
(2018) 04 PAT CK 0005

PATNA HIGH COURT

Case No: Criminal Appeal (SJ) No.383 of 2015

Krishna Kumar Kedia

APPELLANT

Vs

The Union of India
Through C.b.i., Patna

RESPONDENT

Date of Decision: April 6, 2018

Acts Referred:

- INDIAN PENAL CODE 1860, - section 407,420,465,471,326,313,436 Code of Criminal Procedure, 1973, - section 313,164,321 Indian Evidence Act, 1872,-section133,114

Hon'ble Judges: ADITYA KUMAR TRIVEDI

Bench: Single Bench

Advocate: Yogesh Chandra Verma;Sanjeev Kr. Mishra; anjay Kumar;

Final Decision: Dismissed

Judgement

1.Appellant, Krishna Kumar Kedia has been found guilty for an offence punishable under Section 407 IPC and sentenced to under RI for 5 years

as well as to pay a fine of Rs. 25,000/- in default thereof, to undergo SI for six months, additionally, under Section 420 IPC, sentenced to under

RI for 5 years as well as to pay a fine of Rs. 25,000/- in default thereof, to undergo SI for six months, under Section 465 IPC, sentenced to

undergo RI for 2 years as well as to pay a fine of Rs. 5,000/- in default thereof, to undergo SI for three months, additionally, under Section 471

IPC, sentenced to under RI for 2 years as well as to pay a fine of Rs. 5,000/- in default thereof, to undergo SI for three months with a further

direction to run the sentences concurrently vide judgment of conviction and sentence dated 25.06.2015 passed by Special Judge-CBI-2, Patna in

Special Case No. 14/2011 arising out of RC Case No. 15(A)/97.

2. Before coming to main track of the instant appeal, it looks desirable to have a glimpse over salient features appearing from the lower court

records.

3. There was an era of scam which the State faced and this happens to be one of the same known as Bitumen Scam. Bitumen having been ordered

by the Road Construction Department and for that supply orders were issued as it was to be carried from Haldia, a Unit of IOC under work order

relating to delivery being issued by the IOC, Barauni on the office order issued by the department to its destination and the appellant happens to be

proprietor of M/s Cosmo Transport which was engaged for transporting the Bulk Bitumen from Haldia to Road Construction Department, Saharsa

Division during the tenure of 1993-94 under two orders namely, 413(E) dated 17.01.94 as well as 7010(E) dated 18.11.93 which never reached

to its destination as alleged and for that, at the instance of Bhagwan Prasad Poddar, Executive Engineer, Saharsa Division, Saharsa PS Case No.

291/96 was registered at first stroke. Before aforesaid exercise having at the end of Bhagwan Pd. Poddar, the Executive Engineer CWJC No.

1041/96 was filed and vide order dated 20.02.1997, the High Court directed the CBI to register a case and investigate. Though the aforesaid

order covered whole State but so far, this particular controversy is concerned, that relates to Saharsa Division only. Though CBI had registered a

case bearing RC Case No. 15(A)/97 relating to both supply orders namely, 7010(E) dated 18.11.1993 which was relating to 510.35 MT Bulk

Bitumen, 413(E) dated 17.01.94 relating to 1091.95 MT Bulk Bitumen, investigation commenced and during course thereof, both two orders

were investigated separately, and so far instant adjudication is concerned, that relates to order no. 413(E) dated 17.01.94. So, on account of

submission of charge-sheet relating thereto, the trial commenced and concluded in a manner as indicated hereinabove.

4. It further transpires that during course of investigation four persons were identified/arrayed as an accused, No.1. Krishna Kumar Kedia

(Appellant), 2. Maheshwari Prasad, 3. Pancho Mahto and 4. Bhagwan Prasad Poddar. Bhagwan Pd. Poddar was an Executive Engineer as well

as informant of Saharsa PS Case No. 291/96. Pancho Mahto was the officer who managed the thing, passed the work order and nominated M/S

Cosmo Transport for transportation of the aforesaid Bulk Bitumen irrespective of having been imputed. Maheshwari Prasad is the person who at

the instance of Krishna Kedia prepared forged and fabricated documents. It is also apparent that Bhagwan Prasad Poddar and Pancho Mahto died

during course of trial whereupon proceeding was dropped/abated while Maheshwari Prasad has been granted pardon and during course of trial,

he stood as one of the star witness of the prosecution and that being so, while accused-appellant faced trial, met with ultimate consequence, at

whose behest the same is under challenge in the instant appeal.

5. The prosecution story as has been unfurled during course of trial is that supply order no. 413(E) dated 17.01.1994 was issued for supply of

1000 MT of Bulk Bitumen to the Road Construction Division, Saharsa. Bulk Bitumen was to be lifted from the loading point of Indian Oil

Corporation Limited, Haldia. M/s Cosmo Transport was entrusted for transportation after lifting the same who, against the 1000 MT lifted

1091.95 MT of Bulk Bitumen from the loading point, Haldia but failed to deliver at the Road Construction Department, Saharsa. That being so,

the aforesaid M/s Cosmo Transport misappropriated the entire quantity of the Bulk Bitumen and to justify the same, prepared forged and

fabricated documents as well as used the same knowingly and intentionally.

6. It has further been asserted that the aforesaid supply order no. 413(E) dated 17.01.1994 was issued by Panchu Mahto, the then Director,

Purchase and Transport, Head Office, Road Construction Department, Patna without any kind of approval at the end of Engineer-in-chief which

was mandatory. Furthermore, in spite of having sufficient material that M/s Cosmo Transport, Kolkata had misappropriated the Bulk Bitumen of

other Road Construction Division for which, he himself had made proposal to institute a criminal case against him, even then, he himself

ordered/entrusted the M/s Cosmo Transport for transportation of the Bulk Bitumen against supply order no. 413(E) dated 17.01.1994.

7. After registration of the case, the CBI had begun to investigate the case and during course thereof, it was found that Krishna Kumar Kedia

(appellant) malafidely created certain valuable documents i.e., CRC (Consignee receipt certificate), authority letter with the help of Maheshwari

Prasad (pardoned) and on the basis of the aforesaid forged and fabricated documents, succeeded in lifting 1091.95 MT of Bulk Bitumen from

lifting point of Indian Oil Corporation Haldia valued at Rs. 54,07,920/- and misappropriated the same. That being so, charge-sheet was submitted

after concluding the investigation paving the way for trial which ultimately concluded in a manner subject matter of instant appeal.

8. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete

denial. It has specifically been pleaded that all the documents are genuine valid one, Bulk Bitumen was unloaded at specific destination after

receiving the same at Haldia but the concerned officials themselves misappropriated the same and for that, they, on their own, created forged

documents.

9. Manifold arguments have been raised on behalf of appellant in order to challenge the judgment impugned. The first and foremost argument is that

the instant case happens to be that of no evidence. To substantiate the same, it has been submitted that though Maheshwari Prasad, PW-5 who

once upon a time, was co-accused and been identified as an approver subsequently, happens to be unreliable apart from the fact that whatsoever

been deposed at his end appears to be uncorroborated. In the aforesaid background, it has been submitted that at least the hand-writing should

have been placed before an expert to find out whether over any relevant document signature was forged at the end of PW-5, and in absence

thereof, it could not be inferred that signature of relevant authority was forged, nor evidence of PW-5, under aforesaid eventuality, evidence

appears to be prudential for the prosecution. Furthermore, referring the answers having been given by the appellant during course of statement

under Section 313 CrPC, it has been submitted that there happens to be no denial at the end of appellant that he had not lifted the Bulk Bitumen in

compliance of supply order no. 413(E) dated 17.01.1994. Furthermore, the appellant specifically stressed upon that the aforesaid Bulk Bitumen

were unloaded at the specified destination of Road Construction Department, Saharsa and the receipt of such acknowledgement by the official

having duly entrusted therefor, happens to be over CRC (Consignee receipt certificate). The prosecution, in order to show that no delivery was

made, examined so many junior engineers as well as produced respective stock registers. From perusal of the same, it is evident that prosecution

itself had committed forgery in order to malign the appellant as, none of the registers happens to be properly certified by the head of the institution

nor its paging has been duly authenticated. When the aforesaid registers itself became doubtful one, more particularly, regarding its authenticity,

reliability then in that circumstance, the evidence of those junior engineers along with exhibits of those registers could not be legally entertainable

whereupon, no reliance could be placed thereupon. Then it has been submitted that for the purpose of proving of fake documents, the evidence of

PW-5, Maheshwari Prasad appears to be the life line for the prosecution. After going through his evidence, it is apparent that manner whereunder

he deposed, did not speak with regard to its reliability, acceptability. No one could trust that a stranger would be lifted without having expertise in

preparation counterfeit documents/signatures that too without any negotiations as, there was every possibility of exposure at any stage, will get only

Rs. 3 for each specimen signature and will get the forged and fabricated document prepared without any precaution as there was every possibility

of being an accused, in case, the activity is unearthed.

10. It has also been submitted that 1091.95 MT of Bulk Bitumen is not an item to be concealed in a room or in a locker nor it could be diverted on

single round during course of transportation. The Country's prestigious investigating agency was involved having accumulation of experts of all

kinds of branches, then in that event, would have located in what manner the aforesaid Bulk Bitumen were siphoned and that too, where it had

gone. Keeping mum on the aforesaid score, is a circumstance indicative of the fact that appellant was victimized on one pretext or the other and for

that purpose, PW-5, Maheshwari Prasad was searched out, made an escape goat, different registers were prepared in order to project non

receipt of 1091.95 MT Bulk Bitumen which in the facts and circumstances, is found completely fettered whereupon, appellant is to be acquitted.

