

(2014) 12 PAT CK 0077

In the Patna High Court

Case No : Criminal Appeal (SJ) No.181 of 1995 (Arising Out of PS.Case No. null Year- null Thana -null District-Bhagalpur)

Shri Nagendra Prasad Lal

APPELLANT

Vs

Union of India (C.B.I.)

RESPONDENT

Date of Decision : 24-12-2014

Acts Referred:

Citation : (2015) 1 BBCJ 275

Hon'ble Judges : Gopal Prasad, J.

Bench : Single Bench

Advocate : M/s Vijay Kumar Pandey, Rajesh Kumar & Arvind Kumar Verma, Advocates, for the Appellant in CR. APP (SJ) No. 181 of 1995; Mr. Purusotam Prasad, Advocate, for the Appellant in CR. APP (SJ) No. 188 of 1995; Mr. Bipin Kumar Sinha, SC(Vigilance) (in both Appeals), for the Respondent in CR. APP (SJ) No. 188 of 1995

Final Decision : Dismissed

Judgement

Gopal Prasad, J. (Oral) - Both these appeals have been and are being disposed off by this common judgment.

2. It is pertinent to mention that both the appellants died during the pendency of appeal. In Criminal Appeal (S.J.) No. 181 of 1995 a petition bearing I.A. No. 2062 of 2010 filed by Surmila Devi, wife of late Nagendra Prasad Lal and Arun Kumar Sinha, son of late Nagendra Prasad Lal to allow them to continue Criminal Appeal (S.J.) No. 181 of 1995. In Criminal Appeal (S.J.) No. 188 of 1995, I.A. No. 316 of 2013 has been filed by (1) Sheoji Ram, son of deceased appellant Sone Lal Ram, (2) Manoj Ram, son of deceased appellant Sone Lal Ram,, (3) Ram Ratan Ram, son of deceased appellant Sone Lal Ram, (4) Most. Puja Devi, daughter of deceased appellant Sone Lal Ram, (5) Most. Sekha Devi, daughter of deceased appellant Sone Lal Ram, (6) Maya Devi, wife of Uttam Ram, daughter of deceased appellant Sone Lal Ram, (7) Asha Devi, wife of Gauri Shanker, daughter of deceased appellant Sone Lal Ram, (8) Nittu Devi, wife of Rajesh Das,

daughter of deceased appellant Sone Lal Ram and (9) Lakshmi Devi, wife of Sukh Deo Ram, daughter of deceased appellant Sone Lal Ram to grant them leave to continue the Criminal Appeal (S.J.) No. 188 of 1995. They filed the interlocutory application to grant leave to continue the Appeals under Section 394(2) of the Civil Procedure Code as they are highly prejudice as their right to family pension and other pensioners benefit is effected. Hence, permission was accorded to them to continue the Appeals by the order, dated 23.11.2013, passed in Criminal Appeal (S.J.) No. 181 of 1995 and the order, dated 14.05.2013, passed in Criminal Appeal (S.J.) No. 188 of 1995.

3. The appellants have been convicted under Sections 120B and 409 of the Penal Code and sentenced to undergo rigorous imprisonment for two years and to pay a fine of rupees five thousand each and in default of payment of fine to undergo rigorous imprisonment for six months each for offence under Section 120B of the Penal Code read with Section 409 of the Penal Code and Section 1, 2 and 5(2)(c) (3) of the Prevention of Corruption Act corresponding to Section 13(2) read with Section 13(i)(c) and (d) of the Prevention of Corruption Act, 1988, and has, further, was sentenced to undergo rigorous imprisonment for two years for offence under Section 414/34 of the Penal Code and, further, convicted Abhimanyu Prasad Sinha and Nagendra Prasad Lal for offence under Sections 409 and 477(A) of the Penal Code and sentenced to undergo rigorous imprisonment for two years each and, further, to pay a fine of rupees five thousand each and in default to undergo rigorous imprisonment for six months each though it has been ordered that all the sentences shall run concurrently.

