IN THE COURT OF MS. COLETTE RASHMI KUJUR
SPECIAL JUDGE (PC ACT) (CBI)-05,
ROUSE AVENUE COURT COMPLEX, NEW DELHI

CNR No. DLCT11-000854-2025
Crl. Appl. No. 06/2025
RC No. 1/2006/EoU-VIII
P.S : CBI/EoU-VIII/New Delhi
U/s : 217 of Indian Penal Code

Vijay Kumar Jain . . . **Appellant**
S/o Late Sh. A.P. Jain
R/o B-1, Friends Apartments
I.P Extension, Delhi – 110 092

V E R S U S

CBI/EoU-VIII . . . **Respondent**
CBI, HQ, Plot 5-B
Jawaharlal Nehru Stadium Marg
CGO Complex, New Delhi – 110 003

Date of institution	:	23.08.2025
Date when reserved for judgment	:	02.02.2026
Date of judgment	:	11.02.2026

Appearances : Sh. Yudhishtar Kahol, Ld. Counsel for appellant.
: Sh. Darshan Lal, Ld. Sr. P.P for CBI.

J U D G M E N T

The present appeal has been filed under Section 374(2) of Cr.PC/415 of BNSS on behalf of the appellant Vijay Kumar Jain against the impugned judgment dated 07.08.2025 and order on sentence dated 11.08.2025 passed by the Ld. ACJM-2-cum-ACJ, Rouse Avenue District Court, New Delhi whereby the appellant has been convicted for the commission of offence punishable under Section 217 Cr.PC and ordered to undergo simple imprisonment of one year and to pay a fine of

Rs. 10,000/-. In default of payment of payment of fine, the appellant shall undergo simple imprisonment for 15 days.

<u>Grounds of Appeal</u> :

2. The present appeal has been filed on the grounds, *inter alia*, that the impugned judgment and order on sentence are against the facts and law and are based upon conjectures and surmises; that the Ld. Trial Court failed to appreciate the evidence of witnesses produced by the prosecution in the right perspective; that the inquiry has been conducted for more than 11 weeks (79 days) in complete violation of the directions of Hon'ble Supreme Court passed in *Lalita Kumari vs. State of U.P*; that as per the charge-sheet inquiry was converted into RC SID 2006E 001 on 01.11.2006 under Section 120B read with Sections 417, 468, 471 IPC which is totally a different FIR than the present one; that when the case was registered under section 13 PC Act, the investigation could not have been carried out by an officer in the rank of SI; that the allegations against the appellant are absolutely baseless; that the allegations that the appellant has retained the files deliberately are absolutely incorrect.

3. It is contended by Ld. Counsel for the appellant that Ld. Trial Court failed to appreciate the statement of witnesses in the right perspective; that PW11 Hasruddin Khan, who worked with the appellant as JE has categorically stated in his examination-in-chief that he had never dealt with any file pertaining to C.L. Lohia matter and thus was not aware of it in any manner; that the Ld. Trial Court further failed to appreciate that the investigation of the present case was carried out in

violation of Section 155 Cr.PC, which mandates seeking permission from the court of a competent magistrate for investigating a non-cognizable offence; that there is also violation of Section 3 of Delhi Special Police Establishment Act (hereinafter to be referred to as “DSPE Act”), which bars the CBI from investigating a case under Section 217 IPC; that the case could not have been investigated by an officer below the rank of Inspector, that the sanction order (Ex. PW8/A) is undated; that there is also violation of directions of Hon’ble High Court as there was directions to the CBI to only conduct a preliminary enquiry whereas after preliminary enquiry, CBI has registered an FIR; that the notification was issued on 20.08.2008 whereas the sanction has been accorded on completion of the investigation before 11.08.2008, which is evident from the letter of Assistant Law Officer (Vigilance) dated 11.08.2008 which forwarded the sanction order with regard to the prosecution of appellant.

4. The counsel has also pointed out the fact that the appellant had undergone operation on the said dates and that his hospitalization is proved by the statements of the prosecution witnesses. It is argued that the trial court has failed to appreciate the facts of the case properly. It is argued that the order of which there was contempt is not on record. There is nothing to prove that the order was ever received by the appellant. It is argued that the only mistake of the appellant was that he traced the files and produced before the investigative authority. The prosecution has however not explained as to from where the files were traced and in whose possession they were.

5. The appellant has further pointed out that the order

purported to have been ignored by him was issued in four copies and every department had it yet the departments failed to pursue the matter. It is stated that the appellant has been made a scapegoat. That after departmental enquiry, the appellant was reinstated/exonerated and in that case how could the appellant be charge-sheeted and accordingly prays that the appeal may be allowed and impugned judgment and order on sentence may be set aside.

Reply of CBI

6. On the other hand, reply is filed by the prosecution whereby it is the stand of the Ld. Sr. PP for CBI that the accused had without authorization retained the under construction (u/c) files with an intent to save the properties from demolition. That the trial court has taken into consideration all the facts and the fact that the trial took about 17 years to complete while passing the order and sentence. It is stated that the prosecution witnesses have proved various documents which are sufficient to establish the guilt of the accused.

7. It is stated that PW12 investigated the matter following procedural norms and judicial directions stating further that such investigations can be carried out by the officers of the CBI with the permission of the Hon'ble Court. Questioning his integrity without any substantive proof is unjustified. It is stated that the investigation was carried out pursuant to a valid notification, which empowered the investigating agency to probe offences within its jurisdiction. It is further stated that the sanction was accorded by the competent authority subsequent to

the initiation of the enquiry but during the course of investigation.

8. It is stated that the prosecution has established, through documentary evidence and witnesses' testimony, that the directions of the Hon'ble High Court dated 11.04.2005 were duly communicated to the concerned officials, including accused V. K. Jain. It is stated that as the Assistant Engineer overseeing the relevant files, V. K. Jain was under a duty to ensure compliance regardless of who initially received the order. It is stated that the preparation of demolition notices by Md. Ahmed JE and their retention with him do not negate the accountability of V.K. Jain. That the chain of command and supervisory responsibility rested with V.K. Jain, who failed to take appropriate action or submit compliance report to the Hon'ble High Court.

