

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 3<sup>RD</sup> DAY OF FEBRUARY 2026 / 14TH MAGHA, 1947

CRL.A NO. 106 OF 2011

CC NO.15 OF 2002 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE,  
THIRUVANANTHAPURAM

APPELLANT/ACCUSED NO.2 :

T.O.ABRAHAM,  
GOVT.CONTRACTOR, ONMOOTAN THOTTATHIL, PUTHENPURA,  
URUMBIKUNNEL, THIRUVALLA,, PATHANAMTHITTA (DIST).

BY ADVS.  
SHRI.AMITH KRISHNAN H.  
SHRI.B.G.HARINDRANATH (SR.)  
SHRI.SUNDEEP ABRAHAM  
SMT.ANNA MARY MATHEW  
SMT.MANA VI MURALEEDHARAN

RESPONDENT/COMPLAINANT :

STATE OF KERALA  
REP.BY THE PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, ERNAKULAM

SPECIAL PUBLIC PROSECUTOR SRI RAJESH.A,  
SENIOR PUBLIC PROSECUTOR SMT.REKHA.S

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04.12.2025,  
ALONG WITH CRL.A.9/2011, THE COURT ON 03.02.2026 DELIVERED THE  
FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 3<sup>RD</sup> DAY OF FEBRUARY 2026 / 14TH MAGHA, 1947

CRL.A NO. 9 OF 2011

CC NO.15 OF 2002 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE,  
THIRUVANANTHAPURAM

APPELLANT & ADDL.APPELLANTS 2 TO 4/ACCUSED NO.1 & HIS L/Hs

1 SHRI.K.K.PHILIP, S/O.K.P.KURIYAN  
S/O.K.P.KURIAN (ACCUSED NO.1), 23 CHACKO HOMES,, UC  
COLLEGE.P.O., ALUVA.

ADDL.2 MR.VINOD GEORGE PHILIP,  
AGED 48 YEARS  
S/O LATE. K.K.PHILIP, 184, CANTONMENT SOUTH NAGAR,  
BEACH ROAD, KOLLAM-691001.

ADDL.3 MR.MANOJ KURIAN PHILIP  
AGED 50 YEARS  
S/O LATE. K.K.PHILIP, PONVANIBHAM, POORAM NAGAR,  
ASRAMAM, KOLLAM.

ADDL.4 MS.VINITHA RACHEL PHILIP  
AGED 46 YEARS  
D/O LATE K.K.PHILIP, 59, AROKIA NAGAR, 4TH CROSS,  
CRAWFORD, TRICHY, TAMILNADU-620012.

(ADDITIONAL APPELLANTS 2 TO 4 IMPLEADED AS PER ORDER  
DATED 24/7/2020 IN CRL.MA NO.1/2020)

BY ADV SHRI.JOY THATTIL ITTOOP



2026:KER:9212

Crl.Appeal No.106 & 9 of 2011

3

**RESPONDENT/COMPLAINANT :**

STATE OF KERALA, REP. BY THE PUBLIC  
REPRESENTED BY THE PUBLIC PROSECUTOR,, HIGH COURT OF  
KERALA, ERNAKULAM.

SPECIAL PUBLIC PROSECUTOR SRI RAJESH.A  
SENIOR PUBLIC PROSECUTOR SMT.REKHA.S

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04.12.2025,  
ALONG WITH CRL.A.106/2011, THE COURT ON 03.02.2026 DELIVERED THE  
FOLLOWING :



**“C.R”**

***A. BADHARUDEEN, J.***

=====  
*Crl.Appeal Nos.9 and 106 of 2011*  
=====

*Dated this the 3<sup>rd</sup> day of February, 2026*

**COMMON JUDGMENT**

These appeals have been filed by the 1<sup>st</sup> and 2<sup>nd</sup> accused in C.C.No.15 of 2002 on the files of the Enquiry Commissioner and Special Judge, Thiruvananthapuram. The respondent herein is the State of Kerala represented by VACB.

2. During the pendency of this appeal, the appellant/1<sup>st</sup> accused in Crl.Appeal No.9/2011 died and accordingly his legal-heirs got impleaded as additional appellants 2 to 4.

3. Heard the learned Senior Counsel Sri B.G.Hareendranath for the appellant/2<sup>nd</sup> accused in Crl.Appeal No.106/2011 and Advocate Sri Babu S.Nair, the learned counsel for the additional appellants in Crl.Appeal No.9 of 2011. Also heard the learned Special Public Prosecutor Sri Rajesh A. and Senior Public Prosecutor Smt.Rekha.S in detail. Perused the



relevant documents and the decisions placed by both sides.

4. The prosecution case is that the 1<sup>st</sup> accused who worked as Superintending Engineer, [SE] KIP RB Circle, Kottarakkara for the period from 6.7.1990 to 28.2.1991. 2<sup>nd</sup> accused, who was the Contractor for the work relating to KI & TCDP RBC formation of Kulasekharapuram Distributory from Ch. 1700 M to 2400 M including CD works hatched criminal conspiracy with the common object of deriving undue pecuniary advantage and by adopting corrupt or illegal means and in pursuance of the said conspiracy and by misutilizing clauses 31 and 32 of LCB specifications negotiated rates on 21.2.1991 for 5 items of work viz. (1) Construction of a road crossing at Ch.1950 M, (2) C.C.1:3:6 for making up foundation, (3) Constructing flume canal from Ch. 1700 M to 1715 M with bed width of 2.7 meter, (4) Supplying PVC water stopper 305 MM wide and (5) Providing shoring etc. and executed Supplemental Agreement (hereinafter `SA' for short) No.3 on 25.02.1991 ignoring the fact that the 2<sup>nd</sup> accused was eligible for the agreed rate only as per the original agreement for item Nos. 1 to 4 and not eligible for any extra rate for item No.5, awarded extra rates and thereby obtained undue pecuniary advantage



to the tune of Rs.7,01,380/-. It is further alleged by the prosecution that the 1<sup>st</sup> accused in pursuance of the above conspiracy hatched with the 2<sup>nd</sup> accused obtained a request from the 2<sup>nd</sup> accused on 23.02.1991 demanding higher rates for RCC 1:2:4 and re-inforcement for the construction of flume canal with tie beam, negotiated rates with the 2<sup>nd</sup> accused on 27.02.1991 and allowed a rate of Rs.1,590/M3 for the total quantity of 1000 M3 of RCC 1:2:4 and also allowed a rate of Rs.11,750/T for a total quantity of 100 T of re-inforcement for RCC work whereas the Contractor was eligible only the rate of Rs.1,150/M3 for RCC 1:2:4 and Rs.7,500/T for re-inforcement for RCC work as per the original agreement and the 1<sup>st</sup> accused had done these acts neglecting the recommendation of his subordinates and executed supplemental agreement No.6 on 28.2.1991 the last day of the service of the 1<sup>st</sup> accused and thus allowed a total excess amount of Rs.8,65,000/- to the 2<sup>nd</sup> accused resulting in corresponding loss to the Government. Finally it is alleged by the prosecution that the 3<sup>rd</sup> accused, who had worked as Executive Engineer, KIP RB Division No.III, Kayamkulam from 10/1990 to 10/1991 by abusing his official position, hatched criminal conspiracy with the 2<sup>nd</sup> accused with the same common



object of deriving undue pecuniary advantage and the 3<sup>rd</sup> accused, who should have rejected CC Bill No.IV, V and VI prepared in favour of the 2<sup>nd</sup> accused on the basis of SA Nos.3 & 6 executed on 25.2.1991 and 28.2.1991 respectively by the 1<sup>st</sup> accused in violation of the LCB conditions, passed CC Bill No. IV on 21.3.1991 for Rs.6,55,450/-, CC Bill No.V on 27.3.1991 for Rs.5,22,473/-, CC Bill No. VI on 24.10.1991 for Rs.7,54,774/- and issued cheque to the 2<sup>nd</sup> accused and paid a total excess amount of Rs.15,32,809.69 to the 2<sup>nd</sup> accused and corresponding loss to the Government. Thus it is alleged that due to the aforesaid illegal acts the 2<sup>nd</sup> accused obtained undue pecuniary advantage to the tune of Rs.16,04,908.36 and thereby both accused committed offences punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 ('PC Act, 1988' for short hereafter) and Section 120B of the Indian Penal Code ('IPC' for short). Thereafter, accused Nos.3 and 4 also were arrayed in this matter alleging commission of the same offences, but the 4<sup>th</sup> accused died before trial.

5. After framing charge, the learned Special Judge recorded evidence. PWs1 to PW7 were examined and Exts.P1 to P32 were marked



on the side of the prosecution. Exts.D1 to D3 were marked on the side of defence. On appreciation of evidence, the learned Special Judge found that accused Nos.1 and 2 committed offences punishable under Section 13(1)(d) r/w 13(2) of the PC Act, 1988 and under Section 120B of IPC while acquitting the 3<sup>rd</sup> accused. Accordingly, accused Nos.1 and 2 are *sentenced to undergo rigorous imprisonment for a period of three years each and in addition they shall pay a fine of Rs.17,00,000/- (Rupees Seventeen Lakhs only) each and in default of payment of fine, they shall undergo rigorous imprisonment for a period of one year each, for the offence under S.120-B I.P.C, they are sentenced to undergo rigorous imprisonment for a period of one year each. The bail bond executed by them are cancelled. The substantive sentences shall run concurrently.*

6. The learned Senior Counsel appearing for the 2<sup>nd</sup> accused vehemently argued that none of the offences would be attracted in the present case. The prime contention raised is that even though Ext.P3(a), the original agreement executed in 1988, fixed the amount for completing the work at Rs.23,15,000/-, without properly considering the shiny and slushy nature of the soil, and even though Rs.23,15,000/- was



fixed as the expenditure, taking into account the odorous nature of the soil, the work could not be completed for the said sum because extra works had to be carried out due to the slushy soil. For this reason, Ext.P4(p) SA No.3 dated 25.02.1991 and Ext.P4(q) SA No.6 dated 28.02.1991 were executed. It is also pointed out that although the number of tie-beams originally proposed in Ext.P3(a) was 46, a total of 78 tie-beams were actually constructed, and in this regard reliance is placed on the evidence of PW1 supported by PW7. Apart from this, it is contended that as evident from Ext.P7(b), Ext.P7(g) and Ext.P7(e), water stoppers having a width of 45 cm were agreed to be provided, but due to non-availability during the construction period, water stoppers having a width of 30.5cm were used, entitling the 2<sup>nd</sup> accused to claim additional amounts under the head 'extra items'. The learned Senior Counsel further contended that as per item No.1 in Ext.P3(a), the extra work was done as a result of an agitation initiated by Nanoo Master, the then MLA of the locality, and due to the intervention of the Irrigation Minister, to make additional constructions, since only a footpath was provided at Ch.No.1930 m. Thus the contractor was compelled to construct a motorable road crossing the canal during the



execution of the work.