11. Another circumstance which, as per submission of the learned counsel for the appellant is found sufficient to dismantle the prosecution version is

apparent from evidences of the prosecution witnesses itself. Highlighting the same, it has been submitted that in spite of order being entrusted to the

Transporter, Transporter would not be entitled to lift consignment as, before that Transporter has to move before the IOC, Barauni to get R.O.

and on the presentation of the same, the Transporter would be entitled to lift the Bulk Bitumen from its loading point at Haldia. Furthermore, after

carrying and unloading the same at its destination, the receipt is being acknowledged by the employee concerned, which is again to be deposited at

the Oil Company. The aforesaid bill is sent to the A.G. Bihar and after getting nod therefrom, transportation charge is being paid. That means to

say, during course of finalization of aforesaid paraphernalia, it took lot of time giving all kinds of access to the department during intervening period

to filature any kind of malpractice if any, have been taken up during course of exercise of aforesaid event. So, submitted that it happens to be a

collusive act of the departmental personnel who succeeded in digesting/misappropriating the same and only to get the blame shifted upon the

appellant in order to save themselves, prepared false and fabricated documents which, in the facts and circumstances of the case could not be

relied upon and that being so, the whole prosecution case is fit to be brushed aside.

12. Learned counsel representing CBI submitted that during course of statement recorded under Section 313 CrPC, admission at the end of

appellant to the extent of upliftment of 1091.95 MT of Bulk Bitumen through its employee has made an obligation of the prosecution relaxed to

some extent. In the background of the admission, custody of 1091.95 MT of Bulk Bitumen under the appellant, now no more remains under

controversy. Only thing now the prosecution is to prove whether the same was unloaded at its destination and further, CRC (Consignee receipt

certificate) happens to be genuine or not and to that extent, apart from the evidence of Maheshwari Prasad, PW-5, the evidence of other witnesses

along with Exhibits of stock registers are sufficient to dislodge the claim of the appellant that it was delivered at its destination. With regard to other

activities, that relates with other co - accused is not at all found relevant for the present as they are dead, save and except that there happens to be

nexus in the background of the fact that without obtaining sanction from the authority concerned, it was ordered, and further, appellant in who was

outcast on account of its tainted character, conduct, was again entrusted with transportation of Bulk Bitumen.

13. That being so, the judgment of conviction and sentence recorded by the learned lower court happens to be just, legal and proper and is fit to be

confirmed.

14. In order to substantiate its case, prosecution had examined altogether 26 witnesses who are PW-1, Ajit Chandra Mishra, PW-2, Mithilesh

Kumar Khan, PW-3, Madan Prasad Sinha, PW-4, Arjun Prasad Sinha, PW-5, Maheshwari Prasad, PW-6, Jagdeesh Prasad, PW-7,

Ramchandar Prasad Suman, PW-8, Rambilash Mehta, PW-9, Ravindra Nath Jha, PW-10, Jawahar Prasad Bhagat, PW-11, Manas Saha, PW-

12, D.K. Srivastava, PW-13, Ashish Maity, PW-14, Shivandar Narayan Sharma, PW-15, Md. Mustaq, PW-16, Ramesh Mishra, PW-17,

Kameshwar Rajak, PW-18, Jha, PW-19, Basant Manjhi, PW-20, Birendra Kumar Jha, PW-21, Balmiki Prasad Sharma, PW-22, Shati Kant

Jha, PW-23, N.K. Sharma, PW-24, Arjun Prasad, PW-25, Sudip Chakrawarti, PW-26, S.K. Khare.

15. Side by side has also exhibited Ext-1, Seizure memo, Ext-2 to 2/1, agreement register and signature on it, Ext-2/2 to 2/3, signature of Madan

Prasad Sinha on agreement register, Ext -2/4 to 2/20, signature of executive engineer B.P. Poddar on agreement dated 30.03.96, Ext-X/1, the

forged authority letter for lifting 10% extra bulk bitumen created by Maheshwari Prasad on the instant of K. K. Kedia, Ext-X/2 to X/22, the

twenty forged signature of Executive Engineer M.P. Sinha on CRC Supply Order No. 413 (E) dated 17.01.94, Ext-3, Supply Order No. 413 (E)

dated 17.01.94, Ext-4 to Ext-4/65, the forged signature of Ex. Engineer, M.P. Sinha on CRC done by Maheshwari Prasad, Ext-5, the signature

of Maheshwari Prasad on statement under Section 164 of CrPC, Ext-6 and Ext-7, the stock register of bulk bitumen of section 2nd of RCD

Saharsa, Ext-8, is formal FIR of Saharsa PS Case No. 291/96 dated 02.07.96, Ext-8/1, typed complaint of Bhagwan Pd. Poddar, Ext-9 to Ext,

9/78 the AC-5 invoice/challan, Ext-10, two numbers of AG Memo, Ext-11 agreement dated 30.03.96, 78 F2/95-96, Ext-Y/2 the complaint file

of RCD against M/s Cosmo Transport, Ext-12, the noting dated 25.05.93 to Panchu Mahto for lodging FIR against M/S Cosmo Transport for

misappropriation of bulk bitumen, Ext-13, the order issued for lodging FIR against M/s Cosmo Transport, Ext-14, the production memo, Ext-15,

the Account register of bulk bitumen of RCD, Saharsa. Ext-Z to Z/3, Site account register of RCD, Saharsa, Ext-19 to Ext-19/98, the

invoice/challan, Ext-20 to Ext 20/19, the CRC, Ext-21 the DGS & D Bill, Ext-22 is letter no. 784 dated 08.09.2001 of Ex-Engineer RCD,

Saharsa showing non receipt of bulk bitumen against S.O. No. 413(E) dated 17.01.94, Ext-23, the noting of engineer in chief Sri Badrinarayan

Chaudhry on file no. DCN6-14/93 making inquiry against Cosmo transport. Ext-24 the proposal of black listing Ms Cosmo Transport by

Ramsagar Ram, Ext-25 to 25/1, authority letter issued by K.K. Kedia in favour of Ashish Maity and Sudeep Chakrworthy for lifting bulk bitumen

on his behalf. Ext-26 to 26/2, the seizure list. Ext-27 to 27/01, the statement of M. Prasad & Masood under Section 164 CrPC, Ext-28 is the

formal FIR of CBI.

16. Before coming to scrutinize the evidence inconsonance with the allegation, it has been gathered from the record that there was no

demand for supply of Bulk Bitumen from the Road Construction Department, Saharsa Division to the head office and on account thereof,

whatever steps were taken at the head office along with issuance of order no. 413(E) dated 17.01.1994 was exclusively by the Panchu Mehta

(since deceased) without taking approval from Engineer-in-Chief, Road Construction Department and in likewise manner, the transportation from

the Haldia to store of RCD, Saharsa was entrusted to M/s Cosmo Transport was also made by the aforesaid Pachu Mehta and in token thereof,

an agreement was in between the then Executive Engineer, Bhagwan Pd. Poddar (since deceased) as well as Cosmo Transport. It is further

evident that in spite of perceiving the conduct of the M/s Cosmo Transport at an earlier occasion dupery by the Panchu Mehta himself over which

had ordered for institution of a criminal case against the aforesaid M/S Cosmo Transport, Panchu Mehta again activated himself by way of

issuance of order in favour of M/s Cosmo Transport. Then thereafter, there happens to be twist. As per prosecution, all subsequent eventualities,

that means to say, issuance of authority letter no. 104, Saharsa dated 19.04.1995 for release of 10% of extra Bulk Bitumen in pursuance of

Supply Order 413(E) dated 17.01.1994, signature over CRC, all were falsely created by means of committing forgery and on the basis thereof,

Bulk Bitumen was lifted from Haldiadelivery point and siphoned illegally.

17.While the mode of cross-examination as well as from the statement recorded under Section 313 CrPC, appellant/accused specifically admitted

and further, asserted that after lifting Bulk Bitumen from Haldia delivery point, same was unloaded at the godown of RCD, Saharsa Division

whereupon, there happens to be proper receipt over CRC and that being so, no misappropriation happens to be at the end of Transporter and nor

false document was ever created under fraudulent activity. Though the accused Panchu Mehta, Bhagwan Pd. Poddar are dead, even then,

propriety of order 413(E) dated 17.01.1994 is to be seen at the first instance.

18.The second stage happens to be with regard to previous conduct of M/s Cosmo Transport. The third aspect, as there happens to be an

admission at the end of the appellant regarding lifting of 1091.95 MT of Bulk Bitumen from Haldia Delivery point, the same was unloaded at its

destination and further, to supplement the same whatever documents have been necessitated, are genuine or forged and fabricated.

19.Supply order no. 413(E) dated 17.01.1994 is not under controversy rather the procedure having been followed for issuance of aforesaid

supply order is under controversy and further, during adjudicating the same the part played by Panchu Mehta (since deceased) is to be seen and in

likewise manner, his activity while allotting its transportation to M/s Cosmo Transport. Evidence of witnesses are being dealt with according to

relevancy, irrespective of their stronghold status. In the aforesaid factual admitted scenario, would like to deter upon the statement of appellant

recorded under Section 313 CrPC.

Q. AAPNE SAKSHION KO SAKSHYA SUNA HAI ?

ANS. JI HAAN

Q. APKE VIRUDH SAKSHYA HAI KI AAP M/S COSMO TRANS. KOLKATA KE MALIK HAIN, KYA KAHNA HAI?

ANS. JI HAAN.

Q. APKE VIRUDH YAH BHI SAKSHYA HAI KI AAP KI FIRM M/S COSMO TRANS. PATH NIRMAN VIBHAG, BIHAR AND

IOCL KA NOMINATED TRANSPORTER HAIN, KYA KAHNA HAI?

