(2012) 04 UK CK 0068

In the Uttarakhand High Court

Case No : Criminal Appeal No.284 and 274 of 2002

P.D. Sharma — APPELLANT

Vs

State of Uttranchal
 Bijendra Singh Vs State of Uttaranchal and Central Bureau of Investigation — RESPONDENT

Date of Decision : 13-04-2012

Acts Referred:
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2012) 1 NCC 580

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Advocate : Rajendra Singh in Criminal Appeal No.284 of 2002 and Sri S.K. Aggarwal and Sri Swapnil Bisht in Criminal Appeal No. 274 of 2002, for the Appellant; V.K. Shukla, Advocate in Criminal Appeal No.284 of 2002 in Sri V.K. Shukla, Advocate in Criminal Appeal No. 274 of 2002, for the Respondent

Final Decision : Allowed

Judgement

Hon''ble B.S. Verma, J.—Since both the criminal appeals, have been filed against the same judgment, therefore, for the sake of convenience, both these appeals were heard together and are being decided by this common judgment. Both the appeals have been filed against the judgment and order dated 19-10-2002, whereby the accused/appellant P.D. Sharma has been convicted u/s 13(2) read with Section 13(1)(d) of Prevention of Corruption Act 1988, and was sentenced to undergo two years R.I. and to pay a fine of Rs. 10,000/- and in default of payment of fine to further undergo six months R.I. Accused/appellant P.D. Sharma, was also held guilty U/S 467 I.P.C. and was sentenced to undergo three years R.I. and to pay a fine of Rs. 10,000/- and in default of payment of fine to further undergo six months R.I. He was also held guilty U/S 468 I.P.C. and was sentenced to undergo two years R.I. and to pay a fine of Rs. 2,000/- and in default of payment of fine to further under one month''s R.I.

2. Accused/appellant Bijendra Singh was held guilty U/S 420 I.P.C. and he was

sentenced to undergo five years R.I. and to pay a fine of Rs. 20,000/- and in default of payment of fine to further undergo six months R.I. Accused/appellant Bijendra Singh was also held guilty U/S 471 I.P.C. and was sentenced to undergo three years R.I. and to pay a fine of Rs. 5,000/- and in default of payment of fine to further undergo three months R.I. However, the sentences awarded to both the accused/appellants were directed to run concurrently.

3. Brief facts of the prosecution case are that Public Works Department, Haridwar, published notification in the Newspapers, inviting tenders for the contract to collect Toll Tax at Cable Stayed Bridge, Haridwar. The last date of submission of tender was 4-4-1992. Accused Bijendra Singh, who is proprietor of M/s Shiva Traders, Civil Lines, Roorkee, District Haridwar, participated in the auction of contract. On receipt of a reliable information that while accused/ appellant P.D. Sharma was posted and functioning as Branch Managr, Nagal Soti Branch, Punjab National Bank, District Bijnor, during the year 1992 entered into a criminal conspiracy with co-accused/appellant Bijendra Singh, with the object to cheat the said Branch of P.N.B., an F.I.R. was lodged by C.B.I. SPE Dehradun against both the accused/appellants. In the F.I.R. it has been mentioned that the accused/appellants hatched a criminal conspiracy, with the object to cheat the said Branch of P.N.B. to the extent of Rs. 25,74,000/-. In pursuance to the aforesaid criminal conspiracy accused/appellant Bijendra Singh opened a Multi Benefit Deposit Account No. 1354 and Rs. 10,000/- were deposited in the said bank account on the same for issuing a Fixed Deposit Receipt in favour of Work Superintendent, Public Works Department, Haridwar. Accused P.D. Sharma prepared and issued a forged FDR No. QDB- for Rs. Ten lacs instead of Rs. 10,000/-. The said F.D.R. was knowingly utilized by co-accused Bijendra Singh for depositing as security money to participate in the auction of contract of collection of Toll Tax at the Cable Stayed Bridge, Haridwar. It is further alleged in the F.I.R. that accused Bijendra Singh opened two F.D.R. Account Nos. 1401 and 1402 on 30-11-1992 and Rs. 8,000/- each were deposited for preparing two F.D.Rs. in favour of Work Superintendent Public Works Department, Haridwar. On the same day accused P.D. Sharma dishonestly and fraudulently issued two forged F.D.R. Nos. QDB-101365 and 101366 for Rs. Eight lacs each instead of Rs. 8,000/- each. Both the said F.D.Rs. were utilized for security deposit in the auction of contract of Toll Tax Collection at Chandi Ghat Bridge, Haridwar. It was further mentioned in the F.I.R. that accused P.D.Sharma adopted corrupt or illegal means and obtained pecuniary advantage of Rs. 25,74,000/- either for himself or for co-accused Bijendra Singh by abusing his position as public servant causing corresponding loss to the P.N.B. or P.W.D. Haridwar and the aforesaid facts disclose commission of the offences punishable U/s 120B, 420, 467, 468, 471 I.P.C. and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988. Case crime No.RC- 15(A)/93-DAD was lodged on 30-7-1993 at 2.30P.M. against both the accused. The F.I.R. is Ext. Ka. 26.