7. Regarding this contention, the learned Special Public Prosecutor pointed out that this item had already been accepted as an extra item in favour of the 2<sup>nd</sup> accused by the Special Court, and the prosecution had no dispute in that regard. According to the learned Special Public Prosecutor, for this additional work, the 2<sup>nd</sup> accused was entitled to payment determined through negotiation between the 1<sup>st</sup> accused (Superintending Engineer) and the 2<sup>nd</sup> accused.

8. The learned Senior Counsel for the 2<sup>nd</sup> accused also submitted that as per clause 32 of Ext.P3(a) and as per SA Nos.3 and 6, the amounts sanctioned by the 1<sup>st</sup> accused and obtained by the 2<sup>nd</sup> accused were within the powers of the 1<sup>st</sup> accused and the said amount was entitled by the 2<sup>nd</sup> accused. Therefore, there is no conspiracy in granting and encashing the bills. Therefore, there is no misappropriation as alleged by the prosecution and the prosecution case in its entirety is based merely on surmises and conjectures, without support from any convincing evidence.

9. The learned Senior Counsel also submitted that when this Court considered Crl.Appeal No.2/2002 arising out of



C.C.No.29/2009, where similar allegations were raised, this Court by judgment dated 04.09.2019 acquitted all the accused on the finding that when excavation of “hard narikkal” work was carried out in deviation from the agreement, the Superintending Engineer was found empowered to approve the work done for constructing the “hard narikkal” as an extra item and accordingly by setting aside the judgment of the Special Court all the accused were acquitted. He has also pointed out the decision of another Single Bench of this Court reported in [2008 (3) KLJ 165 : 2006 ICO 11532 : 2008 (3) KHC 817], *Varghese Mathew & Ors. v. State of Kerala*, wherein this Court acquitted the accused therein. He also cited the judgment in Crl.Appeal No.2/2004 in *K.G.Ashokan v. State of Kerala*, in this regard. Therefore, applying the ratio of the above decisions and the submissions made, it is contended that the impugned verdict would require interference and the 2<sup>nd</sup> accused is entitled to acquittal, after revising the verdict impugned.

10. Similar contentions were raised by the learned counsel appearing for the legal heirs of the 1<sup>st</sup> accused while seeking interference in the verdict of the Special Court.



11. Zealously opposing the contentions raised by the respective counsel for the accused, the learned Special Public Prosecutor pointed out that originally Ext.P3(a) was executed to complete the work appended therein for a total sum of Rs.23,15,000/-. According to him, except item No.1 in SA3 [Ext.P3(b)], all other items of work for which SA3 and SA6 agreements were executed, were completed, and thereby amounts of Rs.7,13,415/- (SA3) and Rs.27,65,000/- (SA6) became payable. Thus, a total of Rs.34,78,415/- was the amount entitled by the contractor for the work provided in the agreement at the agreed rate fixed as per Ext.P3(a) original agreement. Therefore, there is no question of invocation of clause 32 of Ext.P3(a) to grant any additional amount for the said work, treating it as 'extra work' done in deviation from Ext.P3(a) original agreement.

12. It is specifically argued by the learned Special Public Prosecutor that item Nos.2 to 4 covered by SA3 and two items covered by SA6 were the works originally included in Ext.P3(a) original agreement. According to the learned Special Public Prosecutor, regarding item No.2 in SA3, PW1 categorically had given evidence that item No.2 was included



as item No.5 in appendix G and the same is a part of Ext.P1(a) estimate. The learned Special Public Prosecutor further pointed out that, for this work, the 1990 schedule of rates was applied and the AEE fixed the rate at Rs.817.61 per m<sup>3</sup>. Then the Executive Engineer worked it out at Rs.681/- per M<sup>3</sup>, the 1<sup>st</sup> accused granted Rs.1,400/- per m<sup>3</sup> in SA No.3 item No.2 and that was agreed upon by the 2<sup>nd</sup> accused. Similarly, item No.3 in SA3 was also a work originally included and the work was agreed to be done at the rate of Rs.531.48/- per M<sup>3</sup>, Rs.1,186/- per M<sup>3</sup> and Rs.7,567.40 per tonne. According to the learned Special Public Prosecutor, as per Ext.P4(m), for item No.1 in SA3, instead of Rs.681/- per m<sup>3</sup>, the rate was enhanced to Rs.1,400/- per m<sup>3</sup> through Ext.P3 negotiation between the 1<sup>st</sup> and 2<sup>nd</sup> accused and for item No.2, the rates were increased to Rs.850/- per M<sup>3</sup>, Rs.1,700/- per M<sup>3</sup> and Rs.11,000/- per tonne as against Rs.531.48 per M<sup>3</sup>, Rs.1,186/- per M<sup>3</sup> and Rs.7,567.40 per tonne, as stated in paragraph 11 of the judgment. He also pointed out that regarding the water stoppers mentioned in SA3, the agreed size was 45 cm and according to the accused persons, the size was reduced to 30.5cm. In this connection, it is submitted by the learned Special Public Prosecutor that, in fact, the shortage of water



stoppers having size of 40 cm was found after completion of 90% of the work, and as per Ext.P1(h), as pointed out by the learned Senior Counsel for the 2<sup>nd</sup> accused, only water stopper to a size of 30.5cm was permitted. It is also pointed out by the learned Special Public Prosecutor that originally the amount agreed for a water stopper was at Rs.100/M, but as per Ext.P1(m) negotiation, the rate for the same was increased to the tune of Rs.750/- per metre. According to the learned Special Public Prosecutor, regarding item No.5 in SA3, as per the evidence given by PW1, claim for shoring was not entitled, as the work was included in the original agreement. However, after granting the same, Rs.1,169/- per metre was negotiated between the 1<sup>st</sup> and 2<sup>nd</sup> accused for a total length of 217 metre, as seen from paragraph 13 of the judgment. It is also submitted that regarding item No.1 in SA6, the said item also was agreed upon in the original agreement @ Rs.1,150/- per metre. But the same was enhanced by the 1<sup>st</sup> accused as per Ext.P4(m) negotiation to the tune of Rs.1,169.50 per metre.

13. According to the learned Special Public Prosecutor, in this case, the prosecution has no case that there was conspiracy in between



the accused persons at the time of execution of the original agreement or at the time of commencement of the work. But the prosecution case specifically is that after completion of the work as agreed, the 1<sup>st</sup> and 2<sup>nd</sup> accused conspired together to misappropriate Government funds and as a result of the said conspiracy, both of them decided to put up and act upon unwanted claims, as discussed herein above for obtaining a huge amount as enhancement and the Government money to the tune of Rs.34,78,415/- was encashed by the 2<sup>nd</sup> accused and thereby the 2<sup>nd</sup> accused misappropriated the said sum with the aid of the 1<sup>st</sup> accused and accordingly both of them committed the offences as alleged.

14. The learned Special Public Prosecutor anxiously argued that, in fact, the work was taken on tender by the 2<sup>nd</sup> accused, who is an experienced contractor, after knowing the nature of the soil, the work to be carried out, etc. for an amount of Rs.23,15,000/-. Thereafter, SA3 and SA6, were vexatiously created for claims which were not at all entitled by the 2<sup>nd</sup> accused and the amounts were encashed. The learned Special Public Prosecutor further pointed out that, for a work originally agreed upon for an amount of Rs.23,15,000/-, an amount of ₹34,78,455/-



was altogether obtained by claiming the same as 'extra works'. Therefore, the prosecution case as to misappropriation of Rs.34,78,455/- is proved beyond reasonable doubts. According to the learned Special Public Prosecutor, as far as the decisions placed by the learned Senior Counsel for the 2<sup>nd</sup> accused are concerned, the said decisions in no way addressed the agreement or the conditions thereof in its proper perspective and also, the facts and claims therein were totally different. Therefore, the above decisions have no binding effect when independently considering the work done herein based on Ext.P3(a) for which an exorbitant amount was granted by executing SA3 and SA6.

15. The learned Special Public Prosecutor has placed a decision of the Apex Court in ***Rajiv Kumar v. State of U.P.*** [2017 KHC 6522 : AIR 2017 SC 3772 : 2017 (8) SCC 791 : 2017 CriLJ 4734], particularly paragraphs 10 and 44, wherein the Apex Court extracted the ingredients to constitute the offence of forgery as under:

*“10. S.13 of the P.C. Act in general lays down that if a public servant, by corrupt or illegal means or otherwise abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage, he would be guilty of 'criminal*



*misconduct'. Sub-section (2) of S.13 speaks of the punishment for such misconduct. S.13(1)(d) read with S.13(2) of P.C. Act lays down the essentials and punishment respectively for the offence of 'criminal misconduct' by a public servant. S.13(1)(d) reads as under:*

*"13. Criminal misconduct by a public servant. –*

*(1) A public servant is said to commit the offence of criminal misconduct, (d) if he, -*

*(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or*

*(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or*

*(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or"*

*A perusal of the above provision makes it clear that if the elements of any of the three sub-clauses are met, the same would be sufficient to constitute an offence of 'criminal misconduct' under S.13(1)(d). Undoubtedly, all the three wings of clause (d) of S.13(1) are independent, alternative and disjunctive. Thus, under S.13(1) (d) (i) of P.C. Act obtaining any valuable thing or pecuniary advantage by corrupt or illegal means by a public servant in itself would amount to criminal misconduct. On the same reasoning under S.13(1) (d) (ii) of P.C. Act "obtaining a valuable thing or pecuniary advantage" by abusing his official position as a public servant, either for himself or for any other person would amount to criminal misconduct."*

*"44. The essential ingredients of the offence of criminal conspiracy are:*

*(i) an agreement between two or more persons; (ii) the agreement must*



*relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. It is, therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine qua non of criminal conspiracy. It is extremely difficult to adduce direct evidence to prove conspiracy. Existence of conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. In some cases, indulgence in the illegal act or legal act by illegal means may be inferred from the knowledge itself.”*

16. Having considered the arguments on the issue, the points arise for consideration are :

(i) Whether the Special Court is justified in holding that accused Nos.1 and 2 committed the offence punishable under Section 13(1)(d) r/w 13(2) of the PC Act, 1988?

