

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SMT. JUSTICE NANDITA DUBEY

CRIMINAL APPEAL No.29 of 2008

BETWEEN:-

**P.K.RAKWAL (P.S.RAKWAL) S/O M.S.RAKWAL, AGED
ABOUT 48 YEARS, ARTILLERY RECORDS, NASIK ROAD
CAMP, (MAHARASHTRA) PRESENTLY POSTED AT JAMMU
& KASHMIR LIGHT INFANTRY SRINAGAR (J&K).**

....APPELLANT

(BY SHRI ANSHUMAN SINGH - ADVOCATE)

AND

**UNION OF INDIA, THROUGH SPECIAL POLICE
ESTABLISHMENT, CENTRAL BUREAU OF INVESTIGATION/ANTI
CORRUPTION BUREAU, JABALPUR, DISTT. JABALPUR
(MADHYA PRADESH)**

(BY SHRI VIKRAM SINGH - ADVOCATE)

....RESPONDENT

CRIMINAL APPEAL No.52 of 2008

BETWEEN:-

**LT.COL.P.O.OMAN, S/O P.K.OMAN, AGED ABOUT 62 YEARS,
RETIRED, R/O THOPIT HOUSE, UNGADICAL PUTHANKEV,
P.O. CHENGANNUR (KERALA)**

....APPELLANT

(BY SHRI SIDDHARTH DATT - ADVOCATE)

AND

**UNION OF INDIA, THROUGH SPECIAL POLICE
ESTABLISHMENT, CENTRAL BUREAU OF INVESTIGATION/ANTI
CORRUPTION BUREAU, JABALPUR, DISTT. JABALPUR
(MADHYA PRADESH)**

(BY SHRI VIKRAM SINGH - ADVOCATE)

....RESPONDENT

CRIMINAL APPEAL No. 94 of 2008

BETWEEN:-

**PRAHLAD DAS AGRAWAL S/O PREM NARAYAN AGRAWAL,
AGED ABOUT 47 YEARS, PROPRIETOR PREM NARAYAN
AND SONS, 438, KOTWALI WARD, MILONIGANJ, JABALPUR
(MADHYA PRADESH)**

....APPELLANT

(BY SHRI SHIVENDRA PANDEY - ADVOCATE)

AND

UNION OF INDIA, THROUGH SPECIAL POLICE ESTABLISHMENT, CENTRAL BUREAU OF INVESTIGATION/ANTI CORRUPTION BUREAU, JABALPUR, DISTT. JABALPUR (MADHYA PRADESH)

(BY SHRI VIKRAM SINGH - ADVOCATE)

...RESPONDENT

CRIMINAL APPEAL No. 152 of 2008

BETWEEN:-

LT.COL. J.S. VIRDI, S/O LATE JASWAT SINGH, AGED ABOUT 64 YEARS, 21/29 (882) CIVIL LINES, NEAR CSEB OFF. RAIPUR, DISTT RAIPUR (CHHATTISGARH)

....APPELLANT

(BY SHRI ANSHUMAN SINGH - ADVOCATE)

AND

UNION OF INDIA, THROUGH SPECIAL POLICE ESTABLISHMENT, CENTRAL BUREAU OF INVESTIGATION/ANTI CORRUPTION BUREAU, JABALPUR, DISTT. JABALPUR (MADHYA PRADESH)

(BY SHRI VIKRAM SINGH - ADVOCATE)

...RESPONDENT

CRIMINAL APPEAL No. 153 of 2008

BETWEEN:-

**SUBEDAR N. PRASAD, S/O SHRI SHIO ASHRAY PRASAD,
AGED ABOUT 56 YEARS, R/O VILL. ASHA PARARI P.S.
SIMRI, DISTT BUXAR (BIHAR)**

....APPELLANT

***(BY SHRI K.C. GHILDIYAL – SENIOR ADVOCATE WITH SHRI
MANOJ RAJAK – ADVOCATE)***

AND

**UNION OF INDIA, THROUGH SPECIAL POLICE
ESTABLISHMENT, CENTRAL BUREAU OF INVESTIGATION/ANTI
CORRUPTION BUREAU, JABALPUR, DISTT. JABALPUR
(MADHYA PRADESH)**

(BY SHRI VIKRAM SINGH - ADVOCATE)

CRIMINAL APPEAL No. 154 of 2008

BETWEEN:-

**LT. COL. E. R. KUMAR S/O LATE D. JOHN SOLOMON, AGED
ABOUT 48 YEARS, R/O B-208 4TH AVENUE SAINIKPURI
SECUNDERABAD (ANDHRA PRADESH)**