4. The Superintendent of C.B.I. entrusted the investigation to Inspector Sri R.K. Verma. The investigating officer seized 18 documents from the Punjab National

Bank and prepared seizure memo Ext. Ka.27. He also seized some other documents and prepared seizure memo Ext. Ka.28. Counter-foil, in original was also seized and seizure memo Ext. Ka. 29 was prepared. During investigation the investigation officer also obtained the specimen signatures of accused P.D. Sharma and Bijendra Singh. Specimen signatures and writing of accused P.D.Sharma, Ext. Ka. 30/1 to Ka-30/128, were obtained jointly, whereas specimen signatures and writing of another accused Bijendra Singh Ext. Ka.31/1 to Ka-31/86 were also taken jointly. The investigating officer also obtained the specimen signatures of some other persons. The disputed documents as well as the specimen writings and signatures were sent to Handwriting Expert through letter Ext. Ka.23. The report of Handwriting Expert was obtained, which is Ext. Ka.23. The I.O. also obtained sanction Ext. Ka.1 to prosecute the accused P.D. Sharma. After completion of the investigation the I.O. has submitted charge sheet Ext. Ka.35 against the accused persons U/Ss 120B, 467, 468, 471 I.P.C. and U/S 13(2) read with Section 13(1)(d) of Prevention of corruption Act, and forwarded the charge sheet to the court.

5. On receipt of charge sheet, the trial Court framed charges U/Ss 120B, 467, 468 I.P.C. and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988, against accused P.D. Sharma, and also framed charges U/Ss 120B, 420 and 471 I.P.C. against accused Bijendra Singh. Both the accused persons denied the charges and claimed their trial.

6. The C.B.I. in support of its case produced Sri V. Nagraja, P.W.1, Sri Jang Bahadur Bhasin, P.W.2, Sri A.K. Tandon, P.W.3, Sri H.S. Kohli, P.W.4, Sri D.L. Sharma, P.W.5, Sri Daya Ram Jain, P.W.6, Sri Sahel Singh, P.W.7, Sri H.M. Saxena, P.W.8 and Sri Raj Kumar Verma, P.W.8.

7. Accused/appellant P.D.Sharma, in his statement U/S 313 Cr.P.C. stated that he was posted as Branch Manager in Punjab National Bank, Branch Nagal Soti, District Bijnor in the month of May 1992. He denied this fact that in order to deceive the Bank as well as Public Works Department, Haridwar, he prepared forged F.D.R. He admitted that at the time of preparing the F.D.R. the amount of F.D.R. was there in the accounts of the account-holders. He also admitted this fact that on 4.4.1992 he was not posted in the above Branch of P.N.B. He admitted to hand over the F.D.R. in question to Bijendra Singh. However, he showed ignorance about the fact that to which Bijendra Singh had deposited the F.D.R. Accused P.D. Sharma, also admitted this fact that on 7.7.1992 he had opened Account No. M.B.S. 1356 in the above said Branch. However, has denied the fact that he had adjusted the amount of Rs. 7,34,413-50P. from the account No. 6623 of Bijendra Singh and Rs. 4,03,586-50P. from the Saving Bank Account No. 160 of Sandeep Kumar. The accused further stated that the disputed F.D.R. amounting to Rs. ten lacs was prepared in the month of May 1993 and was handed over to co-accused Bijendra Singh. He further stated that accused Bijendra Singh had given the deposit authority of his account and due to this reason after verifying the signature of Bijendra Singh and looking to the balance

of the account he had prepared the F.D.R. but wrong date was written in the F.D.R.