ANS. JI HAAN.

Q. APKE VIRUDH YAH BHI SAKSHYA HAI KI AAP KI FIRM M/S COSMO TRANS 1994-1995 MEIN PATH NIRMAN

VIBHAG, SAHRSA PATH PRAMANDAL KE LIYE HALDIA SE SAHRSA TAK BARAUNI HOTE HUE BULK BITUMEN DHULAI

KARNE KA KAAM KARTA THA?

ANS. JI HAAN.

Q. APKE VIRUDH YAH BHI SAKSHYA HAI KI AAP KI PATH NIRMAN VIBHAG MUKHYALAYA PATNA SE NIRGAT APURTI

SANKHYA 413(E), DINANK 17.01.94 MEIN AADESHIT BULK BITUMEN MATRA 1000 MT KI HALDIA SE SAHARSA TAK

DHULAI KARNE KA KAAM APKE TRANSPORT FIRM M/S COSMO TRANS. KO SAUNPA GAYA THA. KYA KAHNA HAI?

ANS. JI HAAN.

Q. APKE VIRUDH YAH BHI SAKSHYA HAI KI AAP KI PATH NIRMAN VIBHAG MUKHYALAYA PATNA SE NIRGAT APURTI SANKHYA 413(E), DINANK 17.01.94 MEIN AADESHIT BULK BITUMEN MATRA 1000 MT KI HALDIA SE SAHARSA TAK DHULAI KARNE KA KAAM APKE TRANSPORT FIRM M/S COSMO TRANS. KO SAUNPA GAYA THA. KYA KAHNA HAI?

ANS. JI HAAN.

Q. APKE VIRUDH YAH BHI SAKSHYA HAI KI ASHISH MAITI AUR TAPAN PODDAR KO APNE HALDIA REFINERY MEIN

APNA PRATINIDHI NIYUKTA KIYA THA. KYA KAHNA HAI ?

ANS. JI HAAN.

Q. APKE VIRUDH YAH BHI SAKSHYA HAI KI AAP NE ASHISH MAITI KO HALDIA SE BULK BITUMEN UTHANE KE LIYE

PRADHIKRIT KIYA THA. ISKE LIYE UNKE PAKSHA MEIN PRADHIKAR PATRA JARI KIYA THA. KYA KAHNA HAI?

ANS. JI HAAN.

Q. APKE VIRUDH YAH BHI SAKSHYA HAI KI AAP KI APKE DWARA NIRGAT PRADHIKAR PATRA KE ADHAR PAR ASHISH

MAITI NE IOCL KE HALDIA REFINERY SE APURTI ADESH SANKHYA 413(E), DINANK 17.01.1994 KE ANTARGAT DINANK

26.05.94 SE 09.06.95 KE BEECH MEIN LAGBHAG 1091.95 MT BULK BITUMEN PRAPT KIYA THA, KYA KAHNA HAI ?

ANS. JI HAAN.

Q. APKE VIRUDH YAH BHI SAKSHYA HAI KI AAP KI APKE ABHIKARTA ASHISH MAITI NE UPROKT BULK BITUMEN

PRAPT KARTE SAMAY IOCL KE AC-5 CHALAN PAR APKI OR SE PAWATI BANAYA THA TATHA US PAR HASTAKSHAR

BHI KIYA THA, KYA KAHNA HAI?

ANS. JI HAAN.

Q. APKE VIRUDH YAH BHI SAKSHYA HAI KI AAP KI APKE PRATINIDHI ASHISH MAITI DWARA PRAPT KIYA GAYA

UPROKT BULK BITUMEN KO IOCL REFINERY, BARAUNI HOTE HUE SAHARSA PAHUNCHANA THA, KYA KAHNA HAI.

ANS. JI HAAN.

Q. APKE VIRUDH YAH BHI SAKSHYA HAI KI AAP KI APKE NIRDESHANUSAR APKE PRATINIDHI ASHISH MAITI NE PRAPT

KIYA HUA UPROKT BULK BITUMEN KO BARAUNI HOTE HUE PATH NIRMAN VIBHAG KE SAHARSA PRAMANDAL ME

NAHI PAHUNCHAYA, KYA KAHNA HAI.

ANS. JI NAHI, WAH BITUMEN SAHARSA PRAMANDAL MEIN PAHUNCHAYA THA.

Q. APKE VIRUDH YAH BHI SAKSHYA HAI KI AAP KI APKE NIRDESHANUSAR APKE PRATINIDHI ASHISH MAITI NE PRAPT

KIYA HUA UPROKT BULK BITUMEN KO KALKATTA STHIT ALAMPUR KE FACTORION MEIN PAHUNCHA DIYA. KYA

KAHNA HAI?

ANS. JI NAHIN.

Q. APKE VIRUDH YAH BHI SAKSHYA HAI KI AAP KI APNE SAKSHI SANKHYA 5, MAHESHWAR PRASAD JO IS KES MEIN

SARKARI GAWAH HAIN UNKE SATH SADYANTRA KARKE APURTI ADESH SANKHYA 413(E), DINANK 17.01.1994 BULK

BITUMEN KI 1000 MT MATRA IOCL, HALDIA SE PRAPT KARNE KE LIYE FARZI PRADHIKAR PATRA BANAYA. KYA

KAHNA HAI.

ANS. JI NAHI.

Q. APKE VIRUDH YAH BHI SAKSHYA HAI KI AAP KI APKE NIRDESHANUSAR MAHESHWAR PRASAD NE APURTI ADESH

SANKHYA 413(E), DINANK 17.01.1994 MEIN ADESHIT BULK BITUMEN UTHANE KE LIYE M/S COSMO TRANS. KE PAKCH

MEIN KARYAPALAK ABHIYANTA PATH NIRMAN VIBHAG PATH PRAMANDAL, SAHARSA KA JALI PRADHIKRIT PATRA

PAR TATKALIN KARYAPALAK ABHIYANTA PATH PRAMANDAL SAHARSA SRI MADAN SINHA KA JALI HASTAKCHAR

BANAYA. KYA KAHNA HAI.

ANS. JI NAHI.

Q. APKE VIRUDH YAH BHI SAKSHYA HAI KI AAP KI APNE UPROKT JALI PRADHIKAR PATRA KE ADHAR PAR IOCL

HALDIA SE 1091.95 MT BULK BITUMEN PRAPT KAR LIYA. KYA KAHNA HAI.

ANS. JI HAN, MAINE SAHI PRADHIKAR PATRA KE ADHAR PAR, BULK BITUMEN PRAPT KIYA THA.

Q. APKE VIRUDH YAH BHI SAKSHYA HAI KI AAPKE FIRM M/S COSMO TRANS KE DWARA IOCL HALDIA SE BULK

BITUMEN PRAPT KAR BULK BITUMEN SE BHARA HUA TANKER AUR S.C.-5 CHALAN KO IOCL BARAUNI MEIN JAMA

KARKE A.C. 10 PAR HASTAKCHAR BANAKAR CONSIGNEE RECEIPT CERTIFICATE (CRC) KO PRAPT KARNA THA. KYA

KAHNA HAI.

ANS. JI HAAN.

Q. APKE VIRUDH YAH BHI SAKSHYA HAI KI APNE IOCL BARAUNI SE CONSIGNEE RECEIPT CERTIFICATE (CRC) TO

PRAPT KIYA KINTU BULK BITUMEN SE BHARI HUI LORRY NAHIN PAHUNCHAYA. KYA KAHNA HAI?

ANS. JI NAHI. MAINE BULK BITUMEN SE BHARI HUI LORRY KO PAHUNCHAYA.

Q. APKE VIRUDH YAH BHI SAKSHYA HAI KI AAPNE MAHESHWAR PRASAD SE SADYANTRA KAR CONSIGNEE RECEIPT

CERTIFICATE (CRC) PAR TATKALIN KARYAPALAK ABHIYANTA PATH PRAMANDAL SAHARSA SRI MADAN PRASAD

SINHA KAR FARZI HASTAKCHAR KARAYA. KYA KAHNA HAI.

ANS. JI NAHI.

Q. APKE VIRUDH YAH BHI SAKSHYA HAI KI AAPNE PATH NIRMAN VIBHAG SAHARSA PATH PRAMANDAL KE

TATKALIN KARYAPALAK ABHIYANTA SRI BHAGWAN PRASAD PODDAR KE SAATH SADYANTRA KARKE DINANK

30.03.96 KO BULK BITUMEN KI APURTI ADESH SANKHYA 413(E), DINANK 17.01.94 KE DHULAI KE LIYE KARAR KIYA

JABKI APKO YAH GYAT THA KI AAPNE KARAR KI $\hat{A}_{\hat{c}}^{\hat{A}^{1/2}}$ TITHI SE PAHLE SARA BULK BITUMEN UTHA KAR GABAN KAR

LIYA HAI. KYA KAHNA HAI.

ANS. JI NAHI.

Q. SAFAI MEIN KYA KAHNA HAI?

ANS. MAINE KOI BHI GALAT KAM NAHIN KIYA HAI. MAINE ADESHANUSAR JO BULK BITUMEN PRAPT KIYA THA,

USKO JAHAN PAHUNCHANE KA ADESH PRAPT KIYA THA, WAHAN PAHUNCHA DIYA. MAIN NIRDOSH HUN. JHUTHA

PHASAYA JA RAHA HAI. MUJHE SAKCHYA DENA HAI.