9. It is the stand of the prosecution that retention and delay in forwarding these files to the concerned authorities directly contributed to the non-execution of demolition orders. The appellant's plea that he was hospitalized after signing the demolition notice on 04.03.2005 does not explain or justify the prolonged inaction that continued well beyond his hospitalization period. It is stated that the appellant was the custodian of the files at the relevant time. It is stated that the decision in the departmental enquiry does not impact the validity of the criminal investigation. Both are separate processes with different procedure, standards and purpose. That in view of the facts and circumstances the appeal may be dismissed.

10. The trial court record was also requisitioned and the

same has been received and perused.

FINAL ARGUMENTS :

11. Ld. Counsel for the appellant/accused has argued on four points basically – firstly, there are two different FIR's/RC's registered in the present case *i.e.* 1/2006/EOU-VIII dated 27.07.2006 under Section 120B IPC/ Sec 13 (2) read with Sec 13(1)(d) P.C Act and another dated 01.11.2006 as mentioned in the charge-sheet under Section 120B read with Sections 417, 419, 468, 471 IPC. It is argued that the prosecution has neither brought the order of the Hon'ble High Court directing the registration of FIR nor the second FIR on record of this court. It is argued that this conduct of the investigating agency is with a view to falsely frame the accused. It is argued that the offence under Section 217 IPC is non-cognizable under which the charge-sheet has been filed only against the appellant. It is argued that for reasons best known to them, the investigating officer did not choose to proceed against all the other officers and made a scapegoat to the appellant/accused.

12. Secondly, the prosecution has failed to prove that the files were retained by the accused deliberately or knowingly from 04.03.2005 to 31.05.2006 and did not deliberately comply with the directions of the Hon'ble High Court dated 11.04.2005. It is argued that the prosecution was unable to prove the fact that the order was marked to the accused V.K. Jain. What has come on record is that PW6 Ajay Kumar had received the order. There is no office noting on judicial record to suggest that the same was marked to the accused. It is argued that there is no evidence that

the convict/appellant had received the order of the Hon'ble High Court, in order to assign any knowledge about it, to him.

13. Thirdly, it is the overall duty of the Junior Engineer to initiate proceedings, carry out the process, get notices signed by the Assistant Engineer, get the FIR's and entries made in the *missal band* register. And OI(B) is bound to keep a track of all the under construction (u/c) files entered in the *missal band* register. It has come in the prosecution evidence that the Executive Engineer has to look into the overall working of the Zone on a day to day basis. It is argued that if an u/c file is not returned on any given day to OI(B) then it is his duty to ask for the concerned file and in case the same is not made available to him, the matter should be reported to XEN.

14. It is argued that the accused only assisted the official in tracing the file. The files were lying in the office itself and not in the personal possession of the appellant/accused. The documents prove that the appellant/accused had already signed the demolition notice and after that he fell ill in the office itself. It is stated that the appellant had taken seriously ill and suffered a heart attack due to which he was hospitalized on 05.03.2005. It is argued that the case was decided against the accused as he failed to bring on record the medical record to prove this fact. However, as this fact was admitted by the prosecution witnesses the accused did not produce his medical documents.

15. And lastly, it is argued that the accused was dismissed from the service but after the departmental enquiry, he was exonerated and reinstated. It is argued that this fact has also

been admitted by the IO of this case during his cross examination.

16. Ld. Counsel for the appellant has relied upon ***MCD vs. S.L. Meena [W.P. (C) 9300/2009]*** wherein Vijay Kumar Kadyan predecessor of appellant was also one of the respondent and the subject matter of the writ petition arose out of a PIL titled as *Kalyan Sanstha Social Welfare Organization Vs. Union of India & Ors. (CWP 4582/03).* The Hon'ble High Court of Delhi observed that the procedure declared by the respondents as per their office order dated 20.08.2001 read with relevant provisions of the MCD Act makes it impossible for a single person to take all the actions as are required to be taken up but apparently the responsibility being the head of the Building Department in their respective Zones are persons who are certainly responsible for the unauthorized construction……Further, the respondents were directed to be reinstated in service from 07.04.2006.

17. The Counsel has also relied upon ***Lalita Kumari vs. Govt. of UP and Ors. [2013 (14) S.C.R. 713]*** where it was held that the registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. If the inquiry discloses the commission of cognizable offence, the FIR must be registered. He has further relied upon ***Mam Chand & Ors Vs. State [1999 (1) JCC Delhi 218]*** to argue that where the allegations in the FIR

do not constitute a cognizable offence but constitute a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code and such investigations if carried out, would not be validated even by an order of the Magistrate obtained subsequently. In ***R.C Sharma vs. Central Bureau of Investigation [Crl.Rev. P.No.965/2003],*** the Hon'ble High Court held that the provision of Section 155 Cr.P.C were mandatory and any violation thereof will be sufficient to invalidate the investigation so carried out in contravention to the said provision. The proceedings carried out against the petitioner in that case was quashed and petitioner was discharged.

18. For all these reasons, it is prayed that the appeal be allowed and the order and sentence of the trial court be set aside.

19. The Ld. Sr. P.P for the CBI has argued that there is no illegality in the order of the Ld. Trial court. It is stated that the court took several years to try the matter and hence is aware of the entire facts of the case and has taken due account of the aggravating factors in favor of the convict.

20. It is argued that, the argument of the Ld. Counsel for accused/appellant that the case was registered under Section 13 P.C Act and Sections 417, 468 and 471 IPC were an attempt to circumvent the provisions of Section 155 Cr.P.C is baseless and without legal merit. It is argued that the FIR was registered by the CBI under competent jurisdiction and the investigation was lawfully conducted. It is argued that merely because the charge-sheet refers to multiple RC, it does not render the investigation

illegal. It is argued that the different RC numbers only reflect the administrative categorization within different branches of CBI and not a defect in the legal procedure. It is argued that the different numbers are merely internal communications/ investigative coordination between the branches of the CBI.