(ii) Whether the Special Court is right in holding that the accused committed the offence punishable under Section 120B of IPC?

(iii) Whether the contention raised by the 2<sup>nd</sup> accused that there was no prosecution sanction to prosecute the accused is sustainable?

(iv) Is it necessary to interfere with the judgment in any manner?

(v) The order to be passed?

Points (i) to (v)

17. In this case for formation of Kulasekharapuram Distributory from Ch.1700M to 2400 M including CD works as part of Kulasekharapuram Irrigation Project, an estimate was prepared by PW5, who was the Assistant Engineer of KIP RB Section during the said period. Ext.P10 is the file relating to the preparation of estimate with respect to the aforesaid work which was maintained at the office of PW5 (AE). PW5 deposed that the estimate of this work was prepared by him and he had sent the estimate to the Assistant Executive Engineer. The first item covered in Ext.P10(a), that is the estimate, is earth work excavation in all classes of soil with foundation and depositing on banks with all leads and lifts including back filling using the spoil, watering etc. The second item of work is bailing out water with 5 H.P oil engine including conveying erecting, cost of fuel, pay of staff etc. The 3<sup>rd</sup> item of work is cement concrete 1:4:8 using 40 mm metal including watering, curing etc. complete as per specifications and drawing or as directed by the Engineer-in-charge. The 4<sup>th</sup> item of work is RR in CM 1:6 including pointing the exposed face simultaneously with the same mortar including watering, curing etc. The



5<sup>th</sup> item of work is RRC 1: 5:6 using graded metal for road crossing etc. The 6<sup>th</sup> item of work is RCC 1:2:4 using 20 mm metal including all watering, curing etc. complete in road crossing and foot path. The 7<sup>th</sup> item of work is providing reinforcement for RCC work bent, tied and placed in position as per specification and drawing or as directed by the Engineer-in-charge. The 8<sup>th</sup> item of work is filling and forming approaches of road way using contractor's own earth etc. The 9<sup>th</sup> item of work is plastering with CM 1:4 15mm thick one coat floated hard.

18. The evidence of PW5 further is that in the estimate the earth work excavation of flume canal RCC 1:2:4 using 20mm metal size, bed, haunches and tie beam are included. PW5 stated that for each item estimate was prepared for concrete and reinforcement. The said estimate prepared by PW5 was forwarded to the Executive Engineer (EE) through the Assistant Executive Engineer (AEE). This estimate was then forwarded to the Superintending Engineer (SE) by the EE.

19. It is discernible that PW1 was the S.E of KIP, RBC from 22.06.1997 to 02.03.1999. PW1 identified Ext.P1 file as the file relating to this work maintained at his office. Ext. P1(a) is pages 1 to 15 of the said



file which is the estimate forwarded to him by the E.E. PW1 identified his initials in page 15 of Ext. P1(a). Two major items of work could be found from Ext.P1(a), the first one is canal formation as per Appendix L. It is stated in Ext.P1(a) that the canal proposed was an open flume of RVV 1:2:4 as per approved hydraulic particulars.

20. It is further stated that in this estimate the flume is starting in a transition of 5 m length from Ch.1700 to 1705M. As per items 1 and 2, provisions had been made for uprooting of trees in the alignment. Item No.3 is earth work excavation for foundation of flume canal. It is stated that the canal reach passes through sandy soil and paddy field and so the rate for ordinary soil with necessary additional leads and lifts had been provided. Item No.4 is bailing out water with 5 H.P Engine and pump set, approved rate was given in the estimate. Item No.5 is provision has been made in this estimate for CC 1:4:8 using 40mm metal for foundation of the flume for the entire length. Item No.6 was RR block masonry in cement mortar 1:6 proposed over the CC 1:4:8 for the flumed portion to with stand the heavy load over it. The minimum depth of RR 1:6 in paddy field was fixed as 40cm and varies in filling. It is noted that necessary openings are



proposed in masonry blocks in paddy field to allow water to flow. Item No.7 is provided for the construction of flume with RCC 1:2:4 using 20 mm metal. Necessary reinforcement is also provided. Item No.8 covers necessary provisions in this estimate for providing reinforcement for RCC work. Reinforcement at 100kg is proposed. Item No.9 mentioned that water tight expansion joints at 30 M intervals is proposed by using rubber water seal and the joints filled with bitumen mastic filler. The second major head is Appendix-G that is road crossing culvert and foot paths. It is noted therein that the alignment of the canal crosses 7 m wide roads at Ch.2310 and 2M wide road 3 Nos. at different chainages. Necessary provisions such as earth work excavation, bailing out water, CC 1:4:8 for foundation and CC 1:3:6 for abutments have been made in this estimate for constructing the road crossings. A clear road way of 7 m are provided by 30cm thick RCC 1:2:4 deck slab over the abutments and 15cm thick for foot slab provisions have been made for constructing parapet and retaining walls, step footing in RR 1:6 and in DR packing. Necessary earth fillings to raise the road way so as to get approaches to the road way have also been made in this estimate. The attached drawing and the estimates are self



explanatory. Finally it is noted that the estimate is prepared based on the current schedule of rates. Further it is again noted that the LS sheets, data and conveyance statement, detailed estimate and drawings are appended to the same. The total estimate amount was shown as Rs.25 lakhs, and later corrected to Rs.24,45,000/- at the office of PW1 as could be gathered from page 30 of Ext.P1.

21. PW1 also testified regarding Ext.P2 file. According to PW1, Ext.P2 is the file relating to the said work maintained at the office of the Chief Engineer. The said file is identified by PW1. Ext.P2(a) is sheet Nos.1 to 21 of the said file which is identified by PW1 as the estimate sent from his office to the Chief Engineer (C.E). for this particular item of work. Drawings are also included in Ext.P2. PW1 stated that these drawings were received by him from the office of the S.E. and he forwarded the same to the C.E. along with the estimate. This drawings are contained in page 1 to 5 of Ext. P2 file. Pages 6 to 17 of the file relates to conveyance statement and detailed estimate. Scrutiny was conducted at the office of C.E. and it was sanctioned for a total amount of Rs.23,15,000/-. Ext.P1(b) is page 25 of Ext. P1 file showing that the technical sanction



was given for the said work from the office of the C.E. Ext.P1(c) is sheet Nos.22 to 24 which is the abstract of the estimate prepared at the office of the C.E. In this abstract the total quantity of work for RCC 1:2:4 was fixed as 1000M<sup>3</sup> and reinforcement was fixed at 100T. The total amount for Appendix-L canal formation that is flume canal is fixed at Rs.21,22,950. For road crossing at Ch.2310 and foot path that is Appendix-G the total amount is fixed as Rs.1,57,651/-. Thus the general abstract prepared at the office of the C.E. would go to show that the final sanction was given for Rs. 23,15,000/-. In page 11 of Ext.P1(a) the details of the construction of flume canal is shown. The total quantity is mentioned as 1008M<sup>3</sup> that was converted into 1000M<sup>3</sup> at the office of the C.E. In Ext.P1(a) different items of work in item No.7 including the berl, size, haunches and tie beams of the flume canal are shown. The total number of tie beams mentioned as 46 and the total quantity for the said tie beam work is shown as 2.9M<sup>3</sup>. It is further shown that the tie beams should be constructed at 15m intervals. The length of the tie beams is shown as 2.8m width of the beam is shown as 0.15m and depth is shown as 0.15m. He stated that the total number of tie beams fixed is 46 and so the total quantity of the tie



beam is arrived at 2.900m<sup>3</sup>. The item No.8 is also mentioned in Ext.P1(a). The item of work in this item No.8 is providing reinforcement for RCC work bend, tie and placed in position as per specification and drawing or as directed by the Engineer-in-charge.

22. According to PW1, the reinforcement of the bed flume canal, sides, tie beams and any other RCC work of same specification. 100kg of steel/M<sup>3</sup> was fixed. The length of the flume was reduced to 7.8m and so the total quantity was reduced to 1000M<sup>3</sup> from 1008M<sup>3</sup>. The said length reduced was included in Appendix-G. PW1 stated that when the C.E. scrutinized the said estimate the quantity of the tie beam was not changed. At the office of the C.E. also the total quantity of the concrete portion was fixed at 1000M<sup>3</sup> and the quantity of the reinforcement was fixed at 100T. So far the said work tenders were invited from the office of PW1. PW1 deposed further that the lowest tender was submitted by the 2<sup>nd</sup> accused. Ext.P1(d) is the letter sent by PW1 to the Director of Public Relations, Thiruvananthapuram for publishing the short tender notice. As stated above, the 2<sup>nd</sup> accused submitted the lowest tender and accordingly this tender was accepted and agreement was entered by PW1 with the 2<sup>nd</sup>



accused. Ext.P3 is the agreement file maintained at the office of PW1.

23. Now it is necessary to look into Ext.P3(a). Ext.P3(a) is the original agreement No.9/88-89/SC/KIP executed between PW1 and the 2<sup>nd</sup> accused. This agreement was executed on 19.7.1988. Ext. P3(a) is sheet Nos. 1 to 75 which contains the original agreement schedule etc. Sheet No.73 is the memorandum of work. The sanctioned estimate is shown as Rs.22,78,566/- and the accepted tender is shown as Rs. 23,62,858/-, the date of commencement of work is mentioned as the date of issue of order to start the work. The date of completion of work is 9 months from the date of issue of order to start the work. Ext.P3(a-1) is sheet Nos.67 to 71 of Ext.P3(a) which is the accepted agreement schedule. Appendix-L-1 in Ext.P3(a-1) is constructing flume canal. Item No.1 is earth work excavation in all classes of soil with foundation and depositing on banks with all leads and lifts including back filling using the spoil, watering etc. Item No.2 is bailing out water with 5 H.P oil engine including conveying erecting, cost of fuel, pay of staff etc. Item No.3 is cement concrete 1:4:8 using 40 mm metal including watering, curing etc. to be completed as per specifications and drawing or as directed by the



Engineer-in-charge.

