

(g) The final order : Accused Mahender Singh & M.L. Gaur are acquitted. Accused Sudesh Pal is convicted.

(h) The date of the order : 14-08-2015
JUDGMENT

1. This case No. RC 11(S) / 92 Delhi was registered by the CBI / Spl. Crime Branch / Delhi in 1992 on the basis of the source information with the allegation that during the period 1986 - 1990, Jai Prakash, Srichand, Rajendar Singh, Dharamvir Singh, and Sushil Kumar joined service in the DDA on 'work charge' basis on the strength of bogus / CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11 forged transfer order(s). These persons were never employed by DDA, the transfer order vide which they had joined were forged. Furthermore, in connivance with the DDA officials and unknown persons the accused persons forged the documents such as the appointment letters service book, transfer / posting orders purportedly under the signature of various competent authorities of the DDA and thus cheated to the tune to Rs.1.06, 417.10 by way of salary etc. received by them. It is further the case of the prosecution that the proper procedure was not followed.

2. The CBI has explained the procedure in the charge sheet as under :

"When an employee is transferred from one division say D□ to another Division say D□, the transfer order is issued by Deputy / Asst. Director from the office of the said Zonal Chief Engineer. A copy of the said order is sent to D□ and D□ through the Peon Book of Zonal Chief Engineer. On the basis of the said transfer order, a relieving order is sent to the Executive Engineer D□ (Transferring Division) and a copy of the said relieving order is sent to the Zonal Chief Engineer as well as to the Executive Engineer D□ (Transferee Division). The order is sent through the Peon Book. After that the transferred employee submits report in D□ and he posted to one of the sub-divisions of D□ (Transferee Division).... order to this effect is issued by Executive Engineer D□. Again a copy of the said order is sent to the Zonal Chief Engineer and Executive Engineer D□. So that the transferring division i.e. D□ knows about the joining of the transferred employee and it also facilitates the accounting aspect. The service book, personal file, and the LPC of the transferred employee are to be sent from D□ to D□ along with a forwarding letter."

CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11

3. The above said procedure was not followed and the accused Mahender Singh working as Head Clerk ensured that copy of the joining report and the posting order did not reach D□ and the office of the Zonal Chief Engineer.

4. The CBI has further alleged that the accused Mahender Singh while working as 'work charge beldar' of DDA of Eastern Division□ (earlier HD□9) entered into a criminal conspiracy with the accused M.L. Gaur & Sudesh Pal for the purpose of inducing him in the service of DDA as 'work

charge employee' without any 'appointment order' and on the basis of forged transfer / relieving order. The accused M.L. Gaur & Sudesh Pal were never appointed in any of the divisions of DDA and there was no transfer order as mentioned in the service book.

5. The accused Mahender Singh forged the service book and the personal file of accused M.L. Gaur & Sudesh Pal by obtaining the official seal of Ex-Engineer of DDA (embossed with the signatures of the said engineer) and made the accused M.L. Gaur & Sudesh Pal join the Eastern Division - 4 in the year 1985. The said ED-4 was thus induced to believe that M.L. Gaur & Sudesh Pal was a 'work charge employee'. The accused M.L. Gaur & Sudesh Pal drew salary and other benefits till the year 1992 from the said department. The GEQD has confirmed the handwriting of Mahender Singh on the forged service book of the bogus appointee.

6. On 30.01.1995 the charges u/s 120(B) r/w S.420, 467, 468, & 471 IPC were framed against all the accused persons. The accused Sudesh Pal was also charged separately u/s 420/471 IPC while the accused Mahender Singh was also separately charged under S. 467/468 IPC.