21. It is also argued that the alleged bar under Section 3 of the Delhi Special Police Establishment Act (DPSE) is equally unfounded. It is argued that the investigation was carried out pursuant to a valid notification, which empowered the investigating agency to probe offences within the jurisdiction. It is argued that the sanction was also obtained in accordance with the statutory requirements and before the filing of the charge-sheet as mandated by law.

22. It is argued by the appellant that the Sub Inspector was not authorized to conduct investigation for the offence under Section 13 PC Act is incorrect. That such investigations can be carried out by officers of the CBI with the permission of the court. That there is nothing in the evidence led in the present case that would discredit the IO or the investigation. It is further argued that the delay of 79 days in converting the inquiry (PE SID 2006E-002) into an FIR/RC no. (1/2006/EOU-VIII) was necessitated by the need for a thorough and detailed preliminary investigation as directed by the Hon'ble High Court of Delhi in W.P.C. No. 2073-94/2004.

23. It is argued that the allegations were made against the other officers including Vijay Kadyan, A.P. Sharma and Mohammad Ahmed and they were examined in detail. However,

evidence available against them was neither sufficient nor established their culpability beyond reasonable doubt, the prosecution therefore cannot be accused to selectively prosecuting one person.

24. The Ld. Sr. P.P has further argued that prosecution has proved through documentary evidence that the directions of the Hon'ble High Court dated 11.04.2005 were duly communicated to the concerned officials, including accused V.K. Jain. It is argued that the order was duly received within the department and marked for compliance to accused V. K. Jain. That as the AE overseeing the relevant files he had the duty to ensure compliance regardless of who initially received the order. Furthermore, the preparation of demolition notices by Md. Ahmed, JE and their retention will not absolve the AE of his responsibility. It is argued that the chain of command and supervisory responsibility rested with V.K. Jain, who failed to take appropriate action or submit the compliance report to the Hon'ble High Court.

25. It is further argued that the plea of illness taken by the accused does not justify or explain the prolonged inaction that continued well beyond his hospitalization period that too after signing the demolition notices on 04.03.2005. It is argued that the AE's role is not merely clerical or limited to endorsing documents. The AE is bound to monitor the entire process, ensure timely action and prevent any lapses or concealment of records. The consistent retention of the files clearly indicate a failure in supervisory duties.

26. It is explained that the statement of PW11 is that about the procedural explanation and of general nature and does not in any manner establish compliance of the accused. It is stated that the witness did not depose that the procedure was followed in this specific matter. The fact is the files remained in the exclusive custody of the accused and any procedural failure by other officials does not negate the omission on the part of the accused, who was the custodian of the files at the relevant time.

27. It is argued that the trial court has rightly not placed reliance on the testimony of PW11 who, by his own admission was not associated with the files in question. Therefore the court may dismiss the present appeal of the appellant/accused. Ld. Sr. PP for CBI has relied upon ***State of N.C.T. of Delhi vs. Ajay Kumar Tyagi [Crl. Appeal No.1334 of 2012 (@ SLP (Crl.) No. 1383 of 2010)]*** wherein it was held by the Apex Court that exoneration in departmental proceeding *ipso facto* would not lead to exoneration or acquittal in a criminal case. It was observed that it is well settled that the departmental proceeding or for that matter criminal cases have to be decided only on the basis of evidence adduced therein.

28. Submissions of Ld. Counsel for appellant and Ld. Sr. P.P for CBI heard.

REASONS FOR THE DECISION :

29. Perusal of record reveals that vide order dated **20.04.2006** passed in W.P. (C) No. 458/2003 titled as *Kalyan Sansthan Social Welfare Association vs. Union of India and Ors,* the Hon'ble High Court of Delhi directed the CBI to register a

preliminary inquiry against such engineers and officials of the MCD, who allowed unauthorized construction to go on despite being duty bound to stop/demolish the unauthorized construction under the DMC Act. Accordingly, PE SID 2006 E002 dated 10.05.2006 was registered against Vijay Kadyan, the then Executive Engineer, West Zone, MCD, other officials of MCD and owners of 15 properties situated at Road No. 78, West Punjabi Bagh, New Delhi.

30. Record further reveals that during preliminary inquiry, it was found that 15 properties situated at Road No. 78, West Punjabi Bagh were booked for unauthorized construction on 29.07.2004 by Suleman Khan, the then JE. CBI sought files pertaining to these 15 properties from the MCD, West Zone. However, the files were not traceable. Vishv Ratan Bansal, the then Executive Engineer (Building) wrote a letter dated 25.05.2006 to the concerned AEs, including appellant/accused Vijay Kumar Jain (AE) to produce the said files. Pursuant to the letter dated 25.05.2006, the appellant/accused, who was already transferred from West Zone, MCD, visited the office on 31.05.2006 and produced all the 15 files. He handed over all these files to the office of Executive Engineer vide his note/letter dated 31.05.2006.

31. It is further revealed that these 15 properties were booked by Suleman Khan (JE) on 29.07.2004. The status of all these 15 properties was shown as 'under hearing' in the *missil band* register. The first entry of these properties in the *misil band* register was made on 29.07.2004. Owners of three properties out of the above said 15 had not given response to the Show Cause

Notices under Section 344(1) and 343 DMC Act issued on 29.07.2004 and thus, they lost their right to be heard in person. Since the construction raised by these three properties could not be considered for regularization and accordingly, orders under Section 343 DMC Act for issuance of demolition notices were solicited by JE and approved by A.P. Sharma (AE) on 04.08.2004. The demolition notice was put up before A.P. Sharma (AE) and it was signed by him on 04.08.2004. When no response were received demolition orders were passed by A.P. Sharma (AE) on 11.08.2004. Thereafter, despite marking these files to the Officer Incharge (Building) for taking further action, A.P Sharma (AE) did not hand over the said files to the Officer Incharge (Building). A.P. Sharma (AE) was transferred from West Zone, MCD on 01.09.2004. Pursuant to his transfer, A.P. Sharma (AE) handed over these files to the appellant/accused on 01.09.2004. Appellant/Accused retained these files with him without initiating action through OI(B) and JE. Thus, A.P. Sharma (AE) alongwith appellant/accused and Vijay Kadyan (EE), were found to be directly responsible for the lapse.