....APPELLANT

(BY SHRI ANSHUMAN SINGH - ADVOCATE)

AND

**UNION OF INDIA, THROUGH SUPERINTENDENT OF POLICE,
SPECIAL POLICE ESTABLISHMENT, ANTI CORRUPTION
BUREAU, JABALPUR, DISTT. JABALPUR (MADHYA PRADESH)**

(BY SHRI VIKRAM SINGH - ADVOCATE)

Reserved on : 09.08.2023
Pronounced on : 14.09.2023

These appeals having been heard and reserved for judgment, coming on for pronouncement this day, the Court pronounced the following :

J U D G M E N T

These six appeals arise out of judgment dated 31.12.2007 passed by Special Judge (C.B.I.), Jabalpur in Special Case No.07/1999, whereby P.K. Rakwal (appellant in Cr.A. No.29/2008), P.O. Oman (appellant in Cr.A. No.52/2008), J. S. Viridi (appellant in Cr.A. No. 152/2008), N. Praspad (appellant in Cr.A. No.153/2008) and E.R.Kumar (appellant in Cr.A. No. 154/2008) have been found guilty for the offence punishable under Section 420 read with Section 120-B of the Indian Penal

Code and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act and has been sentenced to rigorous imprisonment for 3 years with fine of Rs.2,000/- and rigorous imprisonment for three years with fine of Rs.2,000/- respectively with default stipulations, whereas, Prahlad Das Agrawal (appellant in Cr.A. No.94/2008) has been found guilty for the offence punishable under Section 420 read with Section 120-B of the Indian Penal Code and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act read with 109 of I.P.C. and has been sentenced to rigorous imprisonment for 3 years with fine of Rs.2,000/- and rigorous imprisonment for three years with fine of Rs.2,000/- respectively with default stipulations.

2. The case of prosecution is that, in April 1995, a shortage of cooking oil occurred in Army Supply Depot, Jabalpur. As per the Standing Operating Procedure (Ex. P-30), a board was constituted for local purchase of refined cooking oil for the army units. The Board was authorized to make purchase for daily consumption and was allocated a sum of Rs. 1 lakh for the same. According to prosecution, J.S. Viridi, P.S. Rakwal and N. Prasad were members of the purchase committee Board which made local purchase of 109 tins of Soybean oil valued at Rs. 76,416/- from the firm M/s Baldev Prasad Prem Narayan, (proprietor

Prahlad Das Agrawal) (hereinafter referred to as the vendor firm) for supply to various army units in Jabalpur. Complaints were received from various units regarding the poor quality of the oil. After the seizure of Oil Tins as per the order of the Station Commander Lt. Col. Krishna Swaroop Sahrma (P.W.-11), samples were taken and sent for testing in the laboratory. As per Ex. P-180 the first report of chemical analysis from Food Laboratory Director General, Supply and Transport Quarter Master General, New Delhi, the oil was found to be unrefined. As per the chemical analysis report Ex.P-191 of the second sample taken on 26.10.1995, the specific gravity of the oil and iodine content was higher than prescribed standards and there was a mixing of linseed/flex seed oil in the same. The sample was also sent to Food Testing Laboratory, Bhopal and as per their report (Ex. P-196), the oil was found to be adulterated. Hence, the prosecution was lodged against the vendor of the oil, Prahlad Das Agrawal and officers said to be involved in the purchase of the oil. The appellants namely, J.S. Viridi, E. R. Kumar and P.S. Rakwal were said to be the persons responsible for the purchase.

3. According to prosecution, appellant P.O. Oman was the Commanding Officer from June 1993 to June 1995. Appellant J. S. Viridi, was the Presiding Officer and P.S. Rakwal

and N. Prasad were members of the Local Purchase Committee, which made the purchase for the Supply Depot., whereas appellant E.R. Kumar was the Receipt and Dispatch Officer of the Supply Depot.

4. The learned Special Judge framed charges against the appellants P.S. Rakwal, P.O. Oman, J.S. Virdi, N. Prasad and E.R. Kumar under Section 420 read with Section 120-B of I.P.C., Section 7 read with Section 16(1)(a)(1) of the prevention of Food Adulteration Act, 1951 read with Section 109 of I.P.C. and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act and appellant Prahlad Das Agrawal was charged under Section 420 read with Section 120-B of I.P.C., Section 7 read with Section 16(1)(a)(1) of the prevention of Food Adulteration Act, 1951 and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act read with Section 109 of I.P.C.