24. As per Ext.P3(a), the 4<sup>th</sup> item is RR in CM 1:6 including pointing the exposed face simultaneously with the mortar including watering, curing etc. The 5<sup>th</sup> item is RRC 1:5:6 using graded metal for road crossing etc. The total quantity mentioned is 412/M3. The rate fixed is 500/M3. Item No.6 is Random Rubble in cement mortar 1:2:4 for foundation and super structure including pointing the exposed faces of masonry simultaneously with the same mortar including watering, curing etc. complete as per specification. The total quantity mentioned is 564M3 and the rate fixed is Rs.100/M3. The 7<sup>th</sup> item is RCC 1:2:4 using 20mm broken stone for flume canal including all form work watering, curing etc. complete but excluding cost and labour for reinforcement as per specification. The quantity is 1000M3 and the rate fixed is Rs. 1150/M3.

25. Coming to reinforcement for RCC work, bent, tied and placed in position as per specification. The total quantity mentioned is 100T and the rate is Rs.7,500/T. Coming to supply and fixing of PVC water stopper 45cm wide and filling the gaps with 25mm thick machine



pressed bitumen pad of approved quality including all cost and conveyance etc. complete. The total quantity is 250M and the rate fixed is Rs.100/M. Appendix-G is construction of road crossing at Ch.2310M and foot path at different chainages.

26. Reverting back to item No.1, the same is earth work excavation in all classes of soil to lines and grades for foundation of canal structure and depositing the spoil on banks and back filling with the spoil with all leads and lifts, watering, ramming and consolidating etc. complete. The total quantity mentioned is 185M<sup>3</sup> and the rate fixed is Rs.5/M<sup>3</sup>. The second item is bailing out water using 5HP Engine and pump set including conveying to site, Erection charges, cost of fuel, lubricating oil and all other stores, pay of staff etc. complete. The total time is 24 Hr and the rate is Rs.10/Hr. The third item is cement concrete 1:4:8 approx using 40mm metal (nominal size) for foundation to lines and grades and dimension as shown in the drawing including hire and labour for fixing to lines and grades, the form work staging scaffolding etc. including removing the same after the concrete has set or as directed by the Engineer-in-charge including all boxing, compacting curing, dewatering etc. complete as per



specification. The total quantity is 19M<sup>3</sup> and the rate fixed is 400/M<sup>3</sup>.

27. Item No.4 is random rubble cement mortar 1:6 including pointing the exposed spaces simultaneously wherever necessary or as directed by the Engineer-in-charge including watering, curing etc. complete. The total quantity is 54M<sup>3</sup> and the rate fixed is Rs.300/M<sup>3</sup>. The item No.4(a) is dry rubble masonry for retaining wall, wherever necessary as directed by the Engineer-in-charge. The total quantity is 48M<sup>3</sup> and the Rs.50/M<sup>3</sup>.

28. Item No.5 is cement concrete M100 (1:3:6 approx) for super structure using graded metal, lines and grades and dimension as shown in the drawing including hire and labour for fixing to lines and levels all form work, staging, scaffolding etc. for concrete including removing the same after the concrete has set or as directed by the Engineer-in-charge including all boxing, compacting, curing, watering, etc. complete as per specification. The quantity mentioned is 82M<sup>3</sup> and the fate fixed is Rs.725/M<sup>3</sup>.

29. Item No.6 is reinforcement cement concrete M150 (1:2:4 approx) with 20 mm broken stone for slab as per the dimension shown in



the drawing including hire and labour for fixing to lines and levels, all form work, staging, scaffolding etc. for concrete including removing the same after concrete has set or as directed by the Engineer-in-charge, compacting, curing etc. complete, but excluding cost and labour for reinforcement. The total quantity mentioned is 30M3 and the rate fixed is 1200/M3.

30. Item No.7 is in relation to providing reinforcement for RCC work, bent, tied and placed in position as shown in the drawing or as directed by the Engineer-in-charge etc. as per specification. The quantity mentioned is 2.35T and the rate fixed is Rs.7500/T. Item No.8 is filling and forming the approach road to lines and levels with earth available from flume excavation including spreading in layers having a thickness of not more than 15 cm when compacted watering and consolidating with power roller or other approved equipment and the quantity is stated 55 M<sup>3</sup> at Rs.15/ M<sup>3</sup>. The 9<sup>th</sup> item is plastering with CM 1:4, 15 mm thick one coat floated hard and trowelled smooth including all charges for watering, curing etc. complete as per specification. The total quantity mentioned is 61M2 and the rate is Rs. 13/M2.



31. During examination of PW1, PW1 identified his signature in Ext.P3(a) agreement and he also identified the signature of the 2<sup>nd</sup> accused in this agreement. PW1 deposed that the item of work mentioned is the bed, sides, haunches, tie beam of flume canal. Drawing are also appended to Ext.P3(a). PW1 further testified that the LCB specifications appended to Ext.P3(a) agreement would form the part of the agreement. This aspect is not in dispute. Sheet Nos. 25 to 32 of Ext.P3(a) is the Local Competitive Bidding Specification. Ext. P3(a-2) is the statement of departmental materials proposed to be issued for the work. Cement, Tore steel are included as Departmental materials supplied for the said work. The quantity of cement allowed is 471.20T and the total quantity of tore steel allowed is 102.35 T. The recovery rate is fixed at Rs. 1200/-T for cement and Rs. 6500T for tore steel.

32. PW1 stated that the copy of the agreement was sent to the Accountant General, EE, AEE and AE and also to the Contractor and Ext.P1(e) is the copy of the letter showing that the same was sent to these persons. Ext.P1(f) is the initial level proposed and sent to PW1 by the E.E.

33. When the evidence of PW1 is analysed in the above line



the prosecution proved Ext.P3(a), otherwise also the execution of Ext.P3(a) is not disputed by the 2<sup>nd</sup> accused. It is not in dispute that the LCB Specifications appended to Ext.P3(a) is applicable to this contract in question. The period fixed was 9 months and so clause 32(A) the price adjustment clause was struck off at the time of executing the agreement. The work was carried on at the site under the supervision of PW5 who was the A.E. during the said period.

34. Regarding the use of water stopper having a width of 45 cm. Ext.P1(g) is the letter sent by the 2<sup>nd</sup> accused to PW1. In Ext.P1(g) it is stated by the 2<sup>nd</sup> accused that as per item No.9 of the accepted schedule supplying and fixing PVC water stopper of size 45 cm wide was specified. But such size was not available in the market and the only available size is 30.5 cm. The said letter ie Ext.P1(g) is dated 18.10.1988. PW1 stated that this water stopper is a rubber pad fixed in the joints on two sides of the flume to prevent leakage of water. Ext.P1 (h) is the reply sent by PW1 to Ext.P1(g) letter of the contractor. As per Ext. P1(h), the 2<sup>nd</sup> accused was permitted to use 30.5 cm wide PVC water stopper instead of 45 cm provided in the agreement. The copy of the said letter was forwarded to the



E.E., KIP RB Division No.II, Adoor with request to submit the data and the supplemental schedule for this item for executing SA. Again Ext.P1 (i) letter was sent by the Contractor PW1. It is stated in Ext.P1 (i) letter that during the earth work excavation both banks of the canal found slipping down because of sandy soil and he was now excavating at 1:1 side slope. It was further stated that they were providing shoring at 1.5 m height and round the clock bailing out of water with 5 HP pump would be required. So he requested to issue necessary orders for the payment for additional earth work for side slope, shoring and for bailing out of water to proceed with work. To Ext. P1 (i) letter PW1 had endorsed that any unauthorized modification in side slope providing shoring without approval or extra pumping not duly approved at site by the site Engineer would not be paid for. Ext.P1(j) is the reply sent by PW1 to the accused for Ext.P1(i) letter. It is stated in Ext.P1(j) that any unauthorized modification in side slope providing shoring without approval or extra pumping not duly approved at site by the Site Officers would not paid for. Copy of the said letter was seen forwarded to the E.E., KIP, RB Division No.III, Adoor. As stated earlier as per Ext.P1(h) letter sent by PW1 to the Contractor he was



permitted to use 30.5cm wide PVC water stopper and PW1 had recommended for executing supplemental agreement with respect to the said work. PW1 identified Ext. P4 as the file maintained at his office. Ext. P4(a) is identified by PW1 as the letter sent to him by the E.E. Along with the said letter the E.E. submitted the data for providing PVC water stopper 305 mm wide and refilling the gap with 25mm thick machine pressed bitumen pad. He stated that the cost of materials provided in the data were the current market rate. He requested for approval of the said data and execution of Supplemental agreement. Ext.P4(a-1) is the data for PVC water stopper. The cost of the water stopper was arrived at Rs.205.42/M in Ext.P4(a-1). Ext.P5 is the note file of Ext.P1 and P4. Ext.P5(a) is the sheet Nos.38 and 39 of Ext. P5 file. In Ext.P5(a-1) the Draftsman had noted that the E.E. in his letter dated 12.1.1989 had submitted the data and supplemental schedule for the above extra item and the data was checked and put up for approval and rate come Rs.205.42/M. He requested for the approval of the said data. PW1 had directed the E.E. to certify the reasonableness of the cost of PVC water stopper in the data. In Ext. P5(b) it was noted that some proposals were received in the office and also some



quotations had been received in Division No.1 and it was directed to compare the rates and put up the file. PW1 deposed that till he left the said office no decision was taken in the said matter. During cross-examination PW1 stated that only after perusing the records he could say whether trial pit was taken. In Ext. P2(a) it is noted that the canal reach passes through sandy soil and paddy field and in the LS drawing between 2000M to 2100M a pond is shown and in Ch. 2310M to 2400M paddy field is also shown. He admitted that flume canal was purely structural work/RCC with reinforcement. When the execution work started PW1 was there in the office as S.E. He admitted that Ext. P3(a-3) was the drawing of typical flume canal with flume section. Ext.P3(a-4) is the drawing of foot path at Ch.1930m. Ext. P3(a-5) is the drawing of road crossing at Ch.2310M and Ext.P3(a-6) is the foot path at Ch.2100M to 2106M. He further admitted that if during soil excavation it could be found that the vertical execution would not be practical, because the Site Engineer could direct to give slope. According to him in this case it was not revealed that vertical excavation was not practical. He testified further that he had visited the site and he had also seen the excavation done at the spot. He added that it was the duty



of the Contractor to give side protection at the time of excavation of soil and for bailing out water. He stated that there was provision for the same in the estimate. The total width of the acquired land according to him was 6m and the canal width was 2.8m. He admitted that the contractor could envisage what all particulars were there in the structure on seeing the drawings and the specifications.