32. It is further revealed that with regard to the remaining 12 properties, a decision was taken to give hearing to the concerned owners by A.P. Sharma (AE); at the time of his transfer, the files of these properties were handed over by A.P. Sharma (AE) to V.K. Jain (AE) on 01.09.2004. Appellant conducted several hearings and passed final orders on 28.02.2005 for issuance/preparation of demolition notices to the JE (Building). Demolition notices were signed by appellant/accused V.K. Jain on 04.03.2005. However, instead of sending the files to

the JE, he retained these files with him due to which demolition could not be effected.

33. During preliminary inquiry, A.P. Sharma (AE) pleaded that it was a mistake on his part to have retained the files; appellant stated that he had to proceed on leave for a fortnight as he was to undergo angioplasty and after joining his duty, he forgot that action was required to be taken on these files as the said files got mixed with other files; Vijay Kadyan (EE) failed to enquire about the status of the booked properties despite closing the *missil band* register daily; Suleman Khan (JE) failed to ask for the files from the appellant despite having booked the properties and having prepared the demolition notices. Accordingly, FIR/RC was recommended to be registered against Vijay Kadyan (EE), A.P. Sharma (AE), V.K. Jain (AE) and owners of 15 properties under Section 120B IPC read with Section 13(2) read with Section 13(1)(d) of the P.C. Act.

34. Accordingly, the present FIR/RC was registered on 27.07.2006 against Vijay Kadyan (EE), A.P. Sharma (AE), V.K. Jain (AE) and owners of 15 properties under Section 120B IPC read with Section 13(2) read with Section 13(1)(d) of the P.C. Act and the investigation was conducted.

35. During investigation, it was found that owners of those 15 properties had filed a Writ Petition No. C.W.P 2073-94 before the Hon'ble High Court of Delhi against one Kamal Khosla for carrying out unauthorised construction. In retaliation, Naval Khosla, brother of Kamal Khosla filed a complaint with the MCD against these 15 property owners for unauthorised

construction. While disposing of the petition, Hon'ble High Court vide order dated 11.04.2005 directed the MCD to take action in accordance with law and to file a compliance report within four months.

36. During investigation, it was further revealed that appellant/accused had passed orders for issuance of demolition notice in 12 cases; demolition notices were prepared by Mohammad Ahmad, JE on 04.03.2005 and signed by appellant/accused on the same day. Thereafter, he marked the files to the JE for serving the demolition notices upon the concerned property owners. However, instead of sending these 12 files to the JE and earlier three files to the OI(B) for further action, he retained the files with him despite being aware of the directions of the Hon'ble High Court of Delhi.

37. During investigation, it was further revealed that the order dated 11.04.2005 of Hon'ble High Court of Delhi was received by M.K. Singhla, the then EE on 16.06.2005; he marked it for compliance to the appellant. Thereafter, appellant further marked it to Ajay Sharma (JE); Ajay Sharma (JE) sent it back to the appellant as the files were not pending with him. The appellant did not bother to submit the compliance report to the Hon'ble High Court. Thus, it was concluded that appellant did not conduct himself properly despite being aware of the directions of Hon'ble High Court of Delhi and retained the files without any authority which resulted in non-execution of demolition orders. It is alleged that this was done with an intent to save the said properties from demolition and thus appellant committed offence punishable under Section 217 of the IPC.

After completion of investigation, the charge-sheet was filed in the court disclosing offence punishable under Section 217 IPC only against the appellant/accused.

38. The convict was charged for having committed the offence under Section 217 IPC to which he had pleaded not guilty and claimed trial.

39. **Section 217** of the Indian Penal Code reads **Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.-** *Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extent to two years, or with fine, or with both.*

40. As per the facts presented to the accused in the charge framed on 04.07.2018 , the Hon'ble High Court of Delhi in CWP No.n 2073-94/2004 namely C.L. Lohia vs. MCD and CM NO. 9266/2004 had directed vide its order dated **11.04.2005** that action be taken against the owners of the property including Sh. Kamal Khosla, owner of property No. 42-A/78, West Punjabi Bagh, New Delhi in accordance with law and report compliance within four months from the date of the order. The said files were marked to the appellant on 16.06.2005 but the appellant had

failed to take action on the under construction (u/c) files and had retained them with himself till 30.05.2006 so as to give advantage to the owners of the properties as mentioned in those files.

41. Coming first to the aspect of the law in violation. The prosecution has relied upon the order of Hon'ble High Court dated **20.04.2006** whereby the Hon'ble High of Delhi had directed the CBI to register a preliminary enquiry against such Engineers and officials and also to probe the nexus with their hierarchy in the Engineering Department, builders as well as the political bosses who allowed the unauthorized construction to go on despite the fact that they were duty bound to stop/demolish the unauthorized construction under DMC Act. And that the preliminary enquiry is to be conducted by a Task Force headed by a person not below the rank of a Joint Director. The status report was to be filed with the Hon'ble High Court within a month.

42. The present charge-sheet dated 20.10.2006 does not mention the month end report or its finding filed before the Hon'ble High Court of Delhi neither does it mention the name of the complainant. As per the FIR, it was registered '*On the direction of Hon'ble High Court'.* Neither the report of the departmental enquiry nor the order of the Hon'ble High Court directing the registration of FIR is placed on file by the prosecution. It also does not specify whether or not the enquiry was conducted by a task force under the supervision of the Joint Director of CBI. It is nevertheless, assumed that inquiry was conducted in accordance with the orders of the Hon'ble High

Court of Delhi. In case of any grievance, relating to the registration of the FIR, appellant should have approached the Hon'ble High Court. One may however note that the preliminary enquiry indicated offence under Section 120B IPC read with Section 13(2) read with Section 13(1)(d) of the P.C. Act. While, investigation after the registration of FIR disclosed the commission of offence only punishable under Section 217 IPC.