5. The learned Special Judge, though acquitted all the appellants from the charges under Section 7 read with Section 16(1)(a)(1) of the prevention of Food Adulteration Act, 1951, but held the appellants P.S. Rakwal, P.O. Oman, J.S. Virdi, N. Prasad and E.R. Kumar guilty under Section 420 read with Section 120-B of I.P.C. and Section 13(1)(d) read with Section 13(2) of

prevention of Corruption Act on the ground that these appellants misusing their official position directly, accepted the quotation of the said firm with intent to give undue gain and advantage to Prahlad Das Agrawal. They did not follow the SOP (Standard Operating Procedure) nor did they physically verified the oil supplied by the vendor before accepting the delivery. To reach to this conclusion the learned Special Judge has relied on the statement of O.P. Shrivastava (P.W.-6) and L.S. Sundaram (P.W.-12). Further, relying on the statements of Swayam Narang (P.W.-3), Beldev Raj Dhingra (P.W.-4), Brijlal Kesharwani (P.W.-5), Vinod Kumar Makkad (P.W.-7) and Shyam Sunder Makar (P.W.-8) and the report (Ex. P-161) of handwriting expert, reached to the conclusion that Prahlad Das Agrawal submitted fabricated quotation with intent to obtain the order for supply of oil and to gain pecuniary advantage and therefore, convicted him under Section under Section 420 read with Section 120-B of I.P.C. and Section 13(1)(d) read with Section 13(2) of prevention of Corruption Act read with Section 109 of I.P.C.

6. Mr. Anshuman Singh, learned counsel appearing for J.S.. Virdi,, P.K. Rakwal, and E. R. Kumar after taking the Court through all the oral and documentary evidence relied upon by the prosecution as well as defence, raised the following contentions :-

(a) Appellants J.S. Viridi and P.K. Rakwal were the members of tender opening Board and not purchase Board, as alleged, whereas E.R. Kumar was the receipt and dispatch officer of the supply depot. The permission for the local purchase of soyabean oil upto the value of Rs.1 lakh was issued on 16.03.1995 (Ex.P-33). The list of vendors for soyabean oil (Ex.P-32) was sent by Officer Commanding, P.O. Oman, the appellants were only member of tender opening Board which was to open the quotations and make a comparative chart. The quotations were submitted to the purchase board with instructions to open the sealed quotations and to enquire the rates from civil market for acceptance. After opening the sealed cover, the quotation of M/s Beldev Prasad Prem Narayan was recommended being the lowest in rates;

(b) The same firm M/s Beldev Prasad Prem Narayan has supplied the soyabean oil for the month of March (previous months also) and no complaints were received for that lot. As per the instructions regarding local purchase of edible oil (Ex. D-4) and clause V of Ex. I (operating procedure titled “sampling of local purchase items”) items required for immediate consumption, i.e., within 48 hours may not be sampled and analysed. Even otherwise the responsibility for examination of such items is that of the Officer Commanding of the supply depot, who has to

satisfy himself that the items meet the requirement before acceptance;

(c) It is further submitted that there was no system of testing available in the supply department, therefore, appellant E.R. Kumar, who was only a Receipt and Dispatch Officer could not have got the sample tested nor could have detect the adulteration with naked eyes. The oil samples were put to chemical examinations by different chemical analysis laboratories. The reports are Ex. P-179, Ex. P-191, and Ex. P-196. Only on the basis of these reports of chemical analysis, it could be assessed that the soybean oil samples showed higher density, had more than prescribed iodine and appeared to be unrefined. These deductions could never have been made by appellant E.R. Kumar, on physical examination;

(d) The appellants were acquitted from the charges under the Food Adulteration Act, 1984. Since the very foundation of the case stood demolished all other allegations flowing from it must also fail;

(e) There are 43 units, but complaint was made by only three of the units, therefore, there is no evidence that the oil contained in all the 109 tins (entire lot) was adulterated;

(f) The trial Court though recorded a finding that the appellants did not get any benefit out of the transaction but still held the

procedure was breached with intent to facilitate co-accused P.D. Agrawal to reap illegal gains. It is argued that when no benefit was received by the appellants, under such circumstances the ingredients of Section 13(1)(d) and 13(2) of the P.C. Act will not be made out. It is further submitted that prosecution failed to prove the charge under Section 420 read with Section 120-B of the Indian Penal Code beyond reasonable doubt.