7. The CBI examined as many as four PWs in order to prove the allegation. The deposition of the said witnesses are as under: CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11 PW1 Sh. P.L. Nagpal, Assistant Director, Vigilance, DDA deposed that he was posted as Asstt. Director, Admn.II in the office of Chief Engg, East Zone from 12-2-90 to 26-9-93 and he is aware about the establishment orders issued from the office of Chief Engg, East Zone. He deposed that first of all Head office at Vikas Minar used to issue an order giving EO No., if an employee on the work charge establishment of DDA was transferred from one Engg. Division to another and original office order is retained in the office file called EO book, whereas copies are sent to concerned divisions, after entering the same in Peon book, where the concerned employee is transferred as well as to the division to which he is transferred. On receipt of copy of the EO the transfer division passes order for relieving the employee transferred from that division. The EO is first seen by the Executive Engg. to whom it is required to be put up by the diarist and he marks it to the head clerk who marks it to the dealing hand and copy of the relieving order is sent to the head office, to the transferee division and to the concerned employees and copies of the same also sent to the account and some time also to the concerned Suptd. Engg. Normally it takes about one week to issue the relieving order after receiving the transfer order. The transfer division also sends LPC, service book and personal file of the transferred employee to the transferee division along with a forwarding letter and some time with note after entering in the peon book and same is sent through the peon. The transferred employee is also required to submit joining report in the transferee division. If the personal file is not recd. in the transferee division by the time the employee submits joining report there, a part file is open in the transferee division and posting order are issued under the signatures of the concerned Executive Engg and the copies of posting orders are sent to all the concerned offices to whom copies of EO are sent. These are also sent CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11 through Peon after making entry in Peon Book and some time if peon book is not easily available such order are also sent through special messenger but in that case receipt is obtained on a piece of paper which is pasted in the peon book. If an employee brings the transfer order as well as relieving order to the transferee division and submits along with joining report, the concerned head clerk or the concerned Executive Engg. Is required to compare the copy

brought by the employee with the copy recd in the division. If the copy of transfer order has not been received in the division, in normal course, the employee should not be allowed to join on the basis of the copy brought by him. Normally transfer orders are received in the concerned division within a week. The transfer orders are required to be entered in service book of the concerned employee, Executive Engg. is required to sign the service book of the employee and no one else is supposed to sign it. The entry regarding transfer is made in the service book by the transferor division and transferee division also. PW2 Sh. R.K. Jain, Dy. Govt. Examiner of Questioned Documents, Shimla, during his examination in chief deposed that the documents marked Q 220 to Q 225 and Q 421 to Q 436 in service book pertaining to Sudesh Pal Ex.PW2/A and Q 753 in Ex.PW2/B in the present case were received from SP, CBI, SCB, New Delhi in their office as disputed documents. The specimen writing of Sudesh Dhama marked Q 202 to Q 216 and S 379 to S 400 were also received for comparison which are Ex.PW4/B case No:53/2 titled as CBI Vs. Mahinder Singh. PW deposed that the person who wrote writings marked S 202 to S 216 and S 379 to S 400 also wrote writings marked Q 222 and W 753. His reported is Ex. PW2/C. The report is common and pertains to about 16 cases. PW further stated that said reports are signed by him as well as by Sh. Santokh Singh, Govt. Examiner of questioned documents who has also examined this case CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11 independently. It is deposed by PW that the documents were photographed by the Govt. Photographer under his supervision. The negatives which are in 21 wallet pertaining to all the disputed and standard writings are Ex.PW2/D1 to D21 (The negatives of this case are already exhibited in file No:40/2 as Ex.PW2/D1 to D21). The photographs of all these relevant documents are in one envelope which is Ex.PW2/E1 to Ex.PW2/E308 (Exhibited in File No:40/2). PW3 Shri Ajay Rawat, Vigilance Officer, GAIL, USAR (Maharashtra) deposed that in the year 1992 I was working as Sub Inspector of Police/CBI/SCB, New Delhi. I worked in this branch from Sept. 1990 till Feb., 1993. The present case was assigned to me for investigation in the year 1992 (August). This case was regd. On the basis of source information recd. That in DDA during the period 1986 to 1990 certain persons were fraudulently appointed on the strength of bogus/forged transfer orders. Since these persons were never employed by the DDA, the transfer orders vide which they joined DDA were forged. Today I have been shown the FIR dt. 20.8.1992 which is signed by Shri Ashok Kumar, the then SP, CBI, SCB, New Delhi. The same was assigned to me for detail investigation. During the investigation, I had contacted various DDA officers in Delhi and collected all the relevant documents including service books, transfer orders, relieving orders etc. During the investigation, searches were also conducted at various places in order to seize relevant documents and also to find out the various suspects involved in this case. I had also recorded the statements of various DDA officers and other witnesses. Specimen handwritings and Signatures of various suspected persons/officials were also taken by me. The same were sent to GEQB for opinion. I have seen FIR No. RC 11/S/92-DLI Dt. 20.8.1992 u/s 120-B r/w 420, 467, 468 and 471 IPC lodged against the accused persons. It bears the signature of Sh. Ashok Kr. Supdt. Of CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11 Police, CBI, SCB, New Delhi at point A. I identify his signature as I have seen him writing and signing. The FIR is Ex. PW3/A1, upon the basis which investigation charge sheet was filed agst. The accused persons by Sh. Akhil Kaushik, Inspector, CBI, SCB, New Delhi. I have also seen seizure memo dt. 28.9.92 which bears my signature at point A. This seizure memo was prepared after seizing 15 files from Eastern Div. No. IV/DDA. The same is Ex. PW3/A2. Similarly a seizure memo dt. 19.10.92 is Ex. PW3/A3 it bears my signature at point - A. I have seen receipt memo dt. 11.1.93 vide which Sh. S.N. Gupta, Dy.