8. The accused/appellant Bijendra Singh in his statement U/S 313 Cr.P.C. admitted himself to be proprietor of M/s Shiva Traders, Civil Line, Roorkee in the year 1992, but he denied to hatch criminal conspiracy with accused P.D. Sharma, so as to deceive the P.N.B. or the P.W.D. Haridwar. He denied the F.D.R. in question. He also admitted his participation in the bid organized at P.W.D. Haridwar but he denied to deposit any F.D.R. with the P.W.D. He also admitted that he was sanctioned contract by Commissioner Meerut Mandal. He further admitted to open his account in Nagal Soti Branch of P.N.B.but denied his account number to be 1356. He further stated that in the year 1992 he has not opened any account. He also showed his ignorance to deposit the amount of F.D.R. in his account No. 6623.

9. The accused persons did not adduce any evidence in their defence. However, during the course of evidence of witnesses, the accused persons produced some documents.

10. The learned trial court after hearing the arguments of counsel for the parties and considering the entire evidence on record, found the accused persons guilty and were convicted.

11. Accused/appellant P.D. Sharma has been convicted u/s 13(2) read with Section 13(1)(d) of Prevention of Corruption Act 1988, and was sentenced to undergo two years R.I. and to pay a fine of Rs. 10,000/- and in default of payment of fine to further undergo six months R.I. Accused/appellant P.D. Sharma, was also held guilty U/S 467 I.P.C. and was sentenced to undergo three years R.I. and to pay a fine of Rs. 10,000/- and in default of payment of fine to further undergo six months R.I. He was also held guilty U/S 468 I.P.C. and was sentenced to undergo two years R.I. and to pay a fine of Rs. 2,000/- and in default of payment of fine to further under one month''s R.I.

12. Accused/appellant Bijendra Singh was held guilty U/S 420 I.P.C. and he was sentenced to undergo five years R.I. and to pay a fine of Rs. 20,000/- and in default of payment of fine to further undergo six months R.I. Accused/appellant Bijendra Singh was also held guilty U/S 471 I.P.C. and was sentenced to undergo three years R.I. and to pay a fine of Rs. 5,000/- and in default of payment of fine to further undergo three months R.I. However, the sentences awarded to both the accused/appellants were directed to run concurrently.

13. Charge U/S 120B I.P.C. was not found proved against both the accused/ appellants, hence they were not convicted under this count.

14. Being aggrieved by the aforesaid judgment and order these appeals have been preferred before this Court.

15. I have heard learned counsel for the accused/appellants as well as learned counsel appearing on behalf of C.B.I. and perused the record.

16. The allegation against accused/appellant P.D. Sharma, is that he hatched a criminal conspiracy, with co-accused Bijendra Singh, with the object to cheat the Nagal Soti Branch of P.N.B. to the extent of Rs. 10,00,000-. In pursuance to the aforesaid criminal conspiracy accused/appellant Bijendra Singh opened a Multi Benefit Deposit Account No. 1356 and Rs. 10,000/- were deposited in the said bank account for issuing a Fixed Deposit Receipt in favour of Work Superintendent, Public Works Department, Haridwar. Accused P.D. Sharma prepared and issued a forged FDR No. QDB- 101429 for Rs. Ten lacs instead of Rs. 10,000/- on 4-4-1992, so that the co-accused Bijendra Singh may deposit the forged F.D.R. as security deposit with the P.W.D. whereas there was no sufficient fund for issuance of said F.D.R. in the account of Bijendra Singh, thereby he committed offences punishable U/s 120B, 467, 468, I.P.C. and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988.

17. The learned trial court has found the offence U/S 120B I.P.C. proved against both the accused. However no punishment has been awarded on this count separately and merged the offence along with other offences charged against the accused persons. Accused P.D. Sharma has been found guilty and convicted u/s 467, 468 I.P.C. and U/S 13(2) read with section 13(1(d) of Prevention of Corruption Act, 1988.

18. It is to be seen whether offences u/s 467, 468 I.P.C. and U/S 13(2) read with section 13(1(d) of Prevention of Corruption Act, 1988 have been proved by the C.B.I. against accused appellant P.D. Sharma beyond all reasonable doubts.