7. Shri Siddharth Datt, learned counsel appearing for appellant P.O. Oman contended that appellant was Officer Commanding of the 54 Company ASC (Supply) Jabalpur from 30.06.1993 to 13.06.1995. During the month of April, 1995 a 'Station Board of Officers' was detailed by the Station Headquarter, Jabalpur for local purchase of edible oil (soyabean oil) to meet the immediate requirement of troops/units on day to day basis. This board consists of three members, J.S. Viridi as Presiding Officer and P.K. Rakwal and Subedar N. Prasad as members. Appellant briefed the Presiding Officer (J.S. Viridi) on the purchase of edible oil according to laid down procedure and instructions. It is further contended that the quotations were obtained by the board of officers. A comparative statement was made and recommendation was made for acceptance of the lowest rates. Appellant P.O. Oman only endorsed the remark of board of

officers certifying that “the rates recommended by the board of officers is reasonable”. Learned counsel pointed out that it was the duty of the supply officer E.R. Kumar to take sample when articles were received in the depot. During the month of April, E.R. Kumar was performing the duties of Depot Supervising Officer (R&D) in place of Major S.S. Rathore, who proceeded on course from 25.03.1995 to 26.04.1995. His duties entails checking on the quality and quantity of the products supplied by permanently taking samples and constantly checking the stock in order to detect variation. Till 21.04.1995, there was no complaint from any of the units. On 21.04.1995, the first time heavy smell in the oil supplied was reported and replacement was asked. Thereafter two other units also reported and returned the items. The supplier/vendor also agreed to replace the tins vide letter dated 01.05.1995.

8. He further argued that the supply depot was not having any technical equipment to check the quality and specification of the oil nor was there any technically qualified person to carry out such sample checking/testing. It is submitted that appellant Oman was responsible for overall welfare of the personnel, maintenance of discipline, administration etc. He could also delegate his responsibilities to his subordinates

working on different units. After acceptance of the quotation, he simply placed the order and on receiving the stock, distributed it to different units. It was not possible for the commanding officer to take the sample himself.

9. Learned counsel further urged that appellant was mainly charged for purchasing adulterated oil, though he has been acquitted under Section 7 read with Section 16(1)(a)(1) of Food Adulteration Act. It is argued that no offence under Section 13(1) (d) read with Section 13(2) of P.C. Act is made out as there is no pleading or evidence on record to show that appellant in any way obtained for himself any valuable thing or pecuniary advantage, nor is there any evidence to show that appellant was involved in any criminal conspiracy.

10. Shri K.C. Ghildiyal, learned Senior Counsel appearing for Subedar N. Prasad has contended that appellant was only a member of the tender opening Board. The Board was directed to purchase the oil at the lowest price. The rates quoted by Prahlad Das Agrawal were the lowest, hence the same was approved by the Board. It is argued that appellant was charged for facilitating the purchase of adulterated/substandard oil in connivance with Prahlad Das Agrawal to benefit him. Learned Senior Counsel submitted that once the appellant was acquitted

for the offence under the Food Adulteration Act, 1954, as natural corollary, other charges would also fall. It is contended that for not following the procedure, the appellant at the most could be held accountable for negligence, but could not be convicted under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

11. Shri Shivendra Pandey, learned counsel appearing for appellant Prahald Das Agrawal submitted that present appellant is proprietor/owner of the vendor firm which supplied the oil qua the local purchase done by the Board in the month of March and April, 1995. His quotation for supply of oil, being the lowest was selected by the purchase board. It is submitted that on receipt of complaint regarding the quality of oil, the appellant immediately replaced the same and did not charge for the same. Referring to the statement of L.S. Sundaram (P.W.-12), it is urged that there were 109 tins, but sample was taken from a single tin. It is argued that ingredients of Section 120-B of I.P.C. is not made out because there could not be any meeting of mind as appellant was not party to decision making process nor was there any intent to cheat. It is urged that once the accused has been acquitted under the Food Adulteration Act, he could not be convicted under Section 420 read with Section 120-B of I.P.C. on the ground that

the oil supplied by the firm was substandard or adulterated. It is further pointed out that appellant had not attained any monetary advantage as his bills had not been cleared till date. It is pointed out that the appellant had earlier supplied the oil in the month of March and there was no complaint regarding the quality of oil supplied in the month of March, 1995.

