IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE JAI KUMAR PILLAI

CRIMINAL APPEAL NO. 2011 OF 2018

SMT. SABEENA NINAMA

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Prakash Upadhyaya, senior counsel assisted by Shri Aditya Singh and Shri Kinjal Shrivastava, counsel for the appellant.

Shri Lokendra Joshi, counsel for the respondent/Economic Offence Wing (EOW).

Reserved on: 08.07.2026

Post on : 18.08.2026

JUDGMENT

1. This criminal appeal has been preferred under Section 374(2) of the Code of Criminal Procedure, 1973, and is directed against the judgment of conviction and order of sentence dated 27.02.2018 passed by the Special Judge (Prevention of Corruption Act), 1988, Ujjain (M.P.). By the impugned judgment, the appellant has been convicted under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for brevity, 'PC Act', 1988) read with Section 120-B of the Indian Penal Code, 1860 (for brevity, 'IPC', 1860) on three counts. The conviction relates to irregularities committed in relation to the missing of 110 transit passbooks, the failure to execute auction agreements in respect of 26 mines, and excess payments made towards advertisement charges.

FACTS IN BRIEF

2. The facts of the case, in a nutshell, are that the Collector, Ujjain (M.P.) directed an inquiry into the matter, and in pursuance thereof, a Committee was constituted, which was headed by Mr. Aditya Nagar (PW/17). The said Inquiry Officer (PW/17) found that the present appellant, along with other co-accused persons, was responsible for the irregularities committed in the discharge of official duties as a 'public servant'. On the basis of the said inquiry, Mr. Ashok Neem (PW/1), the then Chief Executive Officer, Janpad Panchayat, Ujjain (M.P.), lodged a complaint at Police Station Madhav Nagar, Ujjain (M.P.), and accordingly, Crime No. 436/2005 was registered under Sections 406, 409, 467, 468, and 471 of the IPC, 1860.

3. Thereafter, the Superintendent of Police, Ujjain directed the matter to the Economic Offence Wing (EOW), Bhopal (M.P.), where the case was re-registered as Crime No. 22 of 2006 by adding Section 13(1)(d) read with Section 13(2) of the PC Act, and the matter was investigated. Accordingly, after obtaining prior sanction under Section 19 of the PC Act, the chargesheet was submitted against the appellant and other co-accused persons.

4. The appellant was posted as Chief Executive Officer (CEO), Janpad Panchayat, Ujjain from 17.09.2002 to 14.10.2003. The prosecution has alleged that during her tenure, 110 transit passbooks were irregularly dealt with, the auction duties in respect of 26 mines were not recorded from time to time, auction agreements were not executed, and advertisement bills were paid in excess of the prescribed bills.

5. The charges under Sections 409, 467, 468, and 471 of the IPC were dropped by the learned trial court itself, and ultimately, the charges were framed only under Section 13(1)(d) read with Section 13(2) of the PC Act and Section 120-B of the IPC.

CONTENTIONS OF THE APPELLANT

6. It is argued by the learned senior counsel for the appellant that the prosecution has failed to prove dishonest intention, wrongful gain, or any pecuniary advantage against the appellant. It is argued that she was not the custodian of the transit passbooks and that the relevant office records were handled by one Mr. Babulal Sharma (Accused No. 5) and one Mr. Anant Singh Bains (Accused No. 6). It is further contended that the auction defaults had not matured for any coercive action during the relevant period and that the relevant expenditure was made only by the order of superior authorities. It is also stated that the departmental enquiry ended in a clean chit, and the sanction was not validly proved by the prosecution.

7. The senior counsel contended that the trial court acquitted the co-accused Accountant Mr. Anant Singh Bains (Accused No. 6) but did not adjudicate upon the culpability of the Accountant Mr. Babulal Sharma (Accused No. 5), as he expired during the pendency of the trial on 21.04.2016. The conviction has been restricted only to the Chief Executive Officer, namely Mr. D.D. Tripathi (Accused No. 3), and the present appellant, who served as CEO, Janpad Panchayat, Ujjain, during the relevant period. Mr. Prashant Uikey (Accused No. 1) was discharged vide order dated 02.03.2010, whereas Dr. V.S. Vaid (Accused No. 2) and Mr. Anant Singh Bains

(Accused No. 6) were acquitted by the impugned judgment. It is contended that the findings recorded by the trial court in this regard are vague and inconclusive.

