

CC No. 358/2019

CBI Vs. Shambhu Prasad Singh & Ors.

RC No. AC-I/2014/A0008/CBI/AC-I/New Delhi

**u/S. 120B r/w 420/471 r/w 467 IPC & u/S. 13(2) r/w 13(1)(d) of
PC Act, 1989**

01.12.2020

ORDER ON CHARGE

1. Vide this order, I shall dispose off the arguments on the point of charge(s) and also the application of accused no. 2 Shyam Sunder Bhattar, (who also represents the accused no. 5 M/s. Rockside Impex Pvt. Ltd.) for discharge u/S. 227 r/w 239 CrPC 1973, further another application on behalf of the accused A-6 R. N. Shukla u/S. 197 CrPC and Section 19 of the PC Act, yet another application u/S. 239 CrPC filed by Sh. Vinod Gupta (A-7) seeking discharge from the present case and one more application u/S. 239 CrPC on behalf of the accused Manish Rai Mathur (A-8) for seeking discharge.

2. Brief facts are :

That on 28.07.2003, a company namely M/s. Sai Baba Builders and Consultants Pvt. Ltd. (hereinafter referred to as SBBCPL) was incorporated to carry on business of construction of buildings, offices structures, import and

purchase of machinery etc. Though Sh. Shambu Prasad Singh did not become one of the Directors of this company, he was having the actual control over this company as his elder brother Shri Jai Prakash Narayan Singh, his wife Mrs. Manjari and his family friend Shri Shyam Sundar Bhattar were just acting as dummy Directors just on the instructions of Sh. S. P. Singh. Besides it, Shri S. P. Singh is also the proprietor of various firms / companies such as M/s. Entourage Consultants, M/s. Aaru Security Pvt. Ltd., M/s. Aaru Aviation and Tourism Pvt. Ltd., M/s. Sai Baba Shelters and Infra Development Pvt. Ltd. and M/s. Inis Hitech Pvt. Ltd. etc.

Investigations revealed that in the year 2007, Sh. Shambu Prasad Singh floated a company namely M/s. Dynamic Shells India Pvt. Ltd. to carry on the business of manufacturing and trading of weather proof PVC shelters and other construction related business. Apart from him Ms. Manjari (w/o. Sh. S. P. Singh) and Sh. Shyam Sundar Bhattar were also appointed as the directors of this company. On 13.10.2007, Ms. Nirmala Bhattar (w/o. Shri Shyam Sundar Bhattar) became the Additional

Director of this company, while Sh. Bhattar and Ms. Manjari resigned from the post of Directors on 26.11.2007 and 03.12.2007 respectively. Investigation further revealed that a company namely M/s. Rockside Impex Pvt. Ltd. (hereinafter referred to as RIPL) was floated by Shri Shyam Sundar Bhattar and incorporated on 02.06.2005 to carry on business in the field of buying, selling, import / export and distribution etc. of various materials / articles including plastic and linoleum articles and bathroom fittings etc.

It is stated that Special Frontier Force (SFF) is a combat force under Cabinet Secretariat. SFF is headed by an Inspector General (IG), who works under the supervision of Director General of Security, Cabinet Secretariat, this post is ex-officio held by the Secretary, Research and Analysis Wing (R&AW). SFF being a secret organization, procurement is generally done through a PAC / Single Tender or a Limited Tender. As per the Delegation of Financial Power Rules, Secretary (R&AW) is competent for purchases upto Rs. 20 crores for open or limited tenders, upto Rs. 5 crores for negotiated or single tender or proprietary

contracts and any purchases exceeding these values require the approval of the Minister in charge of the department. As per the procedure, the user department (in the present case the SFF) used to provide their requirement in the form of indent along with the technical specifications and likely suppliers to the Purchase Cell (Cabinet Secretariat) after due approval of their head of office.

Investigations also revealed that in the year 2009, SFF Unit Commander's Conference held in October 2009 wherein extreme shortage of accommodation and initial deficiency of furniture was explained by the unit commanders and the requirement of prefab shelters was approved as an interim measure till proper accommodation comes up.

Thereafter, a note for formal administrative approval was initiated by Brig. Vijay Singh Retd. then Dy. Director (Admn.) SFF on 09.11.2019 in this mode the total requirement was mentioned as 103 living blocks, 61 toilet blocks and 48 bathroom blocks. However, due to the paucity of funds, it was proposed to procure the same in a phased

manner and for phase 1, requirement of 13 living blocks, 11 toilet blocks and 11 bathroom blocks, an indent dated 19.11.2019 along with the technical specifications and likely suppliers were sent to purchase cell (cabinet Secretariat).

The said purchase cell issued Tender Enquiry No. 4/48/2009-P Cell dated 24.12.09 to the vendors as per the list provided by SFF. M/s. Sai Baba Builders and Consultants Pvt. Ltd., M/s. Rockside Impex Pvt. Ltd., M/s. Rockside Impex Pvt. Ltd. and M/s. A-One Industries participated in this tender. After the technical evaluation, price negotiation was done with the L1 vendor, i.e. M/s. SBBCPL and Acceptance of Tender A/T No. 4/48/2009-P.Cell/DACS/622 dated 18.03.2010 was awarded to M/s. SBBCPL for the procurement and installation of 13 shelters, 11 bathrooms and 11 toilets.

The shelters were delivered and installed by the contractor and a completion certificate dated 15 Feb 2011 was issued in this regard by Brig. Vijay Singh.

Thereafter, on 22.04.2010 Brig. Vijay Singh initiated another note for formal approval for phase

2 procurement i.e. for 60 living blocks, 50 toilets and 37 bathrooms. It is revealed that due to non availability of funds in the budget estimates only 60 living blocks were proposed to be purchased in place of 90 living blocks. The DG (S) had accorded administrative approval on 30.04.2010 and a letter bearing no. HQ SFF UO NO. 25416(10)/HQSFF/Adm(Wks)/10 DATED 06 May 2010 was issued under the signature of Brig. Vijay Singh which was sent to the Director (CS), Cabinet Secretariat along with the indent form duly filled in, copy of aforesaid administrative approval of DG (S), Technical Specifications of pre-fab shelters and list of 7 likely suppliers.

Investigations further revealed that two more vendors namely M/s. Dynamic Shells India Pvt. Ltd. and M/s. Shree Meghalaya Construction and Supply Co. approached the SFF vide their letters both dated 05.06.2010 stating that they deal in the shelters required by the SFF and the names of these two vendors were also forwarded to the Purchase Cell vide letter dated 11.06.2010 issued by Brig. Vijay Singh (since retd.).

