

**IN THE COURT OF SH. VIRENDER BHAT
SPECIAL JUDGE, PC ACT, CBI-15, ROUSE AVENUE
DISTRICT COURT, NEW DELHI.**

IN THE MATTER OF:

CBI Case No. : 34/2019
CNR No. : DLCT11-000075-2019
FIR No. : RC-AC-3/2004A0005 dt. 06.12.2004
Branch : CBI, ACU-III/New Delhi
**U/s : 120B IPC r/w Section 9 of P.C. Act,
1988 and substantive offences
thereof.**

**STATE
THROUGH
CENTRAL BUREAU OF INVESTIGATION
NEW DELHI.**

VERSUS

**1. Jayalakshmi Jaitly @ Jaya Jaitly
D/o Late. Sh. K.K. Chettur
W/o Late Sh. Ashok Jaitly**

CBI Case No. 34/2019

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**R/o C-30, Sujan Singh Park,
New Delhi-110003.**

Also at:

**C-48, Nizamuddin East,
New Delhi - 110013.Accused No. 1.**

- 2. Maj. Gen. S.P. Murgai
S/o Late Sh. B.R. Murgai
R/o C-62, First Floor, Anand Niketan,
New Delhi-110021.**

Also at:

**D-8/1, Vasant Vihar,
New Delhi-110057.Accused No. 2.**

- 3. Gopal K. Pacherwal
S/o Sh. Kalu Lal Ji Pacherwal
R/o Keshav Rai Patan,
District Bundi, Rajasthan.Accused No. 3.**

**Date of Institution : 27.12.2006
Date of Judgement reserved on : 09.07.2020
Date of pronouncement of Judgement : 21.07.2020**

J U D G M E N T :-

1. The genesis of this case lies in a sting operation conducted by a news and views website Tehelka.Com owned by M/s Buffalo Networks Private Limited, New Delhi in the year 2000-01 styled as "Operation Westend" to expose the corruption in defence procurements deals in India.
2. Initially, the FIR had been registered against the four persons, namely, Smt. Jayalakshmi Jaitly @ Jaya Jaitly, Maj. Gen. S.P. Murgai, Sh. Gopal K. Pacherwal and Sh. Surender Kumar Surekha. It appears that during the course of investigation Surender Kumar Surekha turned approver for CBI and accordingly, after seeking pardon for him from the concerned Special Court under section 306 Cr.p.c., he was made a witness in this case instead of the accused. Hence, the charge-sheet was later on filed only against three accused Smt. Jayalakshmi Jaitly @ Jaya Jaitly, Maj. Gen. S.P. Murgai and Sh. Gopal K. Pacherwal.
3. The case of CBI, in brief, is that Smt. Jaya Jaitly entered into a criminal conspiracy with Maj. Gen. S.P. Murgai, Surender Kumar Surekha and Gopal K. Pacherwal in the year 2000-01 and she obtained Rs. 2 lakhs as gratification for herself or for any other person from Mathew Samuel (a Representative of fictitious firm M/s Westend International, London) as a motive to exercise influence upon the public servants in the matter to getting supply orders for defence equipments i.e. Hand Held Thermal Cameras (HHTC) from the Ministry of Defence for the said fictitious firm. It is alleged that a



number of payments were made to Maj. Gen. S.P. Murgai for his service in this regard and a sum of Rs. 1 lakh was paid to Surender Kumar Surekha for his assistance in the matter.

4. It is alleged that during the said "Operation Westend", the Team of Tehelka.Com established contact with various officials of Ministry of Defence, Army, Politicians, Middlemen etc. associated with Defence procurements and projected M/s Westend International, UK as a subsidiary of M/s Wynn Instruments Group of Neitherlands. Mr. Mathew Samuel, the representative of M/s Westend International, UK had assumed the identity of Chief Liaison officer of the said company and contacted all the three accused, namely, S.P. Murgai, Gopal Pacherwal and Jaya Jaitly as well as the approver Sh. Surender Kumar Surekha. First of all, he contacted Maj. S.P. Murgai (Retd.) on the introduction of Lt. Col. V.P. Sayal (Retd.) and through S.P. Murgai, he came in contact with Sh. Surender Kumar Surekha, a Kanpur based industrialists. During the meeting between the three in Room No. 215, Hotel Vasant Continental, Vasant Vihar, New Delhi on 25.12.2000, Mr. Mathew Samuel expressed his desire to meet Smt. Jaya Jaitly for political coverage for the business of M/s Westend International. It was decided in the meeting that Sh. Surender Kumar Surekha would arrange a meeting between Mr. Mathew Samuel and Jaya Jaitly in which Mr. Mathew Samuel would pay Rs. 2 lakhs towards the party fund and would talk about everything to Jaya Jaitly including commission which he wanted to give to her. It was also decided that Mr. Mathew Samuel would pay Rs. 1 lakh each to Maj. Gen. S.P. Murgai and Sh. Surender Kumar Surekha for arranging the meeting with Jaya Jaitly.

5. Further case of CBI is that even though Sh. Surender Kumar Surekha himself knew Jaya Jaitly yet he preferred to approach her through the accused Gopal Pacherwal who was the then President of Rajasthan Unit of Samta Party. Accordingly, Sh. Surender Kumar Surekha contacted Gopal Pacherwal and apprised him about the work of Westend International pending with the Ministry of Defence which was to be got done through the accused Jaya Jaitly. It is stated that accused Gopal Pacherwal discussed the matter with Jaya Jaitly and informed Sh. Surender Surekha that Jaya Jaitly has agreed to render necessary assistance and is also willing to meet Mr. Mathew Samuel. Accordingly, a meeting was fixed between Jaya Jaitly and Mr. Mathew Samuel on 28.12.2000 at 3 Krishna Menon Marg, New Delhi, which was official residence of Sh. George Fernandes, the then Minister of Defence, Government of India, New Delhi. The meeting took place in the evening of 28.12.2000 in which Mr. Mathew Samuel, accused S.P. Murgai, Surender Kumar Surekha, accused Jaya Jaitly and accused Gopal K. Pacherwal were present. Sh. Surender Kumar Surekha introduced Mr. Mathew Samuel to accused Gopal K. Pacherwal. Sh. Surender Kumar Surekha enquired from Mr. Mathew Samuel about the sum of Rs. 2 lakhs which was to be given to accused Jaya Jaitly. It is stated that Mr. Mathew Samuel was carrying the said amount in a brief case and Sh. Surender Kumar Surekha advised him to put the cash amount in an envelope to be handed over to accused Jaya Jaitly. It is further stated that Mr. Mathew Samuel carried with him a Tie camera device and a briefcase camera device for recording the happenings in this meeting.

6. It is further alleged that upon being called, Mr. Mathew Samuel accompanied by accused S.P. Murgai and Sh. Surender Kumar

Surekha went inside to meet accused Jaya Jaitly. Accused Gopal K. Pacherwal was also sitting with accused Jaya Jaitly in the room. Mr. Mathew Samuel had left the briefcase camera device in the visitors room and was having only Tie camera device with him. Sh. Surender Kumar Surekha introduced Mr. Mathew Samuel to Jaya Jaitly as a dealer in electronics and further stated that M/s Westend International would be starting something with the Defence. He also stated that Mr. Mathew Samuel has got something for the party. Thereafter, Mr. Mathew Samuel offered to make payment of Rs. 2 lakhs in an envelope upon which accused Jaya Jaitly instructed accused Gopal K. Pacherwal to receive the same and send it to their Minister Sh. Srinivas Prasad, who was hosting a National Council meeting of Samta Party. Accordingly, Mr. Mathew Samuel handed over Rs. 2 lakhs in an envelope to accused Gopal K. Pacherwal and sought the blessings of accused Jaya Jaitly for himself as well as his company M/s Westend International. It is alleged that at this point of time accused S.P. Murgai intervened and informed the accused Jaya Jaitly that M/s Westend International was making quality products like night vision binoculars, cameras etc. and was going in a big way for commercial selling to make a mark in Defence. It is stated that accused Jaya Jaitly told him that she was not aware of all those things and she was not having any extra interest in anybody, but at the same time, assured Mr. Mathew Samuel that no injustice would be done if the product of the company was of high quality and having competitive price. She also told Mr. Mathew Samuel that a new entry has to be tested first and if the same was refused or if there was any unfair practice, she could get into the picture as everybody has to be given a fair chance. She also told that if somebody was not even being

considered, she would only request Sahib's office to send word down for consideration if anybody was offering the good quality thing at a good price. Thereafter, Mr. Mathew Samuel spoke to accused Jaya Jaitly in their common language i.e. Malayalam.

7. It is alleged that after the aforesaid meeting, Mr. Mathew Samuel visited the house of accused S.P. Murgai at Vasant Vihar, New Delhi where Sh. Surender Kumar Surekha was also present. Sh. Surender Kumar Surekha assured Mr. Mathew Samuel that no injustice would be done and accused Jaya Jaitly had asked him to inform Mr. Mathew Samuel that his work would be done. Mr. Mathew Samuel was having only a sum of Rs. 1 lakh with him at that time which he gave to Sh. Surender Kumar Surekha in presence of accused S.P. Murgai and promised to pay remaining amount of Rs. 1 lakh by 30.12.2000. Sh. Surender Kumar Surekha received the said amount Rs. 1 lakh and passed on the same to accused S.P. Murgai and assured Mr. Mathew Samuel that he would get the evaluation work completed within 10 days of getting the letter and asked Mr. Mathew Samuel to provide him with a copy of the letter already submitted to MOD in this regard. It is alleged that in a subsequent meeting held on 04.01.2001, accused S.P. Murgai enquired from Mr. Mathew Samuel about the balance amount of Rs. 1 lakh upon which Mr. Mathew Samuel told him that he was not getting the money from his Principal and his Principal is insisting for evaluation letter etc. Mr. Mathew Samuel paid only a sum of Rs. 20,000/- to accused S.P. Murgai at that time and promised to pay the balance amount of Rs. 80,000/- alongwith the Rs. 5 lakhs meant for evaluation work later.



8. The charge-sheet further mentions that all the proceedings of the aforesaid meetings had been captured by Mr. Mathew Samuel in a hidden camera and later on Tehelka tape story was made public in the Media during mid March, 2001. Pursuant to the revelation in these Tehelka tapes, the Government of India constituted a Commission headed by retired Justice Venkataswamy of Supreme Court of India to enquire in the deals covered by these tapes.

9. After conducting proceedings for some period of time, Justice Venkataswamy resigned from the Commission in November, 2002. Thereafter, Retd. Justice S.N. Phukan took over as President of the Commission in January, 2003 and continued the proceedings. However, in the month of October, 2004, Government of India abolished the Commission and entrusted the investigation of the case to CBI.

10. It is further stated in the charge-sheet that upon being cautioned by accused Gopal Pacherwal not to speak to anybody about this matter, Sh. Surender Kumar Surekha submitted his reply/affidavit before the Venkataswamy Commission of Inquiry denying receipt of Rs. 2 Lakhs by accused Jaya Jaitly and also took the same stand during the course of his deposition before the Commission. Later on, in his statement u/s 161 Cr. P.C, he explained that his above defence was on the same lines as advised by accused Jaya Jaitly and accused Gopal K. Pacherwal but the same is not correct. He also clarified that the contents of the tapes recorded by Tehelka team with regards to the discussions between him, Mr. Mathew Samuel, accused S.P. Murgai, accused Gopal K. Pacherwal and accused Jaya Jaitly were true and correct. He also filed an application u/s 164 Cr. PC before the



concerned Special Judge (CBI) in Patiala House Courts, New Delhi praying therein that he was willing to make voluntary statement of true facts. The application was allowed and accordingly his statement was recorded u/s 164 Cr. P.C by the concerned Ld. M.M. Sh. V.K. Khanna on 27.04.2005. Vide subsequent order dated 11.12.2006, the Special Judge (CBI) at Patiala House Courts, New Delhi tendered pardon to him on the conditions that he shall make true and full disclosure of the facts and circumstances within his knowledge relating to the offences committed by him in conspiracy with his co-accused in this case.

11. During investigation of this case, the original Hi-8 tapes bearing Nos. 69, 70, 72, 73, 74 and 79 were obtained in sealed packets by the CBI besides VHS copies thereof as also transcripts containing the details of the conversations recorded in each of these Hi-8 tapes, from Sh. S.K. Dasgupta, Designated Officer who was the Secretary of the erstwhile Justice S.N. Phukan Commission of Inquiry. Camera/recording equipments used by the functionaries of the Tehelka.Com were also seized from them. The images and voice of accused Jaya Jaitly, accused S.P. Murgai, Sh. Surender Kumar Surekha and accused Gopal K. Pacherwal recorded in these tapes were got identified by the relevant witnesses and later on these tapes were sent to Andhra Pradesh Forensic Science Laboratory, Hyderabad, for scientific examination of the tapes and also for comparison with the specimen voices and images of accused Jaya Jaitly, accused S.P. Murgai, accused Gopal K. Pacherwal and Sh. Surender Kumar Surekha alongwith the recording units/devices which were also sent to the said laboratory. In its opinions/reports dated 3.12.2005 and 24.06.2006, the laboratory opined that there was no morphing or editing in the original unedited Hi-8 tapes and there was

no addition or deletion of sentences/words in these tapes and their contents represent true depiction of single incident recorded without any material edited. It was further opined by the laboratory that the VHS tapes are true copies of the original and the video images/voices on the questioned tapes as well as their sample pertaining to accused Jaya Jaitly, accused S.P. Murgai, Sh. Surender Surekha and Mr. Mathew Samuel match with each other. It was also opined by the laboratory that the contents of the 5 original Hi-8 tapes marked as Tehelka-69, Tehelka-70, Tehelka-72, Tehelka-74 and Tehelka-79 have been recorded by using briefcase camera system and the contents in the remaining Hi-8 tape marked as Tehelka-73 has been recorded by using the Tie camera system.

12. On the basis of the aforesaid investigation, it was concluded by the investigating officer that accused Jaya Jaitly, in criminal conspiracy with accused Maj. Gen. S.P. Murgai, accused Gopal K. Pacherwal and Sh. Surender Kumar Surekha (approver) obtained Rs. 2 lakhs as gratification for herself and/or for any other person from Mr. Mathew Samuel, a representative of the fictitious firm M/s Westend International, London as motive for inducing the public servants in the Ministry of Defence, Government of India by the exercise of personal influence to show favour to the company M/s Westend International in the matter of getting supply orders for defence equipments including Hand Held Thermal Cameras (HHTC) from the Ministry of Defence for the said fictitious firm. It was also concluded that Sh. Surender Kumar Surekha had received a sum of Rs. 1 lakh in this regard from Mr. Mathew Samuel which he passed to through accused S.P. Murgai and accused S.P. Murgain had obtained further sum of Rs. 20,000/- for arranging the meeting of Mr. Mathew Samuel with accused Jaya Jaitly.

13. Accordingly, the charge-sheet was filed against the accused Jaya Jaitly, accused Maj. Gen. S.P. Murgai and accused Gopal K. Pacherwal for having committed the offences punishable under Section 120B IPC r/w Section 9 of the Prevention of Corruption Act, 1988 as well as substantive offence under Section 9 of the Prevention of Corruption Act, 1988.

14. Upon taking cognizance of the offences disclosed in the charge-sheet, all the three accused were summoned. Pursuant to the order dated 05.03.2012 passed by my Ld. Predecessor, charges under Section 120B IPC r/w Section 9 of the Prevention of Corruption Act, 1988 were framed against all the three accused. Additional charge for the substantive offence under Section 9 of the Prevention of Corruption Act, 1988 was also framed against accused Jaya Jaitly and accused S.P. Murgai separately. All the three accused denied charges and accordingly the trial was held.

15. The prosecution has examined following 32 witnesses to bring home the charges against the accused;

PW No.	Name of witness	Remarks
PW-1	Sh. S.K. Dasgupta	He was posted as Secretary to the Commission constituted by the Government of India to probe into and enquire about the tapes prepared by the Tehelka.Com in the 'Operation Westend'. Later on, he was appointed as Designated officer to facilitate transfer of tapes and

	<p>other documents lying with the Commission to CBI. Accordingly, he had handed over all the Tehelka tapes alongwith the relevant equipments to CBI. Vide seizure memos dated 14.12.2004 (Ex.PW1/G), 15.12.2004 (Ex.PW1/H) and 16.12.2004 (Ex.PW1/I), he had handed over the documents mentioned therein to the investigating officer Insp. K.Y. Guruprasad of CBI. Vide seizure memo dated 16.12.2004 (Ex.PW1/J), he had handed over 101 spare copies of Tehelka tapes to the investigating officer. He identified the Hi-8 tapes Ex.PW1/K2 (Tehelka-69), Ex.PW1/L2 (Tehelka-70), Ex.PW1/M2 (Tehelka-72), Ex.PW1/N2 (Tehelka-73), Ex.PW1/O2 (Tehelka-74), Ex.PW1/P2 (Tehelka-79), Ex.PW1/Q1 (Tehelka-69) which he had handed over to CBI vide aforesaid seizure memo.</p> <p>He also identified VHS cassettes Ex.PW1/R1 (Copy of Tape No. 70),</p>
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		<p>VHS cassettes Ex.PW1/S1 (Copy of Tape No. 72), VHS cassettes Ex.PW1/T1 (Copy of Tape No. 73), VHS cassettes Ex.PW1/U1 (Copy of Tape No. 74), VHS cassettes Ex.PW1/V1 (Copy of Tape No. 79) which he had handed over to the IO vide seizure memo Ex.PW1/G. He had also handed over the transcripts of these tapes to the IO which he identified as Ex.PW1/W1, Ex.PW1/W2, Ex.PW1/W3, Ex.PW1/W4, Ex.PW1/W5 and Ex.PW1/W6. He had handed over to the IO the certificate Ex. X1, Ex. X2, Ex. X3 and Ex. X4 which was given to the Commission by the Ministry of Defence, Government of India certifying the revised transcripts of Tape Nos. 69, 70, 72, 73, 74 and 79.</p>
PW-2	Sh. Brij Kishore Sharma	<p>He was an employee of M/s Buffalo Networks from July, 2000 till August, 2003. Prior to that he had been working with M/s S.M. Verma, Chartered Accountant Company. He identified his signature at point A and B on the letter Ex.PW2/A alongwith which certain documents</p>

		were handed over by M/s S.M. Verma & Company to CBI which related to the money given by the company to Aniruddha Bahal from time to time.
PW-3	Sh. Anil Pranjpe	He was an employee of M/s Jaypee Vasant Continental, Vasant Vihar and proved the hotel documents related to the stay of Mr. Mathew Samuel in that hotel, which he had handed over to CBI.
PW-4	Sh. Raghuveer Singh Dagur	He was posted as Assistant Commissioner, Income Tax, Circle-31 (I), New Delhi and had forwarded the income tax records of Samta Party for two assessment years to CBI vide letter Ex.PW4/A.
PW-5	Sh. S. Mukherjee	He was working as partner with the Chartered Accountant firm with M/s Mukherjee & Associates who used to conduct audit of Samta Party.
PW-6	Smt. Amita Bajaj	She was posted as Senior Stenographer in ACU-III, CBI and had remained a witness to the taking of the voice/image sample of accused Jaya Jaitly.
PW-7	Sh. I.S. Kohli	He was the officer in Canara Bank, Circle office, New Delhi. He too had

		remained witness to the taking of voice/image sample of accused Jaya Jaitly.
PW-8	Sh. Ashok Kumar Arora	He was working as Senior Assistant Manager (Vigilance) in Central Ware Housing Corporation and had remained witness to the taking of voice/image sample of accused Gopal K. Pacherwal.
PW-9	Sh. Harsh Vardhan Gautam	He was working as Assistant Manager in NCCF and also had remained witness to the taking of voice/image sample of accused in this case by CBI.
PW-10	Sh. Surender Kumar Surekha	As already noted, he was initially arraigned as an accused in the FIR in this case but later on he was made an approver by the CBI.
PW-11	Sh. Deepak Gupta	He was an employee of State Bank of India, Rail Bhawan Branch, New Delhi and proved the bank records of Samta Party.
PW-12	Sh. A.D. Tiwari	He was posted as Senior Scientific Officer, Grade-II (Photo), CFSL, CGO Complex, Lodhi Road, New Delhi and had recorded the voice/image sample of accused Maj. Gen. S.P. Murgai in this case.

