

The matter has been taken up through Video Conferencing (VC) using CISCO Webex on account of Covid Pandemic and in terms of directions issued in this regard from time to time by Hon'ble High Court & Hon'ble District & Session Judge RADC.

14.07.2020


Present Online:

Sh,U C Saxena, Ld. Sr. PP for CBI through VC
Sh.Sanjeev Kumar, Adv. for accused Sanjeev.
Sh. Raj Kamal Arya, Adv. for accused Ramesh Mali through VC
Both accused are also present through VC.

Vide separate judgment announced through VC (operative part only), both **accused persons namely Sanjeev Kumar and Ramesh Mali are convicted** for the offence **u/s 120-B, IPC read with Section 7 and Section 13 (2) read with Section 13 (1)(d) of the PC Act.**

Accused Ramesh Mali is also convicted for the offences **u/s 7 PC Act and u/s 13 (2) read with Section 13 (1) (d) of the PC Act.**

Re-notify for argument on sentence on 16.07.2020 at 3 p.m.


Anuradha Shukla Bhardwaj,
Ld. CBI Judge 21 / RADC
14.07.2020

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16.07.2020

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Sh.Sanjeev Kumar, Adv. for accused Sanjeev.

Sh. Raj Kamal Arya, Adv. for accused Ramesh Mali through VC

Both convicts are also present through VC with their sureties.

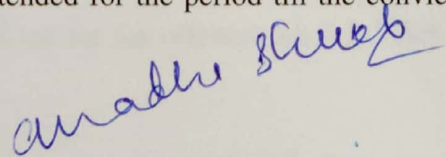
Vide separate order, **both the convicts** have been sentenced for the offences u/s 120-B, IPC read with Section 7 and Section 13 (2) read with Section 13 (1)(d) of the PC Act and accused **Ramesh Mali** is also sentenced u/s 120-B, IPC read with Section 7 and Section 13 (2) read with Section 13 (1)(d) of the PC Act & u/s 7 PC Act and u/s 13 (2) read with Section 13 (1) (d) of the PC Act.

Both the convicts were on bail during the trial. The sentence awarded to both the convicts is less than 03 years. They have conveyed their intention to challenge the judgment and order on sentence. The accused are accordingly admitted to bail on furnishing personal bond with sureties in the sum of Rs.1,00,000/- each. (one lac each)

It is stated that the persons who had sureties for these convicts during the trial, will continue to be their sureties. Both the sureties were present along with the accused persons and appeared through VC. They conveyed their consent to continue to remain sureties for the convicts till the time the appeal is preferred by these convicts.

Considering the extraordinary circumstances, the sureties have been accepted through VC. The bonds already existing on record shall be extended for the period till the convicts preferred the appeal.

File be consigned to record room.



(Anuradha Shukla Bhardwaj)
Spl. Judge (PC Act) CBI-21
Rouse Avenue Courts, New Delhi

In the court of Ms. Anuradha Shukla Bhardwaj, Spl. Judge (PC Act), CBI-21, Rouse Avenue Courts Complex, New Delhi

In the matter of :-

CBI no.225/2019
CBI v. Sanjeev Kumar & Ors.
RC No.DAI-2012-A0004-CBI-ACB ND
U/s 120B IPC & 7, 13 (2) r/w 13 (1)(d) PC Act

CBI
v.

Sanjeev Kumar & Ors.

Sl. No.	Name of accused
A-1.	Sanjeev Kumar S/o Sh. Mahavir Singh, Age 38 years, R/o H. No. 24, Auchandi Road, Bawana, Delhi-110039
A-2.	Ramesh Kumar S/o Sh. Pritam Singh, Age 45 years, R/o H. No. 98, Munshi Ram Colony, Mukharjee Nagar, Delhi-110009

16.07.2020

ORDER ON SENTENCE

- Vide separate judgment dated 14.07.2020, Convicts Sanjeev Kumar and Ramesh Kumar were held guilty and convicted for the following offences:-
 - Both accused persons namely Sanjeev Kumar and Ramesh Mali were convicted for the offence u/s 120-B, IPC read with Section 7 and Section 13 (2) read with Section 13 (1)(d) of the PC Act.
 - Accused Ramesh Mali was also convicted for the offences u/s 7 PC Act and u/s 13 (2) read with Section 13 (1) (d) of the PC Act.
- Arguments were advanced by Sh. U. C. Saxena, Learned Sr. PP for CBI, Sh. Sanjeev Bhardwaj Adv. for accused Sanjeev and Sh. Raj Kamal Arya, Adv. for accused

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Ramesh Mali.

3. It was submitted by Ld. Counsel for convict Sanjeev Kumar submits that he has two minor children. His parents live with him. His mother is a cardiac patient and his father is asthmatic. It is also submitted that his spouse is a house wife and he is the sole bread earner of his family. It is also submitted that accused has also remained in custody for 02 months during the investigation and has suffered 08 years of ordeal of trial. It is also submitted that accused has no previous criminal record. It is also submitted that accused be punished for the sentence already undergone.

4. It was submitted by Ld. Counsel for convict Ramesh Mali submits that he has two minor children. He belongs to lower strata of the society and has burden of his family members. He also remained in JC for 02 months and has suffered the ordeal of trial. It is also submitted that his spouse is a house wife and he is the sole bread earner of his family. It is also submitted that accused has no previous criminal record. It is also submitted that accused be punished for the sentence already undergone.

Ld. Counsel has filed the documents in respect of his contentions of illness of his parents.