35. Item No.2 in Ext.P3(b-1) pertaining to S.A. No.3 was cement concrete 1:3:6 using graded metal 60% 40mm and 40% 20mm to alignment, grade and dimension for making up in slushy including all forming, watering, curing etc. The total quantity for the same was 98M<sup>3</sup> and the rate arrived at in negotiation was 1400/M<sup>3</sup>. It was admitted by PW1 that nowhere in Ext.P1 file it was stated that trial pit was taken. He further admitted that in Ext.P2(a) it was noted that the canal reach portion was sandy soil and paddy field. He again stated that in LS drawing it was noted in 2000M and 2100M there was a pond. He further admitted that from Ch.2310 M to 2400M there was paddy field and for making up the said portion this item of work was done. The same item of work was included as item No.5 in Appendix-G to the original agreement. The said



item was also cement concrete 1:3:6 using graded metal 60% 40mm and 40% 20mm Ext. P4(i) is sheet Nos. 113 to 115 of Ext.P4 file. It could be seen from Ext.P4 that by adopting 1990 schedule of rates for this item the AEE had recommended Rs.817.61/M3 which was finalized by E.E. as Rs.681/M3. Ignoring all these matters at the time of negotiation as seen from Ext.P4(m) negotiation statement the amount arrived by the 1<sup>st</sup> accused on negotiation with the 2<sup>nd</sup> accused was Rs. 1,400/M3. In that case the rate allowed was Rs.725/M3. He also testified that for the said item an amount of Rs.1,400/M3 was granted in S.A. No.3 by the 1<sup>st</sup> accused. So in this place clause 32 of the LCB conditions would not apply since it was not an 'extra item' but an item already covered in the original agreement. In the said circumstances as per clause 31 of LCB specifications revised rates should not exceed the rate quoted even when the quantities of work actually done exceeded by more 30% of the agreed quantity. So with respect to item No.2 in Ext.P3(b-1) the said item could not be treated as an 'extra item' and the amount of Rs.1400/M3 was awarded by the 1<sup>st</sup> accused to the 2<sup>nd</sup> accused in violation of clause 31 and 32 of LCB conditions.



36. Item No.3 in the S.A. No.3. Ext.P3(b-1) was the construction of flume canal from Ch. 1700M to 1715M with a bed width of 2.70M. PW2 stated that as per the original proposal the width of the flume canal was 2.4m and the length was 15m, but the width was increased to 2.7M. The first item under Item III was C.C.1:4:8 using 40 mm broken stone for foundation. The said item was same as Item No.5 in Appendix L-1 of Ext.P3(a-1) original agreement. The item No.2 of RCC 1:2:4 using 20 mm broken stone for flume canal including all form work watering & curing etc. The said item was item No.7 in Ext.P3(a-1), the schedule of original agreement. The third item was reinforcement of RCC work, bent, tied and placed in position as per specification and it was item No.8 in Ext.P3(a-1). It is discernible that for item No.1 the amount awarded in the original agreement was Rs.500/M<sup>3</sup>; for item No.2 the amount awarded in the original agreement was Rs.1,150/-; for item No.3 the amount awarded in the original agreement was Rs.11,000/-. PW2 further stated that Ext.P4(g) was the proposal sent by the E.E to the S.E. with respect to the aforesaid three items. In Ext. P4(g), it was stated by the EE that as per the original agreement the Contractor was supposed to



construct barrel of inside width 2.4.M between Ch.1700M to 1705M. But the off take of Oachira Minor Distributory was fixed at Ch.1720M. The contractor had to alter all the shuttering arrangement which was originally suited for casting barrel of 2.4m width resulting in considerable additional expenditure to the Contractor. There was a change in the dimension of the flume canal and it may be treated as extra and relying on 1990 schedule of rates, he has refixed the rate in Ext.P4(h) that is Rs.531.48/M3 for the first item, Rs.1,186/M3 for the second item and Rs.7567.40/T for the third item. As already stated the said rates were fixed by adopting the 1990 schedule of rates. The 1<sup>st</sup> accused had negotiated with the 2<sup>nd</sup> accused for fixing the rates for these items also. Ext.P4(1) were the rates claimed by the 2<sup>nd</sup> accused. Ext.P4(m) was the negotiation statement prepared by PW2. PW2 deposed that the negotiated rates in Ext.P4(m) were arrived by the 1<sup>st</sup> accused. According to him, for the first item the amount arrived by the 1<sup>st</sup> accused was Rs.850/M3, instead of Rs.531.48/M3 suggested by E.E. as per 1990 schedule of rates. The rate fixed for item No.2 by the 1<sup>st</sup> accused on negotiation is Rs. 1,700/M3, instead of Rs.1,186/M3 suggested by the E.E. The rate fixed by the 1<sup>st</sup> accused on negotiation as seen from



Ext.P4(m) for third item was Rs.11.000/Tonne against the amount of Rs.7,567.40/T suggested by the E.E. It was only an extra quantity of work done by the accused. So he can claim the amount only within the purview of clause 31 of the LCB conditions. Thus PW2 categorically given evidence that clause 31 and 32 of LCB conditions were violated to execute SA and to grant exorbitant amount. PW2 further asserted that there was violation of the delegation of financial powers of the S.E. provided under Appendix II(a) of the Public Works Department Manual.

37. The next item was supplying and fixing PVC water stopper 45cm wide and filling the gaps with 25mm thick machine pressed bitumen pad of approved quality including all cost and conveyance etc. complete. The item rate fixed in the original agreement for this item was 100/M. It is true that in the original agreement, the water stopper mentioned was 45 cm wide. The evidence would show that Ext.P1(g) letter was sent by the 2<sup>nd</sup> accused to PW1 stating that water stopper of 45 cm width was not available in the market and accordingly permission was sought to use water stopper of 30.5cm size which was the only one available in the market. Ext.P1(h) letter was sent by PW1 permitting the



2<sup>nd</sup> accused to use 30.5cm width of water stopper and also suggesting for execution of SA. The E.E. had submitted the data of providing PVC water stopper of 30.5 cm wide and refilling the gaps with 25mm thick machine pressed bitumen pad. He had stated that the cost of materials provided by him in the data were the current market rates. He had requested for approving the said data and execution of S.A. Ext.P4(a-1) would go to show that the data so suggested by the E.E. was Rs.205.42/M. Ext. P4(b) is the letter sent by the S.E. to the 2<sup>nd</sup> accused calling upon him to offer the minimum rate for the extra rate for supplying and fixing 30.5cm width of PVC water stopper. Ext. P5(a) is the notes submitted by the Draftsman to PW1 with respect to this item. In Ext.P5(a) it was stated that the sanction to use 30.5cm wide PVC water stopper instead of 45 cm wide PVC water stopper was issued to the 2<sup>nd</sup> accused, the E.E. in his letter dated 12.1.1989 had submitted the data and supplemental schedule for the above extra item and the data was checked and put up for approval and the rate would come to Rs.205.42/M and there was request for approval of the said item. As per Ext.P5(a-1) PW1 had suggested certifying the reasonableness of the costs of PVC water stopper. It is admitted by PW1 that till he left the said office,



no S.A was executed for the said item. Ext.P4(c) is the letter sent by the 2<sup>nd</sup> accused to S.E. claiming rate for the water stopper. In Ext.P4(c) the rate claimed by the 2<sup>nd</sup> accused was Rs.435/running Metre for 30.5cm wide water stopper. In Ext.P4(m) PW2 stated that the rates suggested was Rs.372.34 since the same was the rate sanctioned for the water stopper in the same nature of work in another reach at Kulasekharapuram. Ext.P4(m) is a negotiation statement wherein the amount arrived on negotiation was Rs.750/M. So it was evident that the amount sanctioned by the 1<sup>st</sup> accused was much higher than the amount of Rs.435/-, that is the amount claimed by the 2<sup>nd</sup> accused or the amount of Rs.205.42/-, the amount suggested by E.E on the amount of Rs.372.34/-, the amount sanctioned for another reach. It was admitted by PW2 that when the same was executed about 90% of the work was already over. In this regard it is relevant to note that PW1 testified that water stopper was a PVC pad fixed in the joints on two sides of the flume to prevent leakage of water. Thus the prosecution clearly established that the price for water stopper had been fixed even from the beginning of the work and 90% of the said work was over when S.A. No.3 was executed for the said item. So the amount was awarded by



the 1<sup>st</sup> accused to the 2<sup>nd</sup> accused in violation of clause 31 & 32 of LCB conditions and also in excess of the financial powers conferred on S.E. by the Kerala Public Works Department Manual.

38. Item No.5 in S.A. No.5 was providing shoring to the sides of the canal using half split coconut piles etc. during foundation excavation and during concreting of the structure so as to protect both sides from slipping at the portions wherever required and removing the same after the completion of the structure. PW1 testified that it was the responsibility of the contractor to provide side protection at the time of digging the canal. PW1 deposed further that he had visited the site and slope excavation had not done and even there was no space available there for slope excavation. Ext.P1(i) was the letter sent by the Contractor - the 2<sup>nd</sup> accused to PW1. Ext. P1(i) would show that the contractor raised claim that during the earth work excavation both banks of the canal were slipping down because of sandy soil and now we were excavating at 1:1 side slope and they were providing shoring at 1.5m height and round clock bailing out of water with 5 HP pump and he had requested issuance of necessary orders for the payment for additional earth work for side slope,



shoring and bailing out of water. Ext.P1(j) is the reply sent by PW1 who was the then S.E. to the 2<sup>nd</sup> accused. In Ext.P1(j) it is stated by PW1 that any unauthorized modification in side slope, providing shoring without approval or extra pumping not duly approved at site by the site officers would not be paid at all.