Thereafter, Tender Enquiry No. 4/51/2010-

P.Cell dated 22.09.2010 was issued under the signature of Ms. Sumati Kumar, the then Dir/Purchase Cell to the 9 vendors as per the list provided by SFF in this regard. The required EMD for this tender was Rs. 40 lacs. On 26.10.2010, the Technical Bids for Phase-II were opened as per the laid down procedures, only four companies / firms namely M/s. Sai Baba Builders & Consultants Pvt. Ltd., Shree Meghalaya Construction & Supply Co., M/s. Dynamic Shells India Pvt. Ltd, and M/s. Rockside Impex Pvt. Ltd. submitted the tender documents.

Investigations further revealed that S. P. Singh through his employees / representatives of SBBCPL and RSIPL submitted forged bank guarantees worth Rs. 40 Lacs each both dated 25.10.2010, issued from Syndicate Bank, Nehru Place and Sh. S.P. Singh also furnished forged bank guarantee dated 25.10.2020 of Rs. 20 Lacs issued from Syndicate Bank and genuine bank guarantee dated 25.10.2010 issued by OBC on behalf of Shree Meghalaya Construction and Supply Co. through his employee Santosh Kumar Singh. Further, it was revealed that requisite EMD was not

submitted with the bids of Dynamic Shells. However, Sh. S. P. Singh managed to submit EMD in the form of bank guarantee dated 25.10.2010 for Rs. 40 Lacs issued by Syndicate Bank, Nehru Place after the opening of technical bids, which was also forged. However, the purchase cell later on declared the bid of Dynamic Shells as unresponsive due to non submission of EMD.

It was further revealed that all the three participating vendors were authorized by Shambhu Prasad Singh and further the aforesaid bank guarantees have not been issued to these firms by Syndicate Bank, Nehru Place, even the bank guarantee numbers do not belong to this bank. Thus forged bank guarantees have been used as EMD in this tender by Sh. S. P. Singh and Sh. Shyam Sundar Bhattar through their employees / representatives of their companies / firms.

Investigations further revealed all the originals of the forged bank guarantees were returned to the company representatives by the purchase cell (cabinet secretariat) and the said company representatives either handed over the same to Shambu Prasad Singh or Shyam Sunder

Bhatter. Investigations also revealed that all the four bank guarantees purported to be issued by Syndicate Bank, Nehru Place were given to Sh. Santosh Kumar Singh by Sh. S. P. Singh along with particular numbers with a direction to write those numbers on those bank guarantees. Accordingly, he wrote the numbers on such bank guarantees.

Further on perusal of the accounts of SBBCPL and RSIPL also shows that the payments received from Cabinet Secretariat pertaining to tender in question have been mostly transferred either in the account of Shri S. P. Singh or in the account of any one of his companies/firms.

Investigations also established that Sh. Shambu Prasad Singh was managing the participation of all the vendors in the SFF tender as his company M/s. Dynamic shells India Pvt. Ltd. started the production of the parts of pre-fabricated PVC shelters under the licence of M/s. Dynamic Shells Israel and he had authorized all the participants to participate in the tender of SFF. In this backdrop, there was no significance as to whom the tender is awarded because ultimately the stores / pre-fab PVC shelters were to be provided

by M/s. Dynamic Shells India Pvt. Ltd.

After the opening of technical bids of phase-2 the same were forwarded to SFF for technical evaluation which was done on 15.11.2010 by the Board of Officers. All the three vendors were found meeting technical specification, thereafter, bids were open. Ms. SBBCPL was adjudged as L-1 with respect to living block shelters for 20 men and bathrooms blocks and RSIPL adjudged as L1 with respect to toilet blocks.

On 01.02.2011, price negotiation was done with both the L1 vendors, i.e. SBBCPL and RSIPL. On 28.03.2011 Tender No. 4/51/2010-P.Cell/DACS/628 has been awarded/ issued to SBBCPL for delivery and installation of 60 living block shelters and 37 bathroom blocks at different unit locations of SFF and Tender No. 4/51/2010-P.Cell/DACS/629 has been awarded to RSIPL for delivery and installation of 50 toilet blocks at different unit locations of SFF.

Investigations also revealed that tender no. 628 of Sai Baba was received by Shyam Sunder Bhattar and tender no. 629 was received by Mahinder Singh on 29.03.2011. On the same day,

pre dispatch instructions of stores was done by Board of Officers of SFF at the factory of M/s. Dynamic Shells Pvt. Ltd. at Bawal, Haryana. It was a term of both the contracts that 60% of the payment was to be released on proof of dispatch and pre-dispatch report and remaining 40% payment on construction and installation of pre fabricated shelters.

Further investigations revealed that on the same day i.e. on 29.03.2011, delivery challans / bilties of M/s. New Varsha Road Carriers (India) Ltd. bearing date of consignment as 29.03.2011 were submitted as proof of dispatch by M/s. Sai Baba and Rockside along with the Bill No. SBBCPL/CS/2011-010 dated 29.03.2011 and Bill No. RSIPL/SSF/2011/01 dated 29.03.2011 respectively. However, it was found that the said challans were fake, as no such transport agency was found at the address furnished in those delivery challans.

Regarding the role of public servant(s) Sh. Manish Rai Mathur and Sh. Vinod Gupta (the then Dy. Director Admn. & Section Officer /Purchase cell respectively) who were associated with the tendering process such as issuing the tender

inquiry, scrutinizing the tender documents, preparing the comparative statement of price etc. As per the provisions of Rules 160(i)(a) of the GFR, they had to mention the criteria for eligibility and qualifications to be met by the bidders such as minimum level of experience, past performance, technical capability, manufacturing facilities and financial position etc. in the tender inquiry which they failed to mention in the draft tender enquiry while preparing the same.

It is also revealed in the investigation that as per the procurement procedure followed at that time, in both the phases after opening of the technical bids, preliminarily scrutiny was to be done by the Purchase Cell before sending the same for the Technical Evaluation. It is revealed that while scrutinizing the bids, neither Sh. Vinod Gupta nor Sh. Manish Rai Mathur could point out the forged bank guarantees despite it was basically not in the language of a bank guarantee but simply an undertaking of the vendor itself. In one of the four bank guarantees submitted on behalf of Shree Meghalaya, the place of issue as Shilong was shown on the same date, 25.10.2010 under the

same signature number which is next to impossible. It is revealed that Sh. Vinod Gupta and Sh. Manish Rai Mathur were regularly in touch with Sh. R. N. Shukla, AD/Adm who used to co-ordinate with the private vendors. In view of their experience of procurement works, it is very much unconvincing that it was not in their knowledge that the bank guarantees submitted in phase-II were forged.