5. Ld. Sr. PP on the other hand has prayed for maximum punishment and fine arguing that the offenses for which the accused persons have been convicted affect the society at large. He further submitted that cost of entire prosecution expenses be recovered from the accused persons for payment to the CBI as per Section 357 (1)(a) of Cr.P.C. since the CBI has invested money in the investigation of the matter, money was spent to call witnesses. He further submits that CBI has taken services of professionals for expert opinion etc. He further submits that in the catena of judgments, Hon'ble Supreme Court has held that corruption should be dealt with iron hand and no leniency should be shown in corruption cases. He has relied upon **State of Rajasthan v. Dhool Singh** AIR 2004 SC 1264, wherein the Hon'ble Supreme Court observed as under:-

"The courts should bear in mind that there is a requirement in law that every conviction should be followed by an appropriate sentence within the period stipulated in law. Discretion in this regard is not absolute or whimsical. It is controlled by law and to some extent by judicial discretion, applicable to the facts of

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the case. Therefore, there is a need for the courts to apply its mind while imposing sentence."

He has also relied upon judgment in **Sevaka Perumal, etc. v. State of Tamil Nadu** AIR 1991 SC 1463, wherein Hon'ble Supreme Court observed as under:-

"Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine to public confidence in the efficacy of law and society could not long endure under serious threats. If the courts did not protect the injured, the injured would then resort to private vengeance. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc."

In the case titled **State of Madhya Pradesh Vs. Shambhu Dayal Nagar** Hon'ble Supreme Court of India, 2007 (2) ACR 1428 (SC) has held that:-

in para no. 19 held that :-

..... From the analysis of the above decisions and the concerned provisions with which we are concerned, the following principles emerge:

a)....

b) Long delay in disposal of appeal or any other factor may not be a ground for reduction of sentence, particularly, when the statute prescribes minimum sentence. In other cases where no such minimum sentence is prescribed, it is open to the court to consider the delay and its effect and the ultimate decision.....

The Hon'ble Supreme Court in the case titled **Ambi Ram Vs. State of Uttarakhand**, Crl. Appeal No. 1723 of 2009, had considered following as the grounds for consideration at the stage of sentence held as under :-

"Keeping in view the aforementioned statement of law laid down by this court when he examined the facts of the case at hand we find that firstly the incident of year 1985; secondly the case is pending for last 34 years; thirdly the appellant has now reached 78 years; he suffering from heart ailment as

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stated by Ld. Counsel for appellant and also not keeping health; fifthly he has so far during the trial and after suffering condition undergone jail sentence of one month and 10 days; sixthly, he has been on bail throughout for the last 34 years and did not indulge in any criminal activities and nor breached any condition of the bail granted to him; seventhly the bribe amount was Rs.1200/- and lastly in the last 34 years he had suffered immense trauma, mental incarceration and anguish.

In **K. P. Singh Vs. State of NCT of Delhi**, CrI. Appeal no. 1264 of 2015 dated 28.9.2015, Hon'ble Supreme Court considered the agony of prolonged criminal proceedings to reduce the sentence of the accused.

6. The order on sentence is to be passed keeping in view all the facts and circumstances including age and health of the accused persons, their economic condition and responsibility towards their families. The court has to draw a balance between the mitigating and aggravating circumstances. I have considered rival contentions. Both the convicts were lower rank in posting being clerical / Mali / orderly. The amount of bribe is also a criteria in considering the sentence which have been found to be Rs.2500/-. They are both in the middle age of their lives and have the responsibilities of their respective families. The convicts were regular in appearing before the court. There are as such more mitigating than aggravating circumstances.

7. In view of above discussion the punishment as detailed hereunder is awarded to the convicts of this case :-

Convicts	Offences	Simple Imprisonment	Fine (in Rs.)	In default of payment of fine
Sanjeev Kumar	u/s 120-B, IPC read with Section 7 and Section 13 (2) read with Section 13 (1)(d) of the PC Act.	1 year	Rs.25,000/-	SI for 6 months
Ramesh Kumar	u/s 120-B, IPC read with Section 7 and Section 13 (2) read	1 year	Rs.25,000/-	SI for 6 months

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8. **The sentences of accused Ramesh Mali shall run concurrently.**
9. Benefit of Section 428 Cr.PC, shall be given to the convicts.
10. Both the convicts shall be supplied with the digitally signed copy of judgment and order on sentence free of cost on their respective emails. They shall be entitled to obtain the physical copies from the court at any time.

File be consigned to Record Room.

**ANNOUNCED FROM THE COURT
WITH CONVICTS AND SURETIES
ALONG WITH COUNSELS APPEARING
ONLINE THROUGH VC ON THIS 16.07.2020**

Anuradha S Bhardwaj

**(Anuradha Shukla Bhardwaj)
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JUDGMENT

1. The charge-sheet was filed in this case against accused Sanjeev Kumar s/o Sh. Mahavir Singh and accused Ramesh Kumar (who has also been referred to as Ramesh Mali in the evidence) s/o Sh. Pritam Singh on the basis of investigation carried in the FIR which was lodged on complaint of one Vijender s/o Sh Babu Lal, after verification of the allegations made in the complaint.
2. Briefly the allegations leveled against the two named accused are of having demanded money from the complainant for registration of his NGO. It is alleged in the complaint dated 02-02-2012 by Sh. Vijender that he was joint secretary of an NGO named 'HELP FOR HELP WITH

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HELPING HANDS'. He had applied for registration of this NGO in May 2011 with the office of SDM (Registrar of Societies and Firm) office of Deputy Commissioner, East Delhi District, Geeta Colony, Delhi. It is alleged that dealing clerk concerned, Sanjeev Kumar (accused no 1/ A-1) (who was posted in the office as an LDC) and Ramesh (accused no 2 / A-2), who was also posted in the said as office (as Gardener cum Peon as per evidence) did not do the needful and made him visit the office again and again. It was alleged in the complaint that on 23-01-2012 when the complainant met Sanjeev Kumar (A-1) in relation to the issue of registration of his NGO, he asked the complainant to meet Ramesh. Ramesh (A-2) on meeting him told him that an amount of Rs. 3000/ would be required for the purpose of registration. Ramesh (A-2) took the mobile no. of the complainant and on 31-01-2012 at 17: 10 hours complainant received a call from Sanjeev (A-1), who told him that his society (NGO) has been registered and that he could collect the registration certificate after giving Rs 3000/ to Ramesh (A-2). The complainant reported the matter to the CBI vide complaint dated 02-02-2012. [The complaint was exhibited as **Ex PW8/A** in the evidence of PW-8, the complainant]