PW-13	Sh. V.K. Khanna	He was posted as Metropolitan Magistrate, Patiala House Courts, New Delhi and had recorded the statement under Section 164 Cr. P.C Ex.PW10/A of Sh. Surender Kumar Surekha.
PW-14	Sh. Tarun J. Tejpal	He was the founder of the Tehelka.Com which was committed to practicing aggressive public interest journalism and had persued the story on corruption of Arms deals in India.
PW-15	Sh. S.N. Mahajan	He was Dy. Manager (Vigilance) in Central Ware Housing Corporation and had remained witness to the taking of the voice sample of accused Gopal K. Pacherwal and S.P. Murgai by CBI in this case.
PW-16	Ms. Manjulika Gautam	She was working as Additional Secretary in the Department of Personnel & Training, Government of India and had written a letter dated 29.10.2004 Ex.PW1/A to the Director, CBI asking the CBI to take necessary action in the matter related to Tehelka tapes.
PW-17	Sh. P.K. Gottam	He was posted as Senior Scientific Officer in CFSL and had taken the

		voice sample of accused Jaya Jaitly, accused Gopal K. Pacherwal and Sh. Surender Kumar Surekha in this case.
PW-18	Sh. A.P. Singh	He was posted as Director (WE-4), Army Headquarters, New Delhi from June, 1999 to July, 2002. He described the process in which the proposal of M/s Westend International, London for Hand Held Thermal Imagers (HHTI) was dealt with in the Army Headquarters.
PW-19	Col. S.B. Bhandari	He was posted in Infantry Directorate, Army Headquarters as General Staff Officer, Grade-I. His Division had evaluated the equipments i.e. HHTI of M/s Westend International on the basis of the literature received by them from Army Headquarters.
PW-20	Sh. Arnab Partim Dutta	He was working with correspondent with Tehelka.Com and had handed over one briefcase device to CBI vide seizure memo dated 01.06.2005 Ex.PW20/A. He proved the said device as Ex.PW20/X.
PW-21	Sh. K. Sessaiah	He was posted as Dy. Secretary, Special Cell, Ministry of Defence and

		had furnished requisite information in relation to the purchase of HHTI equipments to CBI vide his letters Mark PW21/A, Mark PW21/B and Mark PW21/C.
PW-22	Sh. Shankar Sharma	He had been Director of First Global Group of Companies operating from Mumbai as well as from abroad and described the process in which M/s Buffalo Networks was formed.
PW-23	Sh. V. Sreenivasa Prasad	He was Minister of State of Consumer Affairs, Food & Public Distribution, Government of India and also all-India President of Samta Party during the year 2000-01.
PW-24	Sh. Aniruddha Bahal	He alongwith Tarun Tejpal and Minty Tejpal had started Tehelka.Com in March, 2000 which was later on owned by M/s Buffalo Networks Pvt. Ltd.
PW-25	Sh. Prawal Srivastava	He was posted as Assistant Manager in Tehelka.Com. At the request of Mr. Tejpal, he had handed over some recording instruments i.e. one leather bag device fitted with camera and other recording device i.e. Neck Tie having recording facility to CBI vide

		seizure memo Ex.PW25/A.
PW-26	Sh. Brahmanand Mandal	He was President of Samta Party from 2003 to the year 2014.
PW-27	Sh. D. Venkateswarlu	He was posted as Scientific Officer in physics section of Andhra Pradesh Forensic Science Laboratory and had examined the Tehelka tapes in this case and proved his reports as Ex.PW27/A, Ex.PW27/B and Ex.PW27/C.
PW-28	Sh. Mathew Samuel	As already noted herein above, he was representative of Tehelka.Com who is stated to have met and interacted with various defence officials as well as the politicians in order to expose the corruption in defence procurements deals.
PW-29	Sh. Vijay Kumar Sharma	He was working in the Ministry of Defence as Private Secretary to accused Maj. Gen. S.P. Murgai. He identified the accused S.P. Murgai in the recording of Hi-8 cassette Ex.PW28/K2. He also identified the voice of accused S.P. Murgai in the Hi-8 tape Ex.PW1/N2 (Tehelka-70). He also identified the voice of accused Jaya Jaitly and S.P. Murgai in the video cassette Ex.PW1/M2

		(Tehelka-73). He also identified the accused S.P. Murgai in the video cassette Ex.PW1/M2 (Tehelka-72) as well as in the cassette Ex.PW1/O2 (Tehelka-74) and also in the cassette Ex.PW1/P2 (Tehelka-79). He identified Sh. Surender Kumar Surekha in the cassette Ex.PW1/K (Tehelka-69).
PW-30	Sh. Arun Kumar Sharma	He was working in the CBI and was supervising all the officials working in ACU-II Branch. Upon receipt of documents in this case from Government of India, he had registered FIR on 06.12.2004 and assigned the investigation to DSP K.Y. Guruprasad.
PW-31	Sh. K.Y. Guruprasad	He was posted as DSP in CBI, AC-I, New Delhi and was investigating officer in this case.
PW-32	Sh. Biswajeet Dass	He was also working as DSP in ACU-III, CBI and had seized the briefcase camera device in this case from Tehelka.Com vide seizure memo dated 01.06.2005 Ex.PW20/A. He identified the said briefcase camera device Ex.PW20/X during his deposition in the Court.

16. After the conclusion of the evidence led by the prosecution, the entire evidence was put to the accused during their examination under Section 313 Cr. P.C which they denied as being false and fabricated. They stated that the Tehelka tapes in which the recordings of the various meetings as well as discussions between the accused and Mr. Mathew Samuel and Sh. Surender Kumar Surekha are stated to have been recorded were all along kept in unsealed conditions and thus there was every possibility of those being manipulated and edited to suit case of the prosecution. All of them claimed false implication in this case.

17. Accused persons have chosen not to lead any evidence in their defence.

18. I have heard Ld. Public Prosecutor as well as Ld. Counsels appearing on behalf of all the three accused. With their help, I have gone through the entire oral as well as documentary evidence on record in this case including the transcripts of the conversations recorded in various tapes stated to have been recorded by PW28 Mr. Mathew Samuel in the capacity of the representative of Ms/ Westend International.

19. Ld. Public Prosecutor submits that the deposition of PW10 and PW28 coupled with the contents of the various Hi-8 tapes recorded with the help of hidden camera device by PW28, clearly establish that all the three accused had entered into a criminal conspiracy to accept the money from PW28 Mr. Mathew Samuel (representative of fictitious company M/s Westend International) in order to help him to get supply orders from the Ministry of Defence for Hand Held Thermal Imagers (HHTI) which was projected as product of the said company. He

further pointed out that in pursuance to the said conspiracy, accused Jaya Jaitly had received a sum of Rs. 2 lakhs from PW28 in the guise of party fund whereas accused S.P. Murgai had received a total sum of Rs. 1.2 lacs on two different occasions from him for arranging his meeting with accused Jaya Jaitly and for further assistance in this regard. He further argued that accused Gopal K. Pacherwal was instrumental in arranging the meeting between PW28 and accused Jaya Jaitly and had played an active part in the said conspiracy. According to Ld. Public Prosecutor, the amount of Rs. 2 lakhs offered as bribe by PW28 to accused Jaya Jaitly was in fact received by accused Gopal K. Pacherwal on behalf of the accused Jaya Jaitly. He submitted that the contents of all the tapes recorded by PW28, the transcripts of which have been duly proved before this Court, clearly suggest that there was a conspiracy between the accused to exert influence upon the officials of the Ministry of Defence in order to push the product of the fictitious firm M/s Westend International i.e. Hand Held Thermal Imagers (HHTI) for purchase for the Indian Army. He argued that these video tapes are reliable and can be duly considered as corroborative evidence by this Court. He submitted that eye witness account of PW10 and PW28 are sufficient in themselves to prove the guilt of all the three accused. According to Ld. Public Prosecutor, evidence on record, clearly bring home the guilt of all the three accused and they are liable to be convicted.

20. Per contra, Ld. Defence counsels argued that there is nothing in the testimonies of PW10 and PW28 to show or suggest that PW28 was bribing the accused in order to push the product of his fictitious company M/s Westend International for purchase by Indian Army. It is argued that the eye witness account of the meeting held between

PW28, PW10 and all the three accused in the office of accused Jaya Jaitly on 28.12.2000 nowhere suggests even remotely that a sum of Rs. 2 lakhs were being offered by PW28 to accused Jaya Jaitly as a bribe for any favour whatsoever or that she had assured PW28 that the product of fictitious company would inducted in the Indian Army. It is argued that there is no evidence of any prior meeting of minds between the three accused on the one hand and PW10 as well as PW28 on the other hand and therefore, the charges of conspiracy must fail.

21. It was further argued that as per the testimony of PW28, he had handed over a sum of Rs. 1 lakh to PW10 Sh. Surender Surekha at the residence of accused S.P. Murgai when they had assembled there after the meeting with accused Jaya Jaitly but PW10 has falsely deposed that he handed over the said sum of money to accused S.P. Murgai. It was further submitted that no amount at all (either the aforesaid sum of Rs. 1 lakh or any further sum of Rs. 20,000/-) was given by PW28 to the said accused and he was only rendering technical advice to PW28.

22. Ld. Defence counsels also assailed the manner in which the CBI had sought pardon for PW10 and made him as an approver. It is submitted that the endeavour of CBI in eliciting the true facts from PW10 utterly failed for the reason that he has not deposed truthfully and has concealed the incriminating facts against him during his testimony before this Court and therefore, he does not qualify as an approver at all and the CBI should have initiated proceedings under Section 308 Cr. P.C against him for violating the conditions upon which pardon was tendered to him. It is also argued that since PW28

has admittedly offered bribe to the three accused, he himself is accomplice in this case and therefore his testimony also needs to be scrutinized with utmost caution and must pass the test reliability and also must find corroboration from other evidence on record. It is argued that both PW10 and PW28 are totally unreliable witnesses and their testimonies do not find support or corroboration from any other evidence on record.

23. Ld. Defence counsels also argued that the Hi-8 tapes in which various proceedings are stated to have been recorded by PW28 cannot be relied upon for the reason that they were in unsealed condition throughout when they were seized by the CBI and thus there being tempered with by Tehelka officials cannot be ruled out. Ld. Counsels, thus, prayed for acquittal of all the three accused.

24. Since, the instant entire case is founded upon the audio/video recordings done by PW28 Mr. Mathew Samuel on behalf of the Tehelka.Com during the sting operation purportedly to expose the corruption prevailing in defence procurements deals, it is necessary to examine the legality and authenticity of such sting operation conducted by a private individual or a private entity.

25. It is fundamental duty of the every citizen of India to uphold and protect the sovereignty, unity and integrity of India. In the opinion of this Court, the sovereignty, unity and integrity cannot be protected and safeguarded, if the corruption is not removed from this country. In fact, one of the noble ideals of our national struggle for freedom was to have an independent and corruption free India. Article 51 A (j) enjoins upon every citizen of India to strive towards excellence in all spheres so that the Nation constantly rises to higher level. It is thus inbuilt in

the duties cast upon Indian citizens by the Constitution of India that every citizen must strive for a corruption free society and must expose corruption whenever and whatever it comes to his/her knowledge and also must try to remove corruption at all levels of management. At the same time, it is a fundamental right of every Indian citizen to have a clean and incorruptible legislature, executive, judiciary and other organs of the Government. In order to achieve this fundamental right, every citizen has a corresponding duty to expose corruption whenever it comes to his/her knowledge.

26. There cannot be any two opinions about the fact that the corruption has taken deep roots in this country. It was in the year 1988 in AR Antulay's case reported as 1988 (2) SCC 602, that Justice Sabyasachi Mukherjee had lamented:

"Values in public life and perspective of these values in public life, have undergone serious changes and erosion during the last few decades. What was unheard of before is common place today. A new value orientation is being undergone in our life and in our culture. We are at the threshold of the cross-roads of values. It is, for the sovereign people of the country to settle those conflicts yet the Courts have vital roles to play in such matters."

27. The above observations made by the Hon'ble Judge in the year 1988 are more apt and relevant during the present times. One could say that the situation today is much worse. The virus of corruption has engulfed the entire fabric of our society. New ingenious ways are being devised by the corrupt officials in order to avoid being detected and caught. Hence, discreet and novel methods are required to expose corruption in Government departments, especially at higher



levels. Discreet sting operations can be one of these methods.

28. The High Court had occasion to deal with and rule upon the legality or otherwise of the sting operation conducted by a private individual in the case reported as Court on its motion v. State & others 151 (2008) DLT 695. The case related to sting operation carried out by Mr. Kulkarni and Mr. Deepak Sharma of NDTV concerning the role of Defence Lawyers and the Special Public Prosecutor in the ongoing sessions trial what was commonly known as 'BMW Case'. The question for consideration before the High Court was whether Sh. R.K. Anand and Sh. I.U. Khan 'both Senior Advocates' and Sh. Bhagwan Sharma, Advocate have committed criminal contempt of Court. Based upon the erudite and academic articles on the subject and the views of various scholars based on the law in some other countries, Hon'ble Court concluded as follows:

(i) A sting operation by a private person or agency is, by and large, unpalatable or unacceptable in a civilized society. A sting operation by a State actor is also unacceptable if the State actor commits an offence so that an offence by another person is detected.

(ii) A State actor or a law or a law enforcement agency may resort to hidden camera or sting operations only to collect further or conclusive evidence as regards the criminality of a person who is already suspected of a crime.

(iii) The law enforcement agency must maintain the original version of the actual sting operation. Tampering with the original video or audio clips of a sting operation may lead to a presumption of the spuriousness of the entire operation.

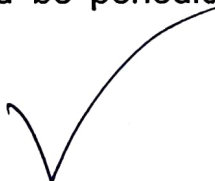
(iv) *A sting operation cannot be initiated to induce or tempt an otherwise innocent person to commit a crime or entrap him to commit a crime.*

(v) *Normally, if a private person or agency unilaterally conducts a sting operation, it would be violating the privacy of another person and would make itself liable for action of law.*

(vi) *A sting operation must have the sanction of an appropriate authority. Since no such authority exists in India, and until it is set up, a sting operation by a private person or agency, ought to have the sanction of a court of competent jurisdiction which may be in a position to ensure that the legal limits are not transgressed, including trespass, the right to privacy of an individual or inducement to commit an offence etc.*

29. Ultimately, in the aforesaid case, High Court held that sting operation conducted by private individual is legal and valid as well as admissible and conviction can be based upon the same. The Judgement of the Hon'ble High Court was upheld by the Hon'ble Supreme Court of India in case reported as R.K. Anand v. Delhi High Court (2009) 8 SCC 106 observing that the sting recordings were rightly made the basis of the conviction and thus upheld the judgement of the Hon'ble High Court.

30. I am reminded of the golden advice of Chankaya in this regard who in his famous work 'Arthshastra' advised and suggested that the honesty of even Judges should be periodically tested by the agent provocateurs.



31. Hence, it is amply clear that the sting operations by private individuals, if conducted in good faith in order to expose corrupt dealings, are legal and valid and can be made the basis of conviction.

32. At the same time, it is to be kept in mind that there are two kinds of traps "Legitimate Trap" and "Illegitimate Trap". In case of "Legitimate trap", the offence has already been born and is being completed whereas in case "Illegitimate trap", the offence has not yet been born and temptation is offered to see whether offence would be committed, succumbing to it or not. Thus, where the bribe has already been demanded from a man and the man goes out offering to bring the money but goes to the police or the Magistrate and brings them to witness the payment, it will be "Legitimate trap", wholly laudable and admirable and to be adopted in every civilized country without the least criticism by any honest man. But where a man has not demanded of bribe and is only suspected to be in the habit of taking bribes and is tempted with a bribe, just to see whether he would accept it or not and to trap him, if he accepts, it will be an "Illegitimate trap" and unless authorized by an Act of Parliament, it will be an offence on the part of the persons taking part in the trap who will all be "accomplices" and whose evidence will have to be corroborated by untainted evidence to a smaller or larger extent as the case may be before a conviction can be ordered. (See In re M.S. Mohiddin, AIR 1952 Madras 561 and Rao Shiv Bahadur Singh v. State of Vindhya Pradesh 1954 Criminal Law Journal 910.)

33. In Bhupender Singh Patel v. CBI, Criminal M.C No. 59/2004 decided by the Hon'ble High Court on 10.11.2004, FIR was lodged against the journalist who conducted a sting operation in which he

bribed the Additional Private Secretary of Union Minister of State with the object of exposing corruption at the highest level in government. While declining to quash the FIR, the Hon'ble High Court held that immunity is given to a bribe giver where he is unwilling to pay illegal gratification to a public servant and approaches the police to get public servants trapped while accepting a bribe. However, in the instant case, the accused bribed the public servants on three occasions and in not a single instance did he report the matter to the police in advance who could have laid a legal admissible trap and apprehended the bribe takers. The accused have not informed the police even after the transactions of bribe was complete.

34. I also find it pertinent here to refer to the apt observations of the Hon'ble Supreme Court in case Ramjanam Singh v. State of Bihar 1956 Criminal Law Journal 1254:

"Whatever the criminal tendencies of a man may be, he has a right to expect that he will not be deliberately tempted beyond the powers of his frail endurance and provoked into breaking the law; it is one thing to tempt a suspected offender to overt action when he is doing all he can to commit a crime and has every intention of carrying through his nefarious purpose from start to finish, and quite another to egg him on to do that which it has been finally and firmly decided shall not be done.

The very best of men have moments of weakness and temptation, and even the worst, times when they repent of an evil thought and are given an inner strength to set Satan behind them."