Regarding the role of public servant R.N. Shukla the investigations revealed that vide letter no. 25416(10)/HQ SFF/Adm(Wks)/2010 dated 29.03.2011 issued under the signature of Shri. R. N. Shukla the aforesaid two bills along with the aforesaid delivery challans as proof of dispatch and the pre-dispatch inspection report were forwarded to Sr. Assistant Director of Accounts (NGE MW), Cabinet Secretariat, New Delhi.

Investigations further revealed that vide demand draft nos. 500369 and 500368 both dated 31.03.2011, issued in the name of SBBCPL and RSIPL respectively with respect to 60% payment were forwarded to SFF. As per the condition of the acceptance of tender (A/T), these demand drafts

were to be retained by SFF and the payment were to be handed over to the contractors after the delivery of full stores.

Investigations further revealed that on the direction of Sh. R. N. Shukla, a note dated 09.06.2011 was put up by Sh. Abhijit Saha, Section Officer/SFF for the release of 60% payment to SBBCPL which was handed over to the company on the telephonic approval of the then IG/SFF, Sh R. K. Rana on 09.06.2011 itself. However, on 10.06.2011 this note was recommended by Sh. R. N. Shukla and approved by Sh R. K Rana after the release of payment.

It is also revealed that on 09.06.2011 Sh. Shukla was on some other temporary duty and was not available in the SFF office even then he directed Sh. Abhijit Saha to put up a note proposing the release of 60% payment to M/s. SBBCPL. Similarly, Sh. R. N. Shukla directed Sh. Abhijit Saha to put up another note proposing the release of 60% payment of RSIPL on 17.06.2011. Accordingly, a note was put by Sh. Abhijit Saha. Sh. R. N. Shukla mentioned on the note sheet that almost 90% stores have been received and recommended the

release of 60% payment to the contractor and the same was approved by the then IG/SFF and 60% payment had been released to M/s. RSIPL. Investigation also established that the 60% payment of both the contractors had been released before the full delivery of stores in violation of the payment conditions of the acceptance of tender dated 28.03.2011 in which Sh. R. N. Shukla has shown an undue haste to release the payments to the contractor.

Investigations further revealed that in the SFF, most of the noting and correspondence with regards to the procurement of pre-fabricated shelters in phase-I & phase-II was done by Brig. Vijay Singh (since retired), the then Deputy Director (Adm)/SFF and Shri. R. N. Shukla, the then Asstt. director (Adm)/SFF. Shri Manish Rai Mathur, the then then Dy. Director Purchase Cell and Shri. Vinod Gupta, the then Section Officer Purchase Cell were processing the tender for procurement of the said shelters in the purchase cell. Sh. Vijay Soni, the then Section Officer (Desk office-II-B) was the opening officer of the technical bids as well as price bids in both the phases. After conducting the

opening of the technical bids in both the phases, Sh. Vijay Soni had handed over the technical bids of the vendors to the purchase cell officers. Sh. Vinod Gupta (the then Section officer / Purchase Cell) and Sh. Manish Rai Mathur (the then Dy. Director / Purchase Cell) and Sh. Manish Rai Mathur (the then Dy Director/Purchase Cell) were duty bound to scrutinize the tender documents.

In phase-II tender they deliberately did not point out the forged bank guarantees submitted by all the vendors and given undue favour to SBBCPL and RSIPL by processing the forged bank guarantee as genuine EMD. It is very much unconvincing that they were not in the knowledge that the said bank guarantees are forged as these bank guarantees are drafted in the manner in which the vendor itself undertakes to pay the amount mentioned in the bank guarantees instead of Syndicate Bank.

Furthermore, out of total four bank guarantees issued under the same signature and number below the signature three are shown the place of issue as New Delhi and one that was submitted on behalf of Shree Meghalaya

Construction & Supply Co. is shown the place of issue as Shillong. These are very minor issues with the bank guarantees in question and can be detected in the first instance.

Finally, it has been concluded in the charge sheet that Sh. Shambu Prasad Singh and Sh. Shyam Sundar Bhattar conspired with the public servants namely Sh. R. N. Shukla (the then AD/Adm/SFF), Sh. Vinod Gupta (the then Section Officer / Purchase Cell) and Sh. Manish Rai Mathur and in furtherance of this conspiracy cheated the Cabinet Secretariat by using the forged bank guarantees as genuine EMD on behalf of M/s. Dynamic shells India Pvt. Ltd., M/s. Sai Baba Builders and Consultants Pvt. Ltd., M/s. Rockside Impex Pvt. Ltd. and Shri Meghalaya Construction and Supply Company in the tender floated by purchase cell (cabinet secretariat) and Sh. Vinod Gupta and Sh. Manish Rai Mathur in conspiracy with the private vendors processed the aforesaid forged bank guarantees as genuine EMD by abusing their official position during phase-II procurement of pre-fabricated PVC shelters for Special Frontier Force (SFF) and given undue

favour to them in obtaining the contract in favour of M/s. Sai Baba Builders and Consultants Pvt. Ltd. and M/s. Rockside Impex Pvt.Ltd.

Further more, in furtherance of the conspiracy with the private vendors, Sh. R. N. Shukla, the then AD/Adm/SFF forwarded the fake delivery challans submitted by M/s. SBBCPL & M/s. RSIPL as proof of dispatch and shown undue favour to the contractors by releasing the 60% payment to them before the full delivery of stores in violation with the payment conditions provided in the acceptance of tender.

3. I have heard Sh. V. K. Pathak, Ld. PP for CBI along with HIO SI Ravish Jha and Sh. Syed Arham Masud along with Sh. Vikhyat Oberoi, Ld. Counsel(s) for A-1 and A-4, Sh. Pranay Kishore Mishra along with Sh. Ravi Ranjan, Ld. Counsel(s) for A-2 & A-5, Ms. Sonal Sarada, Ld. Counsel for A-3, Sh. Ravinder Tyagi, Ld. Counsel for A-6, Sh. Sunil Saha, Ld. Counsel for A-7, Sh. Gaurav Pathak along with Sh. Virag Gupta and Sh. Surya Joshi, Ld. Counsel(s) for A-8.