Director, Vigilance, DDA had sent 5 files as listed in it to Supdt. Of Police, CBI. The same is Ex. PW3/A4. I had received service book and personal file of Shri Krishan Pal Singh vide letter dt. 28.10.92 from Executive Engineer Ed□6/DDA. The same is Ex. PW3/A5. A seizure memo dt. 19.10.92 through which documents which are listed from Sr. No. 1 to 6 were seized from Sh. R.P. Singh, Head Clerk, DDA by me, it bears my signature at point - A. The same is Ex. PW3/A6. Similarly, seizure memo dt. 23.9.92 through which two files were seized from Head Clerk, ED/VIII, DDA by me and it bears my signature at point - A. The same is Ex. PW 3/A7. Another seizure DDA by me and it bears my signature at point - A. Seizure memo is Ex. PW 3/A8. Another seizure memo dt. 20.8.92 through which 10 files were seized from AVO, DDA by me and it bears my signature at point - A. The seizure memo is Ex. PW 5/A9. I have seen Establishment order (2 nos. pages) sent by Asstt. Director, Admn. II, CE (EZ) office DDA vide which they had sent 34 EO numbers which have details of genuine number as well as forged Eos number received from CBI office by AD (Admn.) the same are Ex. PW 3/A10. Likewise another Establishment order sent by Asstt. Director, Admn. II CE (EZ) office, DDA vide which they had sent 34 EO numbers received from CBI office AD (Admn.) the same are Ex. PW 3/A11, CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11 consists of 3 pages and both of these establishment orders bears signatures of Asstt. Director Admn. at point - A. I have seen specimen signature/handwriting of Mahender Singh running into 29 sheets and same bears my signatures at point - A on each sheets which are Ex. PW 3/A□ to A□29. Further I have seen specimen/handwriting of Sh. Mahender Singh running into 37 sheets and the same bears my signature on each sheets at point - A which are Ex. PW 3/B □ to B□37. Likewise I have seen specimen handwriting of R.S. Nim running into 45 sheets and the same bears my signatures at point - A on each sheets which are Ex. PW 3/C□ to C□46. I have seen specimen signature of R.S. Nim running into 38 sheets, it bears my signatures at point - A on each sheets which are Ex. PW 3/D□ to D□38. I have seen specimen handwriting/signature of Pramod Kr. running into 12 sheets and the same bears my signature at point - A on each sheets which are Ex. PW 3/E□ to E□12. Likewise I have seen specimen handwriting of Pramod Kr. Running into 28 sheets and the same bears my signatures at point - A on each sheet which are Ex. PW 3/ F□ to F□28. I have also seen specimen handwriting/signature of Pramod Kr. Running into 45 sheet it bears my signature at point - A on each sheets which are Ex. PW 3/ G□1 to G□45. I have also seen specimen signatures/handwriting of Ramesh Kr. Running into 18 sheets, it bears my signature at point□A which are Ex. PW 3/H□ to H□18. I have also seen specimen signatures/handwriting of Ramesh Kr. Running into 38 sheets. The first sheet bears my signature at point - A which has already been marked as Ex. PW4/C. Rest of the 37 sheets bears my signatures at point□A which are Ex. PW 3/I□ to I□37. I have also seen handwriting bears my signatures at point□A on each sheets which are Ex. PW 3/J□ to J□5. Further I have also seen handwriting/signature of Subhash Dhame running into 28 sheets, it bears my signature at point□A on each sheet and which are Ex. PW CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11 3/K□ to K□28. I have also seen specimen handwriting/signature of C.S. Saini Running into 16 sheet, it bears my signature at point - A on each page and which are Ex. PW 3/ L□1 to L□16. I have also seen specimen handwriting/signature of C.S. Saini running into 54 sheets, it bears my signature at point - A on each sheet which are Ex. PW 3/ M□1 to M□54. I have also seen specimen handwriting/signature of G.L. Khurana Running into 7 sheets, it bears my signature at point - A on each sheets which are Ex. PW 3/ N□1 to N□7. I have also seen specimen handwriting/signature of R.L. Padianl running into 6 sheets, it bears my signature at point - A on each sheets which are Ex. PW 3/ O□1 to O□6. I have also seen specimen handwriting/signature of