8. The learned trial court has principally relied upon the testimonies of PW/1 Mr. Ashok Neem (CEO, Ujjain from 15.10.2003 to July 2005), PW/15 Mr. N.K. Jain (Inspector EOW and IO), PW/16 Mr. N.K. Shukla, and PW/17 Mr. Aditya Nagar (Officer Incharge of the Departmental Enquiry), while the remaining witnesses were found to be irrelevant, particularly in view of the death of the principal accused, Mr. B.L. Sharma (Accused No. 5). The appellant was neither named in the FIR nor implicated at the initial stage; the prosecution sought to attribute primary liability to the appellant solely upon the premise that she failed to administer supervisory control over the principal accused.

9. So far as Charge No. 1 (issue of transit passbooks) is concerned, it is an admitted position on record that the appellant was never the custodian of the transit passbooks, and the records were under the custody of co-accused Mr. B.L. Sharma and Mr. A.S. Bains. A bare perusal of the deposition of PW/1 manifests his categorical admission that the issuance of transit passbooks and maintenance of relevant records and registers were the sole responsibility of the accountants. In his deposition at paragraph 7, PW/1 admitted that it was the responsibility of the accountant to issue and distribute the transit passbooks. PW/1 admitted in paragraph 22 that during the course of the inquiry and investigation, no material whatsoever was found to indicate that the appellant ever requested the issuance of transit passbooks.

10. The senior counsel further invited the Court's attention to paragraph 33 of PW/1's deposition, wherein he admitted that the CEO ordinarily does not deal with transit passbooks and that during her tenure as CEO, she neither issued nor dealt with any transit passbooks. Further, in paragraph 34, PW/1 admitted that the transit passbooks were received and retained by the co-accused and were never in the possession or custody of the appellant. In paragraph 38, PW/1 admitted that transit passbooks were issued to the concerned contractor and the driver of the vehicle specified for loading the quantity. In paragraph 42, he stated that the alleged misuse of 110 transit passbooks during the appellant's tenure is merely an assumption, as no evidence was found to establish that any of the transit passbooks were ever utilized by contractors. In paragraph 45, PW/1 stated that royalty is assessed on the basis of counterfoils deposited by the contractor, and no counterfoils pertaining to the alleged 110 transit passbooks were ever produced on record. PW/1 also admitted in paragraph 55 that the appellant did not receive any transit passbooks during her tenure.

11. This fact is duly corroborated by PW/17, who admitted in paragraph 13 that the unauthorized sale of transit passbooks was merely an inference drawn during the investigation. PW/17 admitted in paragraphs 47 and 49 that the custody and records of the transit passbooks were with co-accused Mr. B.L. Sharma and Mr. A.S. Bains. PW/17 admitted in paragraph 17 that the aforesaid co-accused failed to produce the transit passbooks, stock register, and distribution register, and in paragraph 82, he admitted there is no evidence to establish the actual misuse of the alleged 110 transit passbooks. It is argued that the computation of alleged pecuniary loss is hypothetical, and in the absence of concrete evidence that the appellant took unlawful advantage, the alleged loss to the State Exchequer cannot be attributed to her.

12. So far as the argument in respect of Charge No. 2 (execution of auction agreements) is concerned, the charge is based on assumptions and presumptions, as the contract does not confer any right upon the successful bidder. Rule 37 clearly places the responsibility upon the contractor or successful bidder to get the contract executed within the prescribed period of one month. The trial court misread Rule 37 by holding that it was the responsibility of the CEO to ensure execution, whereas the non-execution of the contract in fact upholds the advantage of the government auction process.

13. The successful bidder was required to deposit the entire bid amount within a period of three months from the date of finalization of the auction proceedings. Undisputedly, the mandatory deposit of 50% (and admitted as 25% by PW/1 in paragraph 53) of the bid amount was made in respect of the 26 mines auctioned during the appellant's tenure. The consequential proceedings for cancellation of the auction and forfeiture of the deposited amount could have been initiated only after the expiry of the prescribed three-month period.