19. The C.B.I. has produced P.W.2, Jang Bahadur Bhasin, who was posted Senior Manager, in the Zonal Office of P.N.B. with effect from 22-6-1992 to 30-3-1998. This witness has narrated the procedure of preparing a F.D.R. He has stated that he is acquainted with the hand writing of accused P.D. Sharma. He further deposed that the F.D.R. Ext. Ka.2 bears the signature of accused P.D. Sharma. He could not trace any voucher in the Bank Office relating to F.D.R. dated 4.4.1992. If the amount was deposited in Bank in cash then its entry should have been in the log book of cashier or in the cash book of the bank and in the case of the amount deposited by transfer then its entry should have been in the transfer journal, but these entries were not there. This witness further deposited that the F.D.R. Ext. Ka.2 was prepared without depositing fund for it. This witness further stated that on 4-4-1992 accused P.D. Sharma was not posted in Nagal Soti Branch. When F.D.R. is prepared the counter foil is also prepared. Material Ext.-1 is the counter foil of F.D.R. Ext.Ka.2 which has been shown cancelled but no initial was put for the cancellation of the counter-foil and this goes to show that no F.D.R. was prepared on 4.4.1992. The accused P.D. Sharma has admitted the account opening forms Exts. Ka.3, Ka.4 and Ka.5. Ext. Ka.3 has been prepared on 7.7.1992, Ext. Ka.4 on 30-11-1992 and Ext. Ka.5 on 5.12.1992. In the cross examination this witness has specifically deposed that in the F.D.R. Ext. Ka.2, the account number is written which was opened on 7.7.1992. Bijendra Singh had opened this account and verification has been done

by accused P.D. Sharma. Thus from the statement of this witness it is quite clear that there is no record available with the Bank regarding deposit of amount for preparation of F.D.R. Ext. Ka.2 on 4.4.1992 either cash deposit or deposit by transfer. However, it is proved that the disputed F.D.R. was prepared and issued by accused P.D. Sharma.

20. P.W.3, Sri K.K. Tandon has stated on oath that he had joined as Branch Manager in Nagal Soti Branch of P.N.B. on 13.5.1993 and he remained there for about 13-14 months. Prior to him accused P.D. Sharma was posted there as Manager. He has deposed that the Account No. 1356 was opened on 7.7.1992 and on the same day F.D.R. of Rs. 10,000/- was prepared. On 4.5.1993 a sum of Rs. 73,4413-50 was transferred to account No. 1356 by voucher No.Ext. Ka.12. Further on 4.5.1993 by transfer voucher Ext. Ka.13, a sum of Rs. 4,03,586-50 were transferred in account No. 1356 and these transfer vouchers bear the signature of Sri Kohli Bank Officer. He also stated that on 4.5.1993 F.D.R. of Rs. ten lacs was prepared from account No. 1356. Photo copy of that F.D.R. has been proved by this witness as Ext. Kha.2. He also stated that the counter-foil do not bear signature of any one. This document Ext. Kha.2 shows that on 4.5.1993 F.D.R. Sheet for Rs. ten lacs was prepared in favour of Shiva Traders.

21. P.W.4, H.S. Kohli was the officiating Manager in the Nagal Soti Branch of P.N.B. in the year 1993. This witness has deposed that material Ext. 1 does not contain the voucher relating to F.D.R. Ext. Ka.2. He further stated that Rs. ten lacs were not deposited with the bank on 4.4.1992 for preparing the F.D.R. Ext. Ka.2. He further stated that transfer journal is prepared in the Bank which is maintained in regular course of business. On 4-4-1992 the sum of Rs. ten lacs was not received in the Bank received by transfer and the disputed F.D.R. was also not prepared by transfer of money. He further deposed that on 4.4.1992 accused P.D. Sharma was not posted in Nagal Soti Branch.

22. On the other hand the specific defence case is that the accused P.D. Sharma had prepared the disputed F.D.R. in the month of May 1993, and it has come in the cross examination of P.W.3 Sri K.K. Tandon that the F.D.R. was prepared on 4-5-1993, then how the endorsement dated 27.4.1993 could be made on the back of the F.D.R. Ext. Ka.2.