In *Ashok Debbarma @ Achak Debbarma v. State of Tripura* reported in (2014) 4 SCC 747, it has been held as follows:-

23. Learned counsel appearing for the accused has raised the question that incriminating questions were not put to the accused while he was

examined under Section 313 CrPC. The object of Section 313 CrPC is to empower the Court to examine the accused after evidence of the

prosecution has been taken so that the accused is given an opportunity to explain the circumstances which may tend to incriminate him. The object

of questioning an accused person by the Court is to give him an opportunity of explaining the circumstances that appear against him in the evidence.

In the instant case, the accused was examined in the Court on 23.4.2005 by the Additional Sessions Judge, West Tripura, Agartala, which, inter

alia, reads as follows :-

Question : It transpires from the evidence of PW No.10, 11 and 13 that they had recognized you amongst the extremists. Is it true?

Answer : False.

Question : It transpires from the evidence of the above witnesses that Dulal, Ajit, Saraswati and Hemender sustained severe bullet injuries by the

firing of you and your associates? What do you have to say regarding this?

Answer : Yes

Question : It is evident from the evidence of these witnesses and other information that at that night Sachindra Sarkar, Archana Garkar, Dipak

Sarkar, Gautam Sarkar, Shashi Sarkar, Prosenjit Sarkar, Saraswati Biswas, Tulsi Biswas, Narayan Das, Mithu Das, Bitu Das, Khelan Sarkar,

Sujit Sarkar, Bipul Sarkar and Chotan Sarkar were killed by the bullets of fire arms and fire. What do you have to say regarding this?

Answer : Yes. (Blank).

The second question put to the accused was that, from the deposition of PW10, PW11, PW13, it had come out in evidence that it was due to the

firing of the accused and his associates, Dulal, Ajit, Saraswati and Hemender had sustained severe bullet injuries, to which the answer given by the

accused was Yes. In other words, he has admitted the fact that, in the incident, Dulal, Ajit, Saraswati and Hemender had sustained severe

bullet injuries by the firing of the accused and his associates. Further, for the question, that from the evidence of those witnesses and other

information, at that night, Sachindra Sarkar, Archana Garkar, Dipak Sarkar, Gautam Sarkar, etc. were killed by the bullets of fire arms and fire,

the accused kept silent.

24. We are of the view that, under Section 313 statement, if the accused admits that, from the evidence of various witnesses, four persons

sustained severe bullet injuries by the firing by the accused and his associates, that admission of guilt in Section 313 statement cannot be brushed

aside. This Court in *State of Maharashtra v. Sukhdev Singh and another* (1992) 3 SCC 700 held that since no oath is administered to the accused,

the statement made by the accused under Section 313 CrPC will not be evidence *stricto sensu* and the accused, of course, shall not render himself

liable to punishment merely on the basis of answers given while he was being examined under Section 313 CrPC. But, Sub-section (4) says that

the answers given by the accused in response to his examination under Section 313 CrPC can be taken into consideration in such an inquiry or

trial. This Court in *Hate Singh Bhagat Singh* (supra) held that the answers given by the accused under Section 313 examination can be used for

proving his guilt as much as the evidence given by the prosecution witness. In *Narain Singh v. State of Punjab* (1963) 3 SCR 678, this Court held

that when the accused confesses to the commission of the offence with which he is charged, the Court may rely upon the confession and proceed

to convict him.

25. This Court in *Mohan Singh v. Prem Singh and another* (2002) 10 SCC 236 held that the statement made in defence by accused under Section

313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section

313 CrPC cannot be made the sole basis of his conviction. In this connection, reference may also be made to the judgment of this Court in

Devender Kumar Singla v. Baldev Krishan Singla (2004) 9 SCC 15 and *Bishnu Prasad Sinha and another v. State of Assam* (2007) 11 SCC

467. The above-mentioned decisions would indicate that the statement of the accused under Section 313 CrPC for the admission of his guilt or

confession as such cannot be made the sole basis for finding the accused guilty, the reason being he is not making the statement on oath, but all the

same the confession or admission of guilt can be taken as a piece of evidence since the same lends credence to the evidence led by the

prosecution.

26. We may, however, indicate that the answers given by the accused while examining him under Section 313, fully corroborate the evidence of

PW10 and PW13 and hence the offences levelled against the Appellant stand proved and the trial Court and the High Court have rightly found him

guilty for the offences under Sections 326, 436 and 302 read with Section 34 IPC.

Its gamut will be seen at an appropriate stage hereinafter.

20. PW 4 is the retired Chief Engineer, Road Construction Department, Bihar Government who had deposed that there happens to be independent

budget of Road Construction Department, which is being approved by the State of Bihar. The requirement of bitumen of particular division is being

requisitioned by the Executive Engineer to the Engineer-in-Chief through proper channel. After approval of Engineer-in-Chief, Road Construction

Department, the same is sent to Secretary, Road Construction Department, and then to Minister of Department. After getting sanction by the

authorities concerned in a manner as indicated above, the file returns and then, is sent to Director, Purchase and Transport wherefrom supply order

is being sent to the company and a copy thereof, is sent to the concerned Executive Engineer as well as Engineer-in-Chief. He had further stated

that Supply order no. 413(E) dated 17.01.1994 lacks the same. It has been passed by the then Director, Purchase and Transport, Panchu Mehta.

During cross-examination at para-3, he had stated that he was not at all posted at Patna during the relevant period. He had further stated that he

had not dealt with the file in his personal capacity. He had further stated that he had got no information that during financial year 1993-94 file was

being directly sent to the Director, Purchase and Transport bypassing the aforesaid formalities. He had further stated that he had got no knowledge

with regard to post of Sri Y.N. Yadav as Engineer-in-Chief in the year 1993-94. During cross-examination at the end of appellant K.K. Kedia, he

had reiterated the procedure that requisition being made by the Executive Engineer of the division which passes through different tables and after

having been approved, comes to Director, Purchase and Transport whereupon the Director, Purchase and Transport gives order to concerned oil

company for supply of requisite bitumen. Simultaneously, the transport company carries Bulk Bitumen and as per direction enumerated under

Challan, Bulk Bitumen are being unloaded at the concerned destination. Then thereafter, the concerned officials issue receiving over CRC. In case

of shortage, the same is being corroborated over CRC.

21.PW-16 is the retired Personal Secretary, Engineer-in-Chief, Govt. of Bihar. He had deposed that he was Secretary to Engineer-in-Chief of

RCD having its headquarters at Patna from 1989-95. In 1993, Panchu Mehta was Director, Purchase and Transport. File No. DCM-6-14-93

happens to be with regard to complaint against the transporter. He had identified note-sheet dated 26.05.93 having over page no.80 made by

Director, Purchase and Transport, Sri Panchu Mehta addressed to Executive Engineer, RCD, Supaul directing him to institute a criminal case

against M/s Cosmo Transport on account of misappropriation of the bulk bitumen. The aforesaid note-sheet was in the pen of Deputy Director,

Purchase and Transport, Mustafa Ahamad bearing signature of Panchu Mehta(Exbhited). In pursuance thereof, order was issued on 26.05.93 in

the pen of Panchu Mehta (Exhibited). The aforesaid steps were taken on a complaint made by Lok Lekha Samiti. During cross - examination, he

had stated that on which date complaint sent by JagdishSharma was received, he is not remembering. Then had said that Jagdish Sharma had been

convicted in Fodder Scam. He had further said that note-sheet was not prepared in his presence. He had further stated that he had not made any

kind of endorsement over the aforesaid file no. 40/93. He is not remembering whether any case was instituted against M/s Cosmo Transport or

not.

22.On that very score, another witness PW-23 has also been examined who was an Assistant at the head office of RCD, Patna from 1987 to

2007. He had also deposed with regard to complaint file no. DCN-06-14/93 in similar way like PW-16 and during course of cross-examination,

he was also confronted with the same set of question whereupon he had stated that Jagdish Sharma happens to be convict of Fodder Scam which

he came to know from newspaper. Then had said that he was not at all involved in the noting, drafting of the aforesaid file.

23.PW-11 had stated that he was an employee of M/s Cosmo Transport from 1984-95. Its head office happens to be at Akaliganj, Kolkata.

K.K. Kedia happens to be its proprietor. The company was mainly engaged in transportation of Bulk Bitumen.Bulk Bitumen was being loaded at

Haldia and then transported to different division of Road Construction Department, Bihar. K.K. Kedia had executed power of attorney in his

favour and on the basis thereof, he used to visit Executive Engineer, RCD as well as Shobha Madam. Shobha Madam used to issue supply order.

After getting supply order, he used to go to the oil company wherefrom CRC, delivery order was being issued. Then thereafter, he used to hand

over aforesaid CRC or delivery order to K.K. Kedia and on the basis thereof, Bulk Bitumen was lifted from Haldia. Ashish Maity as well as

Tapan Poddar were the authorized representative of K.K. Kedia who use to lift the Bulk Bitumen. Then thereafter, Bulk Bitumen was being sent

to its destination as instructed by Kedia. He had further stated that he had gone to RCD, Saharsa as Supply order no. 413(E) dated 17.01.1994

was relating thereto. K.K. Kedia had lifted Bulk Bitumen in total quantity as per Supply order no. 413(E) dated 17.01.1994 and then thereafter,

he sold it to factory located at Alampur, Kolkata. The aforesaid Bulk Bitumen was to be supplied at RCD, Saharsa Division but instead thereof,

was sold away to a factory located at Alampur, Kolkata. During cross-examination on behalf of appellant, he had stated that the aforesaid Bulk

Bitumen was sold in his presence. He had further stated that transport company was closed in the year 1995-96. He had left the job before K.K.

Kedia had gone to jail. Supply order no. 413(E) dated 17.01.1994 was relating to RCD, Saharsa. At that very time, the same Poddar was the

Executive Engineer. They used to lift Bulk Bitumen from the oil company as per order. He was not at all connected with lifting as well as unloading.