14. The dates for the finalization of the three relevant auctions were 10.06.2003, 18.06.2003, and 10.07.2003; accordingly, the three-month prescribed periods expired on 10.09.2003, 18.09.2003, and 10.10.2003, respectively. The appellant stood transferred on 14.09.2003, i.e., immediately four days after the expiry of the three-month period for the first auction, whereas the prescribed date for the remaining two auctions had not even expired. PW/17 admitted in paragraph 63 that proceedings for confiscation could have been initiated only after 08.10.2003 (for the auction finalized on 10.07.2003), whereas the appellant was transferred on 14.09.2003.

15. PW/17 further deposed in paragraph 41 that it was the sole responsibility of the accountant to keep track of the successful bidders' three-month timeline to deposit the balance amount and to bring the record to the notice of the CEO, as well as to call upon the successful bidder to execute the agreement. In paragraph 83, PW/17 stated that since the agreement was not executed, no transit passbook could have been issued to the successful bidder. PW/15 also deposed in paragraph 117 that the appellant had indeed issued notices regarding payment to the successful bidders. Thus, there was no occasion for the appellant to take legal action prior to the expiry of the aforesaid dates, and the prosecution has adopted a discriminatory approach by making PW/1 whose role was identical a prosecution witness while impleading the appellant as an accused.

16. Insofar as Charge No. 3 (payment of advertisements made in excess) is concerned, it is an admitted position that the expenditure incurred was genuine and exclusively for the public purpose of publishing advertisements relating to the recruitment of ***Shiksha Karmis***. This was admitted by the Investigating Officer, Mr. N.K. Jain (PW/15), in paragraphs 104 and 106 of his deposition. The advertisements were issued pursuant to specific directions from the Jila Panchayat, Ujjain, in accordance with applicable recruitment rules, and it was the sole responsibility of the local body to make the payment.

17. Additionally, the senior counsel argued that the sanction for prosecution was not duly proved as the authority granting the sanction was never examined before the trial court. The investigation was conducted in violation of Section 17 of the PC Act, as an offence under the said Act cannot be investigated by an officer below the rank of Deputy Superintendent of Police (DSP). Furthermore, the appellant was completely exonerated in a departmental enquiry (DE) arising out of the same set of allegations, as admitted by PW/15 in paragraph 104 of his deposition, and was merely reprimanded for not exercising veto power or supervisory control over the two accountants.

18. Lastly, it is contended that the appellant was convicted with the aid of Section 120-B of the IPC, but the only other convicted co-accused, Mr. D.D. Tripathi (Accused No. 3), never worked with the appellant in the same establishment. Accused Mr. A.S. Bains (Accused No. 6) was acquitted, and no finding of guilt was recorded against Mr. B.L. Sharma (Accused No. 5) owing to his demise. Thus, the findings of conspiracy against the appellant are misconceived and arbitrary. The senior counsel relied upon the settled legal position that dishonest intention is the gist of the offence under Section 13(1)(d) of the PC Act, citing judgments in

C. Chenga Reddy and Others vs. State of Andhra Pradesh (1996) 10 SCC 193, J.A. Naidu and Others vs. State of Maharashtra (1980) 1 SCC 2026 (sic), C.K. Jaffer Sharif vs. State (2013) 1 SCC 2025 (sic), State of U.P. vs. A.K. Gaba and Others 2026 SCC OnLine SC 967, and P.L. Tatwal vs. State of M.P. (2014) 11 SCC 431 to bolster his submissions.

CONTENTIONS OF THE STATE

19. ***Per contra***, it is argued by the counsel for the respondent that looking to the seriousness of the allegations and the involvement of a public servant, the investigation was properly entrusted to the EOW, which was re-registered as Crime No. 22 of 2026 (sic), and the chargesheet was rightly filed. During the trial, the prosecution examined 34 witnesses and exhibited 279 documents, and after a detailed appreciation of the evidence, the learned trial court rightly found the appellant guilty.

20. It is averred by the respondent that the appellant was holding the post of Chief Executive Officer, Janpad Panchayat, Ujjain, and was the administrative head of the concerned establishment. Inviting the Court's attention towards witness PW/28, Mr. Kamal Khede, who approved the financial records during the tenure of the appellant, the State contended that it clearly established that the supervision of auction proceedings, financial liabilities, maintenance of records, and issuance of transit passbooks were under the domain of the appellant. Thus, the appellant cannot seek refuge behind subordinate officials.

