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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: May 31, 2019

+ **CRL. A. 602/2013**

C.B. SINGH Appellant

Through: Mr. Pramod Kumar Dubey and
Mr. Amit Rathor, Advocates.

Versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Mridul Jain, Special Public
Prosecutor for CBI.

+ **CRL. A. 601/2013**

R.K.GUPTA Appellant

Through: Mr. Rajeev Sharma, Advocate

Versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Mridul Jain, Special Public
Prosecutor for CBI.

+ **CRL. A. 600/2013**

RAKESH KUMAR Appellant

Through: Mr. R.P. Luthra, Advocate and
Ms. Sourabhi Luthra, Advocate

Versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Mridul Jain, Special Public
Prosecutor for CBI.

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CRL. A. 596/2013

ASHOK KUMAR ARORA Appellant
Through: Mr. Anup Kumar and Mr. Subodh
Prasad Deo, Advocates
Versus

CENTRAL BUREAU OF INVESTIGATION Respondent
Through: Mr. Mridul Jain, Special Public
Prosecutor for CBI.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

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JUDGMENT

1. The above four captioned appeals arise out of common judgment of 8th April, 2013 which pertains to R.C. SIB 2007 E0002. With the consent of learned counsel for the parties, the above captioned four appeals were heard together and are being decided by this judgment.
2. Appellants-*R.K. Gupta* (Executive Engineer), *Ashok Kumar Arora*, (*Owner/Builder of property in question*), *Rakesh Kumar* (Asstt. Engineer) and *C.B. Singh* (Junior Engineer) have been held guilty of the offences under Section 120B IPC read with Section 217 IPC and Section 13(2) read with Section 13(1)(d) of The Prevention of Corruption Act, 1988. Appellants-*R.K. Gupta* (EE), *Rakesh Kumar* (AE), and *C.B. Singh* (JE) who were posted in Shahdara South Zone, MCD, have also been held guilty for offences under Section 217 IPC and under Section 13(2) read with Section 13(1)(d) of P.C. Act as they had misused their official position as being public servants by facilitating appellant-*Ashok Kumar Arora* (Owner/Builder), in raising of unauthorised construction in subject property No. J & K-131, Laxmi Nagar,

Delhi and had caused pecuniary advantage to him.

3. Vide impugned order of 11th April, 2013, all the four appellants have been sentenced as under:-

R.K.Gupta	Three years rigorous imprisonment with fine of ₹25,000/- for offences punishable under Section 120-B IPC read with Section 217 IPC and 13(2) read with Section 13(1)(d) of PC Act with default clause.
	One year rigorous imprisonment with fine of ₹25,000/- for offence under Section 217 IPC with default clause.
	Three years rigorous imprisonment with fine of ₹25,000/- for the offences punishable under Section 13(2) read with Section 13(1)(d) of PC with default clause.
Rakesh Kumar	Three years rigorous imprisonment with fine of ₹25,000/- for offences under Section 120B IPC read with Section 217 IPC and 13(2) read with Section 13(1)(d) of PC Act with default clause.
	One year rigorous imprisonment with fine of ₹25,000/- for offence punishable under Section 217 IPC with default clause.
	Three years rigorous imprisonment with fine of ₹25,000/- for offences under Section 13(2) read with Section 13(1)(d) of P.C.Act with default clause.
C.B.Singh	Three years rigorous imprisonment with fine of ₹25,000/- for offences under Section 120B IPC read with

	Section 217 IPC and 13(2) read with Section 13(1)(d) of PC Act with default clause.
	One year rigorous imprisonment with fine of ₹25,000/- for offence under Section 217 IPC with default clause.
	Three years rigorous imprisonment with fine of ₹25,000/- for offences under Section 13(2) read with Section 13(1)(d) of PC Act with default clause.
Ashok Kumar Arora	Three years rigorous imprisonment with fine of ₹25,000/- for offences under Section 120B IPC read with Section 217 IPC and 13(2) read with Section 13(1)(d) of PC Act with default clause.
Trial court has directed that the above sentences of the appellants shall run concurrently with benefit of Section 428 Cr.P.C.	

