



offences to run concurrently with fine and default stipulations in following manner: -

| <b>Provision</b>   | <b>Imprisonment</b> | <b>Fine</b>         | <b>In Default</b>  |
|--------------------|---------------------|---------------------|--------------------|
| <b>Section 407</b> | <b>5 years RI</b>   | <b>Rs. 25,000/-</b> | <b>6 Months SI</b> |
| <b>Section 420</b> | <b>5 years RI</b>   | <b>Rs. 25,000/-</b> | <b>6 Months SI</b> |
| <b>Section 465</b> | <b>2 years RI</b>   | <b>Rs. 5,000/-</b>  | <b>3 Months SI</b> |
| <b>Section 471</b> | <b>2 years RI</b>   | <b>Rs. 5,000/-</b>  | <b>3 Months SI</b> |

2. The facts in brief leading to the registration of a case against the Appellant was a complaint lodged by the Executive Engineer, Saharsa Division stating therein that a supply order no. 413(E) dated 17.01.1994 has been placed for supply of 1091.95 MT of Bulk Bitumen valued at INR 54,07,920/- (Rupees Fifty-Four Lakhs, Seven Thousand Nine Hundred and Twenty Only) which, as a matter of fact, was forged and without proper sanction, delivery of which was taken by M/s Cosmo Transport from Indian Oil Corporation (IOC), Haldia and was required to be delivered to the Road Construction Department (RCD), Saharsa Division but was not so delivered.

3. The said complaint was registered as PS Case No. 291/96 leading to the investigation wherein four persons were identified/arrayed as accused. Krishna Kumar Kedia, proprietor of M/s Cosmo Transport, the Appellant herein was the main accused and Maheshwari Prasad, Panchu Mahto and Bhagwan Prasad Poddar were accused no. 2, 3 and 4 respectively. It would not be out of way to mention here that Panchu Mahto (Accused No. 3) was the officer who managed things and passed the working order nominating M/s Cosmo Transport for transportation of the aforesaid Bulk Bitumen whereas Bhagwan Prasad Poddar (Accused No. 4) was an Executive Engineer and the informant of Saharsa PS Case No. 291/26. Maheshwari Prasad was a person who according to the prosecution had prepared, forged and fabricated documents at the instance of Krishna Kumar Kedia, the proprietor of M/s Cosmo Transport, who was the mastermind and main accused in the misappropriation of the entire quantity of Bulk Bitumen.
4. During the course of trial, Panchu Mahto (Accused No. 3) and Bhagwan Prasad Poddar (Accused No. 4)

died leading to the dropping of the proceedings against them. Accused No. 2, Maheshwari Prasad was granted pardon and turned approver who appeared as PW-5. Appellant was thus, the only person who faced the trial wherein he was held guilty of having committed offences under Section 407, 420, 465, 471 of IPC.

5. Learned Senior Counsel for the Appellant has referred to the evidence of the witnesses and thereafter put forth the following submissions:

- i) There is no evidence on record to show that the wrongful gain has been obtained by the Appellant and corresponding wrongful loss has been caused to the State of Bihar. The ingredients of the offences for which the Appellants has been convicted have not been proved rather the evidence does not support the same. No loss has been caused to the Government Exchequer as the same has not been proved by the prosecution.
- ii) The mere statement of Maheshwari Prasad, (PW-5) accused turned approver with regard to the forged and fabricated documents which contains his signatures as has been stated by him cannot

be relied upon. Merely because the alleged person Mr. MP Sinha, the Executive Engineer had denied his signatures would not be enough. No independent witness has been produced such as handwriting expert, nor has any report been placed on record which would establish the signatures to be not that of the person concerned.