21. It is further argued that the financial records, including Ex.P/112, Ex.P/154 to Ex.P/189, and connected files comprising auction proceedings, registers, note-sheets, transit passbook records, and sanctioned documents produced before the trial court clearly establish the misconduct of the appellant. The records reveal that 110 transit passbooks were never entered in the financial register or in the prescribed registers. Such omissions are not clerical lapses, as they govern the transfer of minor minerals, opening the door for unauthorized movement and causing loss to the State Exchequer.

22. The counsel argued that the statement of PW/17, Mr. Aditya Nagar, who conducted the scrutiny of relevant records, systematically pointed out serious, repeated, and deliberate irregularities committed in the auction proceedings and in the issuance and distribution of the transit passbooks, which were not countered by the appellant. PW/28 further confirmed the irregularities. The appellant directed the issuance of the transit passbooks, tolerated financial defaults, failed to record the auction dates, and bypassed standard departmental safeguards, thereby giving unlawful pecuniary advantage to private contractors. The conspiracy is legally proved by direct and circumstantial evidence. Public servants occupying responsible posts are expected to protect public revenue, and the conviction is based on proper appreciation of evidence.

ANALYSIS AND CONCLUSION

23. This Court has considered the rival contentions of the parties and perused the entire records of the case. It is undisputed that the post of Chief Executive Officer (CEO), Janpad Panchayat, Ujjain (M.P.) was held by the appellant from 17.09.2002 to 14.10.2003.

24. On perusal of the records, this Court has considered the deposition of PW/1, who admitted in paragraph 33 that the CEO ordinarily does not deal with the TP books. In paragraph 16, it was stated that all the documents were prepared by the Lekhapals (Accountants), namely Mr. Babulal Sharma (Accused No. 5) and Mr. Anant Singh Bains (Accused No. 6). Similarly, in paragraphs 32, 40, 47, and 49, PW/1 narrated the entire procedure of auction in respect of the mines.

25. This Court has also perused the deposition of PW/15, Mr. N.K. Jain, Inspector (EOW) and Investigating Officer. In paragraph 90 of his deposition, he stated that he did not find any misuse of 384 TP books during the investigation. In paragraph 104, he confirmed that he did not annex the departmental enquiry order with the chargesheet as the appellant was discharged from the departmental enquiry, and that no letter or document was found showing that the appellant had sought the issuance of any TP books or possessed them. In paragraph 11, PW/15 deposed that the requisite auction amount had been deposited during the appellant's tenure, that the appellant exercised due diligence, and that she issued notices to the successful bidders directing them to deposit the balance bid amount. Regarding the advertisements, PW/15 admitted in paragraphs 104 to 106 that the bill payment was made on the orders of the Jila Panchayat.

26. This Court has also appreciated the deposition of PW/17, Mr. Aditya Nagar, Officer Incharge in the departmental enquiry. He confirmed that the persons in charge of the TP books were Mr. Babulal Sharma and Mr. Anant Singh Bains, and that he found no evidence regarding the actual use of the 110 TP books during the appellant's tenure. He stated that the alleged amount of Rs. 34,38,000/- was an assumed figure with no concrete evidence as to how it was determined. On the issue of the auction, PW/17 admitted in paragraph 63 that the proceedings for confiscation could only be initiated after the expiry of three months, specifically stating that such proceedings could have been initiated only after 08.10.2003, whereas the appellant was transferred on 14.09.2003. He further confirmed that the mandatory deposit of 25% of the bid amount was received, no loss was caused to the State Exchequer, and it was the responsibility of the accountants to keep track of proceedings and bring loopholes to the notice of the CEO. On the advertisement issue, PW/17 had no knowledge about any order from the District Collector or Jila Panchayat regarding the bill payment.