3. Upon receiving the complaint, (Ex PW8/A) verification proceedings were initiated. The complaint was verified by Inspector Nikhil Malhotra on 02-02-2012 itself. Independent witness Abhishek Kumar an officer of the Corporation Bank, who has been examined as PW-9 was called and made part of verification proceedings. A Digital Voice Recorder (DVR) was arranged and after ensuring the same to be blank introductory voice of witness Abhishek Kumar was recorded in it. The complainant was asked to call accused Sanjeev (A-1) on his mobile phone no. 8750393044 from his mobile no 9990289400 at about 2:12 PM. [CDRs of the two numbers are on record.]The conversation was heard by everyone and was recorded in the DVR.

It was said in the charge-sheet that suspected officer (A-1 Sanjeev Kumar) had asked the complainant to visit his office **and not to talk on phone**. Thereafter the team had visited the office of suspect officer. The DVR was given to the complainant in switched on manner and he accompanied by the witness Abhishek had gone inside the office. Sanjeev (A-1) was found busy and the conversation took place between Ramesh (A-2) and the complainant, which was recorded. It is alleged that Ramesh (A-2) had confirmed the demand of Rs. 3000/. The recording was transferred to a CD and a transcript of the conversation was prepared. These proceedings were recorded in verification memo (exhibited Ex PW8/B). As per the charge-sheet since the verification officer found involvement of Ramesh (A-2), therefore, RC-4(A)/2012 was registered against accused Ramesh, Government Servant, Office of Deputy Commissioner East, L.M. Bandh Geeta Colony, Delhi under Section 7 of the Prevention of Corruption Act. The RC aforesaid is Ex PW8/C.

4. Thereafter trap was laid for 03.12.2012. The trap team **included** Complainant, Abhishek Kumar (who was part of trap also), Javed Khan (other public witness) UDC, Delhi Jal Board, Varunalaya Jhandewalan, Karol Bagh New Delhi. Inspector S.K.Khullar the Trap Laying Officer (TLO), Inspector Nikhil Malhotra and other officers of CBI. The complainant had produced a sum of Rs. 3000/ - consisting of six Government Currency Notes of Rs 500/ each; the serial numbers of which were noted down (in the Handing over Memo Ex PW8/D). The averments in the charge-sheet are that the complaint as well as the verification memo was read over to the members of the raiding team. It is also written in Ex PW8/D that **complainant was directed to negotiate the amount of bribe with Sanjeev (A-1) to bring about his culpability.**

The members were apprised of the purpose and significance of use of phenolphthalein powder

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U/s 120B IPC & 7, 13 (2) r/w 13 (1)(d) PC Act

and its chemical reaction with sodium carbonate and water. The GC notes produced by the complainant were treated with phenolphthalein powder and were put in the right side pocket of the pant of complainant by Javed Khan; who had ensured after the personal search of complainant that he was not carrying any incriminating substance. Introductory voices of the independent witnesses were recorded in a DVR, which was then handed over to the complainant with a direction to switch it on after reaching the spot. Independent witness Abhishek was asked to act as shadow to the complainant and to overhear the conversation as also to see the transaction between the complainant and the accused and to give a signal by rubbing his face with his hands or if the TLO and other team members were not visible the complainant and Abhishek were directed to give a call to the TLO. CD regarding the verification proceedings Mark Q-1 was seized. Everything was kept in a bag and the team left for the spot. All these proceeding (pre-trap proceedings) were recorded in Handing over Memorandum Ex PW8/D.

5. After the conclusion of these proceedings the trap team along with complainant and the two witnesses started for the office of accused persons in two CBI vehicles; and reached the office of “Chairman, District Development Committee, District East, and Government of National Capita Territory of Delhi near Geeta Colony at 14:00 hours of 03-02-2012. It is written in the Recovery Memo (EX PW8/E) prepared in respect of these proceedings that after directing the complainant to give money only to the accused Sanjeev or Ramesh on their specific demand or gesture- the complainant was handed over the DVR by Inspector Nikhil Malhotra. The complainant and shadow witness Abhishek Kumar entered the office of “Chairman District Development Committee” at about 14:10 hours. The proceedings inside the office are part of statement of the complainant. The Recovery Memo Ex PW8/E says that at about 14-17 hours a

missed call was received on the mobile of TLO; which was given by Shadow witness. Inspector Sanjay Khullar along with the team entered the office no 3 the notification branch, where the complainant pointed towards the two persons (accused persons). The TLO it is stated had challenged the two accused who got panicked and nervous and turned pale. The recorder was taken from the complainant and switched off. The complainant pointed towards Ramesh (A-2) and said that he had taken the money. He also said that the other person Sanjeev (A-2) who was sitting on a chair in the room had handed over the registration certificate to him after the transaction of money. Shadow witness corroborated the version of the complainant and stated that he had seen the transaction and heard the conversation between the complainant and accused persons. Thereafter, the wash of right hand of Ramesh (A-2) was taken in a fresh prepared colour less solution of Sodium Carbonate in water, which solution turned pink; the wash was transferred in a clean glass bottle. The bottle was marked RHW. The procedure was repeated for left hand and bottle was marked LHW. The bottles were sealed and signed by the independent witnesses. As per the prosecution case independent witness Javed khan was then asked to recover the money, who found an amount of Rs 2500/ from the left side pocket of the pant of Ramesh (A-1). The complainant mentioned at this juncture on query that only Rs. 2500/were given to the accused after the bargain. The shadow witness corroborated his version and the complainant produced the remaining Rs. 500/. The numbers of the recovered/ returned GC notes were tallied by the independent witnesses. The team along with the two accused persons returned to the CBI office at 15:25 hours. The recording was heard which confirmed the version of the complainant about the demand and the acceptance. The accused persons were personally searched and formally arrested. Accused Ramesh was provided with a trouser and

was asked to change as the wash of his pant was required. After the change, the inner lining of left side pocket of the jeans which was worn by Ramesh (A-2) at the time of offence was washed in freshly prepared colourless solution of sodium carbonate and water. The wash was then transferred in a clean glass bottle, which was marked as LSJPW, sealed and signed by the independent witness.