39. In terms of clause 54 of the LCB conditions of contract, the contractor is bound to keep machine numbered well bound spot work order book at the site of work. All instructions given to the contractor by inspecting officers should be recorded in the book and initialled by the officers. No oral orders said to have been issued would be accepted as a claim for payment. A reading of the said clause taken along with Ext.P1(g) letter would make it clear that the 2<sup>nd</sup> accused was not eligible for any claim under the head shoring as an extra item of work unless the same work was done as per clause 54 of LCB conditions. As per report of the E.E, ie. Ext.P5(e-1), it was noted that the length of the shoring done was measured as Rs.2700/m<sup>3</sup> and the contractor demanded rate @ of Rs.2,000/M<sup>3</sup>. But the E.E. had not submitted data and details for shoring done. The 1<sup>st</sup> accused had suggested that the shoring had to be treated as



`extra item' and rate had to be called for from the Contractor. Ext. P4(k) is the letter sent to the 2<sup>nd</sup> accused on the basis of the recommendation of the 1<sup>st</sup> accused. Ext.P4(1) is the reply submitted by the 2<sup>nd</sup> accused wherein he had claimed Rs.3,000/Rm for providing shoring, consolidating of earth during consolidating of flume canal. Accordingly as per Ext.P4(m) demand was negotiated and Rs.1,169.50/RM for shoring was granted by the 1<sup>st</sup> accused. Accordingly as per S.A. No.3 the said amount was granted per running metre to the 2<sup>nd</sup> accused for a total length of 217M. Clause 35 of Specification for Canal Works issued by the Kerala Public Works Irrigation Department for KIP dealt with Excavation for structures. It has been provided that *"except as otherwise provided all excavation for structures will be measured for payment to lateral dimensions 15 cm outside the foundation footing or slab or where foundation footings or projecting slabs are not used lateral dimensions 30cm outside of exterior walls or surfaces of the structures and to side slopes 1 to 4 provided that when the character of the material cut into is such that it can be trimmed to the required lines of the concrete and the need for intervening forms eliminated payment will be made only for the excavation within the neat*



*lines of the concrete. Provided further that for any part of the work where in the opinion of the Engineer-in-charge the conditions will be measured for payment to the most practicable dimensions and lines staked out or otherwise established by the Engineer-in-charge. The contractor shall prepare the excavated surface in a manner, suitable for forming foundations or concrete structures. The bottom and side slopes of excavation upon or against which concrete is to be placed shall be accurately finished by hand to the dimensions shown on the drawings or prescribed by the Engineer-in-charge and the surface so prepared shall be moistened with water and tamped with suitable tools for the purpose of thoroughly compacting them and forming firm foundation upon or against which to place the concrete. If at any point in excavation, the foundation materials are excavated beyond the neat lines required to receive the structure, or specified lines, grades and dimensions the over excavation shall be filled with the same material as that of the foundation footing at the cost of contractor. If any point in excavation, the natural foundation material is disturbed or loosened during the process, it shall be consolidated to a degree satisfactory to the Engineer- in-charge or*



*otherwise it shall be removed and replaced with selected material compacted to the satisfaction of the Engineer-in-charge. Any and all excess excavation or over excavation performed by the contractor for any purpose or reason except as may be ordered in writing by the Engineer-in-charge and whether or not due to the fault of the contractor shall be at the expense of the contractor. No blasting that might injure the work will be permitted and any damage done to the work by blasting including shattering of the material beyond the required excavation lines shall be repaired by and at the expense of the contractor and in a manner satisfactory to the Engineer-in-charge. The schedule for excavation for structures shall include unless otherwise specifically provided for the cost of all labour and materials for ring bund and other temporary construction and of all pumping, bailing, draining and all other work necessary to maintain the excavation in good order during construction and of removing such temporary construction where required". PW1 categorically given evidence that claim for shoring was not at all sustainable as it was included in the excavation and he had turned down that request of the Contractor. So the said item could never be treated as an*



`extra item' and no amount could be granted for the said item. Thus in violation clause 31 and 32 of LCB conditions and in violation of the financial powers confirmed on S.E. under Appendix II(a) he had awarded amount for this item. Thus with respect to S.A. No.3 except item No. 1, all other items were executed violating provisions of clause 31 & 32 of the LCB conditions and total amount of Rs.71,24,015/- was gained unlawfully by the 2<sup>nd</sup> accused at the instance of the 1<sup>st</sup> accused and corresponding loss was suffered by the Government.

40. Coming to execution of S.A. No.6. S.A. No.6 was executed on 28.2.1991 which according to the prosecution is the date of retirement of the 1<sup>st</sup> accused. This was executed for 1000M<sup>3</sup> of RCC 1:2:4 using 20m metal (nominal size) for flume canal including constructing tie beams to protect the side walls wherever necessary as directed by the Engineer-in-charge including all form work staging scaffolding etc. for curing etc. (1<sup>st</sup> item) complete but excluding cost and labour for providing concrete had set or as directed by the Engineer-in-charge watering reinforcement in view of item No.7 of Appendix-L in the original agreement. The second item treated as extra item in S.A. No.6 was



reinforcement for RCC work, bent, tied and placed in position as per specification for flume canal, tie beam etc. in lieu of item No.8 of Appendix-L in original agreement. It is argued by the learned Senior Counsel for the 2<sup>nd</sup> accused that the tie beams were neither provided in the detailed estimate nor in the diagram supplied to the 2<sup>nd</sup> accused and the parties were not at *consensus in idem* with respect to the construction of tie beams. In this regard the evidence of PW5 is relevant, since the estimate for the same was prepared by PW5 who was the then A.E. He deposed that he had prepared the estimate for the work of RBC formation of Kulasekharapuram Distributory from Ch.1700M to 2400M including CD works and sent estimate to the A.E.E. According to him in the estimate there was earth work excavation and the flume canal RCC 1:2:4 using 20mm metal sides, bed, haunches, tie beams along with reinforcement. He admitted that for each item for the concrete reinforcement, the estimate was prepared. The drawing was also prepared by him but he admitted that he could not recollect whether in the drawing the tie beam was shown. He admitted that the tie beams take only very small quantity when compared to the quantity of the total work. It is only a minute portion of the flume



canal and so when the cross section was prepared the same was not included. He further stated that it was he who got the work executed by the 2<sup>nd</sup> accused at the site. According to him, first of all the work of excavation was done followed by concreting of the foundation. He added Thereafter the flume canal was constructed and for that purpose the form work was done. Thereafter the tore steel, bent, tied and fixed and the form work was done inclusive of the shutter, haunches etc., then the haunches from the sides and the bed work were completed. He testified further that the tore steel were kept for construction of the tie beams and gap was given for portion with wooden plank. According to him after cast of several barrels of flume was over, the tie beams were constructed. Ext.P11 is the file kept at the office of the E.E. In Ext.P11(a) the consolidated reinforcement of the cement and tore steel is mentioned. In sheet No.55 of Ext.P11(a) the tore steel required for construction of the tie beam was shown as 51.528M. In sheet No.53, which is Ext.P11(a-1), the quantity of the main rod, stirrups etc. required for the tie beam was shown. The same was signed by the A.E.E. He added that as per 1986 schedule of rates the estimate was prepared. PW1 the S.E deposed that in Ext.P1(c), 46 tie beams were



included at an interval of 15m, the length of the tie beams mentioned as 2.8m, width of 0.15M and depth of 0.15m. So the total quantity of tie beams required were 2.9M<sup>3</sup>. He also admitted that as per the specifications he could not understand whether the tie beam was included in the schedule appended to Ext.P3(a) the original agreement. He further admitted that in the drawings appended to the agreement as well as in the cross section tie beam was not specifically mentioned. According to him since the tie beams were constructed only at 15m intervals the same were not included in the digging section. He further deposed that the total quantity of 1000M<sup>3</sup> and 100T tore steel would include the tie beams also and if it was not included in the drawings, the contractor was bound to construct the tie beams. According to PW1 pre-bid conference was convened only for the purpose of giving an opportunity to the prospective tenderers to understand fully about nature of work to be executed by them. Page 53 of Ext.P3(a) is the minutes of the pre bid conference held at KIP RBC Office in Kottarakkara at 11 am on 2.3.1988. PW1 further stated that the 2<sup>nd</sup> accused did not attend the said conference or in other words failed to avail the said opportunity. In page 122 of Ext.P4(n) there was a letter sent by the 2<sup>nd</sup>



accused to the C.E and forwarded to the S.E. The same was seen signed by Al the S.E. on 22.2.1991. This was sent to the E.E for his remarks and he was directed to offer his report with rate and quantity for these items. In Ext.P4(n), the 2<sup>nd</sup> accused had claimed that the construction of tie beams was not mentioned in the original agreement and there was change of design due to the construction as an 'extra item' and the same had to be treated as an 'extra item' and payment had to be effected. Ext.P5(f) is the note put up in relation to Ext. P4(n). In Ext.P5(f), it was noted that no reply was received from the E.E. The same was dated 23.2.1991. In Ext.P5(g) the 1<sup>st</sup> accused had put up the note to treat RCC 1:2:4 and reinforcement as purely extra item and contractor should be called upon to approach him for negotiation. The said letter was seen served to the Contractor on 23.2.1991 as could be discernible from Ext.P4(o). In Ext.P4(o), the 2<sup>nd</sup> accused had claimed Rs.3/dm<sup>3</sup> for RCC 1:2:4 barrel and Rs.18/kg including cost of steel for reinforcement. Ext.P4(p) is the negotiation statement for the said item. The negotiation was done on 27.2.1991.

41. PW2 deposed that even on the date of negotiation the



report of the E.E on Ext.P4(m) was not obtained. In the negotiation statement Ext.P4(p) the column of rate allowed on negotiation and remarks were filled up by the 1<sup>st</sup> accused. He had noted that negotiated with the Contractor and obtained his concurrence. According to him, for RCC 1:2:4 instead of the agreed rate of Rs.1,150/-, the amount arrived was Rs.1,590/M<sup>3</sup>. Like wise for reinforcement instead of the agreed rate of Rs.7,500/T, the rate allowed was Rs.11,750/Tonne. In the original agreement for RCC 1:2:4 the amount allowed was Rs.1,150/- and the cost of the cement supplied by the Government was Rs.396/-. So the labour and material portion would come to Rs.754/-. So as per the original agreement the contractor would get Rs.754/- as labour and material portion. But during negotiation the amount was fixed at Rs.1,590/-, the cost of departmental material remaining the same as Rs.396/- and the labour and material portion which the contractor get would come to Rs. 1.194/M<sup>3</sup>. Like wise regarding the reinforcement for RCC work as per the original agreement, the agreed rate was Rs.7,500/T and the recovery rate of tore steel per Ton as per the original agreement was Rs.650/-. So the labour portion of the contractor as per the original agreement would come to



Rs.1,000/T. In Ext.P4(p) negotiation statement or in other words in Ext.P3(c-1) S.A. No.6 this amount was raised to Rs. 11,750/-. Then also the recovery rate of the tore steel remained the same as in the original agreement that is Rs.6,500/T. Then the contractors labour portion will come Rs.5,250/-.