4. The factual background as noticed in the impugned judgment is as under:-

“Briefly stating, the facts of the present case are that during the year 2006, Hon’ble Delhi High Court passed orders in WP(C) 4582/2003 against the Engineers and Officials of MCD regarding unauthorised construction and CBI was directed to probe their nexus with their hierarchy in Engineering Department, Builders as well as Politicians. As per order of Hon’ble High Court in WP(C) No.4582/2003, a preliminary inquiry No. PE SIB 2006 E0001 dated 10.05.2006 was registered. Preliminary inquiry was conducted by Inspector Sanjay Dubey (PW-19). During inquiry, it revealed that during tenure of accused R.K. Gupta as Executive Engineer from

9.8.2004 to 31.12.2005, a total of 477 cases of unauthorised construction were booked. It also revealed that accused C.B. Singh, the then J.E., entered into a criminal conspiracy with accused Ashok Kumar Arora and did not take any demolition action at property No. J & K-131, Laxmi Nagar, Delhi. Unauthorised construction at the said property after its purchase on 23.06.2004 was carried out by accused Ashok Kumar Arora without any Building Plan sanctioned by MCD. He had constructed flats thereon and sold it to various buyers. Inspector Sanjay Dubey gave a complaint Ex.PW-19/A on the basis of which FIR Ex.PW-20/A of the present case was registered."

5. Prosecution to prove its case had relied upon deposition of twenty eight witnesses. Out of whom *Inspector J.R.Katiyar* (PW-26) and *Inspector V. Balasubramanian* (PW-28) were the Investigating Officers. Trial Court has relied upon the prosecution version and has discarded the stand taken by appellants in their statements recorded under Section 313 Cr.P.C. and evidence of three defence witnesses, to convict and sentence the appellants as noticed above.
6. The findings returned by the trial court in the impugned judgment are as under:-

"89. The prosecution has successfully established that there was criminal conspiracy between all the accused persons, object of which was to cause pecuniary advantage to accused Ashok Kumar Arora, who was the owner.builder of the property in question. It has been established that accused Ashok Kumar Arora was the owner.builder of the property bearing No. J&K-131, Laxmi Nagar, Delhi and thereupon he raised unauthorised construction. It has also been established that when the saide property was purchased by him from PW27 Meena Dhawan, it was having only temporary

structure and unauthorised construction over it was raised by accused Ashok Kumar Arora booked for raising unauthorised construction raised.

90. *It has further been established that accused Ashok Kumar Arora raised unauthorised construction on the property in question. It has further been established that several complaints were received with regard to unauthorised construction on the property in question which were assigned to accused C.B. Singh, but despite that no action was taken by accused R.K.Gupta, Rakesh Kumar and C.B. Singh despite receipt of complaints.*

91. *It has further been established that Delhi Police also complained against the unauthorised construction on the property in question, but despite receipt of said complaint also, no action on the same was taken by accused R.K.Gupta, Rakesh Kumar and C.B. Singh.*

92. *It has further been established that as per office orders/circulars of MCD Ex.PW3/A1 and Ex.PW3/A4, accused R.K.Gupta, Rakesh Kumar and C.B. Singh were duty bound to physically inspect the area in their jurisdiction. It has been proved on record that accused R.K.Gupta, Rakesh Kumar and C.B. Singh neither booked the property in question despite raising unauthorised construction over it nor took any action for the same, despite having clear cut directions of MCD that accused R.K.Gupta, Rakesh Kumar and C.B. Singh being Executive Engineer, Assistant Engineer and Junior Engineer were duty bound to physically inspect the sites.*

7. On behalf of appellant-R.K.Gupta (EE), it was submitted that he has been erroneously convicted with the aid of Section 120B IPC as he had no information about the alleged unauthorised construction being carried out in the property in question i.e. *property No. J & K-131, Laxmi Nagar, Delhi*. Attention of this Court had been drawn to the office order of MCD dated

16th December, 2003, which is a Manual of Instructions on Unauthorised Construction. It was pointed out that as per aforesaid office order, the action has to be initiated by the concerned Junior Engineer for demolition of unauthorised construction and the FIR has to be got registered by him and the Executive Engineer comes into picture, only when booking action has been completed i.e. after issuance of notice regarding unauthorised construction and reply thereto is given.