RCD used to send request letter to oil company for supply of specific quantity of Bulk Bitumen whereupon, M/s Cosmo Transport got the order.

He is unable to say how much quantity of Bulk Bitumen was lifted by Cosmo Transport during the year 1994-95-96. He had further stated that

after loading of Bulk Bitumen, K.K. Kedia's truck used to unload it at factory located at Alampur but he had not informed either to RCD, Oil

Company or police. Even after relinquishing his job, he had not intimated anywhere. Further he had stated that he had got no documentary proof to

substantiate that Bulk Bitumen was being sold at a factory located at Alampur, Kolkata.

24.PW-13 had stated that in the year 1993-94, he was representative of M/s Cosmo Transport to receive Bulk Bitumen from Haldia on behalf of

M/s Cosmo Transport after putting his signature over AC-5 or AC-10. Then had exhibited those Challans. Then he had stated that after loading of

bulk bitumen, as per direction of Kedia, the vehicle was being sent to Howrah as well as Alampur. Challans were deposited at the office of K.K.

Kedia. During cross-examination he had stated that he had represented the M/s Cosmo Transport from 1992-96. His job was confined only to the

extent of lifting bulk bitumen on behalf of M/s Cosmo Transport. He is unaware with the fact that on whose order the bulk bitumen was being

supplied by the oil company. In para-3, he had said that he had occasion to see invoice. Then had explained the meaning of consigner and the

activity which was to be carried out relating to invoice. Furthermore, he had stated that due to transport company happens to be concerned with

carrying due goods from consigner to consignee and after uploading at the place of consigner, the transport company discharges its duty. Then had

stated that I.O.C, Haldia is the marketing unit of IOC wherefrom, necessary details with relevant documents were being sent to I.O.C, Barauni.

Then had said that he had got no documentary proof to substantiate that as per direction of K.K. Kedia, bulk bitumen were being sent to the

Howrah or Alampur. In likewise manner, he had stated that he had not made complaint anywhere regarding the same.

25.PW-25 had deposed that he had worked under M/s Cosmo Transport from 1993-97. Krishna Kumar Kedia was the proprietor of the

aforesaid company. The aforesaid company was engaged in transportation of bulk bitumen from IOC, Haldia point to different destination as per

agreement. Ashish Maiti used to receive the bulk bitumen on behalf of M/s Cosmo Transport. He used to receive the same under

authorized letter being issued by K.K. Kedia. He had accordingly, exhibited the authority letter issued by K.K. Kedia in favour of Ashish Maity as

well as Tapan Poddar. He had also stated that on 20.06.1994 K.K. Kedia had issued authorization letter in his favour and had exhibited the same.

He had further stated that after lifting the bulk bitumen from Haldia, the same was sent to Alamnagar, Kolkata. He had further said that A.C. Form

No.5 (Challan) was being deposited at Barauni. He had further stated that bulk bitumen was sold away at Alampur Factory. During cross-

examination, he had stated that his job was to carry Challan. K.K. Kedia had signed over authorization letter in his presence. He had further stated

that in some of cases he had deposed and in some, not.

26.PW-3 is the retired engineer who during course of his service was posted at RCD, Saharsa Division as an Executive Engineer from 08.07.92 to

13.07.1994. He had further stated that as there was sufficient stock of bulk bitumen on account thereof, there was no order placed for supply of

bulk bitumen. He had further stated that for the supply of bulk bitumen, there happens to be an agreement in between transporter with the

department and for that, a separate register known as agreement register was being maintained. He had exhibited the relevant register having

opened in his pen and signature and then, had exhibited the relevant pages thereof. He had further stated that he had not correspondent with the

headquarters for supply of bulk bitumen nor he had received bulk bitumen against any of the supply order. He had not entered into an agreement

with M/s Cosmo Transport for supply of bulk bitumen nor any kind of authority letter was so issued. He had further stated that he had not received

AG Memo against Supply order no. 413(E) dated 17.01.1994. Then had stated that one agreement in between Executing Engineer RCD, Saharsa

Division with M/s Cosmo Transport happens to be dated 30.03.1996 executed by BhagwanPoddar as well as M/s Cosmo Transport with regard

to Supply order no. 413(E) dated 17.01.1994. Then had exhibited the same. He had further exhibited letter no. 17(E) dated 02.06.94 whereby

and whereunder M/s Cosmo transport was authorized to lift 100 MT of bulk bitumen. The aforesaid letter happens to be fake and fabricated and

his signature has been forged thereupon. He had denied to have put his signature over alleged letter no. 17 (E) dated 02.06.94. Again he had

exhibited another letter 104/Saharsa dated 19.04.95 in continuance with Supply order no. 413(E) dated 17.01.1994 wherein 10% of extra bulk

bitumen was directed to be released in favour of M/s Cosmo Transport. He had further deposed that the aforesaid letter no.104 also happens to

be forged and fabricated and his signature has been forged after handing over charge by him. He had further stated that during his tenure he had

not used CRC on account thereof, he is unable to disclose what its meaning happens to be and for what purpose it is being used. Now-a-days, he

has come to know with regard to CRC which happens to be relating to authorization of a signature by the Executive Engineer relating to

transporter and on the basis thereof, transporter used to lift bulk bitumen. He had further stated that the signature of concerned Executive Engineer

is being sent to I.O.C, Haldia as well as Barauni. Then had stated that CRC Nos. 70901, 70902, 70903, 70904, 70905, 70906, 70907, 70908,

70909, 709010, 709011, 709012, 709013, 709014, 709015, 709016, 709019, 709020, 709021 are relating to Supply order no. 413(E) dated

17.01.1994 and his signature has been forged over the CRC. On the basis of the aforesaid forged document M/s Cosmo transport lifted the bulk

bitumen and misappropriated the same. During cross-examination, he had stated that at the present moment stock register is not available before

him. He had further stated that he is not a hand-writing expert. He further stated that he handed over charge of RCD, Saharsa to Bhagwan

Poddar. On behalf of Panchu Mehta, he had stated that whenever there happens to be requisition for supply of bulk bitumen by the Executive

Engineer to the head office, on the basis thereof, the supply order was being issued after passing the same. At that very time, Iliyas Hussain was the

Minister while Panchu Mehta was the Director, Purchase & Transport and Mustafa Ahmad was Deputy Director. He had further stated that he

had got no information with regard to Standing Order of the Minister that 500 MT of Bulk bitumen should be sent to all Road Construction

Division. He had further stated that he is not aware with the file no. DCN-6-13-93/95. He had further stated that in pursuance of aforesaid order,

Director, Purchase had issued Order No. 7010(E) dated 18.11.93. He had further shown ignorance with regard to issuance of Supply Order No.

413(E) dated 17.01.94 on basis of the requisition shown by the then Executive Engineer, Nasim Haider. He had also denied the suggestion that it

was relating to File No. DCN-5-04/1993 whereupon, Assistant Shobha Sinha, Section Officer, Ramakant Thakur and Deputy Director, Mustafa

Ahmad had recommended and he had further stated that he is not aware of the fact that under File No. DCN-06-14-/93, M/s Cosmo Transport

was black listed and further having recommendation for prosecution was passed on 12.01.94 but, Panchu was transferred on 27.01.94.

27.PW-6 is the retired Junior Engineer who had deposed that he was Junior Engineer from 01.01.1994 to 2000 at RCD, Saharsa Division. There

were three sub-divisions under RCD, Saharsa. He was Junior Engineer of second sub-division. His job was to maintain the road. Then had stated

that contractor used to procure bitumen on an order of Executive Engineer. He had further stated that after receipt of bulk bitumen the same is

being entered into stock register. The stock register of all the junior engineers of different sub divisions happens to be independent. Then had

exhibited his own stock register maintained from 1994 to 1997 (page 1 to 282) and all the entries are in his pen (exhibited). Furthermore, he had

stated that with regard to receipt of bitumen, the same has been made under page no.1 to 29 and happens to be in his pen (exhibited). He had

further stated that he had not received bitumen in pursuance of Supply order no. 413(E) dated 17.01.1994. He had also exhibited Stock Account

Register of Sub-Division-2 (page 1 to 141) out of which page no.1 to 23 relates with receipt of bitumen which happens to be in his pen and

signature. There happen to be no entry inconsonance with Supply order no. 413(E) dated 17.01.1994 because of the fact that there was no supply

against the aforesaid Supply order no. 413(E) dated 17.01.1994. During cross-examination he had stated that at the relevant time there were nine

junior engineers. All junior engineers had got independent register. Stock Accounts Register of other junior engineers are not before him and so he

is unable to say who had received how much bitumen through which transport company. Further said that the register happens to be available in

the open market. Serial numbering has been put by him. Entry has been made by him. Then had also disclosed that it bears signatures of the SDO.

Then had said that this register was not supplied by the department rather it was purchased by him as per direction of the Executive Engineer.

SDO as well as Executive Engineer used to orally instruct him to bring register from the open market. He had further said that he had not seen

K.K. Kedia.

28.PW-7 had deposed that he was an Assistant Engineer at RCD, Saharsa from July 1994 to 2000. He was also In-charge of Sonbarsa Sub-

Division and during his tenure, he had not received bulk bitumen relating to Supply order no. 413(E) dated 17.01.1994. During cross-examination,

he had stated receiving of bulk bitumen was properly maintained in the register which is not available before him. He had further stated that he used

to maintain the register after purchasing from open market as, same was not supplied by the department. After purchase, register was being

certified by them and the entries were duly signed by the SDO. He had further stated that he was alone junior engineer of his section. He had

further stated that three junior engineers were deployed under Sonbarsa Sub-Division. Each junior engineer had got their own Stock Account

Register which they purchased from open market and maintained. Then had denied the suggestion that all the registers have been prepared in

forged manner.