4. Written submissions along with application u/s. 227 & 239 CrPC have been filed on behalf of A-2, in which the main

ground that has been taken is that the accused No. 2 has been mechanically implicated on the basis of inconsequential statement of PWs, who is active participant in the tendering process has also submitted tender for negotiations and supply of material as he was one of the Director of M/s. SBBCPL and RIPL and he cannot be made accused merely because he was the director of the said company without any specific role showing his personal involvement.

It is also stated that there is nothing in the charge sheet to link the accused with the allegations of submitting bank guarantee towards the EMD which is contrary to the record, as there is the authority letter in favour of Mahendra Singh to participate in the tender process. The tender documents were neither signed nor submitted by A-2.

Further, there is nothing in the charge sheet to suggest any loss to the Cabinet Secretariat or gain to the accused no. 2 by submitting of forged EMD. It was in the nature of performance guarantee.

Regarding the allegations of release of 60% payment contrary to the terms of the contract, it is stated that the same is not correct, as is evident from the relevant clause 18(c) (system of payment) as contained in "Schedule to Acceptance of Tender No. 4/51/2010-P. Cell/DACS/628 dated 28.03.2011"(D-7, Page 240/234). The investigation revealed that 60% payment was made pursuant to getting confirmation from the site about the

status of supply and the same was made after being satisfied regarding the status of supply.

It is further stated that there is an allegation of conspiracy for the offences under Section 420, 471 r/w 467. It has been alleged that accused no. 2 entered into a conspiracy with public servant, who are accused nos. 6, 7 and 8 to get the tender on the basis of forged BG towards EMD and receiving of 60% payment contrary to contract terms. The public servants have been booked under Section 13(1)(d) r/w 13(2) of PC Act.

Therefore, it is stated that no charge is made out against him and he is liable to be discharged.

5. Reply has been filed by the CBI in which the allegations in the said application have been vehemently denied and those asserted in the charge sheet have been reiterated as correct. It is stated that investigations revealed that accused Shyam Sunder Bhattar (A-2) was one of the directors in M/s. Sai Baba Builders and Consultants Pvt. Ltd. (SBBCPL) and M/s. Rockside Impex Pvt. Ltd. (RSIPL) during the relevant time of crime. Accused manipulated the documents required for eligibility conditions and also submitted forged documents to the tender Committee. Further he colluded with public servants who had changed the conditions for delivery and installation in order to grant undue favour to the vendors and caused corresponding loss to state exchequer.

It is stated that accused Shyam Sundar Bhattar conspired with the public servants and other accused persons cheated the Cabinet Secretariat by using the forged bank guarantees as genuine EMD on behalf of M/s. Dynamic Shells India Pvt. Ltd., M/s. Sai Baba Builders and Consultants Pvt. Ltd., M/s. Rockside Impex Pvt. Ltd. and Shri Meghalaya Construction and supply company in the tender floated by purchase cell (Cabinet Secretariat).

Thus, the accused in conspiracy with other accused persons have committed the offence punishable under Section 120-B r/w. 420, 471 r/w. 467 of IPC r/w Section 13(1)(d) r/w. 13(2) of PC Act 1988 and substantive offences thereof. Therefore, it is stated that the application in question is liable to be dismissed.

6. Similar contentions have been filed / raised on behalf of (A-5) in the written submissions, therefore, the same are not being repeated again for the sake of brevity.

7. An application has also been moved on behalf of accused Rudra Narayan Shukla A-6 u/S. 197 CrPC and u/S. 19 PC Act stating that the prosecution has mentioned in para 16.21 of the charge sheet under section 173 CrPC that sanction for prosecution under section 19 of the PC Act and section 197 CrPC has been sought from the competent authority which is awaited.

It is further stated that as per Section 19 of the PC Act and Section 197 CrPC, it is mandatory that no court shall take the cognizance against a public servant, if offence is committed by the public servant while acting in the discharge of his official duty without the previous sanction from Union or Central Government.

It is further stated that the applicant was working as Assistant Director in SFF (Special Frontier Force) under the Directorate General of Securities, Cabinet Secretariat, Government of India, since 1982 and he was promoted as Joint Dy. Director in June, 2014 and was posted in ARC (Aviation Research Centre) in Feb 2015 and the Head of Department of Aviation Research Centre was also under Directorate General of Securities, Cabinet Secretariat, Government of India. Since there is no prior sanction which has been obtained from Directorate General of Secretariat, Cabinet Secretary, Govt. of India to prosecute the accused A-6, therefore, he is liable to be discharged.

Written submissions have also been preferred on behalf of A-6 wherein the main grounds taken are that there is no evidence on the record in view of the averments mentioned in his written submissions that shows accused misused his powers / post or had conspired with A-3, A-4, A-5, A-7 and A-8 nor there is any evidence that he had received any illegal gratification. It is also stated that A-6 had apprised the IG SFF regarding the terms

of the payment to the firms on various occasions. He was fully aware that 60% had to be paid only after the receipt of complete stores however, payment was released with the approval of IG who was fully aware about the same. The notes in this regard clearly show that 16% and 10% of the stores have not been received at the locations when the payment was released, as per the directions of the IG and no fact was concealed from the IG, SFF.

It is also reiterated that no sanction to prosecute u/S. 197 CrPC had been obtained qua the accused. It is further stated that it is alleged that on the directions of the present accused Mr. Abhijeet Saha, the then sanction officer had forwarded the note for payment to the contractor. However, it is stated that it is laid down in the government of India Rules and Procedure that verbal orders given by the superior officers should be authenticated by them as early as possible. Therefore, there is no evidence on the record in this regard to show that Sh. Abhijeet Saha had forwarded the note as per the directions of present accused.

8. Reply has been filed by the CBI that in para 16.21 of the charge sheet, it has specifically been mentioned that since the accused public servant had already transferred / promoted from the posts which were abused by them, no sanction is required as per judgment of Hon'ble Supreme Court of India in **L.**

Narayana Swami Vs. State of Karnataka & Other. However, simultaneously sanction was also sought from the competent authority.

It is further stated that the Hon'ble Supreme Court in the matter of ***L. Narayanan Swami Vs. State of Karnataka & others*** has held that “.... ***where the public servant had abused the office which he held in the check period, but had ceased to hold “that office” or was holding a different office, then a sanction would not be necessary. Where the alleged misconduct is in some different capacity than the one which is held at the time of taking cognizance, there will be no necessity to take the sanction.***”

It is further stated that the Hon'ble Supreme Court in the matter of ***Abhay Singh Chautala Vs. Central Bureau of Investigation*** has held that if the public servant had abused a particular office and was not holding that office on the date of taking cognizance, there would be no necessity to obtain sanction.