35. In case Sh. Bhardwaj Media Pvt. Ltd v. State, W.P. (Crl.) No. 1125/2007 decided on 27.11.2007, Hon'ble High Court declined to quash a FIR against a private television channel and some of its officials who had conducted an undercover operation wherein a Member of Parliament received money for raising questions in the House. The Hon'ble High Court was of the opinion that prima-facie an offence had been committed by the bribe givers as well as bribe takers.

36. In another case reported as Court on its Motion v. State 2008 (100) DRJ 144 (known as school teacher case) also the Hon'ble High Court deplored the thought of inducing a person to commit an offence which he is not otherwise likely to or inclined to commit and then make it a part of sting operation. The Hon'ble Court observed that it was prima-facie for the media to use tools of investigating journalism but that did not permit media to induce a person to commit a crime.

37. Let me now examine the prosecution case herein as well as the evidence led by the prosecution in the light of legal principles derived from the various judgements of the Hon'ble High Court as well as Hon'ble Supreme Court of India referred to hereinabove in order to ascertain as to whether it is a case of "Legitimate trap" or "Illegitimate trap".

38. PW14 and PW24 alongwith one Minty Tejpal had started Tehelka.Com, a journalistic portal, in the year 2000. PW14 has deposed that around September, 2000, Mr. Aniruddha Bahal (PW24) who was investigating editor at Tehelka began to pursue a story in corruption of Arms deals and he was motivated to get into the story of ammunition depot explosion at Bharatpur. According to PW14, PW24

was assisted in his story by Mr. Mathew Samuel (PW28), and in order to expose corruption in Arms deals, they created a dummy company called M/s Westend International and tried to sell a product called Hand Held Thermal Cameras (HHTC) to Indian Army. PW14 further deposed that they captured all their dealings and transactions on hidden camera over a period of nearly 6 months. The equipments which they used was concealed in a variety of modes including satchels, hand bags, briefcase and neck ties. Around January, 2001, they began to transcribe and prepare the findings of the investigation. He deposed that all the original tapes of the investigation were kept in the custody of Annirudh Bahal (PW24) to begin with in his office and later in Grindlays Bank Locker at Malcha Marg. He further deposed that the Tehelka released a 4 ½ hours documentary on 13.03.2001 revealing the findings of their sting operation and also sent a copy of the documentary to the President of India. He stated that later on all the 105 original tapes were handed over to the Venkataswamy Commission set up by Government of India to enquire into the affairs.

39. PW24 has deposed that in May, 2000, Tehelka broke the story of the match fixing in cricket and subsequently, the idea came to them to do an investigation on corruption in defence procurement in India. He stated that they thought that the best way to do it would be to become insider and with that in mind, they created a fictitious entity M/s Westend International ostensibly with an office out of London. He deposed that the field work for operation Westend started sometime in August and the principal reporter on the job was Mr. Mathew Samuel (PW28) who did bulk work of the undercover investigation. He deposed that his own involvement in the field work was limited towards the end as his face was relatively well known because of the

cricket match fixing story. He further deposed that in July and August, 2000, Mr. Mathew Samuel (PW28) came in contact with Mr. Anil Malviya who, being impressed with Tehelka cricket match fixing story, tipped them about certain activities worth investigating in the Canteen Stores Department in Mumbai. Mr. Anil Malviya also wanted a job of marketing in Tehelka and accordingly PW24 decided to pair him with Mr. Mathew Samuel for initial field work that was happening in operation Westend. It is stated that Mr. Malviya subsequently died due to cardiac arrest in the year 2001. PW24 has further testified that during operation Westend, he adopted the fictitious identity of Alvin D'souza, so called President of the Westend International whereas Mr. Mathew Samuel (PW28) was its Chief Liaison Officer and Anil Malviya took an alias of Rajiv Sharma, as Chief Representative of the Westend International. The product which the catalogue highlighted was Hand Held Thermal Imagers (HHTI) and the idea was to go as defence manufacture/middle man to different groups in the defence procurement establishment with the purpose of getting trial and evaluation letter for their fictitious product. He deposed that the field decisions of Operation Westend were done in consultation with Mr. Mathew Samuel (PW28) and sometimes with the knowledge of Sh. Tarun Tejpal (PW14).

40. With regards to circumstances which lead tehelka.Com to conduct sting operation to expose bribery in defence deals and how the process was started, PW28, who is the star witness of the prosecution, has deposed that he joined Tehelka.Com as Special Correspondent in the year 2000. Sh. Aniruddha Bahal (PW24) was his Editor and Editorial head was Tarun Tejpal (PW14). He deposed that during his train journey from Pune to Mumbai in context with the some

official assignment during his employment with Tehelka.Com, he met one gentleman namely Sh. Anil Malviya who gave him an idea about their being bribes in defence deals. When he landed in Delhi, he introduced Mr. Malviya with PW24 and Mr. Malviya insisted upon them to do some story regarding bribery in defence deals. Mr. Anil Malviya alongwith one Mr. Sunil were residing at YWCA Guest House, Connaught Place, New Delhi.

41. It is manifest from the above noted deposition of PW14, PW24 and PW28 that they had no specific or credible information that any particular government official related to the Ministry of Defence or any other person related to the concerned Ministry or any other person whatsoever has been taking the bribes for pushing the products for procurement for the use of Indian Army. Mr. Anil Malviya, who had met PW28 during the course of a train journey from Pune to Mumbai, had only given an idea to him about there being bribes in defence deals and had insisted upon him to do a story about the same. There is no evidence to show that Mr. Malviya had narrated any particular instance where there had been any corruption in a defence procurement deal. He also had not mentioned the name of any particular Minister or any government official who indulges in such corruption. Thus, there was only a suspicion that the defence deals are tainted with corruption. There had not been any demand of bribe at all. It is on such vague and incomplete information/suspicion conveyed by Mr. Anil Malviya about bribery in defence deals that the Tehelka team launched operation Westend to ascertain whether in fact there is corruption in defence deals or not. It was thus, an illegitimate sting operation/trap where the offence had not yet been born and the Tehelka team proceeded to offer temptation to various persons to see

whether or not they succumbed to it. Therefore, PW28 as well as his seniors i.e. PW14 and PW24 were accomplices to the offence of bribery. Their testimonies have to be scrutinized with utmost caution and cannot be relied upon unless corroborated by untainted evidence. It was highly improper for them to induce or attempt innocent persons to commit a crime or to tempt them to commit a crime. They did not inform any law enforcement agency about their sting operation at any point of time nor did they take assistance of such an agency during the entire proceedings. Even after the entire operation was over, they did not approach the police with their findings. Instead, they released their findings to media in the shape of 4 ½ hours documentary.

42. Having said so, it would be now apposite to refer to the charges framed against the accused in this case. The common charge of conspiracy framed against all the three accused is in the following words:

"That, all three of you, alongwith Sh. Surender Kumar Surekha (who has now turned approver), on or about December, 2000 to January, 2001 at Delhi were a party to a criminal conspiracy hatched amongst all of you by having agreed to do an illegal act of accepting gratification from Mr. Mathew Samuel, a representative of M/s Westend International, as a motive or reward for inducing by the exercise of your personal influence, public servant(s) of Ministry of Defence for obtaining supply orders for Hand Held Thermal Images (HHTI) from Army Headquarters, Ministry of Defence, Government of India, in favour of the M/s Westend International and have thereby committed an offence punishable under Section 120B IPC r/w Section 9 of

Prevention of Corruption Act, 1988 and within my cognizance.”

43. The charge for substantive offence under Section 9 of PC Act framed against accused Jaya Jaitly is in the following words:-

“That, you, being National President of Samta Party in furtherance of the criminal conspiracy with other accused persons, had accepted or obtained a sum of Rs. 2 lakhs for yourself or for any other person as “gratification” from Mr. Mathew Samuel, a representative of M/s Westend International, on 28.12.2000 at 3 Krishna Menon Marg, the official residence of the then Defence Minister as a motive or reward for inducing by the exercise of your personal influence, public servant(s) of Ministry of Defence for obtaining supply orders for Hand Held Thermal Images (HHTI) from Army Headquarters, Ministry of Defence, Government of India, in favour of the M/s Westend International and have thereby committed an offence punishable under Section 9 of Prevention of Corruption Act, 1988 and within my cognizance.”

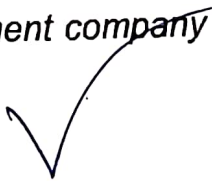
44. Similarly, the charge for substantive offence under Section 9 of Prevention of Corruption Act, 1988 framed against accused S.P. Murgai (Retired) is in the following words:

“That, you, after having retired from Armed Forces, Ministry of Defence, in furtherance of the criminal conspiracy with other accused persons, had obtained a sum of Rs. 1 lakh for yourself or for any other person from Mr. Mathew Samuel, a representative of M/s Westend International on 28.12.2000 at your house at Vasant Vihar, New Delhi, an

amount which he initially handed over to Sh. Surender Kumar Surekha (who has now turned approver), who is turn gave it to you, which you had accepted. Apart from that, you have accepted a further sum of Rs. 20,000/- from Mr. Mathew Samuel on 04.01.2001, at your residence at Vasant Vihar, and have further agreed to accept or obtain balance amount of Rs. 80,000/- alongwith a sum of Rs. 5 lakhs as "illegal gratification" as a motive or reward, for inducing by the exercise of your personal influence, public servant(s) of Ministry of Defence for obtaining supply orders for Hand Held Thermal Imagers (HHTI) from Army Headquarters, Ministry of Defence, Government of India, in favour of M/s Westend International and have thereby committed an offence punishable under Section 9 of Prevention of Corruption Act, 1988 and within my cognizance."

45. It will be pertinent to reproduce Section 9 of the Prevention of Corruption Act, 1988 herein:

"9. Taking gratification, for exercise of personal influence with public servant.- *Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant whether named or otherwise to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c)*



of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.”

46. The essential ingredients of the offence envisaged under Section 9 of the Prevention of Corruption Act, 1988, as reproduced herein above, can be said to be:-

- (i) Accepting or obtaining or agreeing to accept or attempting to obtain any gratification whatsoever by any person from any other person;*
- (ii) as a motive or reward for inducing any public servant whether named or otherwise;*
- (iii) by the exercise of personal influence;*
- (iv) to do or forbear to do any official act or in the exercise of the official functions of such public servants to show any favour or disfavour to any person or to render or attempt to render any service or disservice to any person;*

47. Hence, it is necessary for the prosecution to prove in a trial for the offence under Section 9 of the Prevention of Corruption Act, 1988 that the accused has accepted or obtained or agreed to accept any gratification from any person as a reward for inducing any public servant by exercise of personal influence to show favour or disfavour to any person etc. This assumes much importance in this case in view of the defence taken by the accused that they had never accepted any money from PW28 for exercising their personal influence upon any public servant for helping M/s Westend International to obtain supply orders for Hand Held Thermal Images (HHTI) from Army

Headquarters nor had they given any such assurance to PW28.

48. The evidence produced by the prosecution in this regard can be classified under two heads i.e. the ocular testimony of eye witnesses i.e. PW10 & PW28 and the video recordings of various meetings held by them with all the three accused which have been produced in the shape of various Hi-8 tapes alongwith their transcriptions.

49. So far as the PW10 is concerned, it has already been noted herein above that he was initially arraigned as an accused in the FIR but later on was tendered pardon by the concerned CBI Court at the request of CBI. This aspect needs to be dealt with at first before proceeding to examine his testimony.

50. It was argued by the Ld. Defence counsels that PW10, after having been arraigned as an accused in the FIR, was coerced and pressurized by the CBI to make a statement under Section 164 Cr. P.C before the Ld. M.M and to become an approver in this case by falsely implicating the other three accused. It is pointed out that he had taken the stand before the Government Appointed Commission that no-one had received money from PW28 in this case but later on was forced to change this stand by the CBI by using pressurizing tactics upon him and by offering him pardon in this case. They would submit that the procedure adopted in this case by making PW10 to give a statement under Section 164 Cr. P.C at first and then seeking pardon for him from the concerned CBI Court is not proper and clearly depicts that he has been forced to make a false statement which is contrary to his initial truthful statement given to the Commission. Ld. Public Prosecutor submitted that there is no illegality or irregularity in the procedure adopted in this case in tendering the pardon to PW10



and same is within the four corners of law.

51. Perusal of the record reveals that PW10 himself had approached the concerned Special CBI Court with an application under Section 164 Cr. P.C Ex.PW13/DA stating therein that he wants to make a statement concerning this case voluntarily and without any pressure, coercion or pressure. The application came to be allowed by the CBI Court and accordingly, statement of this witness was recorded under Section 164 Cr. P.C by the then concerned Ld. M.M Sh. V.K. Khanna on 27.04.2005. The statement is Ex.PW10/A. The said statement, especially its initial part where certain queries were put to the witness by the Ld. M.M in order to ascertain his voluntariness in making the statement, and the testimony of the Ld. M.M (PW13) nowhere suggests even remotely that PW10 was under any influence or duress or coercion at the time of making the statement Ex.PW10/A. He has explained at Page No. 4 of the said statement that after the news of the sting operation was telecast on Zee News in March, 2001, accused Gopal Pacherwal called him to Delhi and told him that accused Jaya Jaitly is annoyed with him. Accused Gopal Pacherwal further instructed him not to speak about the payment of Rs. 2 lakhs to anybody. Accordingly, he had said before the Commission of Enquiry that no money was paid to anybody.

52. Thereafter, an application dated 07.11.2006 was filed by the CBI under Section 5 (2) of Prevention of Corruption Act, 1988 r/w Section 306 of Cr. P.C seeking grant of pardon to this witness Sh. Surender Kumar Surekha. A detailed order dated 11.12.2006 has been passed on the said application by the concerned Special Judge, CBI thereby allowing the application and tendering pardon to this witness Sh.

Surender Kumar Surekha on the condition that he would make full account of the case and circumstances within the knowledge related to the offence committed by him in conspiracy with the other co-accused either as principal or abettor.

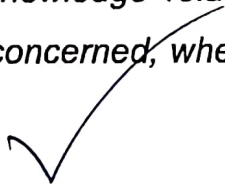
53. It is not discernible as to what is there unlawful and unfair in the aforesaid procedure adopted by the CBI in seeking pardon for PW10. It may be noted here that same procedure had been followed in tendering pardon to a witness in a case before the Hon'ble Supreme Court reported as Bangaru Laxman v. State (through CBI) & Another (2012) 1 SCC 500 and the Hon'ble Supreme Court did not find any merit in the contention urged in this behalf by the remaining co-accused. It was held that the power of granting pardon, prior to the filing of the charge-sheet, is within the domain of the judicial discretion of the Special Judge before whom such a prayer is sought and any other conclusion would be detrimental to the administration justice, in as much as, the power to grant pardon is contemplated in situation where a heinous offence is alleged to have been committed by several persons and with the aid of the evidence of the person, who has been granted pardon, the offence committed may proved.

54. In view of the aforesaid observations of the Hon'ble Supreme Court, the submissions of the Ld. Defence counsels evaporate in thin air and become devoid of any merit.

55. It was also argued by the Ld. Defence counsels that this witness PW10 was granted pardon on the condition that he would disclose the true and correct sequence of events related to this case but he has patently failed to do so in as much as he has made a false statement touching his culpability in this case. It is pointed out that since PW10

has not stated anything inculpatory against himself in his testimony before this Court, he does not qualify as an approver and thus his testimony needs to be rejected out rightly. I am unable to agree with the Ld. Defence counsels on this point also. In my opinion, to become an approver within a meaning of Section 306 Cr. P.C, it is not necessary for a person to inculcate himself in the offence and to be privy to the crime. A bare reading of Section 306 Cr. P.C reveals that it would be sufficient if the person for whom the pardon is sought, had been directly or indirectly concerned in the offence involved in the case, whether principal and abettor and is prepared/willing to make full and true disclosure of whole of the circumstance within his knowledge related to the offence and all the persons concerned. On this aspect I find support from the observations of the Hon'ble Supreme Court in State of Rajasthan v/s Balveer (2013) 16 SCC 321 in which same issue had arisen for consideration and the Hon'ble Court held as under:

22. The first question that we have to decide is whether the High Court is right in coming to the conclusion that for being an approver within the meaning of Section 306 Cr. P.C, a person has to inculcate himself in the offence and has to be privy to the crime, otherwise he removes himself from the category of an accomplice and places himself as an eyewitness, Section 306 Cr. P.C provides that with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence, the Magistrate may tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or



abettor, in the commission thereof.

23. This Court in *Suresh Chandra Bahri v. State of Bihar* – explained the object of Section 306 Cr. P.C in the following words: (SCC p. 106, para 42)

“42. ...The object of Section 306 therefore is to allow pardon in cases where heinous offence is alleged to have been committed by several persons so that with the aid of the evidence of the person granted pardon the offence may be brought home to the rest. The basis of the tender of pardon is not the extent of the culpability of the person to whom pardon is granted, but the principal is to prevent the escape of the offenders from punishment in heinous offence for lack of evidence. There can therefore be no objection against tender of pardon to an accomplice simply because in his confession, he does not implicate himself to the same extent as the other accused because all that Section 306 requires is that pardon may be tendered to any person believed to be involved directly or indirectly in or privy to an offence.”

24. Thus, the High Court failed to appreciate that the extent of culpability of the accomplice in an offence is not material so long as the Magistrate tendering pardon believes that the accomplice was involved directly or indirectly in or was privy to the offence. The High Court also failed to appreciate that Section 133 of the Evidence Act provides that an accomplice shall be competent witness against an accused person and when the pardon is tendering to an accomplice under Section 306 Cr. P.C, the accomplice is removed from the category of co-accused and put into the category of witness and the evidence of such a witness as an

accomplice can be the basis of conviction as provided in Section 133 of the Evidence Act.

56. Hence, even if PW10 has not deposed anything inculpatory against himself during his testimony before this Court, that cannot be made a ground for assailing tender of pardon to him and. It is only to be seen whether he was involved directly or indirectly in the offence and was privy to it. The statement of PW10 u/s 164 Cr.P.C. , on which basis he was granted pardon, manifests that he was involved in the commission of crime in this case and was privy to it. The degree of his culpability was not material at all for passing order u/s 306 Cr.P.C. Hence the arguments raised by Ld. Defence counsels on this aspect have no force.

57. Coming to the deposition of PW10 before this Court. He deposed that he came in contact with accused Maj. Gen. S.P. Murgai in the year 1999 or so when the later was Director (Inspection), the Directorate General Quality Assurance (DGQA) and posted in Delhi. PW10 was having business of Tirpal and Tent in Kanpur under the name and style of M/s India Proofing and General Industries since 1972 and the material supplied by him to the governmental agency was required to be inspected through DGQA and thus he came into contact with accused Maj. Gen. S.P. Murgai. He deposed that in the year 2000 or so, after the retirement of Maj. Gen. S.P. Murgai, he received a call from him saying that he (Mr. Murgai) is soon going to join a big company coming to India and dealing in power generation/electronics. Accused Maj. Gen. Murgai asked him whether he was interested in becoming a representative of the said company to which he replied in affirmative and accordingly a meeting was fixed for 25.12.2000 in Hotel Vasant Continental, New Delhi. He deposed

that he came to Delhi accordingly, reached the said hotel and met accused Maj. Gen. Murgai in the Lobby who took him to the room where one Mr. Mathew Samuel, a representative of that company was already sitting. Accused Maj. Gen. Murgai introduced him to Mathew Samuel as an industrialist from Kanpur and Mathew Samuel also revealed that his company wanted a good partner for business in India.