12. Referring to statements of Swayam Narang (P.W.-3), Brijlal Kesharwani (P.W.-5), Vinod Kumar Makkad (P.W.7) and Shyam Sunder Makar (P.W.-8) it is submitted that these witnesses have admitted their signature on the respective letter head and even if some of them denied the writing the quotation, it will not make any difference. It is argued that, the trial Court has erred in relying on the evidence of handwriting expert, as it is only a weak type of evidence. He has placed reliance on **Bhargav Kundalik Salunke Vs. State of Maharashtra (1995) SCC OnLine Bom 483, Sidhartha Vashist Vs. State (NCT of Delhi) (2010) 6 SCC 1 and Bahadur Singh Vs. State of M.P. (2003) 4 MPLJ 243** to substantiate that it is unsafe to base the conviction solely on the expert opinion without substantial corroboration.

13. It is pointed out that on 03.05.1995, Lt. Col. Krishna Swaroop Verma (P.W.-11) directed to seize the supplied oil on account of complaints received from various units. Though 109

tins were supplied but as evident from statement of L.S. Sundaram (P.W.-12), samples were collected from a single tin. It was not clarified as to whether that tin was sealed or used. Further more, the appellant had immediately replaced the oil and did not charge for the same.

14. Shri Vikram Singh, learned counsel appearing for the CBI submitted that the judgment of the Trial Court is based on independent evaluation of evidence which fully establishes the case of the prosecution. Referring to Section 13(1)(d) and 13(2) of P.C. Act, it is urged that the local purchase was made bypassing all the mandatory provisions. Referring to the circular for sampling of local purchase items (Ex.P-195) it is submitted that the items which require immediate consumption, i.e., within 48 hours, sampling should be done immediately and sent for testing but the SOP was not followed. This was done by the appellants, namely J.S. Viridi, P.K. Rakwal and E.R. Kumar, who are public servants with intent to give undue advantage and gain to accused P.D. Agrawal.

15. Heard the learned counsel for the parties at length and perused the record.

16. In this case the entire controversy revolves around the manner in which supply order was issued ignoring the SOP and the supply of soyabean oil (109 tins) by appellant Prahlad Das Agrawal, in April, 1995, which was found “substandard”, on testing. The very foundation of prosecution case was supply of adulterated oil, but the court did not find the appellants guilty of adulteration and acquitted all of the appellants including the vendor.

17. The allegation against P.K. Rakwal, J.S. Virdi and N. Prasad, who were Presiding Officer and members of the Board, was that they did not follow the SOP and with intent to give benefit to appellant P.D. Agrawal accepted his quotation. Ex.D-9 is the proceeding of Board of Officers dated 17.04.1995, for opening and checking the quotation tendered by various suppliers and enquiring the rates from civil authorities for purchase of acceptance. The Standard Operating Procedure (Ex. P-30) dated 15.03.1989 for local purchase of centrally purchased items provides that where items cannot be obtained from COD sources of other Army supply depots or from the Govt. co-operative stores (federation), fair price shops or government agencies, in such situation, after calling quotation and collecting market rates, a comparative statement duly signed by Board of Officers is to be

prepared and supply order to be placed to lowest tenderer. Ex. D-2, D 2-A dated 05.12.1994 is the order convening the Board of officers which shows that J.S. Viridi, P.K. Rakwal and N. Prasad were the members of the 'Tender Opening Board'. Ex. P-32 dated 11.03.1995 is a letter by appellant P.O. Oman to HQ MP B & O Area (ST) showing the critical stock position of edible oil and the details of marketing rate per kg of different edible oils seeking sanction for local purchase of refined soyabean oil being lowest. Ex. P-33 dated 16.03.1995 is addressed to the Supply Depot, ASC Jabalpur from MP B & O Area (ST) granting sanction for local purchase for cheapest variety of refined edible oil under the financial power of Rs. 1 Lakh subject to approval of Station Commanding Officer for rates/quality and all purchases be made under the Standard Board Officer. It is evident from Ex.D-9 that the Board made the comparative statement and recommended the rates quoted by the vendor firm being the lowest. This was then certified by the appellant O.P. Oman as Commanding Officer, supply Depot. Thus the procedure followed by the Board of Officers was in consonance with the Standard Operating Procedure.

18. The aforestated procedure adopted by the Board of Officer has also been explained by O.P. Shrivastava (P.W.-6), who

was the Station Staff Officer at the relevant time having administrative control over all the units of army staff including supply depot. According to this witness, whenever there is a shortage of items, local purchase board is constituted by the Station Commandant after permission to purchase is taken from the departmental channel. As per this witness two boards were constituted vide Ex. D-2 and Ex. D-2A, one for collecting market rates and the other for opening the quotation and preparing of comparative statement. This witness has further stated that local purchase commenced from 18.03.1995 to 26.04.1995. This supply was made by M/s Baldev Prasad Prem Narayan Agrawal. He has further clarified that no complaint was received for the oil supplied by the vendor firm in the month of March. Similar is the statement of S.S. Rathore (P.W.-13).