42. No doubt, as per clause 10 of the LCB conditions of contract the contractor had to do the work in accordance with the drawings and specifications. Clause 10 mentioned the purpose of drawing and specifications and conformance. It could be seen that the contract drawings read together with the contract specifications were intended to show and explain the manner of executing the work and to indicate the type and class of materials to be used. In this case the evidence would show that tie beams were not included in the drawings and specifications. So the construction of tie beams could be treated as 'extra item' apart from the construction of flume canal. The total quantity of tie beams to be constructed was 2.9m. It was the definite case of the prosecution that though it was omitted to be mentioned in the drawings, the total quantity of 1000M<sup>3</sup> and 100T of tore steel provided in the estimate and drawings



would take in the tie beams also. This contention is found to be sustainable since in the original agreement as well as in the S.A.No.6 the total quantity of RCC 1:2:4 using 20mm metal and the reinforcement for RCC work, bent, tied and placed in position was one and the same that is 1000M<sup>3</sup> and 100T respectively. Apart from all these facts even if the tie beams were taken as not in the contemplation of the contracting parties then the tie beams alone could be treated as an 'extra item' of work for which excess amount could be granted, the quantity of which was 2.9 M<sup>3</sup>. But the 1<sup>st</sup> accused awarded huge amount for the entire quantity of 1000M<sup>3</sup> of RCC 1:2:4 and entire quantity of 100T reinforcement of RCC work. Apart from that PW3 the A.B.E deposed that for RCC work, the rate for reinforcement was fixed on the basis of the weight. According to him, whatever be the nature of the work that was done, the rate would be fixed on the basis of the weight and the same was provided in the PWD Data Standard Book. He added that even if there was change in the structure or design, then also the amount would be awarded on the basis of the weight of tore steel for reinforcement work. The said amounts were awarded in violation of clause 31 and 32 of LCB conditions and also in violation of the financial powers



of the 1<sup>st</sup> accused. This aspect to be borne out from page 17 serial Nos. 130 and 130(a) of PWD Standard Data Book wherein it has been provided that for reinforcement of RCC work, bent, tied and placed in position the rate would be on the basis of weight and not otherwise.

43. The crucial question poses is whether the 1<sup>st</sup> accused granted excess amount legally for the work in dispute and the contention of the 1<sup>st</sup> and 2<sup>nd</sup> accused claiming that the work for which excess amounts were granted would come within the purview of extra-work, i.e, 'extra item'? In this connection the evidence adduced would show that those works are not 'extra items'. If the contention of the accused that those works to be considered as 'extra-items', then next is the mode for claiming 'extra item' to be found in Ext.P3(a), the original agreement, and LCB specifications should have been followed scrupulously without fail.

44. Clauses 31 and 32 of LCB specifications in Ext.P3(a) agreement deals with 'schedule of quantities' and 'extra items'. Clause 31 reads as under:

*“31. Schedule of Quantities : Variation in the quantities of work in the bill of quantities shall not vitiate the contract. The rates quoted for the individual items shall apply for the quantities of work increased or*



*decreased by not more than thirty percent for each of the items. Should quantities of work actually involved under any item exceed quantities provided in the tender by more than thirty percent the rate of such excess over thirty percent of quantity provided in the tender may be revised in accordance with the procedure indicated under clause “extra items”. However, the said revised item rate shall not exceed the item rate quoted, subject to adjustment in accordance with price adjustment clauses. Should the quantity of work actually involved under any items be reduced by more than thirty percent of quantity provided in the tender, the bid unit price of the affected item may be revised in accordance with the procedure indicated under “extra items”. However, the total cost of such item should not exceed the cost of seventy percent of the item quoted, subject to adjustment in accordance with price adjustment clauses. The payment of the item will continue to be made at the original rate until the revised rate is decided.”*

Clause 32 reads as under:

*“32. Extra Items : Extra items of work shall not vitiate the contract. The contractor shall be bound to execute extra items of work as directed by the Superintending Engineer. The rates for extra item to be mutually agreed.”*

45. The prime contention raised by the learned counsel for the accused is that clause 32 empowers the S.E to address extra items of works and the rates for extra item to be mutually agreed by negotiation and, therefore, the amount in excess obtained by the 2<sup>nd</sup> accused, which is



the amount alleged to be misappropriated by accused Nos.1 and 2, in fact, was granted by the 1<sup>st</sup> accused by exercising his power under clause 32. In this connection, clauses 31 and 32 of LCB specifications to be read together. Clause 31 provides that 'extra items' of works shall not vitiate the contract and the contractor shall be bound to execute the extra items of work as directed by the S.E and the rates for extra item to be mutually agreed. In this connection, it is relevant to note that the 1<sup>st</sup> accused worked as S.E, KIP RB Circle, Kottarakkara from 06.07.1990 to 28.02.1991. That is to say, he had retired after 6 months' of service as on 28.02.1991. The prosecution case is that on 23.02.1991, i.e 5 days before retirement of the 1<sup>st</sup> accused, the 2<sup>nd</sup> accused pressed for claims under the extra items for the works which were conducted by Ext.P3(a) and it was acted upon by the 1<sup>st</sup> accused within 5 days even though almost all the works for which claims for extra rate raised by the 2<sup>nd</sup> accused would require thorough verification to ensure whether the works were actually done or not or the same would fall in the category of 'extra items'. Thus even a cursory look at the evidence available would show that the claim for extra work was considered by the 1<sup>st</sup> accused on 23.02.1991 in a hurry-



burry manner and prior to that, there was negotiation on 21.01.1991 for 4 items of work and according to accused Nos.1 and 2, those were 'extra items', though the evidence discussed in detail would show the same as items covered by Ext.P3(a) original agreement.

46. In this connection, it is relevant to note clause 31 and 32; clause 32 could not be read in isolation and clause 32 is to be read along with clause 31, as already observed. The learned counsel for the accused given much emphasis to clause 32 even without referring clause 31. Clause 31 provides that variation in the quantities of work in the bill of quantities shall not vitiate the contract. Should the quantities of work actually involved under any item exceed the quantities provided in the tender by more than 30%, the rate for such excess work beyond 30% of the quantity provided in the tender may be revised in accordance with the procedure indicated under clause 32 'extra items'. However, the said revised item shall not exceed the rate of the item quoted, subject to adjustment in accordance with the price adjustment clauses. In Ext.P3(a), the price adjustment clause provided as 32/A was struck off and therefore the same would not apply in the present contract, as already found. Thus



the revised rate shall not exceed the item rate quoted though a maximum of 30% of such excess quantity, could be negotiated in terms of clause 32. So, when reading clause 31 and 32 together, the application of clause 32 is subject to clause 31.

47. Here the prosecution alleges that, as part of conspiracy hatched between accused Nos.1 and 2, they had misutilised clauses 31 and 32, which do form part of Ext.P3(a) original agreement and negotiated 5 items of work, viz. (1) Construction of a road crossing at Ch.1950 M, (2) C.C.1:3:6 for making up foundation, (3) Constructing flume canal from Ch. 1700 M to 1715 M with bed width of 2.7 meter, (4) Supplying PVC water stopper 305 MM wide and (5) Providing shoring etc.

48. Regarding the application of clauses 31 and 32 of LCB specifications, the learned Special Judge, meticulously addressed the same in para.10 of the judgment and the said finding is found to be justifiable. Relevant observation in paragraph 13 is extracted as under:

*“PW2 further admitted that what was contemplated in the original agreement is foot bridge whereas the newly constructed bridge whereas the newly proposed one is a motorable bridge. The construction of the said road crossing at Ch. 1950M was brought to the notice of the C.E. through Ext.P4(e) letter. It is stated*



in Ext.P4(e) that an estimate amounting Rs.2,36,800/- has been prepared and submitted by the S.E. for road crossing at Ch.1950M as per the request of Sri.T.M.Nanu Master MLA and hence the E.E. was directed to see that the work should be done through the same agency. Ext.P4(e) was approved and initialled by A1 as identified by PW2. Ext.P4(f) is data submitted by A3 to the S.E. It is based on the 1990 schedule of rates. The said data was scrutinized by PW2 and the corrected data was approved by the S.E. So it has come out in evidence that this is clearly an extract work which was not contemplated at the time of execution of original agreement. Hence there is no violation of any clauses of LCB conditions in execution of S.A. No.3 for construction of road crossing at Ch. 1950M. The total amount covered by this item No.1 in Ext.P3(b-1) is Rs.3,36,743/- The second item in Ext.P3(b-1) that is S.A. No.3 is cement concrete 1:3:6 using graded metal 60% 40mm and 40% 20mm to alignment grade and dimension for making up in slushy including all forming, watering, curing etc. The total quantity for the same is 98M3 and the rate arrived at in negotiation was 1400/M3. It is admitted by PW1 that nowhere in Ext.P1 file it is stated that trial pit was taken. He further admitted that in Ext.P2(a) it is noted that the canal reach portion is sandy soil and paddy field. He again stated that in LS drawing it is noted in 2000M and 2100M there was a pond. He further admitted that from Ch.2310 M to 2400M there was paddy field. For making up the said portion this item of work was done. The same item of work was included as item No.5 in Appendix-G to the original agreement. The said item is also cement concrete 1:3:6 using graded metal 60% 40mm and 40% 20mm Ext. P4(i) is sheet Nos. 113 to 115 of Ext.P4 file. By adopting 1990 schedule of rates for this item the AEE has recommended Rs.817.61/M3 which was finalized by E.E. as Rs.681/M3. Ignoring all these matters at the time of negotiation as seen from Ext.P4(m) negotiation statement the amount arrived by A1 on negotiation with A2 was Rs. 1,400/M3. In that case the rate allowed was Rs.725/M3. For the said item an amount of Rs. 1,400/M3 was seen granted in S.A. No.3 by A1. So in this place clause 32 of the LCB conditions will not apply since it is not a pure extra item but an item already covered in the original agreement. In the said circumstances as per clause 31 of LCB specifications revised rates shall not exceed the rate quoted even when the quantities of work actually done exceeded by more 30% of the agreed quantity. So



*with respect to item No.2 in Ext.P3(b-1 the said item could not be treated as an extra item and the amount of Rs. 1400/M3 was awarded by A1 to A2 in violation of clause 31 and 32 of LCB conditions.”*

49. According to the learned Senior Counsel for the accused, all the items are covered under extra items of clause 32 of LCB and, therefore, the S.E exercised his power under Section 32, negotiated the case and granted the same. It is interesting to note that the entire claim, in fact, was put up and finalised on the last week of February, 1991 and thereafter on 28.02.1991 the 1<sup>st</sup> accused retired from service and as pointed out by the learned Special Public Prosecutor, in a hurry-burry manner, for a work for which the original expenditure fixed as Rs.23,15,000/-. That is to say, apart from Rs.23,15,000/- originally agreed and granted, an additional sum of Rs.34,78,458/- had been sanctioned by the 1<sup>st</sup> accused and obtained by the 2<sup>nd</sup> accused and both of them derived due pecuniary advantage over the same.