58. PW10 has further deposed that during the conversation, Mr. Mathew Samuel asked him whether he knew Mrs. Jaya Jaitly. He asked Mr. Mathew Samuel about the kind of work related to Jaya Jaitly and why he wanted to know about her to which Mr. Mathew Samuel replied that he wanted to meet her and to contribute to the party fund. Mr. Mathew Samuel further informed him that if he was able to arrange a meeting between him and Jaya Jaitly, he would give something to him also. PW10 told him that he did not want anything except formal MOU to be prepared regarding his association in such business and assured him that he would look into this aspect of meeting. In response to the Court question put to him, he stated that he did not know Jaya Jaitly personally even though he had met her once or twice and he came to know her through Mr. Gopal Pacherwal. He also stated that Jaya Jaitly was President of the Samta Party at that time.

59. Further deposition of PW10 is that he talked to Gopal Pacherwal on telephone and apprised him about what Mr. Mathew Samuel had desired. Accused Gopal Pacherwal told him that he would consult Jaya Jaitly in this regard. PW10 further states that in subsequent telephonic conversation, accused Gopal Pacherwal informed him that a meeting has been fixed with Jaya Jaitly for 28.12.2000 at the

residence of Mr. George at Krishna Menon Marg. Accordingly, he informed accused Maj. Gen. Murgai about the same. He has stated that he came to Delhi on 28.12.2000, picked up Maj. Gen. Murgai from his residence in the evening and reached the aforesaid house situated at Krishna Menon Marg at 6 pm or 7 pm. They found Mr. Mathew Samuel standing outside the house near gate and all the three went inside the house. Thereafter, accused Gopal Pacherwal also came there. PW10 asked Mr. Mathew Samuel whether he had brought the money for the party fund. Mr. Mathew Samuel opened briefcase and showed the money to him which was in open condition i.e. uncovered which didn't look proper. He deposed that he brought a newspaper and asked Mr. Mathew Samuel to cover the money with the said newspaper.

60. In response to the Court question, he stated that the amount was Rs. 2 lakhs. He deposed that thereafter, accused Gopal Pacherwal informed them that they have been called inside and accordingly, they all went inside where Madam Jaya Jaitly was already sitting.

61. PW10 has further deposed that accused Gopal Pacherwal introduced them to Jaya Jaitly. Mr. Mathew Samuel apprised her about his business and thereafter, stood up and started giving packet to her whereupon she asked accused Gopal Pacherwal to take the packet and send the same to Mr. Srinivas, some Minister, in connection with some conference going on in South India. He deposed that Mr. Mathew Samuel informed her that they wanted to enter into defence also and she stated that you a new entrant would be welcome but the price should be competitive and the quality should be good. Then

Mathew Samuel and accused Jaya Jaitly started conversation in Keralite language. After the meeting ended, Mr. Mathew Samuel left in his car and PW10 dropped accused S.P. Murgai at his residence. He also stayed back for a cup of tea and in the meanwhile Mr. Mathew Samuel also reached there. PW10 states that Mr. Mathew Samuel gave him Rs. 1 lakh but he immediately handed over the said amount to accused S.P. Murgai in presence of Mr. Mathew Samuel. Thereafter, Mr. Mathew Samuel left and he also left for Kanpur.

62. According to further deposition of PW10, there was no conversation thereafter till he happened to see telecast on Zee TV. He realised that there was a fraud and accordingly came to Delhi to meet accused Maj. Gen. S.P. Murgai and found his house locked. He happened to meet to accused Maj. Gen. S.P. Murgai after 7 to 10 days who told him that he too had been trapped as he only wanted to do some work after his retirement. PW10 further deposed that he received a call from accused Gopal K. Pacherwal explaining as to what had happened. He deposed that during his statement before the Venkataswamy Commission, he had stated that he did not take any money in this matter but thereafter, he went into introspection and thinking that he only wanted to do some business but Mr. Mathew Samuel turned out to be a fraud. Accordingly, he volunteered to make statement before the Court. He proved his statement under Section 164 Cr. P.C as Ex.PW10/A.

63. When a CD prepared from Hi-8 Tape No. 73 was played before the PW10 during the course of his deposition, he stated that the footage shows the recording pertaining to his visit to the house of George Fernandes at Krishna Menon Marg. He stated that the

recording is not very clear but he can say from his memory that he had asked Mr. Mathew Samuel to put the money in Lifafa (Envelope). There is Court observation that word "Lifafa" appears as duration 0.06.28. When the CD Ex.PW10/B2 was further played upto duration 0.4.20, PW10 states that phrases are not clear but he is able to hear the audio and everyone including accused Jaya Jaitly, Mr. Mathew Samuel, accused Maj. Gen. S.P. Murgi and himself is participating in the conversation.

64. In the cross-examination conducted on behalf of accused Jaya Jaitly, he denied that he became an approver in this case under pressure of CBI and has testified falsely. In the cross-examination conducted on behalf of accused Maj. Gen. S.P. Murgai, he admitted that it is nowhere mentioned in any conversation or transcript that accused Maj. Gen. Murgai had ever suggested meeting with a political head or any other officer. He admitted that accused Maj. Gen. Murgai always dissuaded him as well as Mr. Mathew Samuel from meeting with any political head/politicians or officer etc. He admitted that when there was a meeting at Hotel Vasant Continental, New Delhi, accused Maj. Gen. Murgai told Mr. Mathew Samuel that there was no need to meet any politician including accused Jaya Jaitly as work is done in defence as per system. However, he reiterated that when Mr. Mathew Samuel extended the Lifafa containing money of Rs. 1 lakh towards him, he immediately pushed that towards accused Maj. Gen. Murgai. In the cross-examination conducted on behalf of accused Gopal K. Pacherwal, he deposed that he never counted the money carried by Mr. Mathew Samuel. He admitted that accused Gopal K. Pacherwal was not present near him and Mr. Mathew Samuel when they spoke about the money in the outer room.

65. The statement of PW10 recorded under Section 164 Cr. P.C Ex.PW10/A is on similar lines. No inconsistency or contradiction can be found between the deposition of PW10 before this Court, as noted hereinabove and his statement under Section 164 Cr. P.C Ex.PW10/A. His deposition gets full corroboration from statement Ex.PW10/A.

66. Another important eye witness of the prosecution is Mr. Mathew Samuel who has been examined as PW28. He is person who is stated to have conducted the sting operation and recorded the proceedings of his various meetings with the accused herein with the help of hidden devices. He has deposed that after getting green signal for the 'Westend Operation' from his editor Mr. Aniruddha Bahal (PW24), he met several defence officers and bureaucrats etc. including one Col. Sayal who introduced him to accused S.P. Murgai during his interaction with accused S.P. Murgai, PW28 sought to know as to who would provide political cover for pushing the product of his company into the Indian Army upon which accused Maj. Gen. Murgai told him that he knows one gentleman known as Mr. Surender Kumar Surekha (PW10) who could do the political part very well. He has further deposed that accused Gen. Murgai introduced him with Mr. Surekha in Hotel Vasant Continental in the month of December, 2000 and they asked him as to how much money he was going to pay Madam Jaitly, Party President of Samata Party. He told them that he could give Rs. 2 lakhs to Madam Jaya Jaitly and thereafter he would pay further Rs. 1 lakh each to both of them also. During the conversation, Mr. Surekha impressed upon him to ask from Madam Jaitly whatever he could ask including the commission matter.



67. PW28 has further deposed that thereafter the meeting was fixed by accused Maj. Gen. Murgai and Mr. Surender Kumar Surekha with Madam Jaya Jaitly and he was asked to come to the residence of the the then Defence Minister George Fernandes at Krishna Menon Marg for the meeting. He did not recollect the date of the meeting. However, on the fixed date, he alongwith accused Maj. Gen. Murgai and Surender Kumar Surekha arrived at the aforesaid residence of Mr. George Fernandes for the said pre-planned meeting. He has stated that he was carrying two devices having provision of the recording i.e. a briefcase device and a tie device. Before he was going to meet Madam Jaya Jaitly, Mr. Surender Kumar Surekha asked him to take out the money. He told Mr. Surender Kumar Surekha that the money was inside the briefcase which he was carrying upon which Surekha said that Madam Jaya Jaitly would not allow the briefcase inside the meeting room as there could be some camera inside the briefcase for spy recording. Thereafter, Surekha gave some old newspaper to him for putting that money into the same. Accordingly, PW28 wrapped the newspaper around the money and kept the same in his hand. Simultaneously he also switched on the tie-camera. He did not take the briefcase with him to the inner room where he was to meet accused Jaitly Jaitly. He has deposed that when he entered the room, accused Jaya Jaitly was already sitting there. He alongwith Surender Surekha, accused S.P. Murgai and Gopal Pacherwal were inside the room for the meeting. He correctly identified accused Gopal Pacherwal in Court. Upon recollecting the conversation which took place in the room, he deposed that accused Jaya Jaitly told him that if any kind of injustice would be there from MOD due to procurement reason, then she would intervene. He was questioned by the Court as to what does

he mean by "injustice from MOD" to which he replied that he meant that the product of his company is not considered by the MOD even if it is of a good quality.

68. According to further deposition of PW28, during the aforesaid conversation, he handed over Rs. 2 lakhs bribe to accused Jaya Jaitly but she asked him to handover the same to accused Gopal Pacherwal. Accordingly, he handed over the said amount to accused Gopal Pacherwal. After the meeting, he met accused Maj. Gen. Murgai and Surender Surekha either at former's residence or somewhere else which he did not recollect. However, he recorded the proceedings of that meeting also during which he handed over Rs. 1 lakh to accused Maj. Gen. S.P. Murgai even though he was supposed to give Rs. 1 lakh to accused Maj. Gen. S.P. Murgai and Rs. 1 lakh to Surender Surekha. During this meeting, Surender Surekha told him that Madam Jaya Jaitly has agreed to deliver their work. PW28 has further deposed that he met accused Maj. Gen. S.P. Murgai several times thereafter who had taken money from him on most of those instances which were recorded. He has stated that he had made recordings in total 105 cassettes and the total amount of bribe money paid to him was Rs. 11 lakhs approximately. He identified the briefcase Ex.PW20/X to be the same which was used by him for doing most of the recordings during Operation Westend. He further deposed that when he met accused S.P. Murgai on 04.01.2001 at later's residence, he paid Rs. 20,000/- to him as he was not having the entire sum of Rs. 1 lakh with him at that time.



69. When the Hi-8 Tehelka Tape No. 69 (Ex.PW1/K2A) was played in the court during the deposition of this witness, he confirmed that this recording is of Vasant International Hotel Room in which he along with the accused Gopal Pacherwal and accused Maj. Gen. Murgai are present. He identified both of these accused in the video. He also identified their voices as well as his own voice from the audio of this tape.

70. Another Hi-8 Tehelka Tape No. 73 (Ex.PW1/N2) was also played in the court during the deposition of this witness PW28. Upon watching the video, he has stated that it is of the the meeting at the residence of Mr. Geoge Fernandes at Krishna Menon Marg, New Delhi. At 0:02:49 of the video, he states that accused Gopal Pacherwal is appearing and some introduction is being done and thereafter accused Maj. Gen. Murgai and Surender Surekha are seen conversing about money which he was supposed to give to accused Jaya Jaitly. He identified the voices of Surender Surekha, accused Maj. Gen. Murgai and his own voice in the video. After watching the video from 0:07:13 to 0:08:50, he deposed that the money is being folded in the newspaper. He deposed that from 0:08:50 to 0:09:22, Surender Surekha is seen informing accused Jaya Jaitly that there is one foreign company which is electronic manufacturer and now they are willing to enter into Indian defence and wanted her blessings. Thereafter, he identified accused Jaya Jaitly and also recognized her voice from the recording. Upon watching the tape from 0:08:00 to 0:09:15 again, he has deposed that Surender Surekha is talking about Madam Jaya Jaitly and told him that he should mention before her that he wanted her blessings. After seeing the cassette from 0:12:53 to

0:15:16, he has deposed that he is seen offering money i.e. Rs. 2 lakhs to Madam Jaya Jaitly upon which she instructed him to handover the money to accused Gopal Pacherwal and further stated that this money will go to Mr. Srinivas Prasad who hosting a National Convention of Samta Party in Karnataka. He has also deposed that accused Maj. Gen. Murgai is seen explaining to Madam Jaya Jaitly about Western International Fictitious Company and also mentioning about the product they are manufacturing. Upon being questioned as to what kind of blessing he was talking about after handing over the money to accused Gopal Pacherwal, he replied that he was requesting accused Jaya Jaitly for blessings for Westend International for pushing its product further. He deposed that from 0:15:30 to 0:17:27, Madam Jaya Jaitly is seen saying that if any unfair practice is happening then she will intervene. After seeing the recording from 0:17:27 to 0:20:30, he deposed that he is seen mentioning to Madam Jaya Jaitly that the amount he has given about Rs. 2 lakhs. When this portion of recording was again played to the witness at the request of the Ld. Public Prosecutor, he deposed that during this period Madam Jaya Jaitly is mentioning that if any unfair practice is happening then she will intervene. After seeing recording from 0:20:25 to 0:29:00, he deposed that there were talks in between accused Jaya Jaitly, Surekha, accused Maj. Gen. Murgai and accused Gopal Pacherwal about the membership of Habitat Centre etc and he too was sitting there.

71. It appears that the Hi-8 Tehelka Tape No. 69 (Ex.PW1/K2A) was played again on a subsequent date during further deposition of this witness. When the tape was paused at 0:07:00, PW28 deposed

that the room shown in the tape is Hotel Vasant Continental, Vasant Vihar, New Delhi. He identified Surender Surekha on his left side and accused Maj. Gen. Murgai sitting on his opposite side. He stated that the purpose of the meeting was that accused Maj. Gen. Murgai introduced him to Surender Surekha who would further introduce him to Madam Jaya Jaitly for pushing HHIT for Indian Army. After watching the tape from 0:07:00 to 0:08:03, he deposed that accused Maj. Gen. Murgai is seen introducing him to Surender Kumar Surekha as vendor of electronic products based in UK in the name and style of Westend International. When the tape was again played and paused at 0:16:08, witness stated that there is conversation between him, accused Maj. Gen. S.P. Murgai and Surender Kumar Surekha about how to further go for HHTI from the Ministry of Defence and he is seen demanding for a meeting with Madam Jaya Jaitly for materializing the deal. He is also offering advance money of Rs. 3 lakhs to Rs. 5 lakhs and maximum 5 percentage of the deal as commission. When the tape was further played again and paused at 0:26:02, witness deposed that Surender Surekha is himself saying that he wants to see if Madam Jaya Jaitly is going to meet him (PW28) or not and he will give a brief about background of the company M/s Westend International to her. He deposed that accused Maj. Gen. S.P. Murgai is explaining that if he is going to meet accused Jaya Jaitly, he will have to give some gifts to i.e. money and he is asking him how much he is going to pay. The answer of this witness is Rs. 2 lakhs. When the said Tape No. 69 was played again and paused at 0:31:31, PW28 deposed that accused Maj. Gen. S.P. Murgai is explaining about the meeting with accused Jaya Jaitly and contributing to party fund and further saying that they will talk about the evaluation letter from Ministry of Defence

in the second round of meeting. When the tape was again played and paused at 0:43:49, witness deposed that he is telling the accused Maj. Gen. S.P. Murgai that whatever money he is going to pay, is not like throwing away the money upon which accused Maj. Gen. S.P. Murgai replied that he can go with a complete proposal to Madam Jaya Jaitly and tell her that this work is to be done and this much will be paid. After watching the recording further from 0:45:21 to 0:46:33, witness stated that Surender Kumar Surekha is seen offering to do whatever works in any Ministry through the Ministers or the Secretaries anywhere in India and is keen on his share. Upon watching the recording from 0:57:28 to 0:59:41, PW28 deposed that accused Maj. Gen. S.P. Murgai is asking him how much money he will spend for evaluation letter. Upon watching recording further from 0:59:42 to 1:00:23, he stated that he is asking accused Maj. Gen. S.P. Murgai how much he is supposed to pay Madam Jaya Jaitly i.e. Rs. 1 lakh or Rs. 2 lakhs. When the tape was played again and paused at 1:01:15, witness stated that he is saying to accused Maj. Gen. Murgai that if he gets evaluation letter, he will give him Rs. 5 lakhs and he may decide how much to pay and to whom from the same. When the tape was played again and paused at 1:01:38, witness deposed that here accused Maj. Gen. Murgai stated that for getting evaluation letter, we can fix Rs. 5 lakhs. When the tape was played again and paused at 1:01:55, PW28 deposed that here accused Maj. Gen. Murgai stated that we are going to meet accused Jaya Jaitly and we have to give Rs. 2 lakhs to her. He is further asking how much money is he (PW28) going to give to Surender Kumar Surekha. PW28 replied that he will give him (accused Maj. Gen. Murgai) Rs. 1 lakh and then he may decide how much to be given to Surender Kumar Surekha. When the

tape was played again and paused at 1:02:45, witness deposed that here accused Maj. Gen. Murgai is clarifying about the money to be spent for meeting with accused Jaya Jaitly i.e. Rs. 2 lakhs for to her, Rs. 1 lakh to Surender Kumar Surekha and Rs. 1 lakh to him (accused Maj. Gen. Murgai). Accused Maj. Gen. Murgai is seen explaining the same to Mr. Surender Kumar Surekha also in the recording from 1:04:35 to 1:04:22. When the tape was played against and paused at 1:04:35, PW28 deposed that accused Maj. Gen. Murgai is saying that the package for evaluation letter is Rs. 5 lakhs.

72. Another Hi-8 Tehelka Tape No. 70 (Ex.PW1/L2) was also played during further deposition of this witness. According to PW28, he is seen talking with accused Maj. Gen. Murgai who is saying that Surender Kumar Surekha is a powerful person and can do work from Ministry and Rs. 5 lakhs is fixed for evaluation work. Accused Maj. Gen. Murgai is also asking PW28 about the copy of the letter which has been submitted in the Ministry of Defence saying that the rest of the work will be done by him.

73. The Hi-8 Tehelka Tape No. 72 (Ex.PW1/M2) was also played during the deposition of this witness PW28. After viewing the recording till 0:05:12, PW28 has deposed that here he is seen with Surender Kumar Surekha at Maj. Gen. Murgai's residence. He is asking Surender Surekha, if Madam Jaya Jaitly has told anything to which Surender Surekha replied that he got a call from her asking them not to worry about it and she will help them in respect of the product. Surender Surekha is also saying that that Madam Jaya Jaitly will call Defence Minister Office and it will go through Secretary of

Defence/ Additional Secretary of Defence like a chain process but he (PW28) has to hammer everywhere. After watching recording from 0:05:13 to 0:09:07, PW28 has deposed that accused Maj. Gen. S.P. Murgai is explaining that Madam Jaya Jaitly will talk to Defence Minister George Fernandes and then George Fernandes will talk to PS and then PS will talk to the Defence Secretary and then Secretary will talk to the DG about the said product HHTI.