It is further stated that the Hon'ble Supreme Court further in ***Prakash Singh Badal's case*** has held that if there is nexus between offences committed and official duty then the sanction is required u/s. 197 CrPC against the public servants removal by the government. The Hon'ble Supreme Court has further held that commission of offences u/S. 120B, 420, 409 etc. IPC are not the official duty of the public servant. Hence, sanction

for the said offences are not required.

9. Another application has been moved u/S. 239 CrPC on behalf of A-7 Vinod Gupta wherein the main grounds stated that there was no system in vogue for verification and authenticity of the EMDs submitted by the bidders. It is further stated that the applicants were entrusted with the tender process work for the first time in the purchase cell, without any specific training or guidance.

It is further stated that on award of Purchase order / contract by Cabinet Secretariat (SR), successful bidders further submitted fresh performance guarantee / bank guarantee for 10% of the contract value for due performance of contract. On receipt of the performance bank guarantee, EMDs (preliminary) were returned to the bidders. Hence, allegation of huge loss to Government is false and denied as it is not understood how Government incurred loss in the alleged tender as no financial transaction is linked with the preliminary EMDs.

It is further stated that requisition of store requirements and selection of vendors for tender purpose is the sole responsibility of indenting department. It is pertinent to mention here that applicant never dealt with any vendors at any point of time during Phase I/II tender process except or otherwise on the direction of seniors as there is no public dealing by purchase cell.

It is further stated that being a dealing hand of purchase cell, applicant's duty and responsibility was to prepare notes based on documents and put forward for process and approval of competent authority / department head.

It is further stated that EMDs (preliminary) for tender is only 2% of the tender value and same is returned back to vendors on award of tender and on receipt of fresh performance bank guarantee of 10% of Order Value as per usual practice. It is stated that there were no trend / instruction / guideline for verification of preliminary EMD from concerned banks.

It is further stated that genuine of EMD (preliminary) may not be ascertained simply by a person but can be verified through concerned bank. There is no practice for verification of EMD rather having no impact on the tender value or work or government financial transaction. Therefore, claim and blame of CBI to declare the applicant Vinod Gupta to be intentional negligent to ascertain fake EMDs (preliminary) is wrong and denied. Therefore, it is stated that the accused be discharged.

Similar written submissions have been filed by A-7 on the same grounds as have been mentioned in his application for discharge u/S. 239 CrPC.

10. Reply has been filed by the CBI controverting the

allegations made in the said application and those made in the charge sheet have been reiterated as correct.

11. Another application has been moved on behalf of accused A-8 Manish Mathur in which the main grounds have been taken that the allegation in para 16.13 of the charge sheet that the other co-accused in conspiracy with the applicant obtained the two tenders in favour of their companies is absolutely incorrect. It is submitted that the charge sheet at para 16.13 itself details as to how after opening of technical bids, the same were forwarded the SFF for technical evaluation.

The technical evaluation was done by the board of officers constituted by Brig. Vijay Singh (Retd.) recommended all three vendors meeting the technical specifications required. Accordingly, on the basis of bids submitted, the ranking statement was prepared and tender was awarded under the signature of appropriate authorities.

It is further stated that with respect to the statement in para 16.18 that the applicant was duty bound to scrutinize tender documents, the following submission is made. With respect to scrutinizing of tender documents, it is nowhere mentioned in the GFR or the DGS&D manual or the Draft procurement rules of the Cabinet Secretariat to inspect the EMD. Moreover, the tender documents were scrutinized by Section Officer Vinod Gupta (Accused No. 7), which were forwarded to the

applicant, who in turn forwarded them to Mrs. Sumati Kumar i.e. Director (CS). It is beyond explanation as to why the applicant is being held responsible as he was neither the first checking authority, i.e. Section Officer, nor the final one i.e. Director (CS).

Moreover, the charge sheet in the last line itself has a contradictory statement as it states, "there are very minor issues with the bank guarantees in question and can be detected in the first instance." A visual comparison shows that the discrepancy is hard to detect in a scheduled format unless known beforehand and clearly a minor issue cannot be detected in the first instance.

It is also stated that in view of the above facts no offence u/S. 120B, 471, 467 IPC and 13(1)(d) r/w. 13(2) PC Act is made out against the accused, as the prosecution has failed to make out the ingredients of the same.

12. Reply has been filed by the prosecution on the said application of A-8 in which the averments made in the application u/S. 239 CrPC have been vehemently denied and those made in the charge sheet have been reiterated as correct and that the acts of the accused attracts offences u/S. 120B , 420, 471 r/w 467 IPC and 13(1)(d) r/w 13(2) of the PC Act.

13. I have gone through the rival contentions.

14. It is settled law that at the stage of framing of charge, it is not expected that the prosecution evidence should be meticulously evaluated. The court has to frame a charge, if there is a strong suspicion that the accused is involved in the commission of offence for which he has been charge sheeted.

It has been held in judgments ***Dilawar Balu Kurane Vs. State of Maharashtra, (2002) 2 SCC 135*** and ***Union of India Vs. Prafulla Kumar Samal, (1979) 3 SCC 4*** that the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out.

Where the materials placed before the court disclose grave suspicion against the accused which has been properly explained the court will be fully justified in framing a charge and proceeding with the trial. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

15. Further, the Hon'ble Supreme Court in ***Sajjan Kumar Vs. Central Bureau of Investigation 2010 (9) SCC 368*** held as under :

“On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge;

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a

charge the court must apply its judicial mind on the material placed on record and must be satisfied

that the commission of offence by the accused was possible.

(vi) At the stage of Section 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

16. The law is also well settled to the effect that if at the time of framing of charge, two views are possible, the view in favour of accused shall be taken into consideration. The law is also well settled to the effect that at the time of framing of charge, the court has to shift the weight for a limited purpose and not to evaluate the entire evidence meticulously which the prosecution may lead after framing of charge nor the court has to hold a mini trial within the trial.

17. From the perusal of the statements of the witnesses u/S. 161 CrPC namely that of PW21 Smt. Manjari (W/o accused S. P. Singh), PW16 Jai Prakash Narayan Singh (younger brother of S. P. Singh), PW32 Sh. Santosh Kumar Singh, it is apparent that though accused S. P. Singh was not the director of M/s. SBBCPL, but he had the actual control of the company and his brother, wife and Shyam Sunder Bhattar were only working as dummy directors. Further from the statement of PW19 Mahendra Singh, it is apparent that Sh. Shyam Sunder Bhattar was controlling the company M/s. RIPL and infact accused S. P. Singh was instrumental to get him in job in the company with S. S. Bhattar in M/s. RIPL.