6. Thereafter the spot conversation in the DVR was transferred into a blank CD in the presence of independent witnesses. The CD was wrapped and sealed with the seal of CBI after taking the same from him; the seal had been handed over to Abhishek Kumar on 02-02-2012. The cloth wrapper was signed by both independent witnesses. The CD was marked Q-2. As per the prosecution case specimen voice of accused Ramesh was recorded in the DVR, which he gave voluntarily in presence of the independent witnesses. The recorded voice was transferred to a CD, which was signed by both independent witnesses. It was wrapped in a cloth, which was also signed by independent witnesses. The CD was marked S-1. Similar procedure was adopted to take the voice sample of Sanjeev (A-1) and the CD so prepared was marked S-2. All the articles were seized vide the recovery memo. The specimen of brass seal was taken and the seal was handed over to independent witness Abhishek Kumar. The accused were taken to the CBI office for further proceedings, where all the documentation was done and both Sanjeev and Ramesh were formally arrested.

7. The complainant gave his statement wherein he narrated the events inside the room where accused Sanjeev had directed him to see accused Ramesh with whom the complainant bargained and got reduced the bribe money, ultimately paying Rs 2500/-. He said that Ramesh Mali (A-1)

had kept the bribe money in left side pocket of his jeans and that after the transaction of the bribe money Certificate of Registration was handed over to him by Sanjeev Kumar (A-1). PW Abhishek Kumar has spoken about the money having been handed over to Ramesh Mali (A-2) by the complainant in his presence. Transcripts of recording of 02-02-2012 (Q-1) and 03-02-2012 (Q-1) have been filed, which are Ex PW8/G & H respectively.

8. The CDR of cellular nos. 9990289400 (of the complainant) & 8750393044 alongwith CAF details were obtained. CFSL vide its report no. CFSL – 2012 P-0178 dtd. 26-03-2012 gave a positive opinion regarding the voices of both the accused persons. Scientific report of the hand washes and pant wash was obtained.
9. Charge-sheet was filed on 21.08.2013. The cognizance of the offences punishable under sections 120-B IPC & 7 & 13(1) (d) of PC Act was taken vide order dated 28-09-013.
10. Arguments on charge were heard. Charges were directed to be framed against both the accused Sanjeev & Ramesh Mali on 18-01-2012. The charge for the offences u/s 120-B, IPC read with Section 7 and Section 13 (2) read with Section 13 (1)(d) of the PC Act for entering into a conspiracy to demand bribe of Rs.3000/- and accepting bribe amount of Rs.2500/- from the complainant to get his NGO registered was framed against both accused persons. A separate charge was also framed against accused Ramesh Mali for the offence u/s 7 PC Act and u/s 13 (2) read with Section 13 (1) (d) of the PC Act for demanding and receiving an amount of Rs.2500/- as illegal gratification from complainant Vijender abusing his position as public servant and benefiting himself amounting to misconduct.

11. To prove its case prosecution has examined 13 witnesses. **PW1** Amar Nath Singh, Nodal Officer, Idea Cellular Ltd. (to prove the call detail records), **PW2** Arvind Kumar, Asstt. Commissioner Food & Supply Deptt, DDA Shopping Complex, Dayanand Vihar, Delhi (to prove the postings of both the accused in the stated government office on the date of offence), **PW3** Vijay Dey, IAS, Chief Electoral Officer & Principle Secretary (Election) Govt. of GNCT of Delhi (who had sanctioned the prosecution of accused Sanjeev), **PW4** Amjad Tak, Dy. Commissioner, EDMC Karkardooma, Delhi, (who had sanctioned the prosecution of accused Ramesh), **PW5** Amitosh Kumar, Sr. Scientific Officer, CFSL, CGO Complex, Delhi (proved the FSL reports), **PW6** Pradeep Kumar Sharma, Retd. AO assigned duties of Registrar, Societies and Firm (proved the issuance of registration certificate and posting of both the accused), **PW7** M. S. Premi, the then SDM Election (East District) (said that accused Ramesh Mali was working in diverted capacity in his office), **PW8** Vijender, the complainant, **PW9** Abhishek Kumar, Assistant Manager Corporation Bank CGO complex, Lodi Road, New Delhi (independent witness, he participated in verification proceedings as well as raid) & **PW10** Javed Khan, UDC Delhi Jal Board, Varunalaya Phase II, Karol Bagh, New Delhi (was part of investigation during trap and had recovered the money from accused Ramesh), **PW11** Nikhil Malhotra, IO/ Inspector CBI (was a member of investigation team; had verified the complaint and participated in raid; had also prepared the CDs of conversations), **PW12** Sanjay Kumar Khullar, Inspector (Trap Laying Officer) and **PW13** M P Singh, Addl. SHO, PS Chitranjan Park, New Delhi.(was second I.O. he had inter alia prepared the transcripts of conversations and written for sanction of the accused persons. He also filed the charge-sheet). Three witnesses

PW8, 11 & 12 were also re-examined u/s 311 Cr.P.C.