R.L. Jain running into 3 sheets, it bears my signature at point - A on each sheets which are Ex. PW 3/ P□1 to P□3. I have also seen specimen handwriting/signature of K.D. Sharma running into 3 sheets, it bears my signature at point - A on each sheets which are Ex. PW 3/ Q□1 to Q□3. I have also seen specimen handwriting/signature of I.M. Mathur running into 6 sheets, it bears my signatures at point - A on each sheet which are already marked B□1 to B□6. I have also seen specimen handwriting/signature of Lal Chand Aggarwal, running into 6 sheets, it bears my signature at point - A on each sheet first and second sheet are Ex. PW 3/R□1 to R□2 and remaining four sheets are already marked A□1 to A□4.

During his cross examination by Id. Defence counsel PW deposed that in the year 1992, I was working as SI of police, CBI, SCB, New Delhi. I worked in this branch from Sept. 1990 till Feb. 1993. The present case was assigned to me for the investigation in the year 1992, August. This case was registered on the basis of source information, received, that in DDA during the period 1986 to 1990 certain persons were fraudulently appointed on the strength of bogus/forged transfer orders. Since, these persons were never CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11 employed by DDA, the transfer orders vide which they joined DDA, were forged. Today, I have been shown a photocopy of FIR dated 20.8.92 which is signed by Sh. Ashok Kr., the then SP, CBI, SCB, New Delhi. The same was assigned to me for detailed investigation. I have been shown original FIR which lies in C.S. No. 4/2 and the same has been compared by me with the photocopy. During the investigation I had contacted various DDA officers in Delhi and collected all the relevant documents including service books, transfer orders, relieving orders etc. During the investigations, searches were conducted at various places in order to seize relevant documents and also to find out the various suspects involved in this case. I had also recorded the statements of various DDA officials, another witnesses. Specimen handwriting and signatures of Pramod Kumar, G.L. Khurana, R.N. Dadlani, R.C. Jain, K.D. Sharma, I.M. Mathur and Lal Chand were also taken by me and the same were sent to GEQD for opinion. I have seen photocopy of FIR No. RC 11(S)/92, DLI dated 20.8.92, u/s 120B, r/w 420, 467, 468 and 471 IPC lodged against the accused persons and it bears the signatures of Ashok Kr. SP, CBI, New Delhi at point A. I identify his signatures as I have seen him and signing in day to day official working. The FIR is Ex. PW 3/A1. On the basis of which investigation was conducted. After the completion of investigation, charge sheet was filed against the accused persons by Sh. Akhil Kaushik, Inspector, CBI, SCB, New Delhi. I have also seen photocopy of seizure memo dated 19.10.92. Original of the same is lying in charge□sheet no. 56/2. I have compared the photocopy with original one. It bears my signature at point A. Vide the seizure memo 8 documents were seized including three personal file and service book of Mr. Lilu Sharma. And the same is Ex. PW 3/A2. I have seen service book of Lilu Sharma which bears Ex. PW 4/A (Already Ex.) I have also seen personal file of Lilu Sharma from page 1 to 5, 6 to 20 CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11 and 21 to 85 respectively contained in three files. The same was seized by me which is Ex. PW 3/A3, A4, and A5 respectively. I have been shown specimen handwriting/signatures of Pramod Kumar running into page 1 to 85 which bears my signatures at point A on each sheet which is Ex. PW 3/A6. I have been shown specimen initials/signatures of G.L. Khurana marked as S 530 to 536 and specimen signatures of Sh. R.N. Dadlani from S 165 to S 170 and specimen signature of R.C. Jain from S 172 to 174 and specimen signature of K.D. Sharma from S 181 to S 183, specimen signature of I.M. Mathur from S 184 to S 189, specimen signature of Lal Chand Adwani from S 190 to S 195. All the specimen signatures bears