74. After watching recording from 0:22:02 to 0:22:15, PW28 has deposed that in this conversation he is supposed to deliver Rs. 2 lakhs to accused Maj. Gen. Murgai and Surender Kumar Surekha for getting evaluation letter regarding the product HHTI and he is saying that he is unable to arrange Rs. 2 lakhs and can arrange only Rs. 1 lakh for that day. When the tape is played again and paused at 0:24:52, PW28 has deposed that he is seen giving Rs. 1 lakh to Surender Kumar Surekha after taking out the same from his briefcase and keeping the same in a polythene. He is also saying that the money is in the denomination of Rs. 100/- as it was not available in the denomination of Rs. 500/-. he deposed that the money was paid to Surender Kumar Surekha for arranging the meeting with accused Jaya Jaitly. Upon watching the recording further i.e. till 0:27:25, PW28 deposed that he is saying that he could not arrange Rs. 2 lakhs and therefore, he is not giving Rs. 1 lakh to accused Maj. Gen. S.P. Murgai which he would give to him very soon. He has further deposed that after paying money to Surender Surekha, the instant response from Surender Surekha was that he will do the evaluation work from Ministry of Defence. Surender Surekha is also saying that if he (PW28) gives the copy of

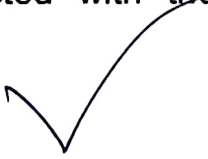
letter which he submitted to Ministry of Defence, he (Surender Surekha) will deliver the evaluation letter within ten days.

75. When another Hi-8 Tehelka Tape No. 74 (Ex.PW1/O2) was played during the deposition of PW28, he deposed that this is the residence of the Mr. George Fernandes where Surender Surekha introduced him to accused Gopal Pacherwal who was a good friend of Madam Jaya Jaitly as well as Surender Kumar Surekha. When the tape was paused at 0:23:04, PW28 has deposed that here accused Gopal Pacherwal is visible and accordingly he identified him. When the tape was paused at 0:26:25, PW28 has deposed that Surender Kumar Surekha asked him to take out the money from briefcase and put it in the "Lifafa". He could not find an envelope and hence Surender Surekha gave him an old newspaper to cover the money. At 0:27:35, PW28 identified his face in the recording and stated that he is covering the money with newspaper. When the tape was played again at 0:29:42, PW28 deposed that Surender Kumar Surekha has given him an envelope and told him that accused Jaya Jaitly would not allow briefcase inside the room where she is sitting and hence he has left the briefcase but the tie camera is on. From the button of the tie camera which was in his pocket and vibrating, he came to know that the said tie camera is working. When the tape was played again and paused at 0:56:12, PW28 has deposed that he came back from the room of Madam Jaya Jaitly. He has stated that Surender Kumar Surekha and accused Gopal Pacherwal are visible in the video and he is requesting accused Maj. Gen. Murgai that he is leaving right now and will return to his home after half an hour. When tape was played again and paused at 0:58:46, PW 28 deposed that Surender Kumar

Surekha is telling him that accused Jaya Jaitly will do everything as she has already accepted the money. Surender Surekha is also saying that he knows how to handle the politicians.

76. Another Hi-8 Tehelka Tape No. 79 (Ex.PW1/P2) was also played during the deposition of this witness PW28. After watching the recording till 0:08:08, he deposed that he has reached the residence of accused Maj. Gen. S.P. Murgai at Vasant Vihar and he has given the copy of the evaluation letter to accused Maj. Gen. S.P. Murgai. When the tape was played again and paused at 0:21:05, witness deposed that he was supposed to give Rs. 1 lakh to accused Maj. Gen. S.P. Murgai and hence, he is saying that he could not arrange the whole money and is asking accused Maj. Gen. S.P. Murgai to take Rs. 20,000/- with assurance that the remaining amount of Rs. 80,000/- will be delivered later. In the recording between 0:21:05 and 0:26:26, PW28 is saying that he can give the balance amount of Rs. 80,000/- + Rs. 5 lakhs for evaluation on coming 7th.

77. PW28 identified the ladies bag Ex.PW24/A to be a spy camera having a pin hole lens. There was a neck tie camera device inside the bag which PW28 identified to the same which he had used when he visited the residence of the then Defence Minister George Fernandes to meet Madam Jaya Jaitly. There was also a recorder of make Sony Hi-8 in the bag. PW28 deposed that he had kept the recorder inside his shirt when he went to the room of Madam Jaya Jaitly and the neck tie camera lens was connected with the said recorder and was working.



78. In cross-examination conducted on behalf of accused Jaya Jaitly, PW28 deposed that he did not put any identifying mark on the tapes or the cassettes used by him during the sting operation either before or after their use. He has not prepared transcription of the tapes himself at any point of time. He denied that it is not recorded in the tape that Surender Surekha told him that the briefcase would not be permitted into the room of Madam Jaya Jaitly and asked him to leave it outside. He deposed that it is inaudible but is definitely there in the tape and he can show it. It appears that in view of the aforesaid reply given by the witness, Hi-8 Tehelka Tape No. 74 was played again during the cross-examination of this witness from 0:20:00 onwards. He was asked to show at which point is Surender Kumar Surekha saying that he (PW28) cannot take briefcase camera inside. PW28 has replied that it not much audible but Surender Kumar Surekha said "briefcase is not allowed inside and taken out the money and then I am asking Surender Surekha whether he has any envelope (Lifafa)". He has deposed that it is from 0:26:17. When the witness was asked to say the exact words used by Surender Kumar Surekha in this regard, he replied that the words were "Peti andar ane ke liye mana hai take out the money." He has deposed that it is from 0:26:13. Thereafter, he asked him "Aapke pas lifafa hai." It has been observed by the Court at this point that PW28 stated these exact words after wearing earphones. In answer to further question put by the Ld. Cross-examinng counsel, PW28 admitted that the word "briefcase" is not used but denied that there is no reference to the words "Money" or "Peti". During further cross-examination, he reiterated that he paid only Rs. 1 lakh to Mr. Surender Surekha and promised to pay Rs. 1 lakh to accused Maj. Gen. S.P. Murgai later.



79. It appears that the Tehelka Tape No. 73 was again played during the cross-examination of PW28 from the beginning till 0:13:55 and it was suggested to him that there was not talk of any work which was to be done either in the Ministry of Defence or otherwise. PW28 replied that there is no reference of Ministry of Defence but immediately recollected that Madam Jaya Jaitly mentioned about the Ministry of Defence and Defence Minister Mr. George Fernandes after the time 0:13:55.

80. Similarly, Tehelka Tape No. 74 was also played again during the cross-examination of this witness and it was suggested to him that there is no conversation at all from 0:22:37 to 0:27:45. Witness denied the same and stated that there is a conversation during this period in the tape which is audible and he can hear it. He reiterated that he can hear that he was told by Surender Surekha that briefcase is not allowed inside. It has been observed by the Court that though the conversation is not completely audible from 0:26:00 till 0:27:45 except at point 0:26:00 to 0:26:26 where one can hear some instruction is being given to the witness which are not clear but it is audible that the person giving instructions has stated that "you take one lifafa." It has also been observed by the Court that at 0:27:45, which is seen in the video that witness is keeping the money in the newspaper. It has further also been observed by the Court that at 0:28:55, it is seen that the witness is taking the money from the newspaper and putting it in a yellow A4 size envelope and the newspaper has fallen down.

81. During further cross-examination, PW28 he stood by his statement in examination-in-chief dated 31.01.2016 to the effect

“accused Jaya Jaitly, accused Maj. Gen. S.P. Murgai, Surender Kumar Surekha and accused Gopal Pacherwal knew each other and they were closely knit.” He explained that since Surender Kumar Surekha arranged meeting with Madam Jaya Jaitly and in that meeting accused Gopal Pacherwal was also present and Madam Jaya Jaitly told him to handover the money to accused Gopal Pacherwal, it is for this reason that he stated as above. He denied the suggestions that as per the contents of the tape, Madam Jaya Jaitly never asked him to handover the money to accused Gopal Pacherwal. In response to the suggestions that he offered for contribution to the party fund before making any reference for any testing or project in Ministry of Defence, PW28 deposed that when he gave the money, he had already a meeting with accused S.P. Murgai and Mr. Surekha and hence all were aware as to why he was giving the money and it was so recorded in the tape.

82. In the cross-examination conducted on behalf of accused Gopal Pacherwal, PW28 denied that there is no video in the Tape No. 73 showing handing over anything to accused Gopal Pacherwal. He admitted that he had not met accused Gopal Pacherwal prior to or after the meeting referred to in his examination-in-chief. He denied that he had never handed over anything to accused Gopal Pacherwal.

83. In the cross-examination conducted on behalf of accused Maj. Gen. S.P. Murgai, PW28 could not recollect the dates when he had given Rs. 1 lakh to the said accused. He admitted that Surender Kumar Surekha had taken the responsibility of getting evaluation letter issued and added that Surender Surekha had stated so in the

presence of accused S.P. Murgai. He admitted that accused S.P. Murgai had told him that no political pressure/influence would be required for the purpose of evaluation. At the same time, he added that accused S.P. Murgai had also stated to him that such political pressure/influence would be required. PW28 explained that accused S.P. Murgai had stated both the facts at different times.

84. A close scrutiny of the testimonies of the PW10 and PW28, noted herein above, would reveal that they have corroborated each other on material aspects of the prosecution case i.e. preliminary discussion between these two witnesses and accused S.P. Murgai where PW10 was introduced to PW28 by accused S.P. Murgai. The help needed by PW28 was deliberated upon and the money part was also discussed which was to be paid by PW28 to accused Jaya Jaitly, accused S.P. Murgai as well as PW10. In the same meeting, PW10 took the responsibility of fixing a meeting between PW28 and accused Jaya Jaitly. They have also given consistent versions with regards to what happened during their meeting with accused Jaya Jaitly on 28.12.2000 at the residence of the then Defence Minister Mr. George Fernandes at Krishna Menon Marg, New Delhi in which accused Gopal Pacherwal was also present and in fact the meeting had been arranged by him only on the asking of PW10. It is in this meeting that PW28 has paid a sum of Rs. 2 lakhs to accused Jaya Jaitly towards party fund and sought her blessings for his company upon which accused Jaya Jaitly assured to intervene whenever needed. The money given by PW28 was not received directly by accused Jaya Jaitly and on her directions, the same was received by accused Gopal

Pacherwal. The faces of all the three accused as well as their voices have been identified by both of these witnesses i.e. PW10 and PW28.

85. However, two things are not clear from the deposition of PW10 and PW28. Firstly, whether the money paid by PW28 to accused Gopal Pacherwal on the directions of accused Jaya Jaitly was wrapped in a newspaper or had been in an envelope. Secondly, when PW10, PW28 and accused S.P. Murgai met at the residence of Mr. Murgai after the meeting with accused Jaya Jaitly, whether PW28 had paid sum of Rs. 1 lakh to PW10 or to accused Maj. Gen. S.P. Murgai. These two aspects of the matter would be dealt with in detail in the later part of the judgment.

86. It has already been noted that both the witness PW10 and PW28 were accomplices to the crime involved in this case. PW 10 being privy to the crime as well as directly involved in it and PW 28 offering bribes to all the concerned persons. Therefore, it would not be safe to rely upon their testimonies alone in giving a finding about the guilt or otherwise of the accused. It is necessary to find whether their ocular version gets corroboration from other evidence brought on record by the prosecution.

87. Apart from the deposition of these two witnesses, the prosecution relies heavily upon the audio/visual recordings contained in the Hi-8 tapes prepared by Tehelka team during the entire Operation Westend. The original tapes are on record and were played extensively during the recording of the testimony of PW10, PW28 and PW29. The witness PW29 was working in the Ministry of Defence as

Personal Secretary to accused Maj. Gen. S.P. Murgai. He has identified the face as well as the voice of accused Maj. Gen. S.P. Murgai, accused Jaya Jaitly and PW10 Mr. Surender Kumar Surekha in the Hi-8 Tapes Tehelka No. 69 (Ex.PW1/K), Tehelka No. 70 (Ex.PW1/N2), Tehelka No. 73 (Ex.PW1/M2) and Tehelka No. 74 (Ex.PW1/O2). Similarly, PW10 and PW28 have identified the audio and visuals of all the three accused at different places in these tapes. The transcripts of the conversation recorded in all these Hi-8 tapes related to this case, also are on record which have been proved by PW1 as Ex.PW1/W1 to PW1/W6. It would be apposite to reproduce hereunder the relevant pages of these transcripts.

Tape No. 69 Ex.PW1/W-1

(This is the recording of the meeting dated 25.12.2000 between PW10, accused S.P. Murgai and PW28 in Room No. 215 Hotel Vasant Continental. Page Nos. 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 24, 25, 26, 27, 37 & 35 are relevant and hence reproduced herein below)

SS: *Battaiye ji mujhe kya karna hai? Aise bhi hota hai. Yeh kya? Mujhe kya karna hai?*

GM: *That's what he has to tell you.*

T: *Now we need a political cover.*

SS: *Political cover? What? What work is there?*

T: *Work is that if the company... two or four companies were short listed....*

SS: *Hmm.*

T: *The final decision will be taken by the Ministry of Defence.*

- SS: *Hmm.*
- T: *That means George...Mr. George Fernandes.*
- SS: *Hmm.*
- T: *So that time. ..the channel to George Fernandes is Mrs. Jaya Jaitly.*
- SS: *Hmm.*
- T: *She will...she's the....briefcase woman.*
- SS: *Hmm.*
- T: *So we want to fix it.*
- SS: *Bataaiye kya kaam hai. What work you want to ask?*
- T: *This is the first work. This is the first work. The use of..... And bureaucrats also, it's not problem. And now the thing is with him....*
- SS: *From there, there will be no problem. I'll take guarantee.*
- T: *Yeah. So, we can give... that normal practice of commission there in the political side.*
- SS: *Hmm.*
- T: *Around three, 3.5 and four. That is what MNCs are paying. Multinational...foreign companies are paying. For beginning. No profit, no loss. I can go to five.*
- GM: *NO. No, you see....*
- SS: *Where is the case? What is the case?*
- GM: *No, no. The point is this, Let's be absolutely very clear.*
- SS: *Hmm.*
- T: *Very open talk.*
-
-
- GM: *At the moment....*



- SS: Hmm.
- GM: ...it is at a stage where...let's understand this.
Tender is yet to be done shortly.
- T: Okay, Now...what now C...Mr. C is saying that,
"Mathew, I can give you guarantee to you. If I
will take your company, naturally I have to give
again evaluation for three-four companies
again."
- GM: Okay.
- T: Okay? "For this moment, if I will go to the
evaluation, the others those who are working in
the same ministry will ask, 'Why you are going
now?'"
- GM: Okay. Fine.
- T: If this point I submitted a application form...that
same application to ministry. He just have to
pass it. Go for their work. Proceed it.
- GM: Hmm.
- T: Then he gave 'go' for it. Evaluation. This is the
stage.
- GM: Okay.
- SS: Now you make an application.
- T: Yeah. We have already submitted.
- SS: You have already submitted? You want to meet
directly or shall I talk to her?
- T: First of all you talk to her. Then I will ring back.
- SS: Hello, haan...abhi....nahin nandu ka phone aa
gaya abhi-abhi Paris se aaya toh voh bhi bol
raha tha ki vahan hotel mein badi problem hai ki
yeh ki voh jitney bhi phone karte hai na to voh
French bolta hai toh aapne logon ki samaj mein

nahin aati hai toh maine us se keh diya ki woh milata rahega parso London gayega, tabiyat theek-theek haan tabiyat bilkul theek hai, haan lakin Doctor Seth se baat nahin ho pai mere ko lagata hai ki yeh log kahin bahaar nikle, Seth ko hotel mai his kahin chod gaye hai, mere ko aisa lagata hai kyonki maine kaha na ki mere doctor Seth se baat karao toh bola bhaiya woh gate par hai, mai bulata hoon, phir maine kaha achcha rakho achcha koi baat nahin hai, anyway aaj sound theek thi uske haan sound theek thi, bus beta hummari ticket abhi confirm nahin hain Praygraj mai waiting list hai, to main abhi vahan Digvijay Singh ke yahan PNR likhaya hain, dheko abhi confirm ho gayege, todi dere main, haan mai bata doonga, bata doonga, theek hai, bus or sub theek hai, narayan-narayan.

GM: I feel in this particular case....Okay? Let me tell you one thing. It is only putting your name. Okay. Fine. After that, the evaluation will take place.

T: Okay.

GM: Evaluation with a users may take one month, two months, five months, six months.....

T: Over two months.

GM: No, no...

SS: Sir, it may take more time also.

GM: You don't know.

GM: Let me tell you. After the evaluation takes place. then... even after evaluations, they may take a decision, they may not take a decision. Where

you stand in evaluations, after that short-listing will be done.

T: Hmm.

GM: That 10 people were there. Out of that three people's equipment has been...

T: Yeah.

GM: ...found okay

T: Haan.

GM: Okay? Now after three has been found, then a request for proposal is sent. .. given to you. All three. And you quote.

T: Yeah.

CJM: Then those technical bids...

T: Hmm... hmm.

GM: ...and finally the order is placed.

T: Yeah.

GM: This whole process may take one year. Two years. Two months, four months. Eight months. Okay. Okay?

T: Hmm.

GM: Now at the moment your anxiety is that your case should go through.

T: Yeah.

GM: Okay.

T: Okay.

GM: If that is the only thing, there are two options.

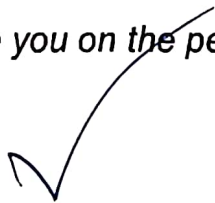
T: Hmm.

GM: One is...you want to meet a person A.

T: Hmm.

GM: Okay? We take you on the person A.

T: Hmm.