4. The prosecution case, as alleged, is that the Food Storage Depot, Food Corporation of India, Bhagalpur, had six units. The accused, Abhimanyu Prasad Sinha, was the Depot In-Charge of six units of Food Storage Depot, Food Corporation of India, Bhagalpur. Out of six units, one unit named and styled as Panna Lal Mill Godown of Food Corporation of India where accused N.P. Singh was A.G. 2 In-Charge of the said unit during the period 1977-1978. Abhimanyu Prasad Sinha and Nagendra Prasad Lal were jointly responsible for the maintenance of record and submission of account and return of the said unit for the period 1977-1978. The concern of the business of the Food Storage Depot with consignment of wheat, received from different places, i.e., Punjab & Haryana, U.P. and other places, were unloaded from railway wagon by Food Corporation of India staff. The delivery of consignment was taken and the same was dispatched to Food Storage Depot, including Panna Lal Mill Godown of Food Corporation of India, Bhagalpur, on truck.

5. On receipt of the truck in the Depot, ten per cent of bags containing 100 Kg of wheat required to be weighed and if the wheat found to be less than 500 gms, then, the cent per cent bags, received, were required to weigh and to be recorded in the wheat check memo and other relevant records. However, the prosecution case that Abhimanyu Prasad Sinha and Nagendra Prasad Lal dishonestly and fraudulently used to cut short weight of the wheat bags,

received, recorded in the check memo even if the bags contain wheat of 100 Kg, received, in bag in the Godown. However, the rule provided that if ten per cent of gunny bags received contain less than 500 gms of the wheat per bag, then, the entire bags, received, were required to be weighed, but, the accused persons while recording the short weight did not use to weight the entire wheat, received, as per the rules and showing the short wheat or wheat loss, they used to misappropriate the excess by showing as wheat loss by falsely recording the less weight and they used to misappropriate the wheat by showing he bags contained less wheat than actually it had recorded.

6. The, further, case is that a newly appointed Godown Assistant, Grade III, gave a joint petition to the Regional Manager, Food Corporation of India, Patna, about the mischief and conspiracy of Abhimanyu Prasad Sinha and Nagendra Prasad Lal and their conspiracy with Sone Lal Ram in misappropriation of the grains and false recording of wheat in weight check memo. It was alleged that on 11.04.1978, wheat were loaded on five trucks provided by a transporter contractor, Keshav Mohan Shukla. About 115 quintals of wheat were loaded on truck bearing registration no. BRJ 3811, 140 quintals of wheat on truck bearing registration no. BRI 3669, 120 quintals wheat on truck bearing registration no. BRJ 2152, quintals Kg wheat on trucks, bearing registration no. BRJ 3051 and 140 quintals wheat on truck bearing registration no. BRJ 2485 for the destination to Barahat Godown, but, only two trucks, bearing registrations no. BRJ 3811 and BRI 3669 reached to it's destination with 255 quintals (115 + 140 quintals) of wheat where as 390 quintals of wheat on three trucks, bearing registrations no. BRJ 2152, BRJ 3051 and BRJ 2485 did not reach to it's destination and dishonestly misappropriated and disposed off in conspiracy with each other. One Vijendra Kumar was newly recruited A.G. 3, who was to perform his duty at the gate of Panna Mill Godown, was required to made entry in the gate register in the evening, when the Watch Man give the gate pass to him. The duty of Sone Lal Ram, the Watch Man at the Food Storage Depot, Panna Lal Mill Godown was to check the vehicle passes through the gate and to count the number of wheat bags loaded and to compare them with number recorded in the gate pass and counter sign the gate pass in token to check the truck or vehicle and to make available the gate pass collected by him during the duty hours to the Gate Pass Clerk. However, it is alleged that on 11.04.1978 out of the five trucks, except truck bearing registration no. BRJ 2485 passed through gate during duty of Sone Lal Ram in collusion with Abhimanyu Prasad Sinha and Nagendra Prasad Lal, but, he did not satisfy about passing of two gate passes to the Gate Pass Clerk to enter in the register. The gate pass of the trucks were demanded by Gate Pass Clerk in the evening for making entry in the register, Sone Lal Ram, Watch Man, told that the gate passes were kept in his house and when on the next day Nagendra Prasad Lal again asked to hand over the five gate passes, in reply Sone Lal Ram told that the gate passes were handed over to Nagendra Prasad Lal and when a demand was made from Nagendra Prasad Lal to hand over the gate pass, he told to make entry of only two gate passes in the register. It is, further,