43. The appellant has objected that as per The Delhi Special Police Establishment Act, 1946 the investigation under Section 217 IPC could not have been conducted by a person below the rank of Inspector. A further peek into the records suggests that an application was moved by the Superintendent of Police/CBI Sh. M. M. Oberoi seeking permission under Section 17 of the P.C Act to investigate the case titled as State vs. Vijay Kadyan & Ors before the Special judge, CBI, which was allowed on 17.08.2006. This order remains unchallenged. Therefore the objection that the officer concerned was not within his right to conduct the investigation stands corrected.

44. The preliminary enquiry was thereafter converted into regular case against (1) Vijay Kadyan (2) V.K. Jain (3) A.P. Sharma and the 15 property owners bearing No. RCSID2006E001 on 01.11.2006. It is imperative to note that the charge-sheet mentions that the case was registered under Section 120B IPC read with Sections 417, 468 and 471 IPC. However, this statement is without any documentary support and hence is understood to be a typographical inadvertence. A careful perusal indicates that the final charge-sheet was filed finally only against the appellant/accused V.K. Jain under Section 217 IPC. The

allegation against him was that of retaining the files of the 15 properties after passing the order of demolition thereby resulting in the non-execution of the demolition *i.e.* failing to take action in the unauthorized construction files.

45. The allegation is based on the fact that these files were being handled by A.P. Sharma, who had issued demolition orders in 3 files on 11.08.2004 and marked the same to OI(B), however, instead of handing over the files to OI(B), he retained them till his transfer and handed all the 15 files over to V.K. Jain on 01.09.2004. It is imperative to note that the charge sheet filed under section 217 IPC against V. K. Jain notes that a preliminary enquiry bearing no. **PESID2006E002EOU.VIII** was conducted against Vijay Kadyan, the then Executive Enginder (B), West Zone. It also notes that Vijay Kadayan has already been dismissed from service. As per the investigation, V.K. Jain also passed the demolition order but failed to hand over the files to OI (B) or the JE for further action. The charge-sheet also alleged that the appellant knew the direction of the Hon'ble High Court dated 11.04.2005 asking MCD to take action as expedient in accordance with law and also ordered MCD to report compliance affidavit within four months of the date of the order.

46. Evidence was led by the prosecution in this matter and statement of the accused was recorded after which the order of conviction was passed against the appellant.

47. The case, *prima facie,* reflects that the appellant was indeed in custody of the files on 11.04.2005 *i.e.* the date of the order of Hon'ble High Court as well as on the day the files were

purportedly marked to him by his superior *i.e.* **16.06.2005**. As per record, the order of demolition was already passed by the appellant in the 12 files under his own signature on 28.02.2005 much before the passing of the order by the Hon'ble Delhi High Court.

48. The appellant has approached this court stating that the case is based on the non-compliance of the order of the Hon'ble High Court dated **11.04.2005** but the prosecution has not been able to prove that the appellant/accused V.K. Jain had any knowledge of it at all.

49. The crux of the arguments advanced on behalf of the appellant is that there is a system of check within the institution of MCD and all officers at the office within the scope of their designation are duty bound to call for action. There is no scope for the files to be retained by any one officer as per the procedure enumerated by the prosecution witnesses during the trial. It has been argued by the appellant that he had been hospitalized for a length of whole 15 days, was no one assigned to look after the files in his absence? Was this job and every other job on his table on hold during his absence? It has also been argued that the prosecution has failed to answer as to from whose possession the appellant located the files after having been transferred from the said office?

50. The prosecution had examined Sh. Suleman Khan as PW2 who had worked as JE in MCD West Zone, Building department, Rajouri Garden, New Delhi for nearly one year since 2003. It is deposed by him that the appellant V.K. Jain, Assistant

Engineer had taken charge from Anand Prakash Sharma. This witness deposed that "*Whenever any unauthorized construction came to notice of our department, our office registers First Information Report (FIR) containing details of the said property, the deviations made in the said property against sanctioned plan, etc. Then FIR is put up to Assistant Engineer and Assistant Engineer orders to issue show cause notice to owner/occupier/builder of the property, if he satisfies. It is the duty of the Junior Engineer to prepare show cause notice, which is thereupon signed by Assistant Engineer. Then show cause notice sent to Officer Incharge (Building), who enters the details of unauthorized construction in the missal bund register, which is maintained and updated by him. In the missal bund register details of property, its owners and show cause notice are entered.*" This witness identified the signature of V.K. Jain the appellant on the second show-cause notice issued for demolition on the files bearing no. B/UC/WZ/04/503 to 517 all dated 29.07.2004.

51. During the examination-in-chief this witness PW2 was specifically asked as to what action was taken by V.K. Jain regarding the demolition of the property in connection with this FIR Ex. PW2/1 (Colly) to which PW2 replied that V.K. Jain has passed the demolition order at page no. 5 of this file and that order was sent to the OI(B) *i.e.* Officer in charge (Building) for further proceedings and further action is to be taken by the Executive Engineer.

52. Upon cross-examination this witness goes on to state that in case the file is not returned to the OI (B), he shall

call back the file from the JE/AE maximum within a period of 2-3 days. He explains that the *missalbund* register is closed almost on a daily basis by the OI(B) or Executive Engineer. It is deposed by him, "*it is correct that the Executive Engineer is the overall Incharge of the building department of the zone and the OI(B) is the incharge of the record and in case file is not returned to them, either on the same day or within a period of 2-3 days they have to find out to check the record of the said file for appropriate action. After passing of the demolition order the Assistant Engineer become functio officio and everything is to look after including the charting of the action plan and other necessary action is to be looked after by the Executive Engineer in consultation with OI (B).* The witness clearly states that the detailed order of the then Assistant Engineer (V.K. Jain) in D-15 has directed the JE to issue the demolition order.