23. Learned counsel appearing on behalf of accused/appellant P.D. Sharma, has vehemently urged that on 4.4.1992, when the disputed F.D.R. is said to have been prepared from Nagal Soti Branch of P.N.B., the accused P.D. Sharma was not posted there and no question arises for preparing the disputed F.D.R. by the accused P.D. Sharma on that day. He further submitted that the Bank authorities had accepted the disputed F.D.R. as a genuine F.D.R. and that was the reason that the F.D.R. was given honour by the Bank w.e.f. 4.4.1992 to 4.10.95 for which period it was prepared and thereafter also. Learned counsel for the accused P.D. Sharma, thus, urged that no offence of forgery and cheating as well as under Prevention of Corruption Act is made out against the accused P.D. Sharma.

24. Having considered the submission as well as the evidence brought on record, it is quite obvious, that on 4.4.1992 accused P.D.Sharma was not posted at Nagal Soti Branch of P.N.B. and preparation of F.D.R. on 4.4.1992 is not substantiated by evidence on record and there is force in the case of accused put-forth that the F.D.R. was prepared in the month of May 1993 and the entry dated 27-4-1993, noting down therein that the auction has been held on 10-4-1992, is highly doubtful.

25. For the sake of argument made, on behalf of C.B.I. that the F.D.R. was forged and there might not be clerical mistake in noting down the date as well as noting down the month in the F.D.R., it is to noted here that that the Bank authorities have treated the F.D.R. as a genuine F.D.R. There is letter Ext. Ka.15 written by Sri Prabhat Nagar Saket, Dy. Zonal Manager, Zonal Office, Meerut wherein it has been written to Executive Engineer (EE) Paschmi Chetra, Lok Nirman Vibhag, Meerut as under:-

with reference to your letter No. 4089 Niyojan/198. P.Chetra/Court/93 dated 29-7-93. We have to advise that FDR QBD-101229 date 4.4.92 for Rs. 10 Lac maturing on 4.10.95 is valid from 4.4.92 to 4.10.95. We have already informed you vide out letter No. FRD/MBD/MISC/54 dt. 14.7.93 that FDR No. QDB. 101429 for Rs. 10,00,000/- will be honoured by the Bank as and when it is presented for payment.

26. Further the C.B.I. has not investigated the matter in the direction that what pecuniary advantage was obtained by the accused P.D. Sharma in lieu of issuing the F.D.R. in question. The prosecution did not attempt to collect evidence in this regard. Nothing is on record on this point. Therefore, the criminal misconduct by accused/appellant P.D. Sharma is not proved beyond all reasonable doubt. Any-how by issuing the disputed F.D.R. the Bank did not suffer any loss, rather it had accepted the same to be a genuine F.D.R. and it was informed that the same shall be honoured for payment as and when it would be presented. There is no iota of evidence on record by which it could have been proved that any personal interest, direct or indirect, the accused was having in anti-dating the date of F.D.R. Ext. Ka.2, as 4.4.1992 instead of 4-5-1993.

27. The finding of learned trial Court is based on presumptions and assumptions. The trial court has recorded a finding that the disputed F.D.R. Ext. Ka.2 was revalidated by the Bank from 4.4.1992 and by doing so this fact finds support that the F.D.R. was prepared on 4.4.1992 otherwise the Bank would not have revalidated the same from 4.4.1992. This finding is a perverse finding and against the material on record. When the Bank officials produced by prosecution have made a categorical statement that the F.D.R. was not prepared on 4.4.1992 and it was prepared on 4-5-1993 when the amount was deposited in A/c No. 1356 and by revalidating the F.D.R. from 4.4.1992 do not prove this fact that the F.D.R. was prepared on 4.4.1992. This action on the part of Bank does not help the cause of prosecution in any manner.

28. Further the prosecution has failed to prove any motive against the appellant P.D. Sharma to indulge in criminal conspiracy so as to prepare a forged F.D.R. and the possibility of mistake on his part cannot be completely ruled out. Had the Bank suffered any loss by the act of P.D. Sharma, then the Bank would have certainly pleaded the loss suffered by the Bank.

29. The investigation of the case was conducted by P.W.9, Sri Raj Kumar Verma. A bare perusal of his statement shows that the I.O. had done the work of seizure of various documents from the Bank as well as P.W.D. and also took specimen signatures of the accused persons. But there is no such averment in his statement that what evidence he has collected regarding loss suffered by the fraud committed on the Bank. All these facts remained unexplained.

30. Therefore, in above facts and circumstances of the case as well as the evidence on record, I am of the firm view that the learned trial court has committed a manifest error of law holding the accused/appellant P.D. Sharma, guilty under Sections 467 and 468 I.P.C. and U/S 13(2) read with Section 13(1)(d) of Prevention of Corruption Act 1988, and the accused appellant is entitled for acquittal.