alleged that five trucks were loaded with wheat bags, but, "M" form was issued for only for 255 bags of wheat loaded in two trucks and he did not enter even a single gate pass in the register. The matter was reported to the Managing Director by Vejendra Kumar and joint enquiry was made by D.N. Singh, Deputy Manager, Vigilance and Security, and R.M. Saha, Deputy Manager Accounts, and submitted the enquiry report on 20.07.1978. The physical verification of the stock of Panna Mill stock was also started from 21.04.1978, on the basis of the order of the Regional Manager, Food Corporation of India, Patna, but, Nagendra Prasad Lal abstain himself from the Depot with effect from 1979 and did not cooperate in conducting the enquiry and, ultimately, verification report submitted, which reveals that 300 quintals and odd were found in excess of the balance shown in the stock ledger. The modus operandi of the accused persons was to record short wheat than the actual weight at the time of receipt of the wheat bags though the grain bags received as per the RR and delivery book revealed that the accused, Abhimanyu Prasad Sinha and Nagendra Prasad Lal recorded shortage and had shown shortage of 1987.94 quintals in the godown record, in between December, 1977, to April, 1978, but, on physical verification the available stock was or wheat found excess by 300 quintals approximately, hence, it reveals that there was shortage of 1687 quintals wheat having been disposed off by the accused persons in black market and misappropriate the sale proceed. The, further, case that three trucks of wheat for destination to Barahat Godown taken out from Panna Mill Godown in presence of Sone Lal Ram, but, Ramlal after collecting the gate pass did not hand it over to Gate Clerk, but, handed over the same to accused Nagendra Prasad Lal when the gate pass was required to be given to Vijendra Kumar for making entry in the main gate register.

7. The, further, case of the prosecution that on the receipt of bag, in the godown, the bag required to be weighed and if the weight of the gram is bag found less by more than 500 grams, then, entire grains required to be weighed, but, contrary to direction was used to be recorded to the tune of more than 500 gms per bag, but, the same was never transmitted nor the entire grains, received, were weighed to mark the total weight in contradiction to the rules as the loss in weight has been shown to the tune of four per cent and, subsequently, on complaint the enquiry was made and the report was submitted finding that the modus operandi was to show shortage per bag more than 500 gms whereas stock verification shows 300 quintals of wheat in excess and shortage shown to be 1987 quintals and odd and the incident, dated 11.04.1978, was the mode of passing the excess is illustrative of the manner in which the accused persons used to dispose off wheat by forging and falsify the godown paper, hence, on the basis of written report of the Regional Manager, Food Corporation of India, Patna, it was investigated and after completion of the investigation and on receipt of the sanction for prosecution, charge sheet submitted on 08.07.1980 and trial commenced after cognizance.

8. The defence of the accused persons was total denial of the occurrence and false implication. During the trial 83 witnesses were examined and several

documents were brought on record and the trial Court taking into consideration the evidence, both, oral and documentary, convicted the appellants, as mentioned above. The same has been assailed. However, during the hearing of the appeal none appeared on behalf of the appellants, Nagendra Prasad Lal and Abhimanyu Prasad Sinha. During the pendency of the appeal all the three appellants have died, but, the case proceeded in view of the provision contained in Section 394 of the Penal Code that the sentence of fine against an appellant does not abate and since appellant has been sentenced to fine of Rs.10,000/-, hence, sentence to that effect does not abate and, further, a petition has also been filed on behalf of the heirs of the appellants, Nagendra Prasad Lal. Abhimanyu Prasad Sinha and Sone Lal Ram, that they may be permitted to contest in view of the fact that in case of acquittal they will be liable to even entitled family pension. The point raised in the defence that the excess quantity of stock of wheat to the tune of 300-19-500 quintals and odd is mentioned as storage gain, which is not the human handy work and each bag contain much less than 100 Kg may be in between 96 to 98 Kg as claimed by the prosecution and the dispatching station representative of the Food Storage Depot and the RR prepared by staff is gross weight and not under weight and the weight of the gunny bag may have also been included as well as the fact that most of the wheat bags were damaged and the consignment of the wheat, received, was not weighed and, further, a plea has been taken that the wheat absorbs moistures in rainy season is also cause for excess weight.