GM: *And after that, get out of it.*

T: *Yeah.*

GM: *Okay. You handle it.*

T: *Yeah.*

GM: *The other thing is, at the moment, keep that option with you.*

T: *Hmm.*

GM: *That can be done a little later.*

T: *Hmm.*

SS: *Let concrete work come....*

GM: *Let concrete work come.*

T: *Hmm.*

GM: *This. .. okay? I I can... hmm...one thing. Because I like. I got a good friendship with him. That's why, I told you, I contacted him.*

T: *Hmm.*

GM: *Let's give the responsibility to him.*

T: *Hmm.*

GM: *Fix up the price. He will make sure your work is done.*

T: *No, sir. Before. ..I want to meet Jaya Jaitly.*

SS: *You want to meet Jaya Jaitly? I can do it.*

GM: *You see, because the...*

T: *No. Not in the free hand.... meeting...*

GM: *No, let me tell you one thing. Why it is being done is...*

T: *Hmm.*

GM: *Here, this type of work.*

T: *Hmm.*

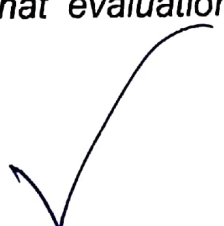
GM: *...what you're talking about...*

T: *Hmm.*

GM: ..this is handled at the bureaucrats level.
T: Okay.
GM: Okay? Let me handle it. Second thing is these bureaucrats do not listen...
T: Hmm. Hmm.
GM: ...to anyone.
T: Hmm.
GM: ...except... .
T: Hmm.
GM: ...there is a link.
T: Okay.
GM: There is a link.
T: Okay,
GM: Okay?
T: Hmm.
GM: Right?
T: Hmm.
GM: He has that link....
T: Hmm.
GM: Who is in a capacity to talk to the...
T: Okay.
GM: ...bureaucrats.
T: Hmm.
GM: That is what I'm saying. I mean think it over.
T: Hmm.
SS: Accordingly to me, you should not meet her now. First I will have to ask her...
T: Yeah.
SS: ...whether she wants to meet you or not.
T: Hmm.

- SS: I will have to tell her what is the work, what is the background. Everything I will tell her.
- T: Okay.
- SS: If she says okay.
- T: Hmm.
- SS: I will like to meet....
- T: Hmm.
- SS: ...then I can...
- T: No, you do the legwork.
- GM: Hmm?
- T: You can go through that channel.
- SS: No Problem.
- T: Or...
- GM: Or one thing more can be done.
- T: Hmm. I
- GM: At the moment... don't tell her the work. Just work at the subject. That there's a party we wanted introduce you.
- T: That's all.
- GM: That's all.
- SS: Par evaluation waali baat kahan pe aevgi? Woh bhi baat kahana hoga use.
- GM: Kaunsi evaluation hai?
- T: Evaluation ka baat karna hai. Sir, that's the...you did not get that word. That is the point.
- T: Hello, haan...haan, achcha dekhna hain, dekhna hain.
- T: You want to talk personally?
- SS: No, nothing-nothing...he just tell.
- GM: Give me five minutes.

- GM: *Usme ek..utna hi ... jo karna ho aap kar dena... total aap batao kitna chahiye.*
- GM: *Usme ek...utna hi... jo karna ho app kar dena....total aap batao kitna chahiye.*
- SS: *Jo aap chaho.*
- GM: *Aisa nahi hai.*
- SS: *Aap uska letter le leejie initial ki copy... Order karvao.*
- GM: *Doosra usko ye kahte hai ki Mathew se milva dete hain....Ye samajh nahi raha dono taraph se kaho.*
- SS: *Jaisa aap kahe.*
- GM: *Nahi, nahi ye baat theek nahi rahegi.*
- SS: *Aap evaluation ke order karva do.*
- GM: *...Hum Aapse milna chahte hain.*
- SS: *Pahle I have to ask her...*
- SS: *Jaya ji ko...Jaya ji ko kaya dege...ye teye kar lijiye.*
- GM: *Bus.*
- SS: *Yehi to check...*
- GM: *Haan yehi to main keh raha hoon abhi itna aadambar karne ki jaroorat nahi hai, ye, ye letter hai...*
- SS: *Theek hai baat kar leejie.*
- GM: *Ye theek hai na?*
- SS: *Haan ji theek hai evaluation aap contract le leejie, hum evaluation ke order karva dete hain...hum introduce kara dete hain...Aap Madam ko kya doge, ye batao. Ye Madam ko pahale batana padega that they are giving so much....*

- GM: *Isse main hamare bhi darshan jo jayenge Madam ke to.*
- SS: *Haan, haan bilkul aap ko to jab chahe tab aapke ghar lekar aajau....*
- SS: *Dosti yari se jyada koi important cheez thodi hai yaar.*
- GM: *Hamare liye...*
- SS: *Main to beech main chala gaya 25 din ke liye.*
- GM: *Hai Matthews!*
- T: *Haan.*
- GM: *See, it is like this. There....the proposal works out like this. He will get you a meeting with Jain.*
- T: *Hmm.*
- GM: *Theek hai? But in that meeting it should be clear how much would you. ...when you go, you will have to give some gift.*
- T: *Yeah.*
- GM: *What he wants. How much would you like to give at first meeting?*
- T: *First meeting I am planning to give that...uh...without...blindly...*
- GM: *Haan. Haan, haan.*
- T: *I have funds for two lakh rupees.*
- GM: *Okay. Okay, okay. Let's see kya hog". Okay, fine.*
- T: *Blindly.*
- GM: *Okay.*
- T: *But that is.... but that evaluation, that is your responsibility.*
- 

- GM: *Nahin, nahin. Hold on, hold on. Nahin, nahin, abhi we're coming to that. You're jumping. Jumping.*
- T: *Yeah. I'm not jumping. Okay. No, I'm in the new generation.*
- GM: *No, no. You see, when you see on TV there is a mediator. You must...*
- GM: *It is like this. Now at the moment we are only saying, the first step , arranging a meeting.*
- T: *Hmm.*
- GM: *In first meetings nothing much is discussed except. ... like this...*
- T: *Evaluation.*
- GM: *No. Like this...*
- T: *Hmm.*
- GM: *An you are meeting for giving for party fund.*
- T: *Hmm.*
- GM: *That is one thing.*
- T: *Hmm.*
- GM: *Secondly, obviously you have to work out...*
- T: *Hmm.*
- GM: *...for him...*
- T: *There is no talks of evaluation?*
- GM: *We're coming to the second part. Evaluation. We're are coming to that.*
- T: *Haan, haan.*
- GM: *We're coming to that*
- T: *Haan.*
- GM: *One is the meeting part.*
- T: *Hmm.*
- GM: *The second one is evaluation.*

T: Hmm.

GM: Evaluation time is short.

T: Hmm.

GM: You have a deal with him. He will get your letter issued for evaluation.

T: Okay.

GM: Matter finished. So there are two separate contracts. At the moment....

T: Hmm.

GM: ...evaluation...

T: Hmm.

GM: ...it is his responsibility. He will get it done.

T: Okay.

GM: His means, I will wherever my contacts, I will help him out.

T: Okay.

GM: Okay? One contract over, you can be at ease. The only thing is when Chaudhary sends the letter, give a copy of it to him.

T: Okay.

GM: And youruh. ...there will be no stoppage of your work from the ministry.

T: Okay.

GM: That contract is over at the moment.

T: Hmm.

GM: For long-term basis. ...

T: Hmm.

GM: ... we also. .. because you're interested...meet you take you. ... arrange a meeting. So that there is two separate. ...

T: Okay.

GM: *...issues. Finished?*

T: *Hmm.*

GM: *Because even if we have to go through Jaya Jaitly. ...*

T: *Hmm.*

GM: *Again, one is meeting. Second is getting the letter issued, which some charges...*

T: *Haan, haan.*

GM: *We don't want to utilize her political clouts at this moment.*

T: *Hmm.*

GM: *It is too small a work. We can handle it.*

T: *Hmm.*

GM: *Happy? Give it a thought.*

T: *.....*

GM: *Give it a thought now or tell me...*

T: *I say everyone to think it that also.*

GM: *Have I put it correctly?*

SS: *Nahin, theek hai.*

T: *Also In this evaluation process, what you are expecting?*

SS: *You just tell me. ..what...what I will expect? You just tell me you know your work better than me. Okay? You just offer. I'll ask the concerned person.*

GM: *That is... you take care. Yaar, dekho...*

SS: *And what will be for the future when the...*

T: *No, this I...this I want to think very freely.*

SS: *Haan.*

GM: *At the moment...at the moment I feel...*

- GM: *So for that, merely having evaluation means nothing. Your equipment may be very good, it may be useless. ...*
- T: *Hmm.*
- GM: *as compared to others.*
- T: *Yeah*
- GM: *It's long way off to cash on the assurance given to you by the users. First get your equipment evaluated. For that, let us say now, putting it bluntly, you meet, let us say, Jaya Jaitly.*
- T: *Hmm.*
- GM: *Good. He will arrange it for you very happily.*
- T: *Hmm.*
- GM: *Again, now you want to get the work done. So you will again go to her.*
- T: *Hmm.*
- GM: *...and explain, "This is this, this is this, this is this, this is this."*
- T: *Hmm.*
- GM: *She....she....she will take time to understand.*
- T: *Hmm.*
- GM: *She's not a contractor.*
- T: *Hmm.*
- GM: *She will put a word once again to someone else....*
- T: *Hmm.*
- GM: *Some bureaucrats she will speak....*
- T: *Hmm.*
- GM: *She's not the minister herself.*
- T: *yeah, yeah.*

GM: *Defence Minister is not going to speak on your behalf.*

T: *Yeah.*

GM: *Don't ever think that he will speak on your behalf. She will talk at some higher level.*

T: *Hmm. Hmm.*

GM: *Okay?*

T: *Hmm.*

GM: *Do this.*

T: *Hmm.*

GM: *Now because he is dealing with the defence matters as a industrialist, he is not a liaison officer.*

T: *Okay, okay. That I understand.*

GM: *So he may be having contacts with the same person.*

T: *Hmm.*

GM: *maybe secretary.*

T: *Hmm.*

GM: *So he's got the confidence. So I'll speak to him. "Yaar, do this." Obviously if he's going to utilize his contacts.*

T: *Hmm. Hmm. Haan.*

GM: *So he would need something himself, na?*

T: *Okay, okay, okay.*

GM: *That...that ...now all this that you are trying to establish the contact, it is your choice. Please do it, you are the best judge. But please remember one thing.*

T: *Hmm.*



GM: *Within next two, three to four months, the complete scenario is changing. The very people whom you have talked...*

GM: *...they are getting out, including this chap.*

T: *Yeah, yeah.*

GM: *He's getting out. Okay? Let me tell you now.*

T: *Hmm.*

GM: *He is on the way out.*

SS: *Sir, ek baat aur bhi hai..*

GM: *Iska agar try nahin...*

SS: *Hmm...khatam ho gaya...*

GM: *...khatam ho gaya...*

SS: *Theek hai. Agar nahin milega kaam, toh nahin payment hoyega... Woh toh jub kaam milega, tab hi payment hoga...*

T: *Haan, that is such a simple thing, sir!*

GM: *Haan, theek hai.*

SS: *Hai ki nahin?*

GM: *Haan, thee hai.*

SS: *.....*

T: *Kaam hoyega toh hoga. Otherwise. ...*

SS: *Otherwise what he's giving is gift. ..gift is gift!*

GM: *Bas, theek hai.*

SS: *It's gone!*

T: *That's all it's so simple. That's what I told you. ..that's a bribe!*

GM: *So, wohi toh bol raha hoon...*

T: *Hmm.*

GM: *...ki abhi...*

T: *Hmm.... Chance...that is...*

GM: *Hmm.*

- T: *...if we pay to ...there's a channel through you and and I. We can approach some other material also through to you too same.*
- GM: *Ab bolo kaise baat...*
- SS: *Mere hisaab se, evaluation ka letter jo unhon ne diya hai...*
- GM: *Hmm.*
- SS: *...uski copy muje dila deejeye. Mein kissi se bhi order karva loonga ussi time.*
- GM: *Finished!*
- T: *Hmm.*
- GM: *Tumhari evaluation ki...yeh karva denge.*
- T: *Hmm.*
- SS: *Woh mein karva doonga.*
- T: *Hmm.*
- SS: *Second Jaya-ji se introduction karva doonga.*
- T: *Hmm.*
- SS: *....aur Jaya-ji ke pass lejakar ke...aap apna poora ek brief bana deejeye.*
- T: *Okay.*
- SS: *...what items you want to give. ...*
- T: *Okay.*
- SS: *...what is the expected turnover...*
- T: *Hmm.*
- SS: *...and you are what. ...Everything like that.*
- T: *Okay.*
- SS: *...and just tell her this much we will be giving. Yeh sab bana ke karva doogna...*
- T: *Okay. That's all?*
- SS: *That's all.*
- GM: *Wohi toh baat hai, na, That's what he is saying.*

- SS: *What will be my interest.*
- T: *Hmm. Yes.*
- GM: *Haan. bilkul theek baat hai...*
- SS: *My simple question is.... I will introduce you....*
- GM: *Nahin, naturally.*
- SS: *you talk her directly.*
- T: *Hmm.*
- SS: *...what percentage you will give, what you will give....Everything you talk her.*
- T: *Haan.*
- SS: *I will...tell her everything. She will listen you. She will say yes.*
- T: *Hmm.*
- SS: *What will be my interest?*
- T: *Tell me.*
- SS: *No. ..I don't want you give me something so that I do this introduction and. ..*
- T: *No, no, na, na, na...*
- SS: *I want something permanently something.*
- T: *Yeah.*
- SS: *Kyon, sir? Boliye?*
- GM: *Theek hai.*
- SS: *Permanently something So that we can look after your work.*
- T: *Yeah.*
- SS: *And anywhere in the Defence Ministry or any ministry.*
- T: *We can... we can...*
- SS: *...any ministry in India. Any ministry in India...*
- T: *We can work out.*

SS: *You give me the job. This you want, I will give you. Some permanent understanding in black-and-white.*

T: *Okay, we can go MOU.*

SS: *Kyon, sir?*

GM: *Theek hai.*

T: *Seven...seven percentage.*

SS: *And. ...and wherever you want to go, I will take you in just....Abhi, if you want to go anywhere, I will take you now.*

T: *Okay.*

SS: *There is MOU between us also.*

T: *You know, I need this political clout. I've not yet touched it. You know this is I need.*

GM: *Look up till now tell me one thing.*

GM: *Same thing with Jaya (Jaitly). na. With Jaya, at the moment, you can have no understanding.*

T: *Hmm.*

GM: *Only you wait and put your foot hold.*

T: *Okay, okay.*

GM: *Mil liya na?*

T: *Hmm.*

GM: *That's right. Now if she is willing to do it, at the moment there is no other contract.*

T: *Hmm.*

GM: *If you're willing to spend...*

T: *.....*

GM: *You tell me.*

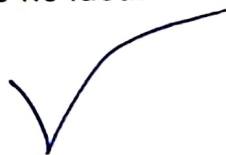
T: *...*

GM: *No, no, how much can you give to him.*

T: *For evaluation this thing?*



- GM: *For evaluation. Okay?*
- T: *Hmm.*
- GM: *And for meeting Jaya. That's all.*
- T: *Hmm.*
- GM: *Because, look, I am. ...*
- T: *Sir, you know...evaluation...you know, that is only in the air.*
- GM: *which one?*
- T: *Evaluation. Kar ke dega, bola.*
- GM: *Kaun?*
- GM: *Kar ke dega, na. Kar ke dega na toh payment hoga. Usse pehle payment nahin hoga. Payment tab hi toh hoga.*
- T: *Hmm.*
- GM: *How much do you think will be all right?*
- T: *Jaya ko do dena hai k eek dena hai?*
- GM: *Yaar, dekho. I was right from the beginning saying don't meet Jaya right now.*
- T: *Sir, but we want to meet.*
- GM: *Okay you meet. So when you're going to a politician, at least you'll have to prove to her.*
- T: *Sir, we can release one. One we can give to him.*
- GM: *It may look...*
- T: *That is not only for the meeting of Jaya. That is the advance of the evaluation also.*
- GM: *No, no. Total how much will you give for evaluation?*
- T: *Tell me, sir. I have no idea.*



- GM: No, no. I don't know these things. Actually, frankly speaking, I have just started talking to you. I don't know myself.
- T: If the evaluation process pay.
- GM: Let us say...
- T:the letter will come. I will give you five lakh to you and. Apne think karo, usko kitna dena hai. You have to think it.
- GM: Okay, let us say.
- T: You can take one or two from your side and give two-three lakhs.
- GM: Okay. First class.
- T: Okay? That is, sir that is with you.
- GM: Okay, okay.
- T: Very clear.
- GM: Okay, fine. So evaluation is five lakhs. Okay?
- T: Hmm. Five lakhs.
- GM: Fixed?
- T: Hmm.
- GM: I will discuss with him on the way. Right? Now let's come to Jaya. Jaya will be meeting like this. Two you are giving. How much will you give it to him?
- T: I will give one to you. You can give....
- GM: I think...uh....it is like this. It is a initial meeting. We want to
- T: Sir, I told you that day. Sir, if you have arrange a meeting with Jaya Jaitly, I will give one to your hand. I can give one lakhs to your hand. He can get on with that work.
- GM: Aisse karte hain, Matthews.

- T: *That is only a meeting, sir. That is nothing else.*
- GM: *Nahin. Agreed. But at the moment some way we can handle it.*
- T: *Hmm.*
- GM: *We will give one to him, one to me and two to her. Okay? Right? Finished? And five this one. I'll talk to him how do we distribute. I'll talk to him. Okay.*
- T: *But Jaya...Jaya's meeting will be fruitful?*
- GM: *Fruitful.*
- T: *That is not like a hanky-panky like that.*
- GM: *No, no. Naturally it's Fruitful. Okay That we'll talk it.*
- T: *Okay.*
- GM: *And... this one...and...uh....because I'll be frank with him how much you're giving. I don't want to hide.*
- T: *Okay.*
- GM: *Aaye ji, aaye.*
- T: *Come.*
- SS: *.....*
- GM: *Aaoji aao, bus paanch minute, kitne baje ki gaadi hai appke.*
- GM: *Aise hai. Two distinct bana diye hain. This...as far as Jaya is concerned...what he wants is a proper meeting and explain his case.*
- T: *Not like hanky-panky. I want to explain.*
- GM: *Usme do de denge Jaya ko. Initially. And one for you and one for me.*
- T: *And evaluation. ..*

- GM: Evaluation total package is five. We'll discuss on the mein apko neeche baataonga... Total package is five. Okay?
- T: Then you can arrange the meeting, sir.
- SS: I will ask her today.
- T: Okay. You have my number?
- SS: Haan.
- T: Make it in a hotel. That is good I don't want to come here if you're not coming.
- GM: He's got a house in NOIDA.
- T: She will come there?
- SS: Either at my house or George Fernanades' house.
- T: That official house?
- SS: Official house. She will meet you just alone only. Nobody else will be there. You can talk as much as you want..
- T: You...