31. Now coming to the charges for which the co-accused/appellant Bijendra Singh has been convicted by the trial court, this accused has been convicted for the offences U/S 420 I.P.C. and 471 I.P.C. According to C.B.I. case this accused Bijendra Singh in order to get contract to collect Toll Tax at Cable Stayed Bridge, Haridwar, from P.W.D. Haridwar, cheated the P.W.D. by producing the forged F.D.R. in the office of P.W.D. knowing that the F.D.R. was forged and therefore fraudulently and dishonestly uses the forged F.D.R. as a genuine one.

32. Learned Senior Advocate appearing on behalf of accused/appellant has contended that no offence is made out against the accused/appellant Bijendra Singh. He further contended that the commissioner had raised certain queries which are evident from correspondences between P.W.D. and the office of the Commissioner. Various issues including the issue of construction of a bridge at a short distance from other bridges also cropped up and these correspondences consumed sufficient time. It forced P.W.D. to seek consent from Shiva Traders for fixing a new date for issuance of letter of allotment. The E.E. P.W.D. addressed a letter Ext. Ka-21 in this regard to Shiva Traders and a positive response was submitted by Bijendra Singh by which he agreed for the contemplated change in the date of allotment as alleged in the tender notice, but the prosecution has failed to bring any document on record to prove that the letter of allotment was ever issued to Shiva Traders after fixation of new date.

33. Before dealing with the offences against accused Bijendra Singh, it is to be mentioned here that on the basis of tender no contract work was awarded to Shiva Traders since the P.W.D. failed to bring on record that letter of allotment was ever issued to Shiv Traders after fixation of new date.

34. Further as concluded in the preceding paragraphs of this judgment, the Bank

itself has accepted that the F.D.R. in question to be a genuine F.D.R., therefore, the accused/appellant Bijendra Singh cannot be held guilty of Section 471 I.P.C. The Public Works Department has received the F.D.R. after the date of auction has expired on 10-4-1992. Not only this, the P.W.D. has written letter No. 4089/ Niyojan/198, P. Chetra/Court/93 dt. 29-7-93 to the Bank in respect of the disputed F.D.R. reply of which was given by the Bank vide letter dated 4-8-93 Ext. Ka.15, that the F.D.R. will be honoured as and when it is presented for payment.

35. In order to prove the offences against this accused Bijendra Singh the C.B.I. has produced P.W.5, Sri D.S. Sharma, who was posted as Work Superintendent on 20-9-1993 at P.W.D. Haridwar. He is a witness of seizure memo Ext. Ka.14.

36. Another witness P.W.6, Sri Daya Chand Jain remained posted as Executive Engineer, in P.W.D. Haridwar during the period June 90 to June 92. This witness has stated about the procedure of calling tenders for auction of contracts. He has further stated on oath that at the time of depositing the tender form the contractor had to submit income tax clearance certificate, status certificate, character certificate, affidavit and earnest money and who complete the formalities his name is added in eligibility list and these persons can participate in the auction proceeding.

37. The assertion of P.W.D. is that the accused Bijendra Singh had completed the formalities and he participated in the auction proceeding.

38. P.W.7, Sahel Singh was posted as Divisional Accountant in April 1992 in P.W.D. Haridwar. He has made a statement that in April 1992 Sri Daya Chand was posted in P.W.D. Haridwar as Work Superintendent. This witness has stated that on 4-4-1992 the security deposit of Shiva Traders was before him and all the five participants were permitted to take part in the auction. Departmental Internal Security Register of P.W.D. was placed before this witness. He has deposed that in official course of business verification takes place in the department. In this register description of security is noted. At serial No.2204 on page 137 of this register description of security of M/s Shiva Traders is noted. He has further deposed that in April 1992 Aman Singh was posted as Cashier in the department. He has stated that the F.D.R. Ext. Ka.2 was presented before him along with other documents and on the basis of these documents he had prepared chart Ext. Ka.19. In cross-examination this witness has admitted this fact that in the Security Register at page 131 serial Nos. 2182 to 2185, all the security deposits relate to year 1993 and further the security deposit entered at page 133 all the security deposits relate to year 1993 except at serial No. 2190. This witness has showed his ignorance about the entry made by the Cashier about the security deposit of Shiva Traders. He has stated that there is no initial or writing of this witness on F.D.R. Ext. Ka.2. I have perused the Security Register. At page No. 137, at serial No. 2204 Security deposit of M/S Shiva Traders is noted which pertains to F.D.R. dated 4.4.1992. Prior to this entry and afterwards also there are so many entries of 1993 and no explanation has come how this entry of 1992