9. The learned counsel for the appellant, Sone Lal Ram, has stated that so weight gain and excess weight is concerned he is not responsible for weight gain and there is no direct evidence of conspiracy having been established that Sone Lal Ram was in agreement with Abhimanyu Prasad Sinha and Nagendra Prasad Lal and unless there is legal, reasonable and trust worthy evidence of agreement of Sonelal Ram with Abhimanyu Prasad Sinha and Nagenera Prasad Lal established, it is established he can not be fastened with liability of conspiracy and, further, the only role of the Watch Man was to count the bags, loaded on the truck and it was the Gate Pass Clerk, who is responsible for passing of truck, hence, it is submitted that prosecution has not been able to prove the charges.

10. The learned counsel for the State, however, contends that the prosecution has been able to prove the charges. There is clear evidence that there is shortage of grain recorded in RR and weight check memo and 300 and odd quintals of wheat found in excess and on 11.04.1978 five trucks entered in the premises of Panna Mill Godown and five trucks were loaded with wheat bags to the tune of 645 quintals, but, the gate pass of only two trucks, bearing registration no. BRJ 3811 and BRI 3669 shown having 115 and 140 bags reached it's destination at Barahat Godown and the three trucks loaded with 120, 130 and 140 bags of wheat respectively though passed through the godown, but, did not reach to it's destination to Barahat Godown, it has come that three trucks loaded with wheat passed through the gate and the same was checked up by Sone Lal Ram, but, the gate pass was not handed over to Gate Pass Clerk to be

recorded in register and it was disclosed that at first hand the same has been kept at the house of Sone Lal Ram and, thereafter, it was reported that the same was handed over to Nagendra Prasad Lal and finally revealed that the truck passed. The evidence of two drivers of the trucks that the same was loaded for it's destination to Barahat Godown, but, they did not reach to Barahat Godown, but was sold out in black market. Further, the gate pass memo and the wheat check memo issued with regard to these trucks, it is apparent that with regard to two trucks the register as wheat check memo and gate pass no. 221 whereas the gate pass memo of the three trucks was shown to be 247 and wheat check memo of 440 indicates that two sets of registers used.

11. The matter was reported by P.W. 14, Vijendra Kumar, on which the enquiry was made and it reveals that the modus operandi of the appellants was to record short weight, the short weight recorded to tune of four per cent less from a bag, however, the law and instruction issued were not followed. The law requires that after weighing ten per cent of the bags if shortage found to be more than 500 gms, less than the entire goods was required to be weighed, however, this instruction was not followed rather violated, i.e., when the loss of the weight has been shown to be four per cent, the entire material was not weighed, further, the shortage of four per cent has also required to be intimated, but, not intimated to the place from where the grains were dispatched, i.e., the place from where wheat started for it's destination to Bhagalpur and the place where it has been received, as apparent from RR, it has not been shown any shortage nor it was shown that the bags were in damage stage rather it shows that bags were intact, hence, any loss of weight recorded by Nagendra Prasad Lal and Abhimanyu Prasad Sinha is against the norms and, further, when the record was checked up and verification made about 300 and odd quintals were found in excess, more over, the drivers of the trucks, who took the trucks for it's destination has come to prove that the wheat was taken out from the Depot and was sold in market, hence, on the basis of these evidences it is apparent that the short weight was recorded in the records without following the rules under the ages of Nagendra Prasad Lal and the same was verified by Abhimanyu Prasad Sinha and, more over, the fact as per the evidence that on 11.04.1978 five trucks loaded with wheat bags went out, but, gate pass was not handed over to the Gate Pass Clerk and the same having been issued from the different wheat checking register or dispatch register and the same, itself, indicates that the three accused persons were in collusion and in agreement to misappropriate the wheat, hence, it is submitted that the prosecution has been able to prove the charge.

12. Hence, taking into consideration the respective submissions, the question for consideration whether the prosecution has been able to prove the charges, the appeal requires consideration.