53. PW3 Moti Lal was also examined by the prosecution, who has stated that the entry of demolition order is made in the *missilband* register. He was the Officer Incharge (Building), West Zone, Rajouri Garden. As per this witness he was maintaining the record pertaining to demolition of unauthorized construction in a missilband register. He also admits that the entire record of demolition including the demolition order used to be kept in his custody. The witness identified his signatures at the entries in the misilband register corresponding to the files B/UC/WZ/04/503-517. The witness admits that the missilband register is maintained by OI(B) and at the end of the day, the same is closed by the Executive Engineer under his signatures. He stated that the missilband register is to

be looked into and closed by the Executive Engineer on day to day basis and monthly report of the same is prepared by the concerned Executive Engineer. The monthly report is sent to Headquarters. The witness interestingly also states, that if the FIR/UC file is not received after two-three days and no action is taken thereon, then a noting is made in the *misil band* register *qua* the same and after asking the concerned JE, the relevant reasons are mentioned thereon. The witness very clearly states that the matter is brought to the notice of the Executive Engineer for further action. The witness further stated on Oath that it is correct that notice is prepared by the JE and signed by AE and after that, file would be sent to JE for demolition/issuance of notice.

54. This procedure is endorsed by PW4, who was JE, West Zone, MCD. The witness identified his signatures on the demolition notice prepared by him in his handwriting. It is deposed by him that the original demolition notice is in the file and the file remains in the custody of the OI(B). It is also informed by the prosecution witness that the demolition notice is prepared in quadruplets of which, one goes to the owner/builder and the second remains with the OI(B). During the cross-examination of this witness he categorically states that it is the duty of the OI(B) to apprise the Executive Engineer that the file has not been received back from the concerned AE. He specifically states, "*OIB is duty bound to inform/apprise the Executive Engineer concerned in case the files are not received back from the concerned AE within the prescribed period i.e. three days for the show cause notice and six days for the*

demolition notice. Monthly report of demolition order prepared by OIB and signed by the Executive Engineer are sent to the concerned DC and Additional Commissioner of the zones. In the monthly report the files are shown as pending and complete".

55. The witness also admits that the exhibits Ex. PW2/1 to 7, 9, 12-15 were all signed on the same day *i.e.* 04.03.2005 and that on 05.03.2005 the accused V.K. Jain was taken to the hospital as he had suffered a heart attack in the office itself.

56. PW6 Ajay Kumar Sharma also deposed that the OI (B) asks for the files, which are not put to him after passing of demolition notice. The department as per this witness takes action in case file is not put up by the JE. During his cross-examination it is stated by the witness that the file for issuing a notice or for demolition is initiated by JE. It is deposed, "The file remains in the custody of the JE. After the signatures of AE, the file comes back to JE. Vol. Till the time file is matured, it remains with the JE after which, it is transferred to OI(B).

57. PW6 Ajay Sharma was cross-examined by the defence Counsel where he admitted that he received the order of the Hon'ble High Court dated 11.04.2005 and that he marked it to V.K. Jain (the appellant herein) as per which the department was asked to file the affidavit in the C. L. Lohia's case. He states that since he was not having the files in which action was to be taken and the files were being looked after by Sh. V.K Jain himself, he sent the file/order of the Hon'ble High Court to Sh. V.K. Jain through proper noting, stating that no action on their part can be taken till the files are disposed of at his end.

58. It is pertinent to note that the noting as stated by the JE Ajay Sharma are not a part of the charge-sheet nor relied upon by the prosecution. The witness also does not know where the order of the Hon'ble High Court is and that it was not traceable in the MCD office. It is further significant to note that the receiving at serial No. 396 and 397 are those of Ajay Sharma but at the same time, it is also observed upon going through the *missil band* register that in all the matters being looked after by the appellant, the JE, working with him is namely/is mentioned as Sh. Mohd. Ahmed. It is also a curious development that the prosecution has no answer as to how and when the office noting of Ajay Sharma, which ought to be a part of the same files, and the court order became untraceable.

59. As per PW7 after the registration of the FIR, in case, the AE concerned is not available due to illness, death, or otherwise, the work is assigned to some other AE. During cross-examination, he further states that it is correct that the Executive Engineer closes the register under his signatures on a daily basis. He goes on to admit that the Executive Engineer keeps a track of the action taken on the basis of *misil band* register on a day to day basis. The witness further admits that the movement of a file is recorded on the daily register itself.

60. The prosecution had also examined K.S. Mehra, the then Commissioner of Municipal Corporation of Delhi as PW8. The witness confirms that the proceedings are initiated by the JE and that the record is maintained by the OI(B). He affirms that the *missil band* register is prepared, which contains the record of all the proceedings and is checked on a daily basis by the

Executive Engineer. He stated that the Executive Engineer is required to keep an overall watch on the duties performed by the Assistant Engineer working under him.

61. PW9 examined by the prosecution also affirms that the OI(B) is the custodian of the records and the UC file is supposed to be in his custody. It is stated by him that it is the duty of the OI(B) to keep track of the UC files and in case the same are not returned to him within a reasonable time, he should call for it. He further affirmed that the *missil band* register is supposed to contain the demolition FIR number and it is placed before the Executive Engineer on a daily basis.

62. PW10 was the Officer Incharge (Building) of the West Zone and deposed that his primary duties involved maintenance of records pertaining to unauthorized construction, which included maintenance of *missil band* register, demolition register, demolition charges register, sealing register, etc., the witness deposed, "*On receipt of information regarding unauthorized construction, the JE concerned books a demolition FIR in a prescribed format which forms part of the booklet. Each page of the booklet bears a number and is in duplicate. The JE puts up the FIR before the AE concerned and the AE gives instructions for issuance of a show cause notice. These instructions are given by the AE by making a note on the FIR itself. The JE then prepares a show-cause notice in the prescribed format, which forms part of a booklet having continuous serial number.*" He further states that the *missil band* register was closed on a daily basis by the XEN concerned. He admits that the entries made in Ex. PW2/16 (Colly) have been closed under the

signatures of Sh. Vijay Kadyan, the then EE (Building). That the missil band register is taken by the OI(B) to the EE every day for closure on each day. Upon further cross-examination he further admits that the JE is in the knowledge of FIR, Show Cause Notice and the UC file. It is stated that the OI(B) has a duty to keep a track of UC files and action taken thereon.