has been made in the middle. Further the page No. 137 is torn and is taken out from the register and it has been pinned up with page No. 135. Again the entries on back side of this page at page serial No. 136 are blank. This stand taken by P.W.D. is refuted by the Bank''s version, when there is specific case of the Bank that on 4-4-1992 no F.D.R. of Rs. ten lacs was prepared and the accused P.D. Sharma was not posted in that Branch on 4.4.1992. There is also no record with the Bank for preparing the F.D.R. on 4.4.1992 except a counter-foil which has been shown cancelled but no initial is there of either Bank Manager or Cashier and it is the case of Bank witnesses that the F.D.R. was actually prepared on 4-5-1993 from account No. 1356. In the above premise the stand of the P.W.D. that the F.D.R. was filed on 4.4.1992 seems to be highly doubtful.

39. However, for the sake of argument if it is to be taken true that the F.D.R. in question was deposited with P.W.D. on 4.4.1992, even then no offence of cheating and dishonest intention of the accused Bijendra Singh is proved. As held earlier the Bank''s authorities have narrated that on 4.4.1992, no F.D.R. was prepared and the same was prepared on 4.5.1993 from the account of No. 1356 of Bijendra Singh and the amount was available in the account of Bijendra Singh and accused P.D. Sharma has jointed the Branch after 4.4.1992. Thus no dishonest intention as well as cheating on the part of accused Bijendra Singh has been proved. If any irregularities are there in the record of P.W.D. that seems to be committed by the officials of P.W.D. It is not the case of C.B.I. that accused Bijendra Singh and the officials of P.W.D. were in collision with each other in committing the irregularities, rather the case of C.B.I. is that the accused P.D. Sharma and Bijendra Singh had cheated the Bank and the P.W.D.

40. The accused/appellant Bijendra Singh is also entitled for acquittal.

Before parting with this judgment, it is relevant to mention here that in the F.I.R. the C.B.I. had made allegations of cheating the P.N.B. by the accused persons to the tune of Rs. 25,74,000/- and besides issuance of F.D.R. of Rs. 10,000/- prepared forged F.D.R. of Rs. 10,00,000/- from account No. 1356 of accused Bijendra Singh, and accused P.D. Sharma, also dishonestly and fraudulently issued two forged F.D.R. Nos. QDB-1013365 and 101366 for Rs. 8 lacs each instead of Rs. 8,000/- each and both these F.D.Rs. were utilized for security deposit in the auction of contract of Toll Tax Collection at Chandi Ghat Bridge Haridwar. But the C.B.I. did investigate the case in respect of those two F.D.Rs. of Rs. 8 lacs each and it seems that charge was not established pertaining to these F.D.Rs. of Rs. 8 lacs each. However, in the charge sheet it has not been mentioned what happened to these F.D.Rs. of Rs. 8 lacs each, whether they were forged or not. The C.B.I. only filed charge sheet with respect to disputed F.D.R. Ext. Ka.2, which was prepared on 4.5.1993 from the account No. 1356 of accused Bijendra Singh, and which has been proved to be a genuine F.D.R. by the Bank and above fact also weakens the case of the C.B.I. I find that the C.B.I. has not come with clean hands and there are material irregularities in the investigation of the case, the benefit of which also would certainly go in favour of the accused/appellants.

41. In view of foregoing discussions, I find that the learned trial court has committed a manifest error of law in convicting the accused/appellants. Both the accused/appellants are entitled for acquittal.

42. Both the appeals are allowed. The impugned judgment and order passed by trial court is set aside.

43. Accused/appellant P.D. Sharma, is acquitted of the charges U/Ss 467, 468 I.P.C. and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act.

44. Accused/appellant Bijendra Singh is acquitted of the charges U/Ss 420 and 471 I.P.C.

45. Both the accused/ appellants are on bail. Their bail bonds are cancelled and sureties discharge. They need not surrender. Let a copy of this judgment be placed in the file of Criminal Appeal No. 274/2002.