8. It was submitted that the unauthorised construction was detected upon a police report being made and the said report was received by the office of the Executive Engineer on 15th September, 2004 and it was forwarded to Junior Engineer vide document Ex.D-39 on 20th September, 2004. It was pointed out that a surprise check of the unauthorised constructions was conducted by the Assistant Engineer and since the property in question was not booked, therefore, no surprise inspection was conducted. Attention of this Court was drawn to evidence of *Inspector Sanjay Dubey* (PW-19) to point out that no monetary benefit derived by the appellant-*R.K.Gupta*.

9. On behalf of appellant *Rakesh Kumar* (AE), it was submitted that this appellant had no role in the demolition of unauthorised construction on the property in question and his conviction with the aid of Section 120B IPC is unwarranted. It was pointed out that since the property in question was never booked by the concerned Junior Engineer, therefore, appellant-*Rakesh Kumar* does not come into picture.

10. It was submitted on behalf of appellant-*Ashok Kumar Arora* (Owner/Builder), that he had purchased the entire premises in question on 23rd June, 2004 and no unauthorised construction was raised by him. It was pointed out that the property was purchased vide document Ex.PW-27/A and

sold on 27th June, 2004. It was submitted that conspiracy angle has been presumed by *Inspector Sanjay Dubey* (PW-19), which is unwarranted.

11. On behalf of appellant-*C.B. Singh* (JE), it was submitted that he was posted as Executive Engineer (Building), Shahdara South Zone from 2nd August, 2004 to 4th May, 2005; 16th May, 2005 to 14th June, 2005 and again from 27th June, 2005 to 30th June, 2005 and the period of scrutiny/inspection was 9th August, 2004 upto 31st December, 2005. It was submitted that complaints regarding unauthorised construction in property in question were not marked to him and so with aid of Section 120B IPC, this appellant cannot be convicted and the trial court has erred in doing so. Thus, appellants seek acquittal.

12. On the contrary, learned Special Public Prosecutor for CBI supported the impugned judgment and order on sentence and submitted that conviction of the appellants is borne out from the evidence on record. It was submitted that appellants- *C.B.Singh*, *R.K.Gupta* and *Rakesh Kumar* in conspiracy with co-accused *Ashok Kumar Arora* had facilitated completion of unauthorised construction in the property for pecuniary gain in utter violation of Delhi Municipal Corporation Act/ Building Bylaws/ Circular/ Office Order issued by MCD authorities from time to time. It is pointed out that at the relevant time, appellant- *R.K. Gupta* was working as Executive Engineer (B) MCD, Shahdara, South Zone, Delhi, whereas appellant –*Rakesh Kumar* was posted in the MCD, Shahdara, South Zone, Delhi as Assistant Engineer (B) and appellant- *C.B.Singh* was posted in MCD, Shahdara, South Zone, Delhi as Junior Engineer (B).

13. It was submitted by learned Special Public Prosecutor for CBI that complaint regarding unauthorised construction in the subject property was

made to the aforesaid MCD officers in September, 2004 but no action was taken by appellants- *R.K.Gupta, Rakesh Kumar and C.B.Singh* against co-appellant *Ashok Kumar Arora*. It was next submitted that inaction on the part of aforesaid three appellants was with the sole purpose of giving undue advantage to co-accused *Ashok Kumar Arora*. It was sought to be highlighted that as per MCD circular of March, 1999, the checking of unauthorised construction was to be conducted by appellants - *R.K.Gupta, Rakesh Kumar and C.B.Singh* within a time line but it was not deliberately done. Attention of this Court was sought to be drawn to MCD register (Ex. PW13/A) to indicate that unauthorised construction in the subject property was noticed on 1st September, 2004 and its intimation was given on 8th September, 2004. It was vehemently asserted that the prosecution of appellants for unauthorised construction was not confined from 12th May, 2001 to 31st October, 2002 but was for the period after October, 2002 and any authorized construction detected after October, 2002 could not be ignored.