13. The prosecution case that Abhimanyu Prasad Sinha and Nagendra Prasad Lal, in conspiracy with Sone Lal Ram, Watch Man, Krishna Mohan Shukla, Transport Contractor, dishonestly and fraudulently misappropriated the wheat by selling the

same in breach of trust and converted to their own use, the wheat belonging to the Food Corporation of India by endorsing shortage, forged and fabricated the record. The modus operandi that the wheat grain, received from various places, such as, Karnal, Lonabad, Abohar, Malout Hatale, Aligarh, Sangroor, Jagraon, Kotakpura and Alin and dispatched in the States of Punjab, Haryana and Uttar Pradesh. The consignment used to have been dispatched by the Goods Clerk or Assistant with their dispatch register and forwarding note, no complaint of shortage dealing of consignment having been received from the Bhagalpur Railway in proper sound condition and the consignment record reflected in delivery book shows neither any shortage nor any pilferage. The record register inform forwarding notes show that the wheat were booked and received in sound condition and after receipt of the goods at the railway head in proper and sound condition used to be shifted to the godown of Panna Lal Mill Godown of the Food Corporation of India where Abhimanyu Prasad Sinha and Nagendra Prasad Lal were jointly responsible for maintenance of record and submission of the account and return of the said unit for the period from 1977 to 1978. The consignment of the wheat sent from the various places received and on railway head, Bhagalpur, by staff of the Food Corporation of India who used to take the consignment and dispatch to the Panna Lal Mill Godown, Bhagalpur. According to the Food Corporation of India Manual if there is excess or less than 500 gms in the food grain bags 10 per cent of the consignment was to be weighed, but, if the variation in loss of weight were more than 500 gms then cent per cent weighed was to be made. Further, the shortage of the food grains was to be conveyed to the dispatching station and the higher officer of the department also required to be intimated by the depot.

14. However, modus operandi of the appellants that on receipt of the truck to Panna Lal Mill Godown, Abhimanyu Prasad Sinha and Nagendra Prasad Lal dishonestly and fraudulently used to record short weight of the wheat bags fill the check memo even if the bags received contain weight of 100 kg in wheat check memo and the accused persons while recording short weight neither used to weight the entire wheat, received, nor used to report the higher officer rather they used to misappropriate the excess wheat by showing short weight, i.e., the weight loss by falsely recording the short weight and misappropriate the wheat by showing the bags contain less wheat then found violating the rule, i.e., the short weight is found more then 500 gms then entire bag was required to be cent per cent weighing and, further, violating the rule without intimating the higher officer. They do not used to take the actual weight of the consignment while recording shortage. The, further, case is that on 11.04.1978, five trucks of wheat, provided by the transport contractor, Krishna Mohan Shukla, were loaded about 115 quintals of wheat on truck bearing registration no. BRJ 3811, 140 quintals wheat on truck bearing registration no. BRI 3669, 120 quintals of wheat on truck bearing registration no. BRJ 2152, 130 quintals of wheat on truck bearing registration no. BRJ 3051 and 140 quintals of wheat on truck bearing registration no. BRJ 2485 for destination of Barahat Godown, but, only two trucks