50. On re-appreciation of the evidence discussed, it would appear that as far as item Nos.2 to 4 covered by SA3 and 2 items covered by SA6, the said works were originally included in Ext.P3(a) original agreement, for the said work, no claim under the head 'extra item' could be granted. That apart, item No.2 in SA3, as deposed by PW1, the same



also was included as item No.5 in appendix G and also the same was made part of Ext.P1(a) estimate. As pointed out by the learned Special Public Prosecutor, the 1<sup>st</sup> accused fixed much higher rates in excess of the agreed rate as extracted hereunder above for the works and the 1<sup>st</sup> accused was not empowered to do so by clause 32 of LCB specification, which do form part of Ext.P3(a). Most importantly clause 32 of LCB has no application for these works already agreed upon in Ext.P3(a) original agreement. Thus it is proved that the 1<sup>st</sup> and 2<sup>nd</sup> accused entered into criminal conspiracy and by violating clause 31 and 32 of LCB conditions executed S.A. No.6 also thus by awarding an excess amount of Rs.27,65,000/-. It was proved by the prosecution that S.A Nos.3 and 6 were executed as a result of the conspiracy entered between the 1<sup>st</sup> and 2<sup>nd</sup> accused in violation of clause 31 and 32 of LCB conditions resulting in pecuniary advantage of Rs.34,78,415/- to the 2<sup>nd</sup> accused and corresponding loss to the Government.

51. Thus the conclusion to be reached by the Court is that regarding the above items, as part of a conspiracy hatched between the 1<sup>st</sup> and 2<sup>nd</sup> accused, before the retirement of the 1<sup>st</sup> accused, some claims were



raised by the 2<sup>nd</sup> accused and in a hurry-burry manner the 1<sup>st</sup> accused granted the same on the date of his retirement. It is judicially noticeable that the 1<sup>st</sup> accused also granted amounts to various contractors on the last date of his retirement in a similar fashion and caused huge loss to the State exchequer.

52. The contention raised by the learned Senior Counsel for the 2<sup>nd</sup> accused that the shiny and slushy nature of the soil and thereby extra work was exercised also could not be countenanced since Ext.P3(a) agreement was executed after understanding the nature of the sand in the same fashion and even the 2<sup>nd</sup> accused failed to attend the pre-bid meeting. It is true that though the tie beams originally agreed were 46, 72 tie beams were constructed and for which the 2<sup>nd</sup> accused is entitled for the amount, as per the agreed rate. In the instant case, even though the 2<sup>nd</sup> accused is entitled to get 26 items of tie beams extra constructed, the construction should be quantified at the rate agreed and not in excess of that. Despite this, huge amounts were granted by the 1<sup>st</sup> accused by misusing clause 32 of the LCB specifications. Even though the learned Senior Counsel for the 2<sup>nd</sup> accused relied on two decisions of this Court in *Varghese Mathew &*



*Ors. v. State of Kerala 's case (supra)* and *K.G.Ashokan v. State of Kerala (supra)*, the facts dealt in those cases and the facts of this case are totally different. Further, in the above cases interpretation of clause 31 and 32 of LCB not at all properly addressed. Therefore, the said ratio cannot be applied to the facts of this case. In addition to that another learned Single Judge of this Court in Crl.Appeal No.1112/2002 as per judgment dated 04.03.2011 considered the decision in *N.E.Abraham v. State of Kerala* and *Varghese Mathew & Ors. v. State of Kerala 's case (supra)* and thereafter interpreted clause of 31 and 32 of LCB form part of Ext.P3(a) the original agreement and observed in para.26 as under:

““26. Going by the above decision it is seen that in that case the conviction was reversed on a conclusion that the payment made thereon cannot be found illegal merely because of the violation of the orders or circulars. The facts of that case revealed in evidence was not at all discussed in the reported judgment. It is also seen that the learned Single Judge had given reliance to the decisions of the Apex Court in *Major S.K.Kale v. State of Maharashtra* [AIR 1977 SC 822], *C.Chenga Reddy and others v. State of A.P.* [1996 (10) SCC 193] and *Abdulla Mohammed Pagarkar v. State* (1980(3) SCC 110]. Going by the above decisions, it is seen that those decisions are with reference to a particular set of facts which has absolutely no bearing with the case on hand. Here, it is not the question of any violation of the circulars or procedures or government orders. But the issue is relating to the clandestine manner in which the appellant had lodged a claim one year and four months after the complete execution of the work and the manner in which the supplemental agreement was executed on the eve of the retirement of the



Superintending Engineer and the passing of the bills by the 2nd accused on the eve of his retirement. The evidence on record in this case would convincingly establish that there was abuse of office by the Superintending Engineer and the Executive Engineer in executing Ext.P2(b) agreement and in passing the bills for payment a high and exorbitant rate, namely 240 times of the originally agreed rate. As concluded by the Special Judge, the appellant is not entitled to any extra rate other than the rate in Ext.P2(a). It is knowing that aspect, the appellant also agreed in Ext.P2(c) dated 20.3.1990 that he is not entitled to claim any extra rate. The Superintending Engineer and the 2nd accused were also aware of it. But to agree for a higher rate, Superintending Engineer and the appellant conspired together and Ext.P2(b) agreement was executed on 30.4.1991. The 2nd accused also knowing the fact that the appellant was not entitled to extra claim additional bills were prepared and passed overruling the objection by the Subordinate officers. Conspiracy between the appellant and 2nd accused is also evident. Bills were passed very hastily and last payment was on the date of retirement of the 2nd accused.”

In *N.E.Abraham v. State of Kerala* 's case (*supra*) the learned Single Judge of this Court correctly stated the law regarding grant of extra items in consensus with the view taken in this judgment, as I already found.

53. Thus the prosecution succeeded in proving that the 1<sup>st</sup> and 2<sup>nd</sup> accused hatched criminal conspiracy with the common object of deriving undue pecuniary advantage and by adopting corrupt or illegal means and in pursuance of the said conspiracy and by misutilising clauses 31 and 32 of LCB executed S.A Nos.3 and 6 resulting in pecuniary advantage of Rs.34,78,415/- to the 2<sup>nd</sup> accused and corresponding loss to



the Government.

54. It is surprising to note that the learned Senior Counsel for the appellant raised challenge regarding sanction under Section 19 of the PC Act, 1988 in the instant case. The learned Senior Counsel while raising this contention, failed to take note of the fact that, admittedly the 1<sup>st</sup> accused, for whom sanction under Section 19 of the PC Act, 1988 is required for taking cognizance of the PC Act offences, retired on 28.02.1991 and the investigation and cognizance for the PC Act offences against the 1<sup>st</sup> accused was taken after his retirement and Section 19(1) of the PC Act, 1988 doesn't provide for sanction in the case of an employee who retired from service at the time of cognizance. Therefore, this contention is found to be untenable.

55. To sum up, it is found that the Special Court rightly appreciated the evidence and came to the conclusion that the appellant Nos.1 and 2 committed offences punishable under Section 13(2) r/w 13(1) (d) of the PC Act, 1988 (PC Act, and Section 120B of the IPC. Thus the conviction imposed by the learned Special Judge is liable to be confirmed.

56. Coming to the sentence, taking into consideration of the



gravity of the offences, the sentence imposed against the 2<sup>nd</sup> accused is confirmed. As far as the sentence imposed on the 1<sup>st</sup> accused is concerned, since he is no more, the execution of the substantive sentence stood abated. Therefore the execution of the sentence in relation to the 1<sup>st</sup> accused shall be confined to realisation of fine from the accounts, if any, inherited by the legal heirs of the 1<sup>st</sup> accused, including the additional appellants in Crl.Appeal No.106/2011.

57. In the result, Crl.Appeal No. 106 of 2011 is dismissed, while partly allowing Crl.Appeal No.9 of 2011 by modifying the same as stated in para.56 above. As a sequel thereof, the order suspending sentence and granting bail to the 2<sup>nd</sup> accused stands cancelled and the bail bond also stands cancelled. The 2<sup>nd</sup> accused is directed to appear before the Special Court to undergo the sentence forthwith, failing which the Special Court is directed to execute the sentence without fail. As regards to realisation of the fine from the legal heirs of the 1<sup>st</sup> accused, the learned Special Judge is specifically directed to proceed with the same without fail.

Registry is directed to forward a copy of this judgment to the



2026:KER:9212

Crl.Appeal No.106 & 9 of 2011

69

Enquiry Commissioner and Special Judge, Thiruvananthapuram, for compliance and further steps.

*Sd/-*

***A. BADHARUDEEN, JUDGE***

*rtr/*



2026:KER:9212

Crl.Appeal No.106 & 9 of 2011

70

CRL.A.NO.106 OF 2011

APPELLANT'S EXHIBITS

NIL.



2026:KER:9212

Crl.Appeal No.106 & 9 of 2011

71

CRL.A.NO.9 OF 2011

APPELLANT'S EXHIBITS

ANNEXURE-A: A TRUE COPY OF THE JUDGMENT IN CC.28/2002.

ANNEXURE-B: A TRUE COPY OF THE CHARGES IN C.C.NO.15 OF 2002.