(emphasis supplied)

(T is used for Tehlka person i. e. PW28 Mathew Samuel, SS is used for Surender Surekha and GM is used for General Murghai)

88. The above transcript reveals that PW28, PW10 and accused General Murgai were not discussing about the game of cricket or Bollywood movies or any geographical / historical / political event. It is limpid from the above conversation that PW 28 is informing them that he has submitted application to Ministry of Defence for evaluation of the product of his company and accordingly wants to meet Jaya Jaitly

as, according to him, she is the channel to George Fernandes and he is prepared to give Rs. 3.5 to Rs. 4 lakhs as commission. PW10 is telling PW28 that he should not meet her directly and first he (PW10) would talk to him in this regard and brief her about the work etc. Accused Murgai is telling PW28 not to tell her about the work but PW28 is insisting that "evaluation" has to be discussed with her. Thereafter, PW10 is telling accused Murgai that he would get the evaluation order issued and is further asking him to take the contract of evaluation. PW10 is also asking to fix the amount to be paid to Madam Jaya Jaitly as he will have to tell her in advance. Accused S.P. Murgai is explaining that there are two contracts; one for the meeting with Jaya Jaitly and other for evaluation. PW10 is then asking for a copy of evaluation letter and assures that he can get the order passed from anybody. He is further telling PW28 that he will introduce him to Jaya Jaitly and he (PW28) should talk to her directly about everything including the percentage he would give. In return, PW10 is asking PW28 to give him a permanent job so that he can do their any kind of work in Ministry of Defence or any other Ministry. PW28 is offering seven percentage which seems to be agreeable to PW10 and accused Murgai. After further discussion, it is finalized that PW28 will give Rs. 2 lakhs to Jaya Jaitly, Rs. 1 lakh to accused accused Murgai and Rs. 1 lakh to PW10. The total package for evaluation is fixed Rs. 5 lakhs. Evidently, these amounts to be paid by PW 28 were as bribe only and nothing else. Further there was an agreement to do something by illegal means (by giving/taking bribe and by exerting personal influence upon the concerned officials in the ministry of Defence.) PW28 is insisting upon a meeting with Jaya Jaitly as, according to him, she is channel to then Union Defence Minister

George Fernandes and could exercise personal influence to upon him for getting the work done in the Ministry.

89. The recording of the meeting between PW10, PW28, accused Murgai, accused Gopal Pacherwal and accused Jaya Jaitly that took place on 28.12.2000 at the official residence of the then Defence Minister George Fernandes is contained in Hi-8 Tape No. 73 Ex.PW1/M2 and the transcript of the conversation recorded in the said tape is Ex.PW1/W4. Page No. 1 of the transcript which relates to the conversation between PW10 and Mr. Mathew Samuel regarding the money is important and same is reproduced as under:-

Transcript of Tape 73

Place: George Fernandes' house, Date: 28.12.2000

Sureka: Jai Ram ji ki Gopal ji. Yeah hummare bhai saheb hain maine bataya tha.

T: Mathew

Sureka: Jai ram ji ki kaise ho... aap baitho. We are just coming.

T: Okay.

Sureka: Paisa kiss mein hai?

T: Packet... that money's in the briefcase.

Sureka: That you give to me because I'm handling that matter.

T: Okay, okay.

T: Nahin, I will take, I will take....

Sureka:

T: You take one lifafa.

Sureka: Okay, you just give it.

Sureka: Coffee or kuch peeyenge, juice?
T: No, thanks.
Sureka: Just cover it.
T: No, I will cover it. Just paid it.
Sureka: I'm going to say... ..
T: Hain?
Sureka: What I've told he is that...

(emphasis supplied)

(T is used for Tehlka person i. e. PW28 Mathew Samuel and Surekha is used for Surender Surekha .)

90. In this conversation, PW10 has introduced PW28 to accused Gopal Pacherwal and is checking from PW28 as to whether he has brought the money and then is asking him to cover the same.

91. The portion of the transcript relating to the point of time when PW28 Mathew Samuel is offering the money to accused Jaya Jaitly is at Page No. 4 and is reproduced hereunder:-

T: Now I'm based in Delhi.
Sureka: Delhi...
JJ: Accha, accha.
JJ: Toh aap kya Delhi mein aate rahenge aise?
Sureka: Main to Delhi mein rehta hoon aise bhi. Mein to ghar le liya abhi NOIDA ke andar.
JJ: Mohinder, zara bol deinge chai lane ke liye?
Murgai: Hamare sahab peeyenge.

- Murgai: *Mein inko bahut dino se bata raha tha, Maine kaha, "Aap abhi specialist honge textiles mein, ab thoda diversify keejiye electronics mein."*
- Murgai: *My specialization is in electronics and...*
- JJ: *Electronics mein scope hai, textiles mein pata nahin kay hogea.*
- Murgai: *Mein bahut dino se bata raha hoon inko... ki electronics mein bahut jaada scope hai. But I'm not advising youngsters to go for venture capital. It is a fantasy. And this is a bubble....*
- JJ: *Hmm. Till now, luckily I don't think too many people have become.... too enamored by that. Abhi tak to IT mein sab log hain.*
- T: *Yeah. People are interested in it.*
- Murgai: *I'm talking venture capital in IT only.*
- JJ: *Hmm.*
- Murgai: *See, those people who have made lot of money in....*
- T: *Can I... can I give it to madam?*
- T: *Yeadplease thank you.*
- Murgai: *This company...*
- JJ: *Please send this to our minister... Mr. Srinivas Prasad.*
- T: *Yeah?*
- JJ: *He is the... hosting the National Council....*
(emphasis supplied)

(T is used for Tehlka person i. e. PW28 Mathew Samuel and JJ is used for Jaya Jaitly)

92. The conversation clearly depicts that when PW28 offered to give money to Madam Jaya Jaitly, she is heard saying the 'please send this to our minister.....Mr. Srinivas Prasad who his hosting the National Council...' There is is no reference to accused Gopal Pacherwal. However, PW28 has very clearly deposed in his examination in chief that between 0:12:53 and 0:15:16 of the recording in the tape, he is seen offering Rs. 2 lakhs to Madam Jaya Jaitly upon which she instructed him to handover the same to Gopal Pacherwal and accordingly he handed over the said money to accused Gopal Pacherwal. There is no material cross-examination of PW28 on this portion of his testimony either on behalf of accused Jaya Jaitly or on behalf of accused Gopal Pacherwal. He has denied the suggestions put to him in this regard.

93. What kind of help was sought from accused Jaya Jaitly and what she assured is at Page No. 5, 6, 7, 8 and 9 of the transcript which also need to be reproduced hereunder:-

T: Okay, okay, okay, Okay.

JJ: We have two days where about five to eight hundred people will be going.

T: Okay, okay, okay.

JJ: The National Council elects the national president....

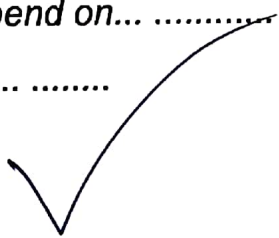
T: Okay.


JJ: That is a once in two-years affair.

T: Okay.

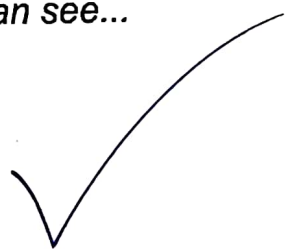
JJ: And a new executive... the whole internal elections of the party finishes and democratically a new president is elected.

- T: Okay, okay, okay.
- JJ: So that process...
- JJ: ...We need some help because I can give 50 per cent of the expense, you do the rest.
- JJ: So the rest... whatever contribution....
- T: Yeah, yeah....
- JJ: ...We can manage.
- T: We need your blessing and We need your blessing also for this.... our company.
- Murgai: This company is making quality products...
- Murgai: And now they are going in a big way for commercial selling, and also make a mark in defence.
- JJ: Hmm.
- Murgai: That is what they're doing. And they are making these night vision binoculars, cameras...
- JJ: Probably as far as I know because I don't know much about these things. But you all have to... whenever some new entry enters into the field, they have to test the things.
- Murgai: That 's right.
- JJ: ... and like that.
- Murgai: So for that testing, a request has been made....
- JJ: Hmm.
- Murgai: That we would like to get... and... all items should be tested. Generally what happens is that now our requests keep on coming. So that we want that at least... ours being a proper company....
- JJ: Eventually they go on quality.
- Sureka: Quality...

- JJ: ... and price.
- Murgai: That's right. But initially we have to short-list.
- JJ: Hmm.
- Murgai: So lot of people would be applying...and in this....this is also another company. Because it's a continuous process. Like, one or two companies would be already established....
- T: Sir, two companies is already established. One is CSF Thompson France. Another one is Elope. Israel. Already that Gen Chaudhary....
- JJ: Hmm.
- T: He is man of....
- JJ: This is Indian? Indian company?
- Murgai: Don't take the name.
- T: No. Yeah, yeah Okay, okay. This is no Indian, this is UK-based.
- Sureka: UK based.
- Murgai: So these products now they are taking in for evaluation. So once they have evaluated, then they will short-list. An after that... then they will demo it.
- Murgai: It's a long process. At the moment, the initial step is there. That the products, we give it for price... And the quality assurance department, the users, they will test it, and find out. They should... basically they should be satisfied. Then that's the second step....
- JJ: That will depend on... ..
- Sureka: What is the.... ..
- 

- JJ: ...If there's any way...if they refusing to test it, that's... then we can get into the picture. In normal course, they would be...
- Sureka: They should be...
- JJ: If they are impressed with either the price or the look or whatever, there has to be something, which would attract their attention...
- T: Yeah.
- JJ:towards it.
- Murgai: So somewhere the....if they don't, then probably you can help me, if they require...
- JJ: Yeah.
- Murgai: ...to test the equipment.
- JJ: Yeah, because if they don't, we can always say, "Look you mustn't treat anybody unfairly. Give everybody a chance."
- T: Yeah, yeah, yeah.
- Murgai: Yeah, that's right. That's right.
- Sureka: Where is the justice? Here is the only justice.
- T: Yeah, yeah.
- Sureka: I have seen justice is done.... ..
- JJ: Because if we...if we try to favour anybody, particularly, specially when we don't know a things, then we maybe doing injustice to somebody else....
- T: Yeah.
- JJ: But if we say, "Look, don't do injustice to anybody...."And if somebody is being unfairly treated, not being called....
- T: Okay.
- 

- JJ: ...somebody else is being favoured and you're not even being asked....
- T: Okay.
- JJ: ...then we'll say, "Look...you please do... because then there's...it's in our interest...."
- T: Okay.
- JJ: ...it's is national interest to consider al."
- T: Okay.
- JJ: You then take the best, which is at the best price.
- Sureka: Okay.
- JJ: So if any...that whole thing is going wrong, then we can step in.
- T: No, we need that. Ma'am, at this stage we need that. Two companies, they...they are not allowing the third company to the picture.
- Murgai: That's right.
- JJ: No, why should they not?
- Murgai: First...
- Sureka: Just apply. Just see whether they do or not then we will see...
- Murgai: Point is, first...
- T: Yeah.
- JJ: First you'd be... you'd be applying. Then you'll naturally grab the opportunity to ask them now I have applied. Are you going to respond to me at all or not.
- Sureka: After that... can see...
- Murgai: That's right.



- JJ: *If they say, "No, no", "we can't", "we don't know", "we will let you know" and they don't sound very convincing, then we'll see.*
- Sureka: *Then we'll see.*
- JJ: *But otherwise...After all when somebody applies, they can't just say, "We'll see." You know....*
- T: *Yeah, yeah, yeah.*
- JJ: *If they say, "Yes, certainly we'll consider your thing and get back to you by such and such a time...."*
- T: *Okay.*
- JJ: *If they do that, I really don't know how they function at all.*
- Sureka: *First you have to apply, then you have to wait for the response....*
- T: *That already...that process is over right now.*
- Murgai: *You will have to get the response.*
- Sureka: *Then I will... in case....*
- JJ: *Give them a little reasonable time ou can check with them and say... send them a reminder. And then if they don't, we can ask.*
- T: *Okay.*
- Murgai: *you see, sometimes as madam has very rightly brought out...things are moving in right direction....*
- T: *Okay.*
- Murgai: *Okay? And if you try to put the pressure.....
..... So.....*
- JJ: *And also, you know what it is. I have no... I will not have any direct this thing. I would only request Sahib's office that somebody is not*

being considered even. So please send a word down that if anybody is fairly offering a good quality thing at a good price, they should also be considered.

- T: Okay .
- JJ: Now...then what happens, we don't want anybody to feel that any anybody has extra interest.
- Murgai: That's true.
- JJ: Because we don't have any extra interest in anybody. We have extra interest in good quality and good price.
- Murgai: That's right.
- JJ: In the interest of the nation. So that we'll ensure that they don't neglect you.
- T: Okay.
- JJ: After that, it's up to you and your product.
- T: That's...that's all...that's....that's all we're expecting. That's all. That's all.
- Murgai: That's the main thing.
- Surekha: So.... let's go.
- T: That's two lakhs....do.
- Surekha: Thank you very much.
- Gopal: Chai bola tha.

(emphasis supplied)

(T is used for Tehlka person i. e. PW28 Mathew Samuel , JJ is used for Jaya Jaitly, Surekha is used for Surender Surekha and Murgai is used for General S. P. Murgai.)

94. From the above conversation between accused Jaya Jaitly and PW28, it is amply clear that she has assured PW28 that in case the product of his company is not considered for evaluation, she would intervene by speaking to Sahib (purportedly the Minister George Fernandes). Manifestly she has accepted the sum of Rs. 2 lakhs from PW28 as gratification to help his company in getting evaluation letter for their product, by using her personal influence upon the " Sahib ". She is very clearly seen and heard assuring PW28 that in case the product of his company is not considered, she would intervene. Who was she to intervene and why? She was not a public servant and had no direct concern with Defence Ministry or Indian Army. It is evident that she had received the sum of Rs. 2 lakhs as bribe from PW28 for exercising her personal influence upon the then Union Defence Minister to favour the product of the company of PW28. The fact that she had held the said meeting at the official residence of Sh. George Fernandes indicates that she was very close to him and hence she did not blink an eye even before assuring PW28 of requisite help. Since all this was happening before the eyes of accused Gopal Pacherwal, as he was present in the meeting, he knew the purpose for which money was offered and thus received the sum of Rs. 2 lakhs from PW28 on the directions of accused Jaya Jaitly knowing fully well that it was bribe money.

95. The recording of the meeting between PW10, accused Maj. Gen. S.P. Murgai and Mr. Mathew Samuel in the house of the accused Maj. Gen. S.P. Murgai after coming out from the meeting with accused Jaya Jaitly is in Tape No. 72 Ex.PW1/M2. The transcript of the recording contained in the said tape is Ex.PW1/W3. The relevant of the transcript recording to the point of time when Mr. Mathew is

offering Rs. 1 lakh to Sh. Surender Kumar Surekha is at Page No. 9 and the same is reproduced hereunder:-

- T: *Even if I told you that I birthday..... he is not able to face or can I give one and on 30th two.*
- X: *I have no problem.*
- S: *OK, ok.*
- T: *This is one lakh, count it that*
- S: *No it is ok.*
- T: *I am sorry that I couldn't able to train that cheeh baje ayega bola, so I waited their, so you know that Krishna Saini we are there, I couldn't ale to wire transfer the money. I don't know that how, aap lifafa mein dene ko bola that na phir kyon briefcase andar anne keliye mana kiya.*
- X: *because of the security reasons, and camera and video*
- T: *camera bhi hai iske andar*
- X: *WE have to be very, very alert otherwise.....could be taken*
- S: *Tum thoda apna organise karo.*
- X: *You should alway keep a packet in a packet, don't use the briefcase, this will impress others.*
- S: *When you give sweet to somebody you pack it and.....*
- T: *500 ka nahin mila, 100 ka mi/a one lakh*
(emphasis supplied)

(T is used for Tehlka person i. e. PW28 Mathew Samuel , X is used for General Murgai and S is used for Surender Surekha.)

96. This transcript reveals that PW28 had handed over the sum of Rs. 1 lakh to PW10 Surender Surekha. He is even asking PW10 to count it who say's 'it is OK'.

97. The recording of a subsequent meeting between PW28 and accused Murgai on 4th January, 2001 is in Tape No. 79, transcript of which is Ex.PW1/W6. Relevant portion of the transcript is reproduced hereunder:-

T: Sir, now I have twenty na, twenty thousand.

Murgai: Say again.

T: No that. ..the pending balance also, rest of eight thousand I have to give.

Murgai: Which one?

T: I have to give one lakh.

Murgai: Haan.

T: This is twenty, eighty thousand pending there. Money is not getting, the reason is they are asking letters and everything, my principals.

Murgai: You see, let me tell you one thing. ..

T: Hmmm, sir, all Suriner knows. ..I am telling that very clearly.

Murgai: I know, I understand that. ..your principle are asking for letters.

T- Hmmm.

Murgai: At the moment you are dealing with big officials, ever one wants to do the job quite, people don't want to do the job in public. Now, you may be passing the deal.

T: No, I am not passing the deal, in front of you Surinder Singh asked this kind of things. ..

- Murgai: No, no. ...*
- T: No, no, not passing the deal, but he want to know hai na, what kind. ..*
- Murgai: You will passing the names of the principles.*
- T: Exactly.*
- Murgai: Now, question sometimes if it is a company, scandal okay you will be involved, in that because you are the main, because. ...*
- T: Don't tell this.*
- Murgai: You know Matthew the point is you arrange a car, so many people will be, you know, you are not understanding, I am again trying to say that anything that is there like who is the king, you are the king. See, I am only trying to say if, ..that is all I am trying to tell you because company has all the details. ..so and so, you are keeping that diary.*
- T: No I am not keeping that diary, I am very clever, for that page. I will sir definitely made my way, ok that same day I will delete it.*
- Murgai: But they will have the information.*
- T: That is not possible to collect this kind of information, from the they also know it is very sensitive case. Otherwise their company. ..our company will also be blacklisted. It is not the one side, if anything will happen. ..*
- Murgai: I don't know, I mean.*
- T: Sir, talk about this evaluation thing, then we can. ..we can make it.*
- Murgai: He is expected on 7th.*

T: *Sir, 7th morning he will give you the letter. 11 'O' clock I will transfer the money, no, not within the meeting. I don't have his number also, telephone number, you know sir this kind of things I am not keeping his telephone number.*

(emphasis supplied)

(T is used for Tehlka person i. e. PW28 Mathew Samuel and Murgai is used for General Murghai.)

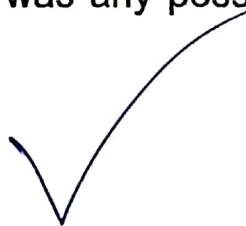
98. From the conversation it is clear that in this meeting PW28 has handed over a sum of Rs. 20,000/- to accused S.P. Murgai and assures him that balance of Rs. 80,000/- will be transferred to him on 7th.

99. Undoubtedly, the above transcripts of the conversations between the accused, PW10 and PW28 during the various meeting are consistent with the deposition of PW10, PW28 and also corroborate their ocular versions. Hence, eye witness account of these meetings given by PW10 and PW28 in their deposition before this Court is in conformity with the electronic evidence on record in the shape of Hi-8 Tapes Ex.PW1/K2, Ex.PW1/L2, Ex.PW1/M2, Ex.PW1/N2, Ex.PW1/O2, Ex.PW1/P2 and Ex.PW1/Q1, the transcripts of which are Ex.PW1/W1 to Ex.PW1/W6. There is, thus, no reason to disbelieve either the testimonies of PW10 and PW28 or the contents of the aforesaid Hi-8 tapes. It may be reiterated here that these tapes were played in the court during the course of the deposition of both these two witnesses PW10 and PW28 and they not only identified the

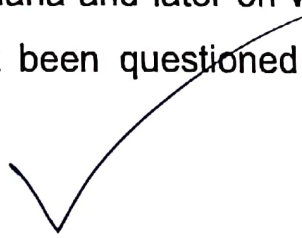
voice/visuals of the accused therein but also explained step by step as to what had happened in these meetings.