bearing registrations no. BRJ 3811 and BRI 3669 reached to it's destination with 255 quintals of wheat whereas 390 quintals of wheat loaded on three trucks bearing registrations no. BRJ 2152, BRJ 3051 and BRJ 2485, did not reach to it's destination and dishonestly misappropriated and disposed off in conspiracy with each other. The, further, case is that the Watch Man used to pass the vehicle from the Godown after taking the gate pass and counting and verifying the gunny bags loaded in the trucks and, thereafter, the gate pass, received, handed over to the Gate Clerk for recording in the register. P.W. 41, Vijendra Kumar, newly recruit, was assigned the job to make entry in the register after passing of the trucks though "return form" maintained by the In-Charge Nagendra Prasad Lal and "return form" reflects that two trucks bearing registrations no. BRJ 3811 and BRI 3669 with 250 bags of wheat loaded thereon were carried out from the Godown. The log book maintained by Nagendra Prasad Lal and the Watch Man also used to put signature. The accused, Nagendra Prasad Lal, gave wheat check memo no. 448 to P.W. 41, Vijendra Kumar, and when P.W. 41 asked for release order, then, accused, Nagendra Prasad Lal, said that he would himself fill up the release order and when the delivery of another truck bearing registration no. BRJ 2485, loaded with 130 bags of wheat for which wheat check memo was prepared by P.W. 41 and handed over the same to Nagendra Prasad Lal and, thereafter, again, two trucks were also loaded with wheat bags in presence of Kishundeo Singh, P.W. 53, and though the four trucks of wheat were released from the Godown by 06.00 p.m. P.W. 41 demanded the gate pass of the four trucks, then, it was disclosed that he would give him the same in the next morning and Kishundeo Singh gave him only gate pass (exhibit 16) which was written and signed by Nagendra Prasad Lal. At the back of said gate pass there was signature of the consignee. P.W. 41 when asked the gate pass of four trucks from Nagendra Prasad Lal, then, Nagendra Prasad Lal said to make entry regarding two trucks only. Nagendra Prasad Lal also asked for the gate pass provided by Kishundeo Singh (exhibit 16), but, he did not hand over to him and then, P.W. 41 reported the matter to the Deputy Regional Manager and the District Manager of the Food Corporation of India and handed over the gate pass provided by Kishundeo Singh (exhibit 16) and he also did not make entry in the gate register with regard to four trucks for which the gate pass was not provided and, thereafter, instruction was made, as per the direction of the Regional Manager, and physical verification was started, but, the appellants did not take participation and proceeded on leave and 300.19.500 quintals of wheat found in excess in the stock and it was found that such excess quantity found at the time of physical verification itself indicating about the serious offence for this quantity unless the book of account was manipulated. It was also found that there was total shortage of 1987 quintals of wheat and if the excess is detected, then, still the shortage is to the tune of 1687 quintals. It was also found that there is conspiracy that dishonest and fraudulent disposal of the wheat has been done clandestinely as two sets of gate pass was being used by the appellants. The gate pass no. 727 and wheat check book memo no. 221 was in use and the gate pass numbers were 72623 and 72627 were issued in respect of truck, bearing registrations no. BRJ 3811

and BRI 3669, but, the wheat loaded on the other three trucks were misappropriate by selling the same in black market and for which another gate pass check book no. 247 and another wheat check book memo no. 448 issued and only one gate pass was issued for three trucks bearing no. 24626 (exhibit 16), which has been written and signed by accused, Nagendra Prasad Lal, but, the gate pass check memo no. 247 and wheat check memo no. 448 was not produced by the accused and exhibit 16, the gate pass, issued by another set of gate pass book with signature of Sone Lal Ram indicates their implication and being in agreement with Nagendra Prasad Lal and Abhimanyu Prasad Sinha.

15. However, on the report of P.W. 41, Vijendra Kumar, P.W. 58 D.N. Sinha, the Deputy Manager, Vigilance, Food Corporation of India and the Deputy Manager, Accounts, made inventory indicates that two trucks of wheat bags dispatched for which there is account, but, three loaded trucks of wheat were not traced and on verification of the stock, 300 quintals and odd were found in excess and the short weight recorded to the tune of 1900 quintals and odd indicate loss of about 1600 quintals and odd wheat.

16. The trial Court, taking into consideration the evidence of the witnesses, both, oral and documentary, found that the appellants were in conspiracy and in agreement with each other.

17. The learned counsel for the appellant, Nagendra Prasad Lal, did not appear to mark any submission in the Court. However, he has filed a written argument raising some of the points that the shortage of 1687-74500 quintals of wheat is not by actual weighing, but, based on exhibits 12 and 12/1 and the original record register has not been produced and has been stated that the shortage may be the outcome of the transit loss and while showing the excess of 300 quintals and odd wheat has wrongly been calculated as average weight and illegal disposal of the wheat has not been established and there is no shortage of wheat. It has, further, been contended that the excess in wheat may be due to the fact that the wheat absorbs moisture.

18. The learned counsel for the appellant, Sone Lal Ram, however, contends that nothing has been found against him. Neither there is anything to suggest that he was beneficiary nor has been shown to be in conspiracy of any agreement.