29.PW-9 had stated that he was posted as junior engineer at RCD, Saharsa, Sub-Division from February 1989 to August 2000. At that very time,

Bhagwan Poddar was Executive Engineer. He had not received supply against order no. 413(E) dated 17.01.1994. He does not know with

regard to Transporter. During cross -examination, he had stated that 10-11 junior engineers were posted at RCD, Saharsa Division. Then had said

that he is unable to say with regard to receipt of bulk bitumen by other junior engineer and that too against which of supply order. Then had stated

that he is not remembering against which supply order he had received bulk bitumen. Then had said that registers were purchased from open

market and then it was being converted as Stock Register. Paging was done by him. The entries were made by him having signature of the SDO.

Then at para-3 had stated that delivery order directly goes to IOC from Director, Purchase and Transport. Then IOC permits the concerned

Transporter to lift the bulk bitumen who, after lifting the same, carry to its destination as per direction of Director of Purchase and Transport. After

receiving the same, receipt thereof was being issued to the Transporter. Then had denied the suggestion that they have prepared forged register.

30.PW-10 had deposed that he was Assistant Engineer at RCD, Saharsa Division from 13.08.1996 to 15.10.1999. In the year 1996, Bhagwan

Poddar was Executive Engineer. He was Assistant Engineer of Sonbarsa Sub-Division. Then had stated that no supply was received during his

tenure of bulk bitumen. Then had stated that for the purpose of transportation of bulk bitumen, there happens to be agreement in between

Transporter as well as Executive Engineer which is being duly endorsed under agreement register. Then had placed and exhibited the aforesaid

event relating to an agreement having in between Bhagwan Poddar, Executive Engineer with M/s Cosmo transport, agreement no. F2-78-95/96 in

pursuance of Supply order no. 413(E) dated 17.01.1994. He had identified the same. Further had disclosed that the aforesaid event has been

entered into an agreement register. Then had said that after receipt of bulk bitumen with the Saharsa Division as per direction of the Executive

Engineer, Junior Engineer received the bulk bitumen whereupon, they put signature over Challan. Then thereafter, the aforesaid bulk bitumen is

being entered in the stock register. During cross-examination, he had stated that there happens to be no signature of any representative of M/s

Cosmo Transport. He had further stated that his signature is also not over the register. He had further stated that stock register was verified on

monthly basis.

31.PW-14 had deposed that he was an Executive Engineer from January 1999 to April 2001 at RCD, Saharsa Division. Bhagwan Poddar was

also posted as Executive Engine, RCD, Saharsa Division and accordingly, he identified signature, writing of Bhagwan Poddar. Then had said that

after supply of bulk bitumen to the Transport Company was being made through Accountant General, Bihar. Then thereafter, AG sent the AG

Memo for adjustment of aforesaid payment to the concerned RCD. AG Memo was to be endorsed by the Executive Engine. He had further stated

that in pursuance of Supply order no. 413(E) dated 17.01.1994, AG Memo was received at RCD, Saharsa which was endorsed by the then

Executive Engineer, Bhagwan Poddar. During cross-examination, he had stated that the aforesaid endorsement was not made in his presence.

32.PW-15 had deposed that he was Accounts Clerk at RCD, Saharsa Division in June 1994. In year 1994-95, Bhagwan Poddar was an

Executive Engineer at RCD, Saharsa Division. Bulk Bitumen was being transported to RSC, Saharsa by M/s Cosmo Transport of which K.K.

Kedia was the proprietor. Then had said that after receipt of the AG Memo, prior adjustment of money and for that, RCD gets sanction from the

Government. It has also been disclosed that payment was being made to M/s Cosmo Transport. Then had exhibited 2 AG Memo having been

received with regard to Supply order no. 413(E) dated 17.01.1994 which was received at office on 16.03.1996. After receipt of the AG Memo,

the Executive Engineer had made endorsement and then put his signature which happens to be in the pen and signature of Bhagwan Poddar. Then

had said that for procurement of bulk bitumen, the executive engineer as well as transporter entered into an agreement. After finalization of the

agreement the oil company was being informed whereupon oil company permits the transporter to lift bulk bitumen. In pursuance of Supply order

no. 413(E) dated 17.01.1994, there was an agreement 78F/02/95-96 dated 30.03.1996 which happens to be in between Bhagwan Poddar as

well as K. K. Kedia proprietor of M/S Cosmo Transport. Further stated that there happens to be signature of Bhagwan Poddar, the then

Executive Engineer and K.K. Kedia (exhibited). Then had disclosed that vide office letter dated 745 dated 29.06.1996 case was instituted at the

end of Executive Engineer against M/s Cosmo Transport, Kolkata and accordingly, exhibited the same. During cross-examination, he had stated

that after agreement, the same was entered into agreement register and accordingly, referred the same (exhibited since before). He had further

stated that no bulk bitumen was supplied to RCD, Saharsa Division in pursuance of Supply order no. 413(E) dated 17.01.1994. Then had said

that all the signatures were made in his presence. Then had stated that agreement was scribed by him on the dictation of the Executive Engineer.

He had got no personal knowledge. In para-4, he had stated that without having order of his department, transporter is not authorized to lifted bulk

bitumen from IOC or HPCL. In the agreement, there happens to be specific clause wherefrom bulk bitumen is to be lifted and where it has to be

carried. In case, there happens to be short supply, then in that event, junior engineer informs the Executive Engineer. Payment is made to the

Transporter after proper verification.

33.PW-17 had stated that he was an Assistant Engineer at RCD, Saharsa Division from 01.09.1992 to 15.10.1999. Then had disclosed that

K.K. Kedia was nominated Transporter of RCD, Saharsa Division. Then had stated that after receipt of bulk bitumen the same was to be entered

into stock Account Register. He was posted at Sub-Division-1st. Jagdish, Ravindra and B.K. Jha were junior engineers under him. In the year

1994-95, Bhagwan Poddar was an Executive Engineer. He had not received any quantity of bulk bitumen under Supply order no. 413(E) dated

17.01.1994 through M/s Cosmo Transport. There happens to be no entry with regard thereof. He had further stated that Bhagwan Poddar had

instituted a case against M/s Cosmo Transport. During cross-examination, he had stated that all the registers were being purchased by the junior

engineer from the market and then it was converted as relevant registers. The aforesaid registers were not certified by the department. Junior

Engineer used to maintain the registers. Then had said that it does not bear the signature of Executive Engineer. Then had denied the suggestion that

all the engineers hatched a conspiracy and misappropriated the bulk bitumen and then thereafter got the transporter involved in this case.

34.PW-18 had stated that he was an Assistant Engineer at Sonbarsa, RCD, Saharsa Division. He received charge from Jawahar Bhagat. Then

had detailed the procedure with regard to receipt of bulk bitumen, its entry under stock account register. Stock Account Registers were to be

operated by the junior engineer. Then had exhibited three stock accounts registers relating to his sub-division whereunder there was no entry with

regard to Supply order no. 413(E) dated 17.01.1994. Then thereafter, he was discharged as learned counsel did not turn up to cross-examine

him.

35.PW-20 had stated that he was a Junior Engineer of Section 1st, RCD-Saharsa Division from 1994-2001. M/s Cosmo Transport was

nominated Transporter of his division for transportation of bulk bitumen. Then had disclosed that junior engineer used to receive bulk bitumen on

an order of Executive Engineer and then the same was to be entered into stock account register. After having been supplied at the site, it was being

entered under Site Account Register. Then had exhibited the Stock Register of Section 1st. It was maintained by him (Page 1 to 195). Page 1 to

123 happens to be in his pen and signature and he had not received bulk bitumen in pursuance of Supply order no. 413(E) dated 17.01.1994.

Accordingly, he exhibited Site Account Register of his Section-1st whereunder also there happens to be no description with regard to Supply

order no. 413(E) dated 17.01.1994. This witness was also not examined.

36.PW-22 was an Executive Engineer, RCD, Saharsa Division in the year 2001. He had stated that the CBI vide Letter No. 5612/03/15(A)/97

dated 30.08.2001 had directed to produce relevant documents relating to Supply order no. 413(E) dated 17.01.1994 and further how much

quantity has been received against those supply orders whereupon vide letter no. 784 dated 08.09.2001, he had informed that nothing has been

received at RCD, Saharsa Division against the aforesaid order from the Transport. This witness was also not cross-examined.

37.PW-24 had deposed that he was an Assistant Engineer at RCD, Saharsa Division from 2000-2003, Subdivision No.2. Then had exhibited

different accounts registers, Stock registers, site account registers and on the basis thereof, had said that no supply order was made relating to

Supply order no. 413(E) dated 17.01.1994. During cross-examination, he had reiterated the mode of receipt of bulk bitumen at the RCD, Saharsa

Division. He had denied the suggestion that they were responsible for misappropriation of the aforesaid bulk bitumen which was supplied by the

transporter in pursuance of Supply order no. 413(E) dated 17.01.1994 and to justify the same prepared forged and fabricated registers.

38.PW-1 is a formal witness who, at the relevant time was posted as Co-ordinator at IOC, Barauni. As per instruction, he had handed over

relevant documents to the Investigating Officer and for that production-cum-seizure list was prepared which has been exhibited. During cross-

examination, he had stated that the documents which were handed over to the CBI by him is not available before him. Then had stated, he had

handed over the documents as per direction given by the head office.