18. Regarding the tender processing with regard to phase-I and phase-II, the statements of PW1 Abhijit Saha, PW7 Mrs. Sumati Kumar and PW10 Brig. Vijay Singh are relevant, as they have deposed / spoken regarding the tendering process of phase-I and phase-II in detail. Further from the statement of PW19 Mahendra Singh, PW32 Santosh Kumar Singh and PW35 Suharsh Dewan, it is apparent that the accused S. P. Singh obtained the genuine bank guarantee of Rs. 20 Lacs from Sh. Suharsh Dewan, who was the proprietor of M/s. Maghalya Construction Company, which he used in phase-II of the tender process and from the statement of PW25 Ram Anuj Tiwari and PW19 Mahendra Singh, it is apparent that Sh. Ram Anuj Tiwari

had represented SBBCPL in phase-II tender and bid documents were provided to him pertaining to SBBCPL by Shyam Sunder Bhattar along with the forged bank guarantee and Mahendra Singh represented RIPL in phase-II tender and bid documents of this company were also provided to him by Sh. Shyam Sunder Bhattar.

19. From the statement of PW32 Santosh Kumar Singh and PW35 Suharsh Dewan, it is apparent that all the four bank guarantees, purported to have been issued by Syndicate Bank, Nehru Place were given to Santosh Kumar Singh by said S. P. Singh along with particular numbers with the directions to write those numbers on the bank guarantees and on his directions. Accordingly he wrote numbers on such bank guarantees.

20. As already discussed above, PW1 Abhijit Saha and PW10 Brig. Vijay Singh have explained the complete details with regard to the tendering process for phase-I and phase-II and the relevant note sheets are contained in document D-14 (with regard to phase-II procurement) and other relevant documents regarding the procurement for both the phases are contained in documents i.e. D3 to D11.

21. Regarding the role of public servants i.e. Manish Rai Mathur and Sh. Vinod Gupta (then Dy. Director Admn. and

Section Officer/Purchase Cell respectively), both of them were associated with the tendering process and as per Rule 160 (i)(a) of GFR, they had to mention the criteria for eligibility and qualifications to be met by the bidders such as minimum level of experience, past performance, technical capability, manufacturing facilities and financial position, which they did not do and there was omission on their part, as they did not mention those conditions in the draft tender enquiry and the scrutiny of phase-II tender documents before sending the same for technical evaluation had to be done by them including the bank guarantees submitted as EMDs.

22. The statement of PW17 Krishan Singh Bharti and PW7 Mrs. Sumati Kumar are relevant. The bare perusal of the bank guarantees purportedly deposited by the representative of SBBCPL and RIPL show glaring irregularities.

As the bank guarantee submitted on behalf of Sai Baba Builders for Rs. 40 Lakhs has not been issued by the concerned bank, however, on the last page of the bank guarantee dated 25.10.2010, there is very dim stamp of the bank, which is not even legible of Nehru Place. The same was also sent for forensic evaluation and as per the CFSL report 17.10.2016 the signatures purported to be on the said bank guarantee was not that of the one K. S. Bharti.

Similarly, there is another bank guarantee of Rs. 40 Lakhs submitted on behalf of Rock Side dated 25.10.2010 which is also having glaring omissions as the same had not been issued by the concerned bank nor the same is in the language of the bank guarantee and the same also has the deficiencies, as pointed in the above bank guarantee and as per the CFSL report dated 17.10.2016 the same is not bearing signatures of the signatory of the concerned bank.

There is another bank guarantee of Rs. 20 Lakhs dated 25.10.2010 of Meghalya Constructions similarly purported to have signed by K. S. Bharti. The same is also found to be forged as per the CFSL report dated 17.10.2016.

Similarly, the bank guarantee of Rs. 40 Lakhs issued on behalf of Dynamic Shells of which accused S. P. Singh was the director is also forged and has same deficiencies, as discussed above and as per the CFSL report dated 17.10.2016 the same is also found to be forged.

In fact the statement of the said purported bank employee Sh. K. S. Bharti was also recorded u/S. 161 CrPC, who is PW17 and in his statement he denied that any of those bank guarantees bear his signatures.

23. Further the tenders for phase-II for living block shelters and bathroom blocks were awarded to SBBCPL as they were L-1 and with regard to toilet block, the same were awarded to RIPL,

as they were L-1 with regard to the same. After price negotiations, both the tenders were issued to SBBCPL and RIPL on 28.03.2011 itself and the tender no. 628 was received by Shyam Sunder Bhattar and tender no. 629 was received by Mahendra Singh on 29.03.2010 itself and on the same day pre dispatch inspection of stores were done by Board of Officers consisting of Sh. Umeshwar Singh and Sh. Ajay Kumar, both from SFF and in this regard they both visited the factory of M/s. Dynamic Shells (India) Pvt. Ltd. at Bawal, Haryana.

In this regard it would be pertinent to mention that while replying to the letter dated 08.09.2011 of PW7 Ms. Sumati Kumar regarding the address of M/s. Dynamic Shells and SBBCPL the public servant R. N. Shukla vide his letter dated 10.09.2010 provided the wrong information stating that the Dynamic Shells was not having address at R-122, GK-1, stating it was a typographical error and provided a new address of Plot no. 350, Sector-3, Phase 2, Industrial Growth Centre, Bawal, though investigations revealed that the Dynamic Shells was very much having office at R-122, GK-1.

24. Further, the investigations also revealed that since 60% payment was to be released on submission of proof of dispatch and pre-dispatch inspection report, however, forged delivery challans / bilties of M/s. New Varsha Road Carriers India bearing the date of consignment as 29.03.2011 was submitted as proof of

dispatch by M/s. SBBCPL and RIPL, as when notice was issued to the proprietor of said Roadlines, the address was found fake and it was revealed during investigations that these fake delivery challans were provided by S. P. Singh through their employee and the challan were filled by the employees of Dynamic Shells (India) Pvt. Ltd., SBBCPL and RIPL on the directions of S. P. Singh.

25. Further investigations also revealed that vide letter dated 29.03.2011, issued under the signatures of R.N. Shukla (public servant), two bills along with the delivery challans as proof of dispatch and pre-dispatch inspection report were forwarded to Sr. Asst. Director of Accounts (NGE MW) Cabinet Secretariat, however, the said demand drafts were to be retained by SFF and the payments were to be handed over to the contractors after the delivery of full stores.