my signature at point A which is Ex. PW 3/ A□7. I have been shown GEQD opinion dated 26.11.93 which pertains to this case. As I have already mentioned that I worked in this branch till Feb. 93 this opinion was received later on after my transfer from this branch. There was no written complaint from DDA and this FIR was lodged on source information by me. My Sr. Officer recd. source information. There was not much of gap may be one week in our receiving information and lodging the FIR. FIR is dated 1992. I do not remember the month. I had investigated the case till March 1993. I had to leave the investigation because I was transferred to ACU□VI. After I was transferred the charge of investigation and later charge□sheet was prepared and filed by Sh. Akhil Kaushik. As and when it was required I was called for assisting Mr. Akhil Kaushik who was then the IO.

During the cross examination of PW3 ld. defence counsel has stated that the cross examination done by Ms. Anjana Prabhakar Adv. Accused Ramesh Kr. May kindly be read in X□examination as part and parcel of all the cases. Heard and allowed.

PW3 during his cross examination further stated that during my CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11 investigation, I might have examined officials lower level than Executive Engineer who know about the procedure of the transfer. Since, Head Clerk and others are generally dealing with transfer. I do not remember whether any clerk has given me statement regarding the procedure for transfer of an employee from one department to another. It is wrong to suggest the investigation of this case was transferred from me as I was shielding Sr. Officers. Vol. The case was handed over to Mr. Kaushik because I was transferred on promotion. I obtained the signatures of accused persons in my office, in the presence of independent witnesses. It is wrong to suggest that I am deposing falsely.

During his cross examination by Ms. Anjana Prabhakar, adv. for accused Ramesh Kumar, PW3, admitted that EXPW3/A1 is carbon copy of FIR. It is correct that I can tell designation of a person who had signed EXPW3/A10 and A□1, same are not written in my presence. It is only after seeing documents I cannot tell person who had signed it. These documents were perhaps received by post. It is correct that EO number mentioned in EXW3/A10 and A□1 had not been collected by me. I have not recorded statements of persons who have signed EXPW3/A10 and A□1. It is wrong to suggest that specimen writing of accused was taken again and again at different point of time because hand writing expert was unable to express his opinion. It is incorrect to suggest that I have not conducted investigation in this case properly. It is incorrect to suggest that specimen writing of accused Ramesh Kumar was not taken by me. It is incorrect to suggest that I am deposing falsely. I have gone through the record. The Establishment Order (EOO) are only relieving and transfer orders. In our second initial EO or appointment letters are bogus and after the joining subsequent EO are genuine. I have not compared the subsequent orders which are genuine. It is incorrect to CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11 suggest that accused Pramod Kumar was only filling up the forms and not signing the relieving and transfer orders. Transfer orders are either signed by AE or Executive Engineers. I have examined the concerned Executive Engineers and they have confirmed that relevant transfer orders/appointment letters were never issued from their office. It is not in my knowledge those Engineers Superintendent have been examined on oath in this Hon'ble Court. It is wrong to suggest that accused Pramod Kumar have been falsely implicated in this case and the investigation as far as this accused is concerned is not proper or that