12. Statements of accused persons under section 313 Cr.P.C. were recorded after the conclusion of evidence; and also after the examination of PW-8, 11 & 12 under section 311 CR.P.C. Both the accused have denied the incriminating evidence against them including the recovery; taking of voice sample and the recordings. Their plea is of false implication on part of the complainant because of the grudges he had with the accused on account of delay in the registration of his society.

13. Three witnesses have been examined by the accused persons in their defence; DW1 Sh Prem Raj Gandhi, Administrative Officer, Horticulture Department of EDMC, Patparganj Industrial Area W1, DW-2 Ram Mehar Sharma, UDC, Vigilance Department, EDMC, Patparganj Industrial Area, Delhi-92 and DW-3 Sh. Krishan Kumar Pandey, UDC, Election Department, District Election Office, East, LM Bandh, Shastri Nagar, Delhi. (All the three witnesses were examined on the aspect of sanction for prosecution).

14. **Based on the record, evidence and arguments the findings are recorded hereunder on various aspects of the case of prosecution and defence.**

15. Call Detail records

PW1 Amarnath Singh, Nodal Officer, Idea Cellular Limited, deposed that mobile number **8750393044** was registered in the name of Nagan Sahay, son of Sukhram, resident of House No. 22, Ishwar Colony. Copy of customer application form (CAF) of the number is **Ex.PW1/A**.

He also deposed that mobile number **9990289400** was registered in the name of Vijender son of

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Bablu Lal resident of B-1/A, First Floor, East Vinod Nagar. Copy of customer application form (CAF) of this number is **Ex.PW1/B**. Call detail records of mobile phone number 8750393044 for the period 01.09.2011 to 05.09.2012 is **Ex.PW1/C** and call detail record of mobile phone number 9990289400 for the aforesaid period is **Ex.PW1/D**. Certificate issued by the witness in respect of the Call Detail Records under Section 65-B Evidence Act is **Ex.PW1/E**. This witness was not cross-examined. He has proved that the phone of complainant was in his name. However, as per his documents the number attributed to Sanjeev (A-1) was not in his name. The CDRs indicate that there were conversations between these two numbers on 31-01-2012 twice and once on 02-02-2012. The prosecution has admitted that after the verification proceedings, which included the telephonic conversation, nothing was found against accused Sanjeev and so the FIR was not registered against him. Relevant testimony is of PW 11 dated 10-01-2017, wherein the witness says, "As the recordings (verification proceedings) revealed demand of bribe on part of accused Ramesh Mali, I made recommendation for registration of case against him under Section 7 of PC Act". Thus mobile no 8750393044 being in the name of someone else does not have much significance.

16. Postings of accused persons. (Relevant witnesses PW2, PW6, PW7 & PW8).

PW2 Arvind Kumar, Assistant Commissioner, Food Supply Department, DDA Complex, Dayanand Vihar, Delhi has been examined by the prosecution to prove the fact of posting of the accused persons: Sanjeev Kumar as LDC/ Dealing Assistant and Ramesh as Mali (in diverted capacity), in the Office of Chief Electoral Officer. The witness himself was posted in the office from August 2010 to May 2012, as Office Superintendent (Administration). He also deposed

that file (**EX PW2/A**) pertaining to registration of society, “Help for Help with Helping Hands” was dealt by him and that the file was initially dealt by accused Sanjeev Kumar. He proved the signatures of Accused Sanjeev Kumar at points A1 to A5 on the file Ex PW2/A. This file was seized by the Raiding team during the raid on 03-07-2012 in presence of raiding team members from the office of Sanjeev Kumar. The other relevant document in this regard is Recovery Memo **Ex PW8/E**, wherein the seizure of this file is mentioned in last para of page 2 mentioning that, on the search of the office file bearing no. 504 bearing title “HELP FOR HELP WITH HELPING HANDS” was found and seized.

The entries in the file which was recovered from the office of accused are worth consideration. The application was filed on 30-11-2011 vide signature of accused Sanjeev at point A-1. The final notice (for curing the defects) was issued on 16-12-2011 with signature of accused Sanjeev at point A-2. The applicant submitted that he went to meet accused Sanjeev on 23-01-2012, when he was asked by accused Sanjeev to meet accused Ramesh and a demand was made for the first time through accused Ramesh. On 23-01-2012 the file was placed before the authority; the entry says there were minor corrections, which may be allowed. It was put before the authority under the signature of accused Sanjeev at point A-3. The changes were got approved on 24-01-2012 vide signature at point A-4. Thereafter the certificate was got prepared on 31-01-2012 with signature of accused Sanjeev at point A-5 (there is a correction in date from 01-02-2012 to 31-01-2012). The applicant says that he was informed about the same by accused Sanjeev telephonically on 31-01-2012. The entries in the file are thus supporting the allegations of accused on how the events occurred.

17. PW6 Pradeep Kumar Sharma was working as SDM (Election) and was also assigned the duties of SDM Headquarter, Shastri Park Delhi. He was also working as Registrar, Societies and Firms and his duties included issuance of registration certificates in respect of eligible societies and firms. In his capacity as Registrar, Societies and Firms he received file, **Ex.PW2/A**, in respect of complainant's society ("Help for Help with Helping Hands") for registration. He deposed that the file was being dealt with by PW2 Arvind Kumar. Accused Sanjeev Kumar was the dealing clerk. The witness had given approval for registration of society on 31.01.2012 vide note on page 3/N in file **Ex.PW2/A**, and also ordered issue of Certificate of Registration (of the society); a photocopy of registration certificate is **Ex.PW6/A**. Copy of the certificate is on file and it shows a receiving under the signature of Complainant PW-8 with a date of 03-02-2012. **The certificate as per official file was thus handed over to the complainant on 03-02-2012.**

18. PW7 M.S. Premi was working as Link Officer to the SDM (Election), East District on 22.06.2013. He has deposed that he had received a notice under Section 91 Cr.P.C. issued from the office of CBI, and in response to the said notice he had sent photocopy of the Order No CEO/ADMN/106(6)/GR.III/09/1452-81, dated 24.01.2011 through covering letter, **Ex.PW7/A**. He had intimated the CBI that co-accused Ramesh Mali was posted in his office in diverted capacity from the office of MCD.