- iii) The evidence which has been produced, by the prosecution fails to establish that the Appellant had any knowledge or belief with regard to the documents being forged which were being used for lifting the Bulk Bitumen from the Indian Oil Corporation, Haldia.
- iv) Similarly, nothing has come on record which would establish that there was forgery and unauthorized order for supply of Bulk Bitumen at the end of the department without there being any demand.
- v) The Indian Oil Corporation does not allow lifting of Bulk Bitumen without proper authorization and in any case after the lifting of the consignment the same was delivered at the godown at Saharsa with the receipt having been issued on the Consignee Receipt Certificate (CRC).

6. Prayer has thus been made for setting aside the conviction and sentence and acquitting the Appellant of the charges by allowing the present appeal.
7. Learned Senior Counsel for Appellant in alternatively prayed that a lenient view may be taken in terms of sentence, in case the conviction is upheld. She contends that the alleged occurrence in the present case is of 1993-94 i.e. more than 30 years old and the present case has caused tremendous mental agony to the Petitioner for the last more than the 25 years. The Appellant is 71 years old infirm person suffering from various old age ailments. He had already undergone more than 1 year and 6 months of actual custody period at the time of grant of bail by this Court.
8. On the other hand, Learned Additional Solicitor General, appearing for the State has supported the judgement of High Court. His submissions are as follows: -
  - (i) while referring to the evidence as led by the prosecution and submitted that during the course of

investigation it transpired that at the instance of the Appellant, an Order was created to be placed for supply of Bulk Bitumen by forging the signatures of Mr. MP Sinha, Executive Engineer of Saharsa Division.

(ii) The Appellant authorized two of his office employees namely Ashish Maity (PW-13) and Sudip Chakrawarti (PW-25) to lift the consignment of Bulk Bitumen from Indian Oil Corporation at Haldia. These persons appeared in Court and proved the factum of receipt of Bitumen from the Indian Oil Corporation at Haldia, which was sent to Alampur, Kolkata. They also proved the signatures on the authorization letter issued and signed by the Appellant in their presence.

(iii) Maheshwari Prasad who was initially an accused but had turned approver, appeared as PW-5 and admitted that he had affixed forged signatures of Mr. MP Sinha, Executive Engineer, Saharsa Division on the authority letter on various Consignee Receipt Certificate (CRC) on the instructions of the Appellant for which he was paid. The factum of the forged signatures on the orders for supply of Bulk Bitumen

has also been established on the admission of this witness.

(iv) Apart from that, it is asserted that the signatures on the Orders placed for Bulk Bitumen were of Panchu Mahto, Director, Purchase and Transport, Head Office, RCD, Patna and Bhagwan Prasad Poddar, Executive Engineer, RCD, Saharsa Division, arrayed as Accused No. 3 and 4 respectively, stands established on the basis of the evidence led by the prosecution, which factum in any case is not disputed as it is admitted case of the Appellant that it is on the basis of those orders that the delivery of the consignment was taken. Prayer has thus been made for dismissal of the appeal as being devoid of merit.

9. After hearing the submission of both the parties, the contention of the Counsel for the Appellant cannot be accepted in the light of the fact that the author of the document Maheshwari Prasad, the approver (PW-5) himself has acknowledged the said fact that he had forged the signatures of Mr. MP Sinha, the Executive Engineer at the behest of the Appellant and further the person who is alleged to have signed the said



document has denied the signatures of being his. No dent has been created in the cross-examination with regard to the evidence led by the prosecution.

10. The case of the prosecution rests not only upon the evidence of Maheshwari Prasad, the accused turned approver who had forged and fabricated the documents on the asking of the appellant but also on the documentary evidence produced to substantiate the allegations apart from the oral evidence of the witnesses. As many as 26 prosecution witnesses were examined.
11. The case of the prosecution was that without there being any demand for supply of Bulk Bitumen from the Road Construction Department, Saharsa Division to the Head Office, the Head Office proceeded to issue a supply order No. 413(E) dated 17.01.1994 which was by Panchu Mahto (Accused No 3) since deceased. It came to light that this order had been placed without taking mandatory approval from the Engineer-in-Chief, Road Construction Department, Saharsa Division. The order for transportation was placed by the then Executive Engineer, Bhagwan Prasad Poddar (Accused No. 3) since deceased with

M/s Cosmo Transport. Not only was the said bulk order placed but another authority letter no. 104, Sahasra dated 19.04.1995 for release of 10% extra Bulk Bitumen was also falsely created by means of committing forgery.