I am deposing falsely to support the case of the prosecution. I do not remember whether the statement given by Head Clerk Braham Singh was in my handwriting or somebody else, but it is a fact that the statement was not written by PW Braham Singh or any other witness for that matter. The statement u/s 161 of the witnesses were written in their presence but their signatures were not obtained on those statements. I do not remember what statement u/s 161 Head Clerk Braham Singh gave whether it was in favour of Pramod Kumar or against. It is not in my knowledge Head Clerk Braham Singh had resigned from his previous statement u/s 161 or not. It is incorrect that original relieving and transfer orders are not on record. It is correct that the employment of Leelu Sharma, Babu, Ram, Ved Ram Suman Kumar, Jai Ram and Prem Singh was not done in a regular basis but they were employed in the DDA through a scheme. And, they were employed in the DDA through a proper procedure followed for the appointment of any employee in DDA. It is correct that all the above mentioned employees were transferred alongwith the scheme from one division to another scheme. I cannot say whether they were transferred alongwith the scheme from one division to another scheme. I cannot say whether they were transferred from HD 14 to HD 19. It is in my knowledge that accused Pramod Kumar was CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11 working in one of the divisions but I cannot say that he was working in HD 19. I do not recall whether there was any head clerk in that division. It is correct that Dadalani was one of the Executive Engineer, I cannot say whether he was heading that division or not where Pramod Kumar was appointed. I do not know who was Superintendent Engineer (SE) of that circle□III. I cannot say that R.B. Dadlani was heading both the division i.e. Sh. R.L. Dadlani u/s 161 Cr.P.C. it is not in my knowledge whether R.L. Dadlani had taken the specimen signatures of R.L. Dadlani and also his signatures on various documents including service book etc. for comparison and sent these signatures to GEQD. It is correct that GEQD has mentioned that his specimen signatures are not tallying with signatures appearing on the questioned documents. Pramod Kumar's specimen signatures were taken on different occassion as and when the files were recd. from various divisions where signatures were alleged to be forged by the accused persons. I had been shown the document listed as D_13 which indicates the list of forged EOs received from CBI office by Addl. Director to Chief Engineer and this tally also indicates about the list of genuine EOs on page 2 EO No. 363 dt. 8.10.87 of Leelu Sharma indicates the signatures are genuine of Sh. R.L. Madan but I cannot comment as Sh. Akhil Kaushik had dealt with this aspect after I was transferred in the year 199 I cannot ascertain at this point of time whether I had taken signatures of above mentioned four employees and compared them with those of Sh. Pramod Kumar. As far as D 14 which is the opinion of handwriting expert Sh. R.K. Jain is concerned it had also been recd. after my transfer and dealt with by Mr. Akhil Kaushik so I cannot comment on that also. The personal file contains the various documents including the alleged transfer order/relieving order. I have gone through the original and as per the personal file of Sh. Lilu Sharma he joined DDA vide Establishment CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11 order No. 18 dt. 25.2.87 and there is no transfer reliving order in case of Sh. Lilu Sharma.

PW4 Sh. Akhil Kaushik Inspector, CBI, Dehradun, during his examination in chief dt 23□□2003, deposed that in 1992 he was posted as Sub Inspector in CBI, Spl. Crime Branch, deposed that Sh.Ajay Rawat investigated and completed the investigation and further investigation of the case was handed over to him and in the present case he(Akhil Kaushik) recorded the statement of some witnesses and filed the charge sheet in the court Ex.PW4/Ex□/A & B and Ex.PW4/Ex□/C & D.

During his cross examination dated 19-11-2002, PW4 denied the suggestion that has not done any investigation in the present case or that charge sheet has not been prepared by him. He further stated that he does not remember that if he had conducted and written statement for few witnesses after Mr. Ajay Rawat(1st IO) had been transferred, however, he has only signed and presented the charge sheet.

8. Statements of the Accused persons u/s 313 Cr.P.C were recorded and during their statement both the accused have stated they have been falsely implicated in the present case. Both the accused chose not to lead defence evidence.

9. I have heard Id. Counsel for the accused persons and Ld. PP for the CBI.

10. Sections 463 and 464 IPC are as under :
S.463. Forgery. Whoever makes any false document or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11 S. 464. Making a false document. [A person is said to make a false document or false electronic record--First--Who dishonestly or fraudulently--

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or Thirdly--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration.] CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11