63. It is admitted by this witness that the copies of the FIR, first show cause-notice and second show-cause notice always remain in the custody of the JE, even if the UC file is lost. He states, "*it is correct that the JE ought to have the information as to what action has been taken with respect to a property. It is the responsibility of the JE to pursue a case for taking any action in the property.*"

64. The prosecution also examined PW11 Hasruddin Khan, who remained the JE (Building) in the West Zone of MCD from August 2004 to January 2008. As per this witness too, till the preparation of UC file, the demolition FIR, first show-cause notice, second show-cause notice/demolition notice as well as the UC file remains in the custody of the JE. He stated that after the demolition order is passed by the AE, the file remains with the OI (B). He also affirms that the *missil band* register is closed on a daily basis by the Executive Engineer after going through it and that it is correct that it is the duty of the EE to keep track of the files where action is pending.

65. Upon specific questioning, the IO who was examined as PW12 states that it is correct that normally the files are with the OI(B) or JE and not with the AE. It is stated by him

that he had tried to ascertain during the investigation but nothing transpired that if within any stipulated time, a file does not come to the OI(B), it is the duty of the OI(B) to call for the file. He also did not remember to ascertain that the JE is under the obligation to take action on a file after getting it signed from the AE and in case no action is intended, submit the file to the OI(B).

66. Apart from the depositions as extracted above, I have also gone through the documents. Ex PW4/A, B, C uptill O which indicate that the demolition order was passed by the appellant/accused on 28.02.2005 itself. The demolition order is handwritten with direction to the JE to issue the demolition notice. Thereafter, the demolition notice was prepared in these files and put up before him for signatures on 04.03.2005 by the JE. Perusal of the notice clearly shows that the accused signed the notice on the same day *i.e.* 04.03.2005.

67. The charge against the accused was that he passed the demolition order on 04.03.2005 and deliberately and knowingly kept all the 12 files to save demolition of the property concerned. It is not in dispute that the accused has put his signature on the demolition notice on 04.03.2005. From the deposition of the prosecution witnesses it is also apparent that after the signatures of the AE the file should be sent to the JE or OI(B) for further action in the matter.

68. The allegations against the appellant arose as no compliance report as sought by the Hon'ble High Court vide its order dated 11.04.2005 was sent by him despite the files being marked to him on 16.06.2005. As per the charge-sheet

investigation was conducted in this aspect and it was revealed that the Hon'ble High Court order was received by the then Executive Engineer Sh. M.K. Singhla on 16.06.2005 and was marked for compliance to the appellant/accused V.K. Jain, who did not bother to submit a report in the Hon'ble High Court. The office files upon perusal do not mention any High Court order dated 11.04.2005 neither is the copy of the order present in the concerned files for the purpose of its compliance. As per Ex. PW7/B there are entries no. 396 and 397 by which order passed in C. L. Lohiya case was received by the then JE Ajay Sharma on 20.06.2005. There is nothing, however, to suggest that the same was put up before the AE, appellant herein.

69. As for the charge of retention of the files is concerned, PW4 affirmed that on 05.03.20025, accused Vijay Kumar Jain was taken to the hospital as he had suffered a heart attack in the office itself. In his cross-examination, PW6 stated that he could not say whether on 04.03.2005 or 05.03.2005, V.K. Jain had to rush to the hospital due to heart attack. He volunteered that he did not remember the dates but his condition had deteriorated. He did not remember whether he remained admitted in hospital or was on leave for the next 4-5 days. In his cross-examination, PW12 IO/Shiv Charan Chauhan affirmed the suggestion that as per the PE report, accused V.K. Jain had to be hospitalized after signing the UC files. He volunteered that accused had attended the office after a fortnight. Supposedly, the affidavit was to be filed by 11th August 2005 before the Hon'ble High Court. The appellant has given no explanation about the lapse blaming it on his illness and inadvertence. He was also

undisputedly the custodian of the files during this period, but was he aware of the order of the Hon'ble High Court? It is the case of the prosecution that the appellant V.K. Jain did not file the compliance affidavit to the High Court as directed by it even after returning from the hospital.

70. The prosecution has failed to explain how the OI(B) or the JE overlooked the files for a whole year despite knowing the order of Hon'ble High Court of Delhi. The prosecution case is silent of the action taken by MCD from June 2005 to May 2006. PW6 in his examination-in-chief states that he put up the order of Hon'ble High Court before the AE/appellant V.K. Jain after it was received by him on 20.06.2005. The relevant noting/marking/order of the Hon'ble High Court, however is not a part of the record. There is also no mention of order dated 11.04.2005 of Hon'ble High Court in the *missil band* register.

71. The appellant/accused, V.K. Jain as per the office record was at this post till September 2005 after which he was transferred. It is important to note that PW6 Ajay Sharma was posted at West Zone, Building Department, MCD as JE from August 2004 to February 2006, however, no compliance affidavits were filed in the Hon'ble High Court of Delhi by the MCD despite the fact that both the EE and JE had knowledge of the order of Hon'ble Delhi High Court. There was no effort to even trace the file by either of them.

72. As per the charge-sheet the case was registered against the appellant in compliance of the order of the Hon'ble High Court dated 20.04.2006. It is also worth noting that the

appellant was exonerated in the disciplinary proceedings, which were initiated on the same facts and grounds. So, if appellant was exonerated, how did the complaint arise specifically against him (appellant/accused V.K. Jain).