Investigations further revealed that on the direction of Sh. R. N. Shukla, a note dated 09.06.2011 was put up by Sh. Abhijit Saha, Section Officer/SFF for the release of 60% payment to SBBCPL, which was handed over to the company on the telephonic approval of the then IG/SFF, Sh R. K. Rana on 09.06.2011 itself. However, on 10.06.2011 this note was recommended by Sh. R. N. Shukla and approved by Sh R. K Rana after the release of payment.

It is also revealed that on 09.06.2011 Sh. Shukla was on some other temporary duty and was not available in the SFF

office even then he directed Sh. Abhijit Saha to put up a note proposing the release of 60% payment to M/s. SBBCPL.

Similarly, Sh. R. N. Shukla directed Sh. Abhijit Saha to put up another note proposing the release of 60% payment of RSIPL on 17.06.2011. Accordingly, a note was put by Sh. Abhijit Saha. Sh. R. N. Shukla mentioned on the note sheet that almost 90% stores have been received and recommended the release of 60% payment to the contractor and the same was approved by the then IG/SFF and 60% payment had been released to M/s. RSIPL.

Investigations also established that the 60% payment of both the contractors had been released before the full delivery of stores in violation of the payment conditions of the acceptance of tender dated 28.03.2011 in which Sh. R. N. Shukla has shown an undue haste to release the payments to the contractor. This is evident from the detailed statement of PW1 Abhijit Saha u/S. 161 CrPC.

26. From the entire discussion above, it is apparent that the tendering process was compromised at every stage due to the active connivance of public servants R. N. Shukla, Vinod Gupta and Manish Rai Mathur (public servants) and accused persons namely S. P. Singh, Shyam Sunder Bhattar and the companies M/s. SBBCPL, RIPL and Dynamic Shells (India) Pvt. Ltd. and they all acted *prima facie* in concert with each other as forged bank

guarantees were prepared and deposited as EMDs in the phase-II tender process in furtherance of the common objective of the conspiracy hatched by all the accused persons towards the ultimate objective of the conspiracy.

27. With regard to the sanction u/S. 19 of PC Act qua the public servant R. N. Shukla, Vinod Gupta and Manish Rai Mathur, it is submitted that the accused R.N. Shukla had retired at the time of filing of the charge sheet. Consequently, no sanction was required qua him in view of the judgment **S.A. Venketa Raman Vs. State AIR 1958 SC 107**.

Regarding the public servants Vinod Gupta and Manish Rai Mathur, it is stated that no sanction was necessary in view of the judgment **L. Narayana Swami Vs. State of Karnataka & Others** as both of them had been transferred from the post where the misconduct took place and therefore, since the misconduct was in different capacity than the one which was held at the time of taking cognizance, therefore, no sanction was necessary qua them.

However, later on it seems that sanction u/s. 19 of the PC Act and 197 CrPC was indeed obtained qua the accused Manish Rai Mathur dated 12.06.2017, however, the cognizance had already been taken on 28.01.2017, therefore, it appears that sanction was obtained after taking the cognizance in this case.

Regarding the accused Vinod Gupta, no sanction was ever obtained or filed on the record even later on.

The Ld. PP for CBI has relied upon **L. Narayana Swami (supra)**.

28. It has been held in the said judgment by the Hon'ble Supreme Court where the question which came before the Hon'ble Supreme Court was whether a public servant who is not on the same post and is transferred, whether by way of promotion or otherwise to another post loses protection under Section 19 (1) of the PC Act, although he continues to be a public servant albeit on a different post ?

Answering the question in affirmative, the Hon'ble Supreme Court held that where a public servant had abused the office which he held in the check period, but had ceased to hold **that office** or was holding a different office, than sanction would not be necessary. Where the alleged misconduct is in some different capacity than the one, which is held at the time of taking cognizance there will be no necessity to take sanction u/S. 19 of the PC Act.

29. The said judgment is squarely applicable to the facts of the present case, as the public servant Vinod Gupta and Manish Rai Mathur had been transferred from the post or office which they were holding at the time of misconduct in the present case

i.e. at the time of tendering process and processing of the bills as well as payment to the contractor, therefore, the alleged misconduct was in some different capacity than the one which they were holding at the time of taking cognizance. Therefore, there will be no necessity to take sanction qua them u/S. 19 of PC Act.

30. Regarding sanction u/S. 197 CrPC qua the public servants in question, the same would also not be necessary in view of the settled law, as it is no part of the official duties of the public servant to enter into a conspiracy with the private persons / contractors by forging EMDs, lorry receipts and making payment to them without delivery of the goods as stipulated in the tender documents, thereby abusing their position as a public servant and obtaining valuable thing of pecuniary advantage to them.

In any case, the alleged acts of misconduct by the public servants has no nexus with their official duties, as has been held in judgment ***Rakesh Kumar Mishra Vs. State of Bihar (2006) 1 SCC 557*** that ***“protection available u/S. 197 CrPC is available only when the alleged act done by public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing an objectionable act.”***

31. The Ld. Counsels for accused Vinod Gupta and Manish Rai Mathur have argued that EMD was not a mandatory

requirement and it was only given to show the bonafides of the firm / company participating in the tender process and it had to be returned after the award of the tender. The said contention is without any substance as even a layman can see from the bank guarantees purportedly submitted on behalf of the accused companies, who participated in the tender process of phase-II that they were forged, as they were not in the language of the bank guarantee and they were not issued by the concerned banks, which is a *sine qua non* for the issuance of the bank guarantees.

Therefore, the public servant cannot say that since they were not trained in this process, therefore, they could not detect the same and it was not their job to check the authenticity of the bank guarantee. As the said contention is without any substance, as every public servant is statutory bound to act with utmost sincerity and caution while doing the public duties as a public servant and a glaring fraud which is apparent to anyone cannot be said to be without any *mens rea* at this stage *prima facie*.

32. Further the pre-dispatch inspection was also done at Warp Speed on the next day after the award of tender, which was awarded on 28.03.2011 and were received on 29.03.2011 and on the same day surprisingly the pre dispatch inspections of the stores was also done and on the same day the delivery challans / bilties as proof of dispatch of goods were submitted and the payment notes were also forwarded by the public servant R.N.

Shukla vide letter dated 29.03.2011 i.e. also on the same day, on the basis of which 60% payment was released to the two tendererees.

In fact the public servant R. N. Shukla had orally directed PW1 Abhijit Saha to put up the note dated 09.06.2011 and thereafter another note dated 17.06.2011 was also put up on his directions and the said public servants had mentioned on the said notes that almost 90% of the stores have been received and recommended the release of 60% payment and the said payment had been released without the full delivery of stores in violation of payment conditions of acceptance of tender dated 28.03.2011 and this shows undue haste on part of public servant R. N. Shukla in expediting the 60% payment to the tendererees.