19. Appellant P.O. Oman at the relevant time was Commanding Officer of the Supply Depot. Ex. P-31A, details of duties of the commanding officer as OC supply depot. Clause 6 (d) prescribes that he is responsible for the correct receipts and issues, proper storage, turn over and sampling of supplies held by the depot. Clause 7 (e) further prescribes that commanding officer will pay special particular attention to sampling. E.R. Kumar was the Officer Incharge, Receipt and Dispatch Section. His duty as

per Ex. D-31D was to carry out inspection, comparison and tests of supplies before receipt and dispatch are made.

20. The allegation against these appellants is that they did not sample the product and thereby violated the SOP to provide illegal gain to the vendor. It is an admitted fact that no facility for testing the sample is available with the unit. It is also not disputed that procedure for sampling as per the prescribed instruction (Ex.P-195)/SOP was not done by these appellants. According to L.S. Sundaram (PW-12), he took only one tin for sampling and the samples collected by him when sent for testing to CFL were found adulterated/substandard. According to this witness, Court of enquiry was conducted against the erring officer and their negligence was pointed out. In its report, the Court of enquiry found that 2425 Kg of Soyabean oil (value Rs.93431.25/-) was purchased by the Commanding Officer without the recommendation of the board. This witness has also certified that, it was not possible to detect the variation/deficiency as mentioned in the three test reports (Ex. P-180, P-191 and P-196) by naked eyes.

21. Technical instructions No.22/89 (Ex. P-195) issued by Headquarter MP, B & O Area (ST) prescribes the procedure for

sampling of local purchase items. Relevant clause 5, 6, 6(b), 8, 11 and 2 are reproduced as under :-

Clause 5 : Items which are required for immediate consumption

Items which are required for immediate consumption, i.e., within 48 hours, may not be sampled and analysed. However, these items will be examined in relation to respective specifications and tested by the Officer Commanding, supply depot, before acceptance. In case of doubt, the matter will be referred to local medical officer for his advice. Items of meat and milk products will invariably be sampled before acceptance.

6. *Inspection and Sampling of consignment for consumption upto one month and above :*

Items which are not meant for immediate consumption will be properly sampled Respective samples will be drawn from the stock and sent to dependent CFL.

6(b) *Tinned Commodities - Vanaspati, - 3 tins*

*Dry fruits, Milk powder, Dehyd
veg (packed in 18/15) kg.sq tins)*

8. *While carrying out the bulk inspection of the consignment the following points shall be borne in mind in cases where the consignment has been reported to be of civil origin and does not bear the ASC code embossing :-*

(a) Name and address of the original manufacturer'

(b) Date of manufacture'

(c) Condition of storage (what is the age of the consignment on the date of inspection)

11. Conclusion :

In case of breakdown of supplied, where local purchase becomes inevitable, adequate safeguard will be taken to ensure that the item being purchased is of acceptable quality and the provisions of mandatory laws and regulations are vitiated.

2. In the recent past in one of the supply depots local purchases has been carried in excess of the quantity required and without going through the proper sampling procedure, analysis of the complaint sample received from the units the items was declared unfit for the consumption by the CFL. The Officer who resorted to local purchase without adhered existing orders and procedures has made him liable for disciplinary action. Such incidents be avoided if existing rules and regulations are adhered to.

22. A bare perusal of the aforestated instruction makes it clear that the items which are required for immediate consumption, i.e., within 48 hours may not be sampled and analysed. However, items which are not meant for consumption immediately will be properly sampled and in case of tinned commodities, sample will be drawn from 3 tines. These instruction further clarified that non-adherance to or violation of

any order or procedure or negligence, will make the officer who resorted to local purchase liable for disciplinary action.