11. Section 463 IPC deals with making a false document with the intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with

property, or to enter into express or implied contract, or with intent to commit fraud or with the intention that fraud may be committed. Since Section 463 IPC deals with "making false documents", obviously, one has to turn to Section 464 IPC which defines under what circumstances, a document is said to be made falsely. A bare perusal of Section 464 IPC clearly reveals that a person is said to make a false document when it is done with dishonest and fraudulent intention, when a part of document is made with the intention of causing it to be believed that such a document was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person whom or by whose authority, the maker knows that it was not made, signed, sealed, executed or affixed by the said authority. Moreover, if the maker, without a lawful authority, cancelled or otherwise altered the said document after the document was made. Only under these circumstances is it said a document is made falsely. S. 468 IPC :: Forgery for purpose of cheating :—Whoever commits forgery, intending that the [document or Electronic Record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

12. A bare perusal of the said section clearly reveals that first ingredient of Section 468 IPC is the commission of forgery i.e., as defined in Section 463 IPC. It is only after the forgery has been committed that one would examine the purpose of committing forgery i.e., whether it is done for the purpose of cheating or not? However, in the present case, since the first ingredient is CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11 conspicuously missing i.e., commission of forgery, the charge for offence under Section 468 IPC could not be framed.

13. Section 471 IPC is as under:—Using as genuine a forged [document or electronic record] -- Whoever fraudulently or dishonestly uses as genuine any [document or electronic record] which he knows or has reason to believe to be a forged [document or electronic record], shall be punished in the same manner as if he had forged such [document or electronic record].

WHETHER FORGERY IS MADE OUT:

14. The service book of the accused Sudesh Pal has exhibited by PW Sh. R.K. Jain (Dy. GEQD) as the exhibit Ex.PW1/A. As per the expert opinion / report Ex.PW1/C, the document mark Q120 to Q125, Q421 to Q.436 in the service book of Sudesh Pal Ex.PW2/A and Q753 in the personal file of Sudesh Pal Ex. PW2/B are in the handwriting of the accused Subhash Shama.

15. The question concerning the evidentiary value of the opinion of a hand writing expert in the context of Sections 45 and 47 of the Evidence Act, 1872 has been considered in a number of decisions of the Supreme Court. In Fakhruddin v. State of Madhya Pradesh, AIR 1967 SC 1326 it was observed as under:

"10. Evidence of the identity of handwriting receives treatment in three sections of the Evidence Act. They are Sections 45, 47 and 73. Handwriting may be proved on admission of the writer, by the evidence of some witness in whose presence he wrote.

This is direct evidence and if it is available the evidence of any other kind is rendered unnecessary. The Evidence Act also makes relevant the opinion of a handwriting expert (Section

45) or of one who is familiar with the writing of a person who is said to have written a particular writing. Thus besides direct CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11 evidence which is of course the best method of proof, the law makes relevant two other modes. A writing may be proved to be in the handwriting of a particular individual by the evidence of a person familiar with the handwriting of that individual or by the testimony of an expert competent to the comparison of handwritings on a scientific basis. A third method (Section 73) is comparison by the Court with a writing made in the presence of the Court or admitted or proved to be the writing of the person.

16. As far as the issue of sanction to prosecute accused Mahender Kumar is concerned, the law is very well settled that conspiracy and forgery can never be part of the 'Official discharge'. In the present case there are direct proof of forgery against the said accused. The protection given under Section 197 Cr.P.C is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. Use of the expression "official duty" implies that the act or omission must have been done in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are there were direct allegations CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11 of forgery, there was no need to obtain sanction to prosecute u/s 197 Cr.P.C.

17. The essential ingredient of the offence of "criminal conspiracy", defined in Section 120A IPC, is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event, unless the Statute so requires, no overt act is necessary to be proved by the prosecution because in such a fact situation criminal conspiracy is establish by proving such an agreement. In other words, where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120 B read with the proviso to sub-section (2) of Section 120 A IPC, then in that event mere proof of an understanding between the accused for commission of such crime alone is enough to bring about a conviction under Section 120 B and the proof of any overt act by the accused or by any one of them would not be necessary.

18. The proved facts of the present case reveal that the accused persons were working in tandem. The accused Sudesh Pal has not come with any sort of explanation or proof in rode to show that he had been previously working in the DDA. The forges papers were prepared so that Sudesh Pal's employment could be created through the forged documents.