14. It was pointed out by learned Special Public Prosecutor for CBI that complaint regarding unauthorised construction in the subject property was marked to appellant- *C.B.Singh*, who was Junior Engineer of the area in question and unauthorised construction during the relevant period stands proved from the deposition of PW-7,8,11 and 16. Attention of this Court was drawn to the deposition of PW-11, 16, 18, 21, 24 and 25 to show that the unauthorised construction in the subject property was done by appellant- *Ashok Kumar Arora*. It was pointed out that as per MCD office order of 20th August, 2001, periodical inspections were to be conducted by appellants- *R.K.Gupta, Rakesh Kumar and C.B.Singh* to depict unauthorised

construction and this was not done to the benefit of appellant-*Ashok Kumar Arora*. It was submitted that criminal conspiracy between appellants can be inferred from the inferences drawn from the illegal omissions of appellants and since the prosecution case stands fully proved, therefore, these appeals deserve dismissal.

15. After having heard both the sides and on scrutiny of evidence of record, I find that the scope of scrutiny in the RC in question was wide enough to cover not only MCD officers but even politicians. It is relevant to note that the period of scrutiny was from 12th May, 2001 to 31st October, 2002. However, the evidence led relates to the period from 2004 to 2007. The crucial evidence regarding the five complaints made in respect of unauthorized construction in the subject property for the period in question does not stand to scrutiny, as the concerned witness i.e. PW-6 in his cross-examination has admitted that complete particulars in these complaints had not been mentioned. As per deposition of PW-7, complaint regarding unauthorised construction in the subject property was not directly received by him. It has come in the evidence of PW-8 that he was not aware whether the subject property is located in authorised or unauthorised area. A careful scrutiny of the prosecution evidence reveals that prosecution has failed to prove that the subject property was located in an authorised area. The material witnesses PW-11, 16, 18, 21, 24 and 25 have deposed regarding purchase of different portions in subject property in the year 2005-07 which is much beyond the period of scrutiny. Infact, deposition of Investigating Officer, *Inspector V. Balasubramanian* (PW-28) reveals that the complaints in question made regarding the unauthorised construction in the property in question could not be proved on record as the said complaints were not

traceable in MCD office. Not only this, Investigating Officer, *Inspector V. Balasubramanian* (PW-28) has admitted in cross-examination that he did not obtain specimen handwriting of appellant- *C.B.Singh* to prove the noting on the said complaints. This witness (PW-28) has gone to the extent of admitting in cross-examination that he had proceeded on the assumption of appellants being in conspiracy to commit offence in question, because they did not take action against unauthorised construction in the subject property.

16. After having considered the entire evidence on record, I find that it has come in the evidence of Superintendent Engineer of MCD (PW-5) that unauthorised construction can be regularized even subsequently, after following the due procedure and on payment of compounding fee. In the face of afore-referred clinching evidence, it was not open to the trial court to have drawn an inference of criminal conspiracy of permitting unauthorised construction in the subject property, as from the evidence on record it does not stand established that during the period in question, appellants - *R.K.Gupta, Rakesh Kumar and C.B.Singh* had deliberately facilitated unauthorised construction in the subject property. Since the complaints in question have not been duly proved on record, such an inference cannot be legitimately drawn.

17. This Court is of the considered view that there is no basis on which it can reasonably inferred that appellants- *R.K.Gupta, Rakesh Kumar and C.B.Singh* had actively connived with each other to give pecuniary advantage to co-accused *Ashok Kumar Arora*. Since it is not proved on record that appellants had connived with each other to facilitate unauthorised construction in the subject property even during the period from September, 2004 to November, 2005, therefore, appellants' conviction

for the offences in question cannot be sustained and is accordingly set aside. Such a view is taken because the evidence on record does not incriminate appellants- *R.K.Gupta, Rakesh Kumar and C.B.Singh* and so, it cannot be said that appellants had abused their official position and had facilitated raising of unauthorised construction in the subject property by appellant-*Ashok Kumar Arora* for pecuniary gain or that the unauthorised construction was ever brought to the notice of aforesaid appellants.

18. In the face of afore-referred infirmities in the prosecution case, conviction of appellants cannot be sustained and is thus set aside. As such, these appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

MAY 31, 2019

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