19. A combined reading of evidence of all these witnesses would prove that both the accused persons were working in the office of Chief Electoral Officer, who was also the Registrar of Societies. **PW 2 has deposed specifically that the file was put before him by accused Sanjeev Kumar always (sic). PW6 said that accused Sanjeev Kumar was dealing clerk of**

the society. It thus stands proved that the file was dealt with by accused no 1 and he was the initial contact of the file. Ld counsel for accused Ramesh has cross examined the witness and he admitted that this accused had no role in society registration. Ld. Counsel submitted in written arguments that CBI has failed to bring on record any evidence to prove the competence of accused Ramesh to favour or disfavor the complainant. It was submitted that, it has been admitted by witnesses PW2, 6 and 7 that accused Ramesh had no role in society registration. And that, no work of complainant was pending with this accused.

Relevantly the case of the prosecution against this accused is that he made demands on behalf of A-1 and thus his competence in dealing with the file would not be all that relevant; still the witnesses (PW2 & PW6) have stated in their cross examinations that A-2 used to shift files from one table to other for further proceedings, which proves his temporary control and the knowledge about the file of the accused. The accused anyways worked on behalf of A-1 in demanding the bribe for needful to be done, which was done by A-1.

20. Sanction for Prosecution

The prosecution has examined PW3 & 4; Sanjeev (A-1) has examined DW-3 and Ramesh (A-2) has examined DW-1&2 to prove their respective stand on grant of sanction and documents of sanction.

PW3 Vijay Dev, IAS was posted as Chief Electoral Officer on 22.11.2012 and had received a request from CBI seeking grant of sanction to prosecute accused Sanjeev Kumar (A-1). The witness deposed that he was the disciplinary authority of A-1. He had after perusing the file and

the documents produced before him seeking sanction for prosecution had concluded that it was a fit case to grant sanction of prosecution; and so he had accorded the sanction **Ex PW3/A**. In his cross examination he denied the suggestion that he, as Chief Electoral Officer, was incompetent to grant sanction as he was not appointing and removing authority of the accused. There is no document on record to challenge the authority of the witness except for the suggestion.

To the question about his knowledge of the complaint- the witness answered that he did not go through the complaint but clarified that he had gone through the report prepared by the CBI. The witness admitted that he had not given any personal hearing to the accused. The witness admitted that in the Prosecution Sanction Order (Ex PW3/A) the arrest of accused Sanjeev was shown to have been effected from Room no 3 of C- Block Office of DC/DEO (East), L. M. Bund Shastri Nagar, New Delhi 110031; he also admitted that the place of arrest of accused mentioned in Arrest warrant was different from this place. It is admitted case of the prosecution that though the accused was taken in custody from his office itself, the **formal arrest** was made in the office of CBI. The difference in the documents thus does not affect the prosecution case much. Suggestions were given to the witness that the FIR was not registered against accused Sanjeev, which he admitted; he also admitted that there was another accused in the case and stated that he was not from his department, thus showing his knowledge of the facts of the case. The witness stated in the cross examination that he had not perused the draft sanction order. Defence has examined DW-3 Krishan Kumar Pandey, UDC, Election Department, District Election Office, East, L. M. Bandh, Shastri Nagar, Delhi, who produced the file pertaining to sanction granted for prosecution of A-1. The file contained two letters of CBI (**Ex DW3/A &**

C), photocopy of SP report (**Ex DW3/B**), photocopy of draft sanction order (**Ex DW3/D**) and photocopy of note-sheet (**Ex DW3/E**). (The defence shall be dealt alongwith similar defence taken by A-2).

21. PW4 Amjad Tak, DC, East Delhi Municipal Corporation, Deputy Commissioner of Shahdara Zone, East District Municipal Corporation posted as such on 24-06-2012 had accorded the sanction for prosecution of Ramesh Mali (**Ex PW4/A**), **which he** deposed was granted after perusal of the documents. He has deposed that he was competent to appoint and remove accused Ramesh Mali. In his cross-examination the witness stated that he was lower in hierarchy to Commissioner and Additional Commissioner (of MCD). The witness admitted that accused Ramesh Mali was appointed by the order of Commissioner/ Additional Commissioner (relevant document is (**Ex PW4/DA**)). He, nevertheless, denied that he was incompetent to accord sanction for prosecution of A-2.

DW1 Sh Prem Raj Gandhi, Administrative Officer, Horticulture Department of EDMC, Patparganj Industrial Area proved the RTI reply **Ex.DW-1/A (obtained by accused Ramesh Mali)**, in which the officer competent to remove a person holding post of Mali has been shown to be Commissioner, EDMC. DW-2 Ram Mehar Sharma proved the record pertaining to sanction for prosecution of accused Ramesh Mali. The documents were forwarding letters, copy of draft sanction order and documents marked as annexures. The documents are exhibited as **Ex DW2/A to C**. It is stated that Ex PW D2/A to C clearly show that entire material was not produced before PW4 so as to prove that mind was applied by PW-4 before according order **Ex.PW-4/A. also that** Sanction Order **Ex.PW-4/A** is the verbatim reproduction of draft order

Ex.DW-2/C, which shows non application of mind by the sanctioning authority.