73. It is also admitted that the appellant was transferred from this post of AE West on 13.09.2005 and complete charge was handed over to S.K. Bansal. As per office order dated 02.09.2005 the transfer was with immediate effect. In that eventuality, who was the custodian of the files on 25.05.2006 when the appellant was asked to produce the files. The appellant has submitted that he visited the Building department on 31.05.2006 to trace the files. The files were irrefutably traced from amidst the old files and documents. The prosecution case does not mention who put the files there or who was in custody of the said files or from which department the files were traced out. Not losing sight of the fact that the appellant was transferred, was it possible for the appellant to go through the files of another department without written permission and take it away without the knowledge of the officials of that particular department. The files therefore cannot be stated to have been in the custody of the appellant till **31.05.2006**, unless, the files were produced by the appellant from his personal custody, which is, not the case of the prosecution. The charge-sheet is devoid of any such explanations and reasoning.

74. So far arguments of the Ld. Counsel for appellant that sanction order to prosecute the appellant/accused is concerned is undated and accorded without application of mind are concerned, it is evident that vide judgment/order dated

24.05.2018, Ld. Special Judge-2 (NDPS), Central District, while dismissing the revision petition filed by the appellant against the order passed by the Ld. Trial Court has already rejected the contentions of Ld. Counsel for accused (appellant herein). It was observed that even if the sanction order does not bear any date, Commissioner, MCD may explain during evidence as to on which date it was granted.

75. In the impugned judgment dated 07.08.2025, Ld. Trial Court has also dealt with the veracity of sanction order and held that no reasonable basis exists to doubt the genuineness and authenticity of the sanction order Ex. PW8/A (colly). It is evident from the testimony of PW8 Sh. K.S. Mehra, the then Commissioner of MCD that he accorded sanction under Section 197 Cr.PC to prosecute the appellant for the offence punishable under Section 217 Cr.PC after going through the material placed before him and satisfying himself. In his cross-examination, the witness stated that he had gone through all the documents placed before him and only after satisfying himself he has accorded the sanction for the prosecution of the appellant. Nothing in his evidence suggests that there was non-application of mind.

76. Though the FIR/RC in the present case was registered, *inter alia*, for commission of offences punishable under P.C. Act, the charge-sheet was filed disclosing offence punishable only under Section 217 IPC.

77. Accordingly, for prosecution of the appellant, sanction was accorded under Section 197 Cr.PC for the offence under Section 217 IPC prior to the presentation of challan in

Court and taking cognizance by the Court. Therefore, in my considered opinion there is no illegality in the sanction order.

78. It is also settled proposition of criminal law that prosecution is supposed to prove its case on the judicial file by leading cogent, convincing, reliable and trustworthy evidence beyond reasonable doubt. The case of the prosecution has to fall or stand on its own legs and it cannot derive any benefit from the weaknesses, if any, in the defence of the accused. It is not for the accused to disprove the case of the prosecution and onus to prove the case against the accused beyond reasonable doubt never shifts and it always remains on the prosecution. Further benefit of doubt in the prosecution case always goes to the accused and it entitles him to acquittal.

79. In ***S.L. Goswami vs. State of M.P, 1972 SCC (3) 22 : 1972 Crl. L.J. 511 (SC)]***, the Hon'ble Apex Court held that :

> *"……...in our view, the onus of proving all the ingredients of an offence is always upon the prosecution and at no stage does it shift to the accused. It is no part of the prosecution duty to somehow hook the crook. Even in cases where the defence of the accused does not appear to be credible or is Palpably false that burden does not become any the less. It is only when this burden is discharged that it will be for the accused to explain or controvert the essential elements in the prosecution case which would negative it. It is not however for the accused even at the initial stage to prove something which has to be eliminated by the prosecution to establish the ingredients of the offence with which he is charged, and even if the onus shifts upon the accused and the accused has to establish his plea, the standard of proof is not the same as that which rests upon the prosecution….."*

80. I find the prosecution case lacking in sufficient explanation as to the roles played/lapses committed by the MCD officials in their hierarchy while carrying out their tasks while at

the same time framing a case against the appellant. The prosecution case has also failed to prove that the appellant had retained the files with him or that he had done anything with the intention of saving the unauthorized construction in the properties from demolition since he had already signed the demolition order even before passing of the order by the Hon'ble High Court.

81. The findings of the preliminary enquiry should have suggested whether the offence was cognizable or non-cognizable, it should have also revealed the wrong doers, however, the FIR was registered under Section 120B IPC and Section 13(2) read with Section 13(1)(d) P.C Act after the preliminary enquiry. The FIR mentioned the present appellant as also the 15 property owners and was also against Vijay Kadyan and A.P. Sharma, however the latter both were dropped at the time of filing of charge-sheet. The preliminary enquiry before the filing of the FIR in the present case and the investigation thereafter are evidently quite at variance.

82. I find the prosecution completely lacking in evidence to prove the charge that the appellant had knowledge of the order of Hon'ble High Court dated 11.04.2005 and committed contempt knowingly and consciously to cause a benefit to the property owners. In the light of these observations, the present appeal is allowed and the impugned judgment dated 07.08.2025 and order on sentence dated 11.08.2025 are hereby set aside. The appellant/accused **V.K. Jain** is acquitted. However, the appellant/accused is directed to furnish a personal bond in the

sum of **Rs. 25,000/-** with one surety in the like amount in terms of Section 437A Cr.P.C (Sec. 481 BNSS) before Ld. Trial/Successor Court within one week from today.

83. Copy of this judgment be given dasti to the Ld. Counsel for appellant/accused.

Trial court record alongwith copy of this judgment be sent to the Ld. Trial/Successor Court forthwith. Appeal file be consigned to Record Room after due compliance.

COLETTE RASHMI KUJUR
Digitally signed by COLETTE RASHMI KUJUR
Date: 2026.02.12 12:59:17 +0530

Announced in the open court today i.e. 11th February 2026

(COLETTE RASHMI KUJUR)
Special Judge (PC Act) (CBI)-05
Rouse Avenue Court Complex
New Delhi/11.02.2026