39.PW-2 is the Accounts Clerk who had deposed that he joined in the year 1980. He joined as Junior Accounts Clerk. First of all, he was posted

at Supaul and then at Saharsa. He had worked under Bhagwan Poddar as well as Madan Pd. Sinha, Executive Engineer and is accustomed to

their signatures. Then hand stated that there happens to be agreement register whereunder details regarding agreement entered in between

department with the parties is incorporated. Then had stated that this agreement register had been certified by Madan Pd. Sinha having 48 pages.

It was opened on 03.04.94 covering 1993-94 to 1996-97. Then had stated that page no.9 to 17 has been written by different clerks namely,

Bechan Pasi, B.N. Jha and at remark column there happens to be signature of Bhagwan Poddar (exhibited).

Then had also exhibited page 32, Serial, 78, 79 having in the pen of Md. Mushtaque bearing signature of Bhagwan Poddar in the remark column

(exhibited). During cross-examination he had stated that original agreement regarding which relevant entries have been made, is not before him. He

had further stated that these entries have been relating to an agreement for transportation of bulk bitumen from Haldia to Saharsa.

40.PW-5 is the person who at an earlier occasion was arrayed as an accused but, at later part, he was given pardon and been recognized as

approver. He had deposed that he knew K.K. Kedia. He claimed identification. He was engaged in transportation of bulk bitumen having his

office at Kolkata. Employees of K.K. Kedia contacted him and used to accompany him invariably at their office where subsequent signatures were

placed before him having different forms with a direction to counterfeit the signature whereupon he done realizing Rs. 3/- per signature. The had

exhibited authorization letter dated 02.06.94 whereupon he had put forged signature of Executive Engineer R.C. being in favour of M/s Cosmo

Transport. He was not at all authorized to forge the signature. He had forged the signature on instruction of K.K. Kedia. The had detailed as

follows:-

C.R.C No. 70922 dated 31.06.95, C.R.C No. 70921 dated

21.06.95, C.R.C No. 70919 dated 07.06.95, C.R.C No. 70920 dated

08.06.95, C.R.C No. 70916 dated 31.10.94, C.R.C No. 70917 dated

31.10.94, C.R.C No. 70915 dated 24.10.94, C.R.C No. 70914 dated

24.10.94, C.R.C No. 70913 dated 21.07.94, C.R.C No. 70909 dated

19.07.94, C.R.C No. 70912 dated 19.07.94, C.R.C No. 70911 dated

19.07.94, C.R.C No. 70910 dated 19.07.94, C.R.C No. 70906 dated

22.06.94, C.R.C No. 70908 dated 22.06.94, C.R.C No. 70907 dated

22.06.94, C.R.C No. 70905 dated 08.06.94, C.R.C No. 70904 dated

06.06.94, C.R.C No. 70903 dated 06.06.94, C.R.C No. 70903 dated

06.06.94, C.R.C No. 70902 (date not printed), C.R.C No. 70901 (date not printed) and the aforesaid CRC Chalan he had forged signature of

Executive Engineer which he identified. Although signatures were put by him at the instance of K.K. Kedia. He had also stated that his statement

was recorded under Section 164 CrPC which he read, found correct and then put his signature. During cross-examination, he had denied the

suggestion that he was not given authorization letter dated 02.06.94. He had further stated that CRC Challan which he had exhibited was not

stated by him during course of his statement under Section 164 CrPC. The aforesaid CRC were shown to him whereupon he had stated that there

happens to be no mention of K.K. Kedia or M/s Cosmo Transport Company. He had further stated that he has got no prove to substantiate that

the aforesaid signature were forged by him on a direction of K.K. Kedia. He had further stated that he has got no information whether the

aforesaid documents were not examined by hand-writing expert. He had further stated that he had earlier gone to jail.

41.PW-12 is the Police Inspector who had deposed that Saharsa Sadar PS Case No. 291/1996 dated 18.11.93 was registered on the written

report filed by Bhagwan Poddar against Executive Engineer whereunder M/s Cosmo Transport was arrayed as an accused. Allegation was relating

to misappropriation of bulk bitumen (Exhibited). He had further stated that case was instituted on 02.07.1996 but it relates with 18.11.1993 and

onwards. During cross - examination at para-2 had stated that as per direction of the High Court, he had handed over investigation to the CBI. He

is not remembering the exact date during course of which he proceeded with the investigation.

42.PW-19 is the retired Dy.S.P. who in the year 1997 was Circle Police Inspector at Saharsa Sadar. He had further stated that all the relevant

documents relating to Saharsa Sadar PS Case No. 291/96 was handed over to CBI by him at Patna under proper receipt (exhibited). During

cross-examination, he had stated that he was not the registering authority of Saharsa Sadar PS Case No. 291/96 nor he was Investigating Officer.

43.PW-21 was Accounts Officer at Barauni TOP during 1994/95. Asghar Masood was Operation Officer. Md. Naseem was Accounts officer.

He further claimed to be accustomed to the writing/signature of aforesaid persons. Then had stated that IOCL used to supply bulk bitumen and its

loading point happens to be Haldia. At the time of loading bulk bitumen, it was under A.C.O5 (stock transport) whereunder from, to, name of

product, document number, quantity, quality of product, Lorry No., name of transporter etc were to be specified. That A.C.O5 form was to be

carried from Haldia to Barauni by agent of the Proprietor in normal course and on production, the employee of Barauni IOC puts his signature in

due acknowledgement. Then had exhibited A.C.O5 relating to supply number 413 which acknowledged by the then Operation Officer, Sri Asghar

Masoor (totaling 79 forms, exhibited). On the basis of the aforesaid acknowledgement A.C. 05, another form known as A.C. 10 (sales

document) were prepared at Barauni IOC containing DGS and D bill as well as CRC (exhibited) prepared by Asghar Masood bearing his

signature. Also exhibited carbon copy of the CRC, prepared by the then Operation Officer, AsgharMasood (exhibited). Also exhibited DGS and

D bill, carbon process in the pen of Md. Naseem. On the basis aforesaid documents he had stated that bulk bitumen was lifted by M/s Cosmo

Transport to unloaded at RCD, Saharsa. During cross - examination at para-4, he had stated that those documents were not prepared in his

presence. He had further stated that he is not knowing any agent of M/s Cosmo Transport.

44.PW-26 happens to be police official who in the month of October 1998 had joined CBI Office at Patna. He had taken investigation of relevant

case relating to order no. 413E dated 17.01.1994 which was registered on account of misappropriation of 1091 MT bulk bitumen by K.K. Kedia

proprietor of M/s Cosmo Transport in between May, 1994 to June, 1995. He had further stated that during course of investigation it was found

that those bulk bitumen were sold away to different factories located at Kolkata itself. He had further stated that he had seized relevant documents

from IOC as well as RCD, Sonbarsa. Some documents were also seized by earlier Investigating Officer while, some documents were seized by

other police officials as per his direction who were assisting him during course of investigation, they also assisted with the investigation of the case

along with other cases concerning misappropriation of bulk bitumen, exhibited the relevant seizure list. Examined the witnesses. Then had stated

that during course of investigation, it was detected that Panchu Mehta had issued order no. without taking sanction from Chief Engineer. It has also

been disclosed by him that after a year K.K. Kedia entered into an agreement with the then Executive Engineer. Bhagwan Poddar was also an

Executive Engineer who was knowing since before that bulk bitumen in it full quantity had already been lifted by the transporter. He had further

stated that during course of investigation, he also came to know that Maheshwari Prasad at the instance of K.K. Kedia had forged the signature of

the then Executive Engineer, Madan Prasad. Then had said that after finding the allegation true, he had submitted charge-sheet. During cross-

examination, he had stated at para-8 that he took up investigation on 24.03.1999. He had further stated that he had placed relevant document for

examination before hand-writing expert. He had also stated that without consignment authorization IOC was not allowing loading of the bulk

bitumen. The bulk bitumen laden by the K.K. Kedia was on the basis of forged signature of Madan Prasad Sinha. Then had denied the suggestion

that none of the independent witnesses had stated that signature of Madan Prasad Sinha was forged. At para-11, he had further stated that from

the evidence of the witnesses it has surfaced that consignment was sold away to different factories at Kolkata. Further he had stated that he had

inspected Hindustan Tyre Product, Ashoka Chemicals and others but those factories were closed on account thereof, the statement of proprietor

and other persons could not be taken. He had further stated that he had not obtained signature of independent witness during course of preparation

of seizure list.

45. The foremost question which now hinges relates to admissibility of PW-5, Maheshwari $\hat{\sim} \hat{\Delta} \hat{\Delta} \frac{1}{2}$ Prasad, initially an accused, became witness after

having been pardoned in accordance with $\hat{\sim} \hat{\Delta} \hat{\Delta} \frac{1}{2}$ Section 321 of the CrPC. The matter has been discussed in detail in the case of Chandra Prakash v.

State of Rajasthan as reported in (2014) 8 SCC 340 as follows:-

37. The next facet to be addressed is whether the evidentiary value of the testimony of approver Pappu, PW-1, is required to be considered.

Learned counsel for the State has drawn our attention to Section 133 and illustration

(b) to Section 114 of the Indian Evidence Act, 1872. They read as under: -

$\hat{\sim} \hat{\Delta} \hat{\Delta} \frac{1}{2}$ 133. Accomplice.- An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it

proceeds upon the uncorroborated testimony of an accomplice.