It was submitted that as per CBI manual (**Rule 19.20**) the investigating agency is required and is duty bound to send all the material documents/statements, collected during investigation to the Sanctioning Authority, but it has not been done in the present case. Further as per RTI reply **Ex.DW-1/A**, the Commissioner, EDMC was the Appointing Authority of accused Ramesh and thus he alone could accord the sanction for prosecution.

In support of his contentions Ld. Counsel relied upon the following judgments on the point of sanction:-

2000 (10) SCC 43 (1) Ram Krishan Prajapati Vs State of UP, wherein the Hon'ble Supreme Court held that since the accused was appointed by higher authority, his removal by other competent authority below in rank was improper.

Ld. Counsel also relied upon the judgment in 1995 Cri.L.J. 3428 titled CBI vs Ravindra Singh : 1995 (2) Crimes 85 Delhi (2). In the said matter, however, the sanctioning authority was weighed down by the consideration that the previous sanction was not a valid sanction and, therefore, he had to accord sanction. The sanction in the said matter was held to be a mere attempt to make good the deficiency in competence. It was under such circumstances that the Hon'ble court held that the sanction was granted on other considerations than on merit of the case, which indicated non- application of mind by the sanctioning authority over the material before it. **AIR 1997 SC 3400 (9) Mansukh Lal Vithal Lal Chauhan Vs. State was also dealing with a similar situation.**

In Cr. Appeal No.976/10 (10.08.2011) (9A) K.C. Singh Vs. State, Hon'ble court found discrepancies as the number of FSL report was found incorrect and in such situation the court held that a reproduction of draft sanction order alongwith the mistakes made therein indicated non application of mind by the sanctioning authority.

In CBI Vs. Ravinder Singh 2007 (1) RCR (Cr.) 519 SC (3), it has been observed that:-

(It would be seen that sanction as mentioned in section 19 of the Act is a pre-requisite for taking cognizance of an offence and prosecution for that offence by a Special Judge under the said Act and if at any stage on the basis of material before the Special Judge or it is otherwise brought to the notice of the Special Judge that the basis of cognizance i.e. the sanction suffers from any vice, infirmity or illegality to argue that the Special Judge has to still proceed with the remaining, evidence will be an exercise in futility and not only an exercise in futility but will be a great burden on public exchequer and time which is in paucity of the Courts concerned.

What was thus required to be shown was that the sanction suffered from some kind of illegality. Ld. Counsel also relied upon **2007 (1) RCR (Cr.) 519 SC (3) V. Venkat**

Subbarao Vs. State, where in it has been held that:-

It is also accepted that before the Sanctioning Authority, the vital documents showing involvement of the M.R.O. had not been produced. The Sanctioning Authority, therefore, did not have any occasion to apply their mind to the entire materials on record and in that view of the matter, the sanction is, therefore, vitiated in law. Conduct of the officers of the respondent who had taken recourse to suppress ioveri deserves serious condemnation."

22. Ld counsel for accused Sanjeev has argued that Sanction Ex.PW3/A granted by PW3, who was Chief Electoral Officer, is invalid since PW3 has falsely deposed that he had perused the file and the documents sent by CBI and found that it was a fit case to grant sanction, yet on

questioning he failed to tell as to how many documents were produced before him. Ld. Counsel further says that PW3 falsely deposed that no draft sanction was sent by CBI, whereas DW3 has proved Draft Sanction (Ex.DW3/D) was sent alongwith other documents as it was lying in the file. Ld. Counsel further submitted that there was no other documents sent by CBI, which in itself shows that the PW3 accorded sanction order Ex.PW3/A in a mechanical manner. Ld. Counsel had argued that a comparison of the draft sanction order Ex.DW3/D sent by CBI with the Sanction Order Ex.PW-3/A would show that PW3 have passed sanction order without application of mind.

23. Regarding the stand of accused Ramesh in challenging the competence of PW-4 in grant of sanction, Ld. Prosecutor filed the office order No. EDMC/CED/DA/2012/24 dated 24-05-2012 by which Mr. Amzad Tak (PW-4) was delegated all the powers of Commissioner of MCD. The relevant portion of the circular is as under:-

“Further in exercise of powers vested in the Commissioner, under Section 491 of the DMC Act, 1957 as amended vide DMC (Amendment) Act, 2011, I hereby delegate **all the powers conferred upon me** under various sections of the said Act, to Mr. Amzad Tak I.A.S. (AGMU:2005), Deputy Commissioner, EDMC, subject to my overall supervision, control and review.

Signed
Commissioner”

24. The document shows that the witness (PW-4) was competent to discharge all the duties, which were conferred upon the Commissioner and hence was competent to remove the accused from his post, which gave him the power of granting sanction for his prosecution as well. The situation in this case is slightly different from the facts of Ram Krishna Prajapati (supra), since

in this case the sanctioning authority was in fact working under the delegated powers and not independent subordinate capacity.

In The Hon'ble Supreme Court in **State of Bihar & Ors. Vs Rajmangal Ram AIR 2014 SC 1674**,

it was held that sanction order does not become invalid merely because witness (sanctioning authority) lacked competence to accord sanction in view of Section 19(3)(b) unless the court is satisfied that such error, omission or irregularity has resulted in failure of justice. It was further held by Hon'ble Supreme Court in this case that in determining whether any error, omission or irregularity in any proceeding or any error or irregularity in any sanction for the prosecution has occasioned the failure of justice, **the court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.**

Ld. Counsel further argued and submitted that as per CBI manual (**Rule 19.20**) and as per judgments, the investigating agency is required and duty bound to send all the material documents/statements, collected during investigation to the Sanctioning Authority, but it has not been done in the present case. In **AIR 2008 SC 108 (6) State Vs. Ameer Jan** the report on the basis of which sanction was granted was not on record. The finding of the court, therefore, was that the sanction which was granted solely on the basis of report, which report itself was not on record, was a bad sanction under the law.