33. With regard to the conspiracy, it has been held in the judgment ***K.R.Purushothaman Vs State of Kerala (2005) 12 Supreme Court Cases 631*** in which the following judgments have also been relied i.e. ***1999 Cri.L.J.3124 State of Tamil Nadu through Superintendent of Police CBI/SIT Vs Nalini and others WITH T.Suthenthiraraja alias Santhan and others Vs State by DSP, CBI, SIT, Chennai WITH P.Ravichandran and others Vs State by DSP, CBI, SIT, Chennai WITH Robert Payas and others Vs State by DSP, CBI, SIT, Chennai WITH S.Shanmugavadivelu and others Vs State by DSP, CBI, SIT,***

Chennai WITH S.Nalini and others Vs State by DSP, CBI, SIT, Chennai, where it was held as under:-

“110. The first condition which is almost the opening lock of that provisions is the existence of “reasonable ground to believe” that the conspirators have conspired together. This condition will be satisfied even when there is some prima facie evidence to show that there was such a criminal conspiracy. If the aforesaid preliminary condition is fulfilled then anything said by one of the conspirators becomes substantive evidence against the other, provided that should have been a statement “In reference to their common intention”. Under the corresponding provision in the English Law the expression used is “in furtherance of the common object”. No doubt, the words “in reference to their common intention” are wider than the words used in English Law, (vide Sardar Sardul Singh Caveeshar v. State of Maharashtra, (1964) 2 SCR 378: 1965 (1) Cri.L.J.608: (AIR 1965 SC 682).

34. From the detailed discussion held above, it is apparent that there are reasonable grounds to believe that all the accused persons had *prima facie* conspired together in reference to their common intention in furtherance of the object / objective of the conspiracy and in this manner Sh. Shambu Prasad Singh and Sh. Shyam Sundar Bhattar conspired with the public servants namely

Sh. R. N. Shukla (the then AD/Adm/SFF), Sh. Vinod Gupta (the then Section Officer / Purchase Cell) and Sh. Manish Rai Mathur and in furtherance of this conspiracy cheated the Cabinet Secretariat by using the forged bank guarantees as genuine EMD on behalf of M/s. Dynamic shells India Pvt. Ltd., M/s. Sai Baba Builders and Consultants Pvt. Ltd., M/s. Rockside Impex Pvt. Ltd. and Shri Meghalaya Construction and Supply Company in the tender floated by purchase cell (cabinet secretariat) and Sh. Vinod Gupta and Sh. Manish Rai Mathur in conspiracy with the private vendors processed the aforesaid forged bank guarantees as genuine EMD by abusing their official position during phase-II procurement of pre-fabricated PVC shelters for Special Frontier Force (SFF) and gave undue favour to them in obtaining the contract in favour of M/s. Sai Baba Builders and Consultants Pvt. Ltd. and M/s. Rockside Impex Pvt.Ltd.

35. Further more, in furtherance of the conspiracy with the private vendors, Sh. R. N. Shukla, the then AD/Adm/SFF forwarded the fake delivery challans submitted by M/s. SBBCPL & M/s. RSIPL as proof of dispatch and had shown undue favour to the contractors by releasing the 60% payment to them before the full delivery of stores in violation with the payment conditions provided in the acceptance of tender.

Therefore, anything said, done or written by any of the accused persons in reference to their common intention during the

existence of conspiracy can be read against each other by the principle of agency, as per Section 10 of the Indian Evidence Act.

36. Consequently, from the above said facts and circumstances, there is strong suspicion that all the accused persons are involved for the offences for which they have been charge sheeted. Consequently, *prima facie* the accused persons Shambhu Prasad Singh (A-1), Shyam Sundar Bhattar (A-2), M/s. Sai Baba Builders & Consultants Pvt. Ltd. (A-3), M/s. Dynamic Shells India Pvt. Ltd. (A-4), M/s. Rockside Impex Pvt. Ltd. (A-5) and public servants Rudra Narayan Shukla (A-6), Vinod Gupta (A-7) and Manish Rai Mathur (A-8) are all liable to be charged u/S. 120-B IPC r/w 420 IPC, 471 IPC r/w. 467 IPC r/w 13(1)(d) r/w 13(2) of the PC Act, 1988.

Further the accused persons Shambhu Prasad Singh (A-1), Shyam Sundar Bhattar (A-2), M/s. Sai Baba Builders & Consultants Pvt. Ltd. (A-3), M/s. Dynamic Shells India Pvt. Ltd. (A-4), M/s. Rockside Impex Pvt. Ltd. (A-5) all are also liable to be charged substantively u/S. 420 IPC, 471 r/w. 467 IPC, whereas the public servants Rudra Narayan Shukla (A-6), Vinod Gupta (A-7) and Manish Rai Mathur (A-8) are all liable to be charged substantively u/S. 13(1)(d) r/w. 13(2) of PC Act 1988.

In view of the above discussion, application of accused no. 2 Shyam Sunder Bhattar, (who also represents the accused no. 5 M/s. Rockside Impex Pvt. Ltd.) for discharge u/S. 227 r/w

239 CrPC 1973 stands dismissed.

Further, the application on behalf of the accused A-6 R. N. Shukla u/S. 197 CrPC and Section 19 of the PC Act also stands dismissed.

Further another application u/S. 239 CrPC filed by Sh. Vinod Gupta (A-7) seeking discharge from the present case also stands dismissed.

Yet another application u/S. 239 CrPC on behalf of the accused Manish Rai Mathur (A-8) for seeking discharge also stands dismissed.

37. Let formal charge(s) be framed against the accused persons Shambhu Prasad Singh (A-1), Shyam Sundar Bhattar (A-2), M/s. Sai Baba Builders & Consultants Pvt. Ltd. (A-3), M/s. Dynamic Shells India Pvt. Ltd. (A-4), M/s. Rockside Impex Pvt. Ltd. (A-5) and public servants Rudra Narayan Shukla (A-6), Vinod Gupta (A-7) and Manish Rai Mathur (A-8), as discussed above.

38. **Nothing observed herein above shall have any bearing on the merits of the case during trial.**

**Announced in the open Court (Sanjeev Aggarwal)
on this 01st day of Dec. 2020. Special Judge-CBI (PC Act)-02
(through Video Conferencing) Rouse Avenue Court/New Delhi
01.12.2020**