19. Taking into consideration the respective submissions and the fact that out of four accused persons, Krishna Mohan Shukla, transport contractor, died during the appeal, hence, his case abated. However, the appeal has been preferred by Abhimanyu Prasad Sinha, Nagendra Prasad Lal and Sone Lal Ram. The criminal appeal of Abhimanyu Prasad Sinha abated by the order of this Court in view his death. The criminal appeals with regard to Nagendra Prasad Lal and Sone Lal Ram are concerned, both of them died during the pendency of the appeal. However, a petition was filed by the heirs of Nagendra Prasad Lal and Sone Lal Ram that they may be allowed to contest as the matter concerned with their rights of consideration of their family pension as the appellants were Government

servants, hence, the leave was allowed.

20. However, initially the first information report was lodged against Abhimanyu Prasad Sinha and Nagendra Prasad Lal, but, subsequently, after investigation, charge sheet was submitted against four accused persons out of which Keshav Mohan Shukla having died in the year 1994, during the pendency of the trial, hence, appeal against him abates. After submission of the charge sheet, cognizance taken and the case proceeded with charge framed and there is evidence to suggest that the wheat were dispatched from various stations of Uttar Pradesh, Haryana and Punjab for destination to Bhagalpur Food Corporation of India and the wheat bags were received by Railway Good Cell, Bhagalpur, and the same was received at Bhagalpur. P.Ws. 5, 6, 7, 8, 9, 10, 12, 13, 14, 24, 37 and 38 have deposed that dispatching of the consignment of the wheat proved the dispatch register forwarding notes that the wheat bags were lodged intact in sound pack having wheat check memo, RR and the consignment relating to RR and, further, P.Ws, 39 and 40 proved that the wheat bag received in proper and sound condition at the Railway Cell, Bhagalpur, and the same was sent to Panna Mill Godown. P.Ws. 57 and 62 have proved that the consignment received mentioned in the delivery book and no shortage or pilferage was found in any note or remark. P.W. 68 is the HT contractor, which has received the food grains at the Bhagalpur Railway Station. P.W. 48 in his evidence proved that according to the Food Corporation of India Manual if there is excess or less than 500 gms from a 100 Kg bag, then, 10 per cent bags of the consignment was to be weighed, if the variation is more than 500 gms per bag then cent per cent weighing of the consignment and, further, any shortage found of the food grain to that extent more than 500 gms per bag then dispatched station and the higher officer of the Department was to be intimated. However, the consignment received at the Bhagalpur Panna Mill Godown and it has been found that the appellants, Abhimanyu Prasad Sinha and Nagendra Prasad Lal showed the less weight than the actual weight and while recording the short weight to the extent of four per cent, i.e., much more than 500 gms per bag, but, they neither adopted the method of cent per cent weighing the wheat from the gunny bag nor they reported about the shortage weight to the dispatched station or the higher officials. P.W. 48 stated that he did not come across any note relating to intimation of the shortage in the gunny bag, received, nor there is any intimation to the higher officials even if there was shortage for more than 500 grams per bag, which has wrongly been recorded and in this connection the evidence of P.W. 54, who has stated in his evidence that he did not take the actual weight of the consignment and though recorded the less weight in proper weight check memo in accordance with the direction of Abhimanyu Prasad Sinha. P.W. 41 has stated that he recorded the quantity at the 19 Kg per bag without actual weight being taken, hence, creating a sample by showing the shortage on receipt of the gunny bag having been taken and without intimation to the dispatched station or to the higher official.