23. Trial Court had acquitted all the appellants under Section 7 read with Section 16(1)(a)(1) of Food Adulteration Act and also recorded a finding in para 43 of the judgment that appellants P.O. Oman, J.S. Virdi, N. Prasad, E.R. Kumar and P.K. Rakwal did not reap any benefit out of the transaction in question but still convicted them for the reason that they misused their official position by not following procedure prescribed under SOP and Technical Instructions (Ex.P/195). The learned Special Judge in para 36 of the judgment referring to Article B-26 and B-27 has observed that appellant P.O. Oman without verifying that the proceedings of the Board did not bear the signatures of Board members recommended for their payment. A perusal of Article B-26 and Article B-27, reveals that these board proceeding are dated 24.04.1995 and 26.04.1995 recommending the quotation of M/s B.R. Trading Company being the lowest and has no relevance for the purpose of present matter which is related to the supply of substandard oil by the vendor firm and for violation of existing order and procedure, “disciplinary action” as provided under the Technical Instructions (Ex.P/195) had already been taken against P.O. Oman, J.S.Virdi and E.R. Kumar with further direction to

initiate enquiry against P.S. Rakwal and N. Prasad to establish their complicity in the matter as evident from proceedings of Court of Enquiry (Ex.D-3) and Article C and also corroborated by L.S. Sundaram (PW-12) as discussed herein above.

24. In para 27, the learned Special Judge has referred to credit receipt vouchers (CRB) (Ex. P-73 to Ex. P-98), related to soyabean oil supplied by the said firm and signed by appellant E.R. Kumar. The learned Judge further relied on the statement of S.K. Nair (P.W.- 9) posted as Hawaldar in supply depot at relevant time to draw an inference that in April 1995, entire soyabean oil was purchased from the said firm for which payment was made. However, the learned Special Judge overlooked the statement of S.S. Rathore (P.W.-13), who has admitted that after receiving the complaint about the oil being substandard, he informed the appellant vendor and asked him to replace the oil. This is also evident from Ex. D-5 dated 29.04.1995. He had further admitted that the vendor agreed to replace the oil and assured that he will not take any charge for it, which is also evident from Ex. D-6 dated 01.05.1995. Under such circumstances, no offence of cheating is made out. The learned Special Judge has relied on Ex. P-99 to P-102, P-125 to P-130 has further misconstrued that the payment for the oil supplied for the month of April was made to

the vendor. Admittedly, these payments were made to the vendor for the period March to April. The purchase of both months i.e., March and April, 1995 were made from the same Firm M/s Baldev Prasad Prem Narayan. It is an admitted fact that there was no allegation regarding the oil supplied in the month of March, 1995. The allegation is only with regard to the supply of Soybean oil after 17.04.1995.

25. The case of prosecution is that adulterated oil (109 tins) valuing about Rs.76,416/- was supplied by the vendor firm. However a perusal of these payment vouchers/cheque numbers do not show that any payment was made of this amount, i.e., Rs.76,416/-. Further Ex. D-4 shows that local purchase was carried out upto 17th April, 1995 and since the amount was not available in the S&S funds of the depot, there was delay in making the payment to the firms. Appellant Prahlad Das Agrawal has been convicted on the ground that he submitted forged quotations to secure the order and supplied substandard oil. For this purpose, the learned Judge relied on the statements P.W.-3 to P.W.-8 and the report of handwriting expert Anand Swaroop Gupta (P.W.-10).

26. As far as the collection of quotation is concerned, Swayam Narang (P.W.-3), proprietor of M/s Shan Trading

admitted in para 2 of his testimony that quotation Ex. P-3 to Ex. P-5 bear his seal and signature and were given by him to OC supply depot when some authority/officer from supply depot asked for the quotations.

27. Baldev Raj Dingra (P.W.-4) is another supplier of oil who denied giving any quotation (Ex.P-6 to P-28) by the name of Manohar Oil Mill. According to this witness, the firm Manohar Oil Mill got closed down in the year 1991.

28. Brijlal Kesharwani (P.W.-5), proprietor of Brijlal Oil Mill and Vinod Kumar Makkad (P.W.-7) proprietor of M/s Arti Oil Mill, both admitted that the letter heads Ex.29 and P-36 to 57 respectively belong to their firm. They also admitted their signature on it but denied that they filled the details of quotation and submitted it before the supply depot.

29. Shyam Sunder Mukar (P.W.-8) admitted that letter head Ex.P-58 to P-69 are of his firm M/s Durga Mill but denied the sign and handwriting. According to this witness, he signed and filled quotations (Ex. P-71 and P-72) and handed it over to appellant Prahlad Das Agrawal in good faith, who may have given this quotation to some firm.

30. Anand Swaroop Gupta (P.W.-10), handwriting expert has opined that the handwriting in the documents sent for examination vide letter dated 08.11.1997 (Ex. P-132) were of the same person. Though he admitted in para 32 that in his opinion he has nowhere mentioned that S-1 to S-26 were written by appellant Prahlad Das Agrawal.