100. It was vehemently argued on behalf of the accused that these Hi-8 tapes or their contents should not be considered at all for the reason that those had been kept in unsealed condition by the Tehelka team and also by the official of the Government Appointed Commission till those were seized by PW31 in this case and therefore, the possibility of their being tempered with or doctored to suit the story fabricated by Tehelka team cannot be ruled out. The submissions of the Ld. Defence counsels on this aspects do not appear to have any force. PW14 has deposed that all the original tapes were kept in the custody of PW24 initially and later on in the Grindlays Bank Locker at Malcha Marg. He has further deposed that subsequently all the 105 original tapes were handed over to Justice Venkataswamy Commission. He has not been cross-examined at all in this regard on behalf of the accused. Even no suggestion was put to him.

101. PW24 has further deposed that the original tapes were always in his safe custody in a safe in his office and their copies as well as their transcripts were prepared under his supervision. He has further deposed that subsequently those tapes were deposited with Justice Venkataswamy Commission of Enquiry. He too has not been cross-examined on the aspect of his custody of tapes and even no suggestion put to him that there was any possibility of tempering with or doctoring of the tapes.



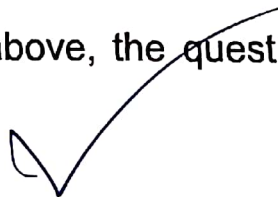
102. PW1 was posted as Secretary to the Commission of Enquiry constituted by the Government of India to probe the tapes prepared by Tehelka.Com during 'Operation Westend' and later on he was appointed as Designated officer to facilitate transfer of these tapes and other documents lying with the Commission to CBI. He had handed over the tapes alongwith their transcripts to the investigating officer (PW31) in this case vide memo Ex.PW1/J. During the course of his deposition before this Court, he has identified the original tapes related to this case as well as VHS copies thereof. He has also identified the transcripts of these tapes which had been seized vide memo Ex.PW1/H. He has also proved the certificates certifying the correctness of these transcripts as Ex. X1 to Ex. X4. He has not been questioned regarding the safe custody of the tapes or the correctness of the transcripts at all on behalf of accused Jaya Jaitly and accused Gopal Pacherwal. In the cross-examination conducted on behalf of accused S.P. Murgai, he deposed that the transcripts were got prepared from the Ministry of Defence, Union of India and are captioned as "Revised" for the reason that the transcripts had already been prepared by the Tehelka people also. He deposed that the certificates of authenticity of the transcripts were also submitted by the Ministry of Defence. No suggestion has been given to him that the tapes have been tampered with or the transcripts were not authentic/correct. PW31 has deposed that after seizure of these tapes, he deposited those in the Malkhana and later on were sent to APFSL for expert opinion. He has not been questioned any further in this regard.



103. Thus, the genuineness or the authenticity of these Hi-8 tapes as well as their transcripts was never disputed by the accused at any point of time during the course of trial of this case. No effort has been made on behalf of the accused to elicit anything during the cross examination of above witness as well as PW10 and PW28 which may suggest that these Hi-8 tapes had not been kept in proper/safe custody or that those had been tampered with or doctored. The manner in which PW28 has explained the audio/visuals of these tapes during his examination in chief and cross examination does not give even a slightest impression that the tapes were doctored. Ld. Defence counsels have failed to point out any place in these recordings which had not actually taken place and had been added/altered by editing. On the other hand, the chain of custody of these Hi-8 tapes appears to be complete without leaving any scope for there being tampered with or doctored. The transcripts of these tapes are supported by certificates of the authenticity issued by the Ministry of Defence which also indicates that these transcripts are correct as per the conversation contained in these tapes. There is nothing in his cross-examination to show that the audio/video contained in these Hi-8 tapes was not genuine or contents thereof had been doctored.

104. The Andhra Forensic Science Laboratory to which these tapes had been sent for examination, also has stated in its report Ex.PW27/A that there is no morphing or editing in these tapes.

105. In view of the nature of evidence on record on this aspect, as noted and discussed herein above, the question of these Hi-8 tapes



being morphed or edited does not arise at all. The contentions of the Ld. Defence counsels, thus, merit rejection.

106. Ld. Counsel for accused Jaya Jaitly pointed out that the evidence on record at some places shows that PW28 had carried the money into the room of Jaya Jaitly wrapped in a newspaper and at some places shows that he had carried the money in an envelope. She argued that in view of these material contradictions, it becomes doubtful whether any money had been carried by PW28 into the room of accused Jaya Jaitly and whether he had actually offered or handed over the money to any person in the room. It is true that the evidence on record creates some confusion on this aspect. PW10 has deposed that upon reaching the meeting venue at Krishna Menon Marg, he asked PW28 about the money who opened the briefcase and showed money to him which was in open condition/uncover. He told PW28 it does not look proper and accordingly brought a newspaper and asked PW28 to cover the money with the same. PW28 has deposed that when he told PW10, that the money is inside the briefcase, PW10 stated that Madam Jaya Jaitly would not allow any briefcase inside the meeting room. He further deposed that PW10 gave some old newspaper to him which he wrapped around the money and kept the newspaper in his hand. Thereafter he entered into the room of accused Jaya Jaitly. During the cross-examination of PW28, Hi-8 Tape No. 74 Ex.PW1/O2 was played. There is observation of the Court that at 0:26:00 to 0:26:26, one can see/hear some instruction being given to the witness which are not clear and it is audible that the person giving instructions as stated that "*you take one Lifafa*". It has also been observed by the Court that at 0:27:45, it is seen in the video

that witness is keeping the money in a newspaper and at 0:28:55, it is seen that the witness is taking the money from the newspaper and putting it into the yellow colour A4 size envelope and newspaper has fallen down.

107. The aforesaid video recording, thus, depicts that PW28 had initially wrapped the money in a newspaper and later on put the same in a yellow colour envelope and the newspaper had fallen down. Both the witnesses PW10 and PW28 have deposed that when PW28 offered to give the said money to accused Jaya Jaitly, she told him to handover the same to accused Gopal Pacherwal and accordingly PW28 handed over the money to accused Gopal Pacherwal. PW28 has also pointed out the portion recording in Tehelka Tape No. 73 Ex.PW1/N2 from time 0:12:53 to 0:15:16 where he is offering money i.e. Rs. 2 lakhs to Madam Jaya Jaitly and Madam Jaya Jaitly instructed him to handover the money to Gopal Pacherwal and further said that this will go to Mr. Srinivas Prasad who is hosting a National Convention of Samta Party in Karnataka. He has further pointed out that after handing over the money to accused Gopal Pacherwal at 0:14:49, he is requesting Madam Jaya Jaitly for blessings for Westend International for pushing its product further. Before leaving the meeting, he has reiterated that the amount which he has given is Rs. 2 lakhs.

108. The deposition of PW10 as well as PW28 in this regard coupled with the video recordings and the transcripts on this issue, clearly indicate that PW28 had offered a sum of Rs. 2 lakhs to accused Jaya Jaitly and on her directions, he handed over the said money to

accused Gopal Pacherwal. In view of the same, it becomes totally insignificant as to whether the money had been wrapped in a newspaper or had been put in an envelope. Neither the video nor the transcripts show that accused Jaya Jaitly had refused to receive the money offered by PW28 and told him to keep the money with himself. It is also not her defence that she refused to receive the money offered by PW28 or that she did not tell him to handover the money to accused Gopal Pacherwal.

109. It was further argued by the Ld. Counsel for accused Jaya Jaitly that she had received the sum of Rs. 2 lakhs from PW28 towards party fund which is legally permissible and therefore, she did not commit any offence at all in doing so. The arguments has been noted only to be rejected. The evidence on record shows that she neither handed over the amount of Rs. 2 lakhs to any party functionary nor had deposited the same in bank account of the party of which she was President at that time. Appearing as PW23, Sh. V. Sreenivasa Prasad denied that he received the sum of Rs. 2 lakhs either from accused Jaya Jaitly or through accused Gopal Pacherwal as fund for preliminary sessions of party of National Convention of Samta Party in the year 2001. He has not been cross-examined at all on behalf of the accused.

110. PW11 has proved the statements of account of three banks accounts operated in the name of Samta Party in State Bank of India, Railway Bhawan Branch, New Delhi as Ex.PW11/A, Ex.PW11/B and Ex.PW11/C. He has deposed that there is no entry indicating the

deposit of Rs. 2 lakhs in any of these accounts either on 28.12.2000 or at any point of time thereafter.

111. Thus, the evidence on record establishes that accused Jaya Jaitly had not received the sum of Rs. 2 lakhs from PW28 as contribution towards party fund and had received the same for herself in lieu of favour which had been sought from her by PW28 for the product of his fictitious company.

112. Ld. Counsel for accused Gopal Pacherwal argued that he was not present in the room of accused Jaya Jaitly at all during the meeting in question which is stated to have taken place on 28.12.2000 and therefore, there was no reason or occasion for him to receive the sum of Rs. 2 lakhs from PW28 on the directions of accused Jaya Jaitly. There does not appear to be any merit in the said arguments. On this aspect, there is cogent and reliable evidence on record in the nature of ocular version of PW10 as well as PW28 who have identified the face and voice of this accused from recording of that meeting. Also, it has nowhere fallen from the mouth of accused Jaya Jaitly during the entire trial that accused Gopal Pachewarl was not present in her room during the said meeting dated 28.12.2000. In fact, the said meeting between PW28 and accused Jaya Jaitly had been arranged through accused Gopal Pacherwal, who was known to accused Jaya Jaitly and PW10. As noted hereinabove also, accused Jaya Jaitly has not taken the defence that the meeting between her and PW28 was not arranged by accused Gopal Pacherwal or that she did not direct PW28 to handover the sum of Rs. 2 lakhs to the said accused. Accused Gopal Pacherwal too has nowhere disputed that the said

meeting had been arranged by him. It is quite obvious that the person arranging a meeting between two strangers would be necessarily present in the meeting to introduce those strangers with each other. According to PW10, he had apprised Gopal Pacherwal as to why PW28 wanted to see Jaya Jaitly. So, accused Gopal Pacherwal was aware about the purpose of meeting also.

113. On behalf of accused Maj. Gen. S.P. Murgai, it has been vehemently argued that there is no reliable evidence on record to show that he had received Rs. 1 lakh from PW28 on 28.12.2000 or the sum of Rs. 20,000/- from him on 04.01.2001. Ld. Counsel submitted that the evidence lead by the prosecution in this regard is shaky as well as doubtful and hence the offence under Section 9 of Prevention of Corruption Act, 1988 is not made out against the said accused. The case of the prosecution is that after having meeting with accused Jaya Jaitly on 28.12.2000, PW10, PW28 and accused S.P. Murgai met at the residence of accused Murgai where PW28 paid Rs. 1 lakh to accused Murgai even though he was supposed to pay Rs. 1 lakh to Surender Surekha also but he was having only Rs. 1 lakh with him at that time. Accordingly, he promised to pay Rs. 1 lakh later on. PW10 has deposed that as soon as PW28 handed over the packet of Rs. 1 lakh to him, he passed it on to accused S.P. Murgai. PW28 had deposed that he handed over Rs. 1 lakh to Murgai though he was supposed to give Rs. 1 lakh to accused Murgai and Rs. 1 lakh to Surender Surekha. However, when Hi-8 Tape No. 72 Ex.PW1/M2 was played during the course of deposition of PW28 from 0:22:05 to 0:24:52, he stated that he alongwith PW10 and accused Murgai are sitting at the residence of accused Murgai and he is giving Rs. 1 lakh

to PW10 after taking out from his briefcase. He further deposed that the money was given to PW10 for arranging meeting with accused Jaya Jaitly. In the cross-examination conducted on behalf of accused Jaya jaitly on 21.08.2018, PW28 was asked to explain this contradiction and he reiterated that he paid Rs. 1 lakh to PW10 Surender Surekha and promised to pay Rs. 1 lakh to accused Murgai later.

114. On this aspect, it is necessary to refer to the meeting between PW28 and accused S.P. Murgai which took place on 04.01.2001 which is recorded in Hi-8 Tape No. 79, the transcript of which is Ex.PW1/W6. In this meeting, PW28 is seen and heard telling accused Murgai that he has to give Rs. 1 lakh and is actually paying to him only Rs. 20,000/- with the assurance that the balance amount of Rs. 80,000/- would be paid on coming 7th.

115. From the visuals contained in Hi-8 Tape No. 72 Ex.PW1/M2, it is evident that PW28 has handed over Rs. 1 lakh to Surender Surekha and is also asking him to count the money to which Surender Surekha said "No, it is OK". The visuals or the audio/transcripts of this meeting, nowhere shows that Surender Surekha handed over the said amount of Rs. 2 lakhs to accused Murgai as claimed by him in his deposition before this Court. It appears that PW10 has lied in this regard in his statement under Section 164 Cr. P.C Ex.PW10/A as well as in his deposition before this Court in order to come out clean in this entire episode. Further, in case PW28 had paid the said sum of Rs. 1 lakh to accused S.P. Murgai, there was no occasion for him to pay Rs. 20,000/- again to him on 04.01.2001.

116. Hence, it is not proved from the evidence on record that PW28 had paid Rs. 1 lakh to accused S.P. Murgai on 28.12.2000. However, the evidence on record clearly shows that PW28 was to pay the sum of Rs. one lac to accused Murgai and paid only Rs. 20,000/- to the him on 04.01.2001 with the promise that the balance amount of Rs. 80,000/- would be paid by him on coming 7th. Obviously the said money was paid to him by PW28 for arranging the meeting with accused Jaya Jaitly and for further assistance in getting the fictitious product HHTI of the company M/s Westend International evaluated from the Ministry of Defence, as discussed between these two and PW10 in the initial meeting that had taken place in the room 215 of Hotel Vasant Continental on 25.12.2000.

117. From the evidence lead by the prosecution, as discussed in detail hereinabove, it is proved beyond doubt that:-

(i) In the meeting between PW10, PW28 and accused S.P. Murgai in the hotel room on 25.12.2000, PW10 and accused Murgai assured their assistance to PW28 in procuring letter of evaluation for the product of his company from the Ministry of Defence and also to arrange a meeting between him and accused Jaya Jaitly who would provide political cover to them in this regard. It was agreed that PW28 would pay a sum of Rs. 1 lakh each to PW10 and accused Murgai and a sum of Rs. 2 lakhs to accused Jaya Jaitly in this regard. Thus there had been an agreement between them to obtain the evaluation letter for the concerned product by illegal means i.e. by resort to corruption and personal influence upon the concerned officials. Such kind of agreement clearly tentamounts to offence of conspiracy as envisaged under Section 120 A of Indian Penal Code.

(ii) Thereafter, PW10 contacted accused Gopal Pacherwal and roped him in the conspiracy. The role attributed to the said accused was to arrange a meeting between PW28 and accused Jaya Jaitly. Accordingly, accused Gopal Pacherwal did the task assigned to him and arranged the said meeting for 28.12.2000. He too was present in the said meeting in the room of accused Jaya Jaitly along with PW10, PW28 and accused S.P. Murgai.

(iii) In the aforesaid meeting dated 28.12.2000, which took place in the official residence of the then Union Minister for Defence, Sh. George Fernandes, PW28 was introduced to accused Jaya Jaitly as a businessman whose company intends to enter the market of defence procurement. He sought blessings of accused Jaya Jaitly for his company and its product which he wanted to be introduced for use by the Indian Army. He offered the sum of Rs. 2 lakhs to accused Jaya Jaitly who instructed him to handover the money to accused Gopal Pacherwal and accordingly, the money was received by accused Gopal Pacherwal knowing that it was bribe money. In lieu thereof, accused Jaya Jaitly assured PW28 that in case the product of his company is not considered, she would intervene by making a request to "Sahib" (purportedly the Defence Minister Mr. George Fernandes) to send a word to the concerned officer in this regard.

(iv) Though accused Gopal Pacherwal and accused Jaya Jaitly were not the parties to the conspiracy initially hatched in the hotel room on 25.12.2000 between PW10, PW28 and accused S.P. Murgai, they joined the same later on and agreed to perform the tasks assigned to them. It is an established legal principle that from the date when a conspiracy is hatched and the date when its object is fulfilled,

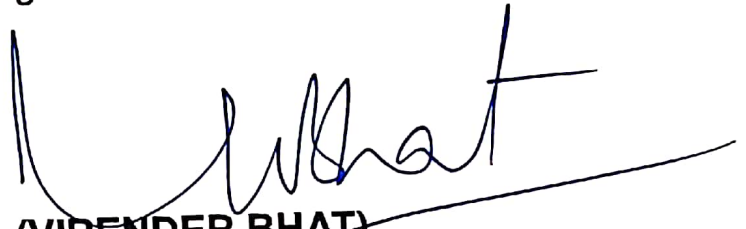
any person can be joined in the conspiracy to accomplish the task given to him. Similarly, any conspirator may leave the conspiracy at any point of time. It is not the law that only those persons who hatched the conspiracy in the beginning are liable as conspirators. Any person who joins the conspiracy at any point of time and shares the intention of the initial conspirators and does any act towards fulfillment of the object of the conspiracy, is also liable for the offence of conspiracy. Therefore, both the accused Gopal Pacherwal and Jaya Jaitly having joined the conspiracy at later point of time with the knowledge about the object of the conspiracy and having agreed to perform the task assigned to them towards fulfillment of the object of conspiracy in this case, are also guilty of the offence of conspiracy envisaged under Section 120 A of Indian Penal Code.

(v) That accused Jaya Jaitly received a sum of Rs. 2 lakhs through accused Gopal Pacherwal from PW28 as a motive/reward for agreeing to accomplish the task given to her i.e. to exert personal influence upon the concerned Ministers/Officers in pushing the product of the company of PW28 into the Indian Army. Similarly, accused Maj. Gen. S.P. Murgai received a sum of Rs. 20,000/- from PW28 on 04.01.2000 in lieu of the assistance rendered by him in fulfilling the object of the conspiracy i.e. arranging a meeting with accused Jaya Jaitly and securing letter of evaluation for the product of the company of PW28 by exercise of personal influence upon the concerned officers. Therefore, both of them have committed offence envisaged under Section 9 of the Prevention of Corruption Act, 1988.

118. Hence, all the three accused are hereby convicted of the offence of conspiracy punishable under Section 120B IPC r/w Section

9 of Prevention of Corruption Act, 1988. Further, accused Jayalakshmi Jaitly @ Jaya Jaitly and accused Maj. Gen. S.P. Murgai (Retd.) are hereby convicted of the offence under Section 9 of Prevention of Corruption Act, 1988 also.

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(VIRENDER BHAT)
SPL. JUDGE (PC ACT), CBI-15,
ROUSE AVENUE DISTRICT COURTS,
NEW DELHI/21.07.2020