21. There is, further, evidence that on 11.04.1978 five trucks entered in Panna

Mill godown on which 645 bags of wheat were loaded for transportation for Barahat Godown and those trucks were furnished by Keshav Mohan Shukla, the transport contractor. On the truck provided 140 bags of wheat were lodged on truck bearing registration no. BRJ 3811, 115 bags of wheat were lodged on truck bearing registration no. BRI 3669, 120 bags of wheat were lodged on truck bearing registration no. BRJ 2152, 140 bags of wheat were lodged on truck bearing registration no. BRJ 3051 and 145 bags of wheat were lodged on truck bearing registration no. BRJ 2485 for its destination to Barahat Godown out of which only 255 bags loaded on truck bearing registrations no. BRJ 3811 and BRI 3669, but, remaining 390 bags of wheat loaded on trucks bearing registration no. BRJ 2152, BRJ 3051 and BRJ 2485 did not reach to its destination at Barahat Godown and were misappropriated though there is evidence that five trucks were passed through Panna Godown Mill and it was the duty of the Watch Man to check the gate pass and the four trucks were verified and passed by Sone Lal Ram, but, he did not hand over the gate pass to the Gate Clerk, Vijendra Kumar, P.W. 41. However, one of the gate passes was handed over to P.W. 41 by P.W. 53 Kishundeo Singh. The said gate pass bearing no. 24616, dated 11.04.1978, issued from book no. 247, but, the gate pass issued with regard to the other four trucks were not handed over by Sone Lal Ram and on demand it was stated that he has kept it at his house and on the next day in the morning when it was demanded for endorsement in the gate register, it was disclosed that it was handed over to Nagendra Prasad Lal and Nagendra Prasad Lal asked Vijendra Kumar to take on record only two trucks whereas five trucks have been passed with wheat loaded on it, as mentioned above, and so the matter reported and it was revealed that two sets of gate pass is being issued and though the "M" form found in respect of two trucks which was received at Barahat Godown with 255 bags of wheat. On the allegation the enquiry was made and on enquiry 300 quintals of wheat was found in excess and, further, it was found that about 1987 quintals of wheat was recorded as shortage and so defalcation assessed as 1600 quintals and odd.

22. The learned counsel for the appellants, however, submitted that the shortage of 1600 quintals and odd has not been found on actual weighing. It is true that the actual weighing shows that the weight found in the godown is excess of 300 quintals and the finding of the that 300 quintals and odd of weight, itself, is serious and required to be explained. However, the explanation that the weight may have been excess, might be due to moistening. However, taking into consideration the fact that the occurrence took place in April and the said verification report is of May and June, which, itself, indicates that it was not a rainy season so that the weight may increase to such an extent. More over, the modus operandi found for recording short weight and, further, the requirement of Food Corporation of India Manual having not been adhered to as if the weight found to the extent of 500 gms per bag on weighing, ten per cent article and when the weight was found less in more than 500 gms then cent per cent weighing was required, but, as per the agreement, no weighing made, the

further requirement that the matter should be reported to the dispatched station and to the senior officials has also not been adhered to, itself, indicates lapses on the part of Abhimanyu Prasad Sinha and Nagendra Prasad Lal. More over, the subsequent conduct that at the time of enquiry they remained absent and did not take participation.

23. The point having been taken that at the dispatched station as well as at the Receiving Rail Head, Bhagalpur, the articles not actually and factually weighed due provision of said condition missed that articles were as it is only approximate weight was taken, but, even accepting the argument if the weight at the Panna Godown Mill, after receipt of the bag, if found less than 500 gms per bag or even less than more than 500 gms per bag, then, non-adherence to rule and mentioning short weight without weighing the bag intimation about shortage to higher officer and the place at which the consignment loaded is serious lapse and, further, the fact that 300 quintals of grains was found to be in excess is again a condition and confirmation of the allegation that the appellants, Nagendra Prasad Lal and Abhimanyu Prasad Sinha were in habit to mention short weight. This fact, taking into consideration that 390 bags of weight were taken on three trucks without recording and indication that the Watch Man having received the gate pass after due verification having not handed over the gate pass to Gate Pass Clerk, P.W. 41, Vijendra Kumar, and making an excuse that he has kept it at his house and, thereafter, on the next day disclosing that the same has been given to Nagendra Prasad Lal, itself, indicates his involvement including agreement in conspiracy. More over, further fact that the Driver and the Cleaner (khalasi) of the said trucks which took the wheat have deposed that they sold the article in black market, itself, clinch the issue that the wheat was not sent and were taken for the monetary benefit in conspiracy having different role attributed and taking all these circumstances factum and chain to suggest that the appellant, Sone Lal Ram, and the accused persons were in collusion and in conspiracy having an agreement amongst themselves to misappropriate in breach of trust for illegal gain and to sell the article by forging the records for their benefit.

24. Hence, I do not find any merit to interfere with the order conviction and sentence, recorded by the trial Court.

25. Both the appeals are dismissed.