27. This Court has further gone through the deposition of Mr. N.K. Shukla (PW/16) regarding the sanction for prosecution. He stated that Ex.P/110 is the sanction letter bearing the signature of Under Secretary Ms. Shyama Tiwari, and on the basis thereof, sanction was granted by Mr. J.K. Vaidya under Ex.P/109. He admitted that neither Ms. Shyama Tiwari nor Mr. J.K. Vaidya was examined to prove what material was placed before them or whether they had applied their minds before granting sanction. As settled by the Hon'ble Apex Court in **CBI vs. Ashok Kumar Agrawal (AIR 2014 SC 287), P.L. Tatwal, and State of Maharashtra vs. Mahesh Jain (supra),** the prosecution must prove that adequate material was placed before the sanctioning authority and that valid sanction was granted after due application of mind. Sanction is not a mere formality but a solemn and sacrosanct act. The burden has not been discharged in the present case.

28. The learned trial court also failed to consider that the appellant was exonerated in the departmental enquiry and was further promoted to a higher post. This circumstance supports the defense that the matter, at most, discloses administrative irregularity and not criminal misconduct. Although departmental findings are not conclusive in a criminal trial, they cannot be ignored where the prosecution evidence itself falls short of proving dishonest intention.

29. Accordingly, this Court holds that the evidence does not establish that the appellant was the custodian of the transit passbooks or had actual knowledge, possession, or control over their issuance or misuse. The evidence consistently places the entire responsibility upon the accountants, Mr. Babulal Sharma and Mr. Anant Singh Bains. No letter was signed by the appellant sanctioning their issuance, no actual misuse was proved, and the alleged loss appears to be based on assumption. Thus, in light of **C. Chenga Reddy and Others (supra),** the circumstances relied upon by the prosecution do not lead to an irresistible conclusion of guilt.

30. Regarding the auction agreements and recovery of dues, the evidence shows that the mandatory 25% of the balance bid amount was deposited during the appellant's tenure. Proceedings for cancellation could only be initiated after the expiry of the three-month period (i.e., after 08.10.2003), whereas the appellant had been transferred on 14.09.2003. The appellant had indeed issued notices to the successful bidders. At most, there could have been lapses in supervision, but considering the law laid down in **C.K. Jaffer Sharif (supra),** such lapses do not amount to criminal misconduct unless *mens-rea* and dishonest intention are proved. Regarding the advertisement expenditure, the bill payment was made under the directions of the Jila Panchayat. There was no evidence that the advertisement was fictitious, diverted, or used for personal gains. Even if there was excess payment, it would at most amount to an irregularity or deviation from departmental norms. In the absence of proving dishonest intention or undue pecuniary advantage, criminal misconduct is not established.

31. Furthermore, the charge under Section 120-B of the IPC remains unproven. As held in **State of U.P. vs. A.K. Gaba and Others (supra)**, the prerequisite for establishing the charge of conspiracy is satisfactory evidence to show a meeting of the minds of the accused; conspiracy cannot be inferred merely on the basis of suspicion or association. There is no cogent material to show any prior agreement between the appellant and other co-accused persons, and administrative irregularity by office functionaries is not enough to sustain a conviction for conspiracy.

32. This Court further finds that a criminal court cannot convict a person merely because she held office during the period when irregularities came to light. The burden is always on the prosecution, and as laid down in **J.A. Naidu and Others (supra),** the accused is not required to prove her innocence. The prosecution has not been able to prove that the appellant obtained any pecuniary advantage for herself or for any other person, or that she intentionally caused wrongful loss to the State Exchequer. The evidence at most suggests administrative omission or supervisory inadequacy, which is not sufficient to constitute criminal misconduct in the absence of any dishonest intention.

33. For the reasons stated hereinabove, this Court is of the considered view that the prosecution has failed to prove beyond a reasonable doubt that the appellant dishonestly abused her official position by causing wrongful loss to the State Exchequer or entered into a criminal conspiracy.

34. Accordingly, the criminal appeal is **allowed.** The conviction recorded by the learned trial court cannot be sustained, and the impugned order dated 27.02.2018 passed by the learned Special Judge (Prevention of Corruption Act), 1988, Ujjain (M.P.) is hereby **set aside** insofar as it relates to the present appellant. The appellant is acquitted of all the charges. The fine amount, if any, deposited by the appellant shall be refunded to her. Her bail bonds shall stand discharged.

35. With the aforesaid, the present criminal appeal stands allowed and disposed of.

(Jai Kumar Pillai)
Judge

Arun/-