrier is not involved in the transport of the goods in question. PW-7 has proved that he never introduced Riti Arora as an agent. PW-10 has proved that Riti Arora was married in 1995 and has since then been living

in Banaras. The fact that Sanjay Raina lodged a claim has been proved by PW-30, the handwriting expert.

50. It is submitted that the fact that a consolidated cheque of Rs. 49,340, which included Rs. 1,500 for the surveyor fee was paid to Sanjay Raina, showed the involvement of L.K. Gupta. The evidence of PW-4 shows that the cheque was prepared by a clerk. It is not known whether L.K. Gupta gave any specific instructions qua this claim to the person preparing the cheque. That singular fact is not sufficient to rope him into the controversy. It appears that Rakesh Mudgil was a fictitious person and the recovery fee was arranged by Sanjay Raina in the name of Weber India, which was a fictitious firm. The evidence on record is sufficient to bring home the guilt of A2 for the offences with which he has been charged other than Section 120-B IPC qua this claim. The evidence is insufficient to return a finding of guilt qua L.K. Gupta for the offences with which he has been charged. Claim of M/s. Abha International 51. This claim pertains to file Ex.P-6. As far as L.K. Gupta is concerned, it is clear that this particular claim was also processed by PW-9 but, for some reason, CBI did not implicate him. This was a clear case of pick and choose by the CBI, letting off one person who was involved in the process of the claim. PW-9 states that all the documents were found in order when he processed the claim. The benefit of doubt should, therefore, also go to L.K. Gupta as far as this claim is concerned.

52. However, the role of Sanjay Raina in using the fictitious address of L.A. Marketing Agency (Consignor) and M/s. Nishant Road Transport as transporter and the roping in of Rajeev Kumar as surveyor is clearly established in the evidence of PWs 1, 3 and 14 and DW4. Rajeev Kumar was not an approved surveyor. Consequently, the guilt of A2 and A3 qua this claim for the offences with which they have been charged stands proved beyond reasonable doubt but not that of A1. Claim of M/s. Abha International 53. This is the second claim involving M/s. Abha International. Here again, the same methodology has been used by A2. He appears to have given the name of a fictitious consignor, LA Marketing Agency, the fictitious transporter, Narang Road Carriers and the surveyor is ZKC, which is none other than himself. He had encashed the cheque in question. The evidence of PWs1, 3, 26 and DWs 4, 6 and 7 sufficiently prove the guilt of A2 as

far as this claim is concerned for the offences under Sections 420/467/468/471 IPC. However, the evidence is insufficient to prove the offence for criminal conspiracy qua this claim under Section 120-B IPC involving the accused or L.K. Gupta for the offences with which he has been charged under the PC Act. Position qua each of the accused 54. The net result of the above discussion qua each of the accused is as under: (i) Although L.K. Gupta was the Manager of Kapashera Branch, NIC, where the above claims were processed by him, the evidence is insufficient to prove beyond reasonable doubt his involvement in the conspiracy and his having abused the official position as a public servant to pass the said claims. He is entitled to the benefit of doubt. (ii) As far as A2, Sanjay Raina is concerned, his guilt qua the offences under Sections 420/467/468/471 IPC qua each of the above claims stands proved beyond all reasonable doubt. The evidence is also sufficient beyond reasonable doubt that he is guilty of the offence under Section 120-B IPC read with Sections 420/464/468/471 IPC qua six of the claims except the claim of M/s. Sonia & Co. (iii) As far as A-3, Rajeev Kumar Goyal is concerned, the evidence is sufficient to prove the offences under Sections 420/464/468/471 and Section 120-B IPC read with the aforementioned offences qua the claim of M/s. Rajeev & Co. and M/s. Abha International (Claim No.6). (iv) The evidence on record is sufficient to prove beyond reasonable doubt the charge against Deepak Handa qua the claim of M/s. Silk Screen for the offence under Section 420 IPC and the offence under Section 120-B read with Section 420 IPC. Sentence 55. On the question of sentence, the Court finds that as far as Sanjay Raina is concerned, considering the offences pertain to the years 1995-98 and the present appeals have been pending for over six years, the sentence awarded by the trial Court is modified by directing that he would undergo RI for eighteen months for the offences under Sections 420/467/468/471 IPC as well as Section 120-B IPC and all the sentences shall run concurrently with no alteration in the fine amount as awarded by the learned trial Court.

56. As far as A-3 is concerned, his sentence is also modified and he is sentenced to RI for one year for each of the above offences with fine amount not being modified and all the sentences shall run concurrently.

57. As far as A-4 Deepak Handa is concerned, the Court sentences him to pay a fine amount of Rs. 1,00,000, which will be made over to NIC for the offences under Sections 420 and 120-B IPC, and on failure to pay the differential fine amount to NIC by 20 th August 2014, to undergo SI for three months. Deepak Handa is given the benefit of probation and he will furnish a bond of good conduct to maintain peace and good behaviour in the sum of Rs. 1,00,000, with one surety of the like amount to the satisfaction of the learned trial Court. For that purpose, the matter be placed before the learned trial Court on 25th August 2014. Conclusion 58. Consequently, Crl. A. No.266 of 2008 filed by L.K. Gupta is allowed and he is acquitted of all the offences with which he has been charged. His bail bond and the surety bond shall stand discharged.

59. Crl. A. 270 of 2008 filed by Sanjay Raina is disposed of in the above terms. His bail bond and surety bond are cancelled and he shall surrender forthwith to serve out the remaining sentence.

60. Crl. A. 265 of 2008 by Rajeev Kumar Goyal is disposed of in the above terms. His bail bond and surety bond are cancelled and he shall surrender forthwith to serve out the remaining sentence.

61. Crl. A. 269 of 2008 filed by Deepak Handa is disposed of and qua him the matter will be placed before the learned trial Court on 25 th August 2014 to enable him to furnish the bond for his release on probation, subject to good behaviour and paying the differential fine amount to the NIC, as directed, by 20th August 2014. S. MURALIDHAR, J.

AUGUST8 2014 dn/tp

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