31. The Apex court in the case of **Magan Biharilal Vs. State of Punjab (1977) 2 SCC 210** has held that it is unsafe to base the conviction solely on the expert opinion and held thus :-

7. It is true that B. Lal, the handwriting expert, deposed that the handwriting on the forged Railway Receipt Ex. PW 10/A was that of the same person who wrote the specimen handwrit-ings Ex. 27/37 to 27/57, that is the appellant, but we think it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of a handwriting .expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in [Ram Chandra v. State\(1\)](#) that it is unsafe to treat expert hand- writing opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in [Ishwari Prasad v. Md. Isa\(2\)](#) that expert evidence of hand-writing can never be conclusive because it is, after all, opinion

evidence, and this view was reiterated in *Shashi Kumar v. Subodh Kumar*

32. The decision of **Magan Biharilal** (supra) was further relied upon by the Division Bench of this Court in **Bahadur Singh Vs. State of M.P. 2003(4) MPLJ 243**, wherein in para 19 it has been held :-

19. The opinion of the hand writing expert is only an expert's opinion under section 45 of the Indian Evidence Act. It is now well settled in law that the expert opinion must always be received with due care and caution and perhaps none with so caution than the opinion of the handwriting experts. There is profusion of presidential authority that holds that it is unsafe to base conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. See Magan Bihari Lal vs. State of Punjab, AIR 1977 SC 1091. In this case, the Apex Court while placing reliance upon an earlier decision in Ram Chandra vs. State of Uttar Pradesh, AIR 1957 SC 381 has held that it would be unsafe to treat expert handwriting opinion as sufficient base for conviction. However, it may be relief upon, when it is supported by other items of internal and external evidence. In the case of Ishwari Prasad vs. Mohammad Isa, AIR 1963 SC 1728 it has been held by their Lordships of Supreme Court that the expert evidence of handwriting could never be conclusive because it is after all an opinion evidence. A similar view has been expressed by the Supreme Court in another case Shashi Kumar vs. Subodh Kumar, AIR 1964 SC 529, in which their Lordship has categorically held that expert's evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before

acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. In the case of Mulraj vs. Murti Ragjhunathji, AIR 1967 SC 1386 the highest court reiterated the law of the land that the evidentiary value of expert in regard to handwriting if uttered with caution pointing out that it would be risky to base conviction solely on the evidence of handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence direct or circumstantial. It be seen that not only in our country but the advanced countries like England and America Judges of that country had also echoed the same preposition of law. See vide Gurney vs. Longland (1822) 5B & Ald 330 and matter of Alfred Foster's Will, 34 Mich 21. The Supreme Court of Michigan pointed out Alfred Foster's case that "Every one knows how very unsafe it is to rely upon one's opinion concerning the niceties of penmanship-opinions are necessarily received, and may be valued but at best this kind of evidence is a necessary evil."

33. In view of the statement of P.W.-3 to P.W.-8 and aforesaid case laws, it is clear that opinion of handwriting expert is a weak type of evidence, and it will be unsafe to base the conviction solely on such evidence.

34. Further there is no evidence on record to establish that there was any agreement between the appellants, who have alleged to conspire to do any illegal Act.

35. In **CBI Vs. K. Narayan Rao (2012) 9 SCC 512**, the apex Court has held:-

24. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence.

36. As discussed in the preceding paragraphs, *mens rea* could be established by the prosecution. From scrutiny of the entire record, it is evident that some lapse was there on the part of the appellants, but every little omission or commission, negligence or dereliction may not lead to the possibility of the

appellants having culpability in the matter which is not the *sine quo non* for attracting the provisions of Prevention of Corruption Act which requires that while holding office as public servant obtains for himself or for any other person any valuable thing or pecuniary advantage by corruption or illegal means or by abusing his position. A person in a given situation may not do what ought to have been done. Some acts of omission or negligence on the part of public servant may attract disciplinary proceedings but may not attract a penal provision.

37. In view of the aforesaid analysis, it is evident that the prosecution has utterly failed to prove its case against the appellants namely, P.K. Rakwal, P.O. Oman, Prahlad Das Agrawal, J.S. Viridi, N. Prasad and E.R. Kumar, hence the judgment of their conviction is hereby set aside. The appellants are acquitted of all the charges. Their appeals are allowed. The appellants are on bail. Their bail bonds stand discharged.

(Nandita Dubey)

Judge

14/09/2023