Illustration (b) to Section 114 The Court may presume $\hat{\sim} \hat{\Delta} \hat{\Delta} \frac{1}{2}$

(b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars. 7

38. The aforesaid two provisions came to be considered in *Bhiva Doulu Patil v. State of Maharashtra* [AIR 1963 SC 599] wherein the Court held

as follows:

7 The combined effect of Sections 133 and Illustration (b) to Section 114, may be stated as follows: According to the former, which is a

Rule of law, an accomplice is competent to give evidence and according to the latter, which is a Rule of practice it is almost always unsafe to

convict upon his testimony alone. Therefore, though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal yet

the courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars. 21

39. In *Mohd. Husain Umar Kochra etc. v. K.S. Dalipsinghji and another etc.* [(1969) 3 SCC 429], the Court observed thus: -

21... The combined effect of Sections 133 and 114, Illustration

(b) is that though a conviction based upon accomplice evidence is legal, the Court will not accept such evidence unless it is corroborated in

material particulars. The corroboration must connect the accused with the crime. It may be direct or circumstantial. It is not necessary that the

corroboration should confirm all the circumstances of the crime. It is sufficient if the corroboration is in material particulars. The corroboration must

be from an independent source. One accomplice cannot corroborate another 21. 21

40. 21 Having stated the legal position with regard to the statutory provisions, presently we shall proceed to consider the requisite tests to be

applied to accept the credibility of the testimony of the approver. At this juncture, we may sit in a time machine and quote a passage from *Sarwan*

Singh S/o Rattan Singh v. State of Punjab [AIR 1957 SC 637] wherein it has been held as follows: -

...An accomplice is undoubtedly a competent witness under the Indian Evidence Act. There can be, however, no doubt that the very fact that

he has participated in the commission of the offence introduces a serious stain in his evidence and Courts are naturally reluctant to act on such

tainted evidence unless it is corroborated in material particulars by other independent evidence. It would not be right to expect that such

independent corroboration should cover the whole of the prosecution story or even all the material particulars. If such a view is adopted it would

render the evidence of the accomplice wholly superfluous. On the other hand, it would not be safe to act upon such evidence merely because it is

corroborated in minor particulars or incidental details because, in such a case, corroboration does not afford the necessary assurance that the main

story disclosed by the approver can be reasonably and safely accepted as true. But it must never be forgotten that before the court reaches the

stage of considering the question of corroboration and its adequacy or otherwise, the first initial and essential question to consider is whether

even as an accomplice the approver is a reliable witness. If the answer to this question is against the approver then there is an end of the matter,

and no question as to whether his evidence is corroborated or not falls to be considered. In other words, the appreciation of an approver's

evidence has to satisfy a double test. His evidence must show that he is a reliable witness and that is a test which is common to all witnesses. If this

test is satisfied the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration. This test is

special to the cases of weak or tainted evidence like that of the approver.

8...Every person who is a competent witness is not a reliable witness and the test of reliability has to be satisfied by an approver all the more

before the question of corroboration of his evidence is considered by criminal courts.

41. In *Ravinder Singh v. State of Haryana*[(1975)3SCC 742], this Court has observed that: -

~An approver is a most unworthy friend, if at all, and he, having bargained for his immunity, must prove his worthiness for credibility in court.

This test is fulfilled, firstly, if the story he relates involves him in the crime and appears intrinsically to be a natural and probable catalogue of events

that had taken place. ~ Secondly, once that hurdle is crossed, the story given by an approver so far as the accused on trial is concerned, must

implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt.~

42. Similar principles have been reiterated in *Mrinal Das and Ors. v. State of Tripura*[(2011) 9 SCC 479].

43. In *A. Devendran v. State of T.N.*[(1997) 11 SCC 720], the Court has registered the view that there cannot be any dispute with regard to~

the proposition that ordinarily an approver~s statement has to be corroborated in material particulars. Certain clinching features of involvement

disclosed directly to an accused by an approver must be tested qua each accused from independent credible evidence and on being satisfied, the

evidence of an approver can be accepted. The Court further observed that the extent of corroboration that is required before the acceptance of

the evidence of the approver would depend upon the facts and circumstances of the case, however, the corroboration required must be in material

particulars connecting each of the accused with the offence, or in other words, the evidence of the approver implicating several accused persons in

the commission of the offence must not only be corroborated generally but also qua each accused but that does not mean that there should be

independent corroboration of every particular circumstance from an independent source. The court proceeded to state that all that is required is

that there must be some additional evidence rendering it probable that the story of the accomplice is true and the corroboration could be both by

direct or circumstantial evidence. Be it noted, the said principle was stated on the basis of pronouncements in *Ramanlal Mohanlal Pandya v. State*

of Bombay[AIR 1960 SC 961], Tribhuvan Nath v. State of Maharashtra[(1972)3 SCC 511], Sarwan Singh v. State of Punjab (supra), Ram

Narain v. State of Rajasthan[(1973) 3 SCC 805] and Balwant Kaur v. Union Territory of Chandigarh[(1988) 1 SCC 1].

44. In Chandan and another v. State of Rajasthan[(1988) 1 SCC 696], the Court held that so far as the question about the conviction based on

the testimony of the accomplice is concerned, the law is settled and it is established as a rule of prudence that the conviction could only be based

on the testimony of the accomplice if it is thought reliable as a whole and if it is corroborated by independent evidence either direct or

circumstantial, connecting the accused with the crime.

45. In Haroon Haji Abdulla v. State of Maharashtra[AIR 1968 SC 832], the view in this regard was expressed in the following terms: - "An

accomplice is a competent witness and his evidence could be accepted and a conviction based on it if there is nothing significant to reject it as

false. But the rule of prudence, ingrained in the consideration of accomplice evidence, requires independent corroborative evidence first of the

offence and next connecting the accused, against whom the accomplice evidence is used, with the crime."

46. In Major E.G. Barsay v. State of Bombay[AIR 1961 SC 1762], it has been observed that this Court had never intended to lay down that the

evidence of an approver and the corroborating pieces of evidence should be treated in two different compartments, that is to say, the court shall

first have to consider the evidence of the approver de hors the corroborated pieces of evidence and reject it if it comes to the conclusion that his

evidence is unreliable; but if it comes to the conclusion that it is reliable, then it will have to consider whether that evidence is corroborated by any

other evidence.

47. In Renuka Bai alias Rinku alias Ratan and another v. State of Maharashtra[(2006) 7 SCC 442], the Court held that the evidence of the

approver is always to be viewed with suspicion especially when it is seriously suspected that he is suppressing some material facts.

48. In *Ranjeet Singh and another v. State of Rajasthan* [(1988) 1 SCC 633], the Court observed that while looking for corroboration, one must first

look at the broad spectrum of the approver's version and then find out whether there is other evidence to lend assurance to that version. The

nature and extent of the corroboration may depend upon the facts of each case and the corroboration need not be of any direct evidence that the

accused committed the crime. The corroboration even by circumstantial evidence may be sufficient.

46. After having adherence of the aforesaid principle enunciated by the Apex Court, it is evident that the evidence of accomplice is admissible and

could be admitted in order to substantiate conviction, but as a caution, corroboration should be searched out apart from having definite finding over

its reliability. From the evidence of PW-5, it is evident that he not only claimed identification of K.K. Kedia rather also shown his presence at his

office, which has not been questioned. Furthermore, from his evidence, he detailed his unscrupulous activity by way of forging signature of the then

Executive Engineer, PW-3, Madan Prasad Sinha, who also deposed that his signature has been forged. From the lower court record, it is evident

that there is no report of handwriting expert, but from the evidence of PW-3 as well as PW-5, it is evident that they were not at all questioned nor

it was denied at the end of accused that it was not a forged one. This fact is to be seen through an other angle. From the evidence it has be come

crystal clear that for supply of Bulk Bitumen, order has to be placed by the Executive Engineer of the concerned RCD, which through different

table has to be placed before the Engineer-in-Chief for sanction. No such activity has been taken up. Contrary to it, PW-3 was cross-examined

over standing order issued by concerned minister that 500 MT of Bulk Bitumen was to be supplied to each RCD, but defence had not insisted

thereupon, as it has not been exhibited at his end. In likewise manner, the illegal activity of Panchu Mahto (since deceased) in issuing supply order

ignoring Chief Engineer, has also not been controverted. In likewise manner, the activity of Panchu Mahto, who had earlier directed to institute a

case against M/s Cosmo Transport than keeping the file at bay, again engaged M/s Cosmo Transport as transporter. In likewise manner, activity of

the then Executive Engineer, Bhagwan Prasad, in entering into an agreement much after the supply order during midst thereof, lifting of Bulk

Bitumen is also found duly substantiated and by such events, the evidence of PW-5 is duly corroborated. Apart from this, the admission at the end

of appellant during course of statement under Section 313 IPC is another circumstance. So, from the evidence, it has become crystal clear that

whole event was carved out by Pachu Mehta, who entrusted the M/s Cosmo Transport to transport the bulk bitumen having such black listed

under file No. Den-06-14/93. Furthermore, evidence of PW-3 has not been properly met, who shown his signature having been framed after his

transfer, entering into an agreement after his transfer by Bhagwan Poddar. When agreement happens to be after the transfer of PW-3, then in that

circumstance having to be an additional ground to infer over the document to be forged relating to PW-3 which ought not to be issued before

entering into agreement. When whole event is interconnected, it is found that chain is completed. Furthermore, the conduct of the appellant has also

to be seen. When PW-3 had disowned his signature over the relevant document and further asserted that the same happens to be forged one, then

in that circumstances, something more was required at the end of accused, at least to challenge the version, wherein failed. That means to say, the

assertion of PW-5 is found genuine one.

47. That being so, the appeal lacks merit and is, accordingly dismissed.

48. Appellant is on bail, his bail bond is, hereby, cancelled directing him to surrender before the learned lower court to

serve out the remaining sentence, failing which learned lower court will proceed against the appellant in accordance with law.