19. In the present case the accused Sudesh Pal was not employed under any scheme therefore the connivance looms large. As per the expert report of PW R.K. Jain (Dy. Government Examiner of questioned documents), the accused Mahender Singh had been writing in the service book, personal file etc. in order to wrongfully benefit to the other co-accused. However, no evidence has come on record to prove the charge against the accused Mahender Singh and M.L. Gaur. Hence, they are acquitted from the charges framed against CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11 them in the present case.

20. CBI has been able to establish the allegations against the accused persons Sudesh Pal and Subhash Dhama only.

Criminal proceedings had already abated against the accused Subhash Dhama vide order dated 20th 10th 2008.

Accused Sudesh Pal, therefore, is convicted under section 120(B) r/w 420,467,468 & 471 IPC. Accused Sudesh Pal is also separately convicted under Section 420/471 IPC.

21. Put up for argument on sentence on 19th 08th 2015.

ANNOUNCED IN THE OPEN COURT TODAY ON 14th 08th 2015.

(VEENA RANI) Chief Metropolitan Magistrate South East District / Saket Courts New Delhi/14th 08th 2015 CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11 IN THE COURT OF Ms. VEENA RANI: CHIEF METROPOLITAN MAGISTRATE, SOUTH EAST DISTRICT, NEW DELHI CBI Versus Mahender Singh, M.L. Gaur & Sudesh Pal and Subhash Dhama (Expired.

Proceeding abated against him vide order dated 20th 10th 2008).

RC No:11(S)/92/CBI/SCB/New Delhi CC No:13/06/11 U/s 420/471/467/468/120^B IPC 30th 09th 2015 Present: Ld. APP for the CBI.

Convict Sudesh Pal on bail along with counsel.

I have already heard ld. APP for the CBI and also ld. Defence counsel for the convict Sudesh Pal.

It is contended by Ld. APP for the CBI that convict deserves severe sentence in the present case so as to deterrent effect. It is further contended that convict entered into a criminal conspiracy and thereby attempted to obtain unjustified pecuniary advantage.

On the other hand it is submitted by the ld. Counsel for the convict that he is the sole bread earner of his family and have already undergone the agony of trial since 1992 for a considerable period. It is further submitted that the conduct of the convict during the trial of the case was good and co-operative. It is stated that convict is first time offender and will not repeat such act in future, therefore, lenient view may CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11

kindly be taken against the convict.

I have heard the convict and considered the reasons for light sentence advanced by him. Keeping in mind the over all facts and circumstances and also taking stock of aggravating and litigating circumstances, I sentence the convict Sudesh Pal as under:□

1. Convict Sudesh Pal is hereby sentenced for the offence u/s 420 r/w Section 120□B IPC for a period of one year simple imprisonment and the fine of Rs.5000/□ in default simple imprisonment for three months.
2. Convict Sudesh Pal is also sentenced for the offence u/s 467 r/w Section 120□B IPC for a period of one year simple imprisonment and the fine of Rs.5,000/□ in default simple imprisonment for three months.
3. Convict Sudesh Pal is also sentenced for the offence u/s 468 r/w Section 120□B IPC for a period of one year simple imprisonment and the fine of Rs.5,000/□ in default simple imprisonment for three months.
4. Convict Sudesh Pal is also sentenced for the offence u/s 471 r/w Section 120□B IPC for a period of six months
5. Convict Sudesh Pal is also sentenced separately for the offence u/s 420 IPC for a period of two years simple imprisonment and the fine of Rs.10,000/□ in default simple imprisonment for six months.
6. Convict Sudesh Pal is also sentenced separately for the offence u/s 471 r/w Section 465 IPC for a period of two year simple imprisonment and the fine of Rs.10,000/□ in default simple imprisonment for six months.

All the sentences would, however, run concurrently and the CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11 convict shall be entitled to the benefit of section 428 Cr.P.C.

At this stage, an application u/s 389 Cr.PC is moved on behalf of the convict. Heard. The convict is admitted to bail on furnishing of personal bond in the sum of Rs.20,000/□with one surety in the like amount. Bail bond/surety bond furnished. Same are accepted for the period of thirty days from today.

Copy of judgment and order be given to the free of cost. File be consigned to record room.

(VEENA RANI) Chief Metropolitan Magistrate South East District / Saket Courts New Delhi/30□
09□2015 CBI Vs. Mahender Singh & Anrs, RC No:11(S)/92, CC No:13/06/11