12. Therefore, the Bulk Bitumen and the 10% extra quantity thereof was lifted from Haldia delivery point and the same was siphoned off illegally. The documents which have been created as forged and fabricated at the instance of the accused were signed by Maheshwari Prasad. It has come in the evidence as also in the documents produced that 20 forged signatures of the Executive Engineer, Mr. MP Sinha, were forged by Maheshwari Prasad which were duly exhibited.
13. MP Sinha, Executive Engineer (PW-3) has appeared and denied the signatures to be his on the said documents and has positively stated that they do not belong to him. With the author of the said signatures (Maheshwari Prasad - PW5) having acknowledged the said factum of forging signatures, the prosecution had been successful in establishing the forgery at the behest of the Appellant. In the cross-examination no

dent has been created with regard to the evidence of the witnesses.

14. Not only this, witnesses have been produced who were employees/representatives of M/s Cosmo Transport who have also acknowledged the fact that they had received Bulk Bitumen from Haldia on behalf of the M/s Cosmo Transport Company. Manas Saha (PW-11), an employee of M/s Cosmo Transport Company from 1984-95 stated that the company was mainly engaged in transportation of Bulk Bitumen. The Appellant had executed power of attorney in his favour and on the basis thereof, he used to go to the oil company wherefrom CRC, delivery order was being issued. He had further stated that he had gone with the supply order no. 413(E) dated 17.01.1994, RCD, Saharsa Division and had lifted Bulk Bitumen in total quantity. Thereafter, he sold it to factory located at Alampur, Kolkata on the instruction of the Appellant. During cross-examination he had stated that the aforesaid Bulk Bitumen was sold in his presence.
15. It has also come in the evidence that after loading of the Bulk Bitumen, on the directions of the Appellant

the vehicles were being sent to Howrah as well as Alampur which indicated that the Bulk Bitumen was not sent to Saharsa Division where it was intended to be delivered as per the order placed at Indian Oil Corporation, Haldia. Ashish Maity (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. He further stated that after loading of bulk bitumen, as per direction of the Appellant the vehicle was being sent to Howrah as well as Alampur.

16. Sudip Chakarwarty (PW-25), had deposed that he had worked under M/s Cosmo Transport from 1993-97. Ashish Maity (PW-13) used to receive the bulk bitumen on behalf of M/s Cosmo Transport. He used to receive the same under authorization letter being issued by the Appellant in favour of Ashish Maity and Tapan Poddar. The authorization letter was exhibited during Trial. He had further stated that after lifting the bulk bitumen from Haldia, the same was sent to Alampur, Kolkata.
17. The factum with regard to non-receipt of the Bulk Bitumen at Saharsa Division has also been

established from the evidence of the departmental employees which include various Junior Engineers who were working at the relevant time as also the Assistant Engineers, who have all, on the basis of the documentary evidence established non-receipt of any Bulk Bitumen during the period when the Bulk Bitumen delivery was taken from Haldia.

18. PW-6, PW-9 and PW-20 are Junior Engineers who were posted at Saharsa Division during the relevant time. They deposed that after receipt of bulk bitumen the same is being entered in the stock register. The stock register of all the junior engineers of different sub-divisions happens to be independent. They had further stated that they had not received bitumen in pursuance of supply order no. 413(E) dated 17.01.1994 and also exhibited Stock Account Register of their respective sub-divisions. There was 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 order.

19. PW-7, PW-10, PW-17 and PW-18 had deposed that they were Assistant Engineers at RCD, Saharsa Division during relevant time and during their

tenure, they had not received bulk bitumen relating to supply order no. 413(E) dated 17.01.1994.

20. Similarly, evidence of the PW-14, PW-20, PW-22 who were Executive Engineers as also the PW-2, PW-15, the officials of the accounts branch has also come on record which would indicate that there was no demand for supply of Bulk Bitumen or that there was even any requirement for the same.
21. All these aspects establish the fact with regard to there being absence of any requirement, demand or even delivery of Bulk Bitumen in pursuance to unauthorized order no. 413(E) dated 17.01.1994 for supply of Bulk Bitumen relating to Road Construction Department, Saharsa Division.
22. Another aspect which comes to light is the statement of the Appellant recorded under Section 313 of CrPC. What is apparent from his statement on perusal would be that the factum of an order being there for supply of Bulk Bitumen which was made the basis for receiving the supply product i.e. Bulk Bitumen from Haldia by M/s Cosmo Transport stands

admitted. Even the receipt of the full quantity of the said Bulk Bitumen stands acknowledged.

23. What has been sought to be projected by the Appellant is that the said Bulk Bitumen has been duly supplied at Road Construction Department, Saharsa Division. The evidence sought to be relied upon by the Appellant is the Consignee Receipt Certificates (CRCs), which, as per the evidence on record, is a forged and fabricated document, created at the behest of the Appellant and signed by Maheshwari Prasad (PW-5), the approver. On the basis of the above evidence, which has been led by the prosecution, the courts below having considered in detail the evidence have found the Appellant guilty of the charges levelled against him leading to his conviction and sentence. This is being sought to be challenged in the present appeal which we found to be without any basis.

24. As stated above, the non-receipt of Bulk Bitumen stands established at the end of the Prosecution leading to the guilt of the Appellant having been established. No admissible evidence has been produced by the Appellant in respect of due delivery

of Bulk Bitumen to Road Construction Department, Saharsa Division after having taken delivery of Bulk Bitumen as per his own admitted case in his statement under Section 313 CrPC.

25. Thus, all the offences as has been alleged to have been committed by the Appellant stands established and proved beyond doubt leaving no scope for any interference.
26. The findings of the Trial Court and the High Court with regard to conviction are affirmed.
27. As regards the quantum of punishment is concerned, the Appellant has been sentenced to undergo rigorous imprisonment for a period of five years along with a fine under Sections 407 and 420 of the IPC on each count. In addition, the Appellant has been sentenced to undergo rigorous imprisonment for a period of two years along with a fine under Sections 465 and 471 of the IPC on each count. All the sentences have been directed to run concurrently. As per the record, the Appellant has already undergone a period of 1 year and 6 months of the said sentences.



28. The offences under which the Appellant is convicted do not provide for any minimum imprisonment to be imposed and the maximum imprisonment provided under Section 407 and 420 IPC is seven years.
29. The records produced before this Court indicate that the Appellant is a 71-year-old individual who is afflicted with various age-related ailments. The medical documentation further reveals that the Appellant is a diabetic person and has a history of having suffered three heart attacks. That apart, the incident is of the year 1994 i.e. more than 30 years old causing mental trauma and agony as faced by the Appellant. All these factors in the facts and circumstances of this case persuade us to take a lenient view.
30. Therefore, this Court is of the view that the sentences imposed under Section 407 and 420 of IPC be reduced to 2 years and 6 months of rigorous imprisonment from 5 years with fine and default punishment unchanged as imposed on each count and to run concurrently with other sentences. This reduced sentence would meet the end of justice.

31. It is reported that the appellant is on bail. The bail bonds of the appellant stand cancelled and he is directed to surrender within four weeks from today to serve out the remaining sentence, failing which, the concerned police authorities shall take him into custody.
32. The present appeal is partly allowed in the above terms.
33. Pending application(s), if any, stand disposed of.

.....**J.**  
[ **B. R. GAVAI** ]

.....**J.**  
[ **AUGUSTINE GEORGE MASIH** ]

**NEW DELHI;**  
**APRIL 30, 2025**