In **Police Inspector Vs T. Venkatesh Murti, AIR2004 Supreme Court 5117 holding:** “Merely because there is any omission, error or irregularity in the matter of according sanction that does not affect the validity of the proceedings unless the court records the satisfaction that such error,

omission or irregularity has resulted in failure of justice” and same view was reiterated in **Prakash Singh Badal & Anr. Vs State of Punjab & Ors, AIR 2007 SC 1274**, wherein it was held that mere omission error or irregularity in sanction is not to be considered fatal unless it has resulted in failure of justice.

In the present case, however, the documents are indicating that substance of all the evidence was put to the sanctioning authority. The material so produced was sufficient to allow the competent authority to understand the nature of offence, the allegations and the evidence available. The defence has not pointed out if any part of the document on the file was cryptic, vague or insufficient in understanding what had happened. The objections to the sanction orders therefore are not sustainable.

25. Complaint (Relevant witnesses PW-8 & PW-11)

PW8 Vijender the complainant deposed that in the month of May 2011, he had applied for registration of a society by the name of “Help for Help with Helping Hands” in the office of SDM, Registrar of Societies and Firms Geeta Colony situated in the office of Deputy Commissioner, East Delhi. He visited the office of SDM several times, his society, however, was not registered. He deposed that during his aforesaid visits, he regularly met accused Sanjeev Kumar, who would point out some or the other shortcoming in his documents. On 23.01.2012, when he met accused Sanjeev Kumar, the accused asked him to speak with accused Ramesh Kumar, who was working as Mali in the same office and was also working as peon to carry files from one desk to other. The witness further testified that as directed by accused Sanjeev he spoke to accused Ramesh Kumar, who demanded a sum of Rs.7000/- from the

complainant. The complainant conveyed his incapacity to pay Rs.7000/-, and so the money was reduced to Rs.3000/. The complainant was asked to visit the office after a few days. PW8 further deposed that on 31.01.2012, he received a phone call from accused Sanjeev Kumar, who told him that his work had been done and asked him to come to the office (of the accused). The accused told the complainant to come prepared and that by preparation he meant money (“*apni tayari se aa jaana ..., tayari ka matlab paise se hai*”). PW8 responded in affirmative yet in his heart he was not willing to pay the money (Rs.3000/-). On 02.02.2012, PW8 Vijender went to CBI office and lodged his complaint giving the facts of demand of money by accused Sanjeev Kumar. The complaint is **EX PW8/A**. In his cross examination he admitted that the fact of initial demand of Rs 7000. by accused Ramesh was not mentioned by him in his complaint. Also that he had not mentioned in his complaint that accused Sanjeev had asked him to come prepared, & that by preparation he meant with money.

The testimony of the complainant is at some variance from the contents of the complaint. The complainant says in his testimony that accused Ramesh Mali had demanded Rs. 7000/ from him, which he reduced to 3000/; which fact is not so mentioned in the complaint. In the complaint he has merely said that the accused Ramesh had demanded Rs 3000/ for the registration of the society. The complainant in his testimony stated that accused Sanjeev had called him on 31-01-2012 and had asked him to come with preparation and that by preparation he meant money, however, the fact is differently worded in the complaint; where the accused has alleged that accused Sanjeev told him that his society was registered and that he could take the registration certificate after giving Rs 3000/ to accused Ramesh. The gist of the two versions remains that the delay was being caused in the registration of society of the complainant and an

amount of Rs. 3000/ was demanded on this account by accused Ramesh, whom the complainant met on the asking of accused Sanjeev. The complainant when speaking about the conversation with accused Sanjeev, might not have used the exact words as were spoken and might also have used stronger words than were spoken, this, however, does not make his statement unreliable if the meaning of the conversation doesnot change. It is settled law of evidence that truthful witnesses rarely give a testimony verbatim to their statements given during investigation and small variations are in fact hall mark of the genuineness of the testimonies. The complainant in both versions is conveying that accused Sanjeev had informed him that the certificate was ready and he could collect the same after giving money (Rs. 3000/).

26. It has been submitted that there was an unexplained delay of 10 days in lodging complaint. PW8 has alleged that demand was made by accused on 23-01-2012 but he filed the complaint only on 02-02-2012. There is no explanation on record regarding this delay. The complainant did say that a demand was made on 23-01-2012. The certificate was prepared only on 31-01-2012. It is on this day that the complainant received the call of accused Sanjeev Kumar. The complainant might have taken a few days' time to make up his mind. The delay of a few days as such is ignorable issue in the facts of the case.

27. [Verification proceedings (Relevant witnesses PW-8, PW-9, PW-11)]

28. PW8 has deposed in his examination in chief that when he was at the office of CBI, he had met Sr. Superintendent of Police, who formed a team (for verification of complaint). The team was led by PW11 Inspector Nikhil Malhotra and included PW9 Abhishek Kumar. He says that the complaint was read over to the team members in presence of every one. SSP also arranged a

voice recorder and thereafter, he (PW8 Vijender) made a call to accused Sanjeev Kumar keeping the call on loud speaker mode. Witness deposed that accused Sanjeev Kumar asked him to come to his office and stated that such things are not discussed on phone (“*aisi baaten phone par nahi hoti*”). After speaking to PW8, the team decided to visit the office of accused Sanjeev for verification. One digital voice recorder (DVR) was arranged, it was played in presence of the complainant to check its functioning; it was found to be working properly and had clear voice. PW8 Vijender alongwith PW11 Insp. Nikhil and panch witness PW9 Abhishek Kumar had left the CBI office for the office of accused Sanjeev in government vehicle. They reached the office and parked the vehicle at a nearby place, in Shakarpur and walked on foot from there. As per the witness (PW8) the voice recorder was affixed in his left pocket and was kept in “switched on” mode.

29. PW8 further deposed that he alongwith PW9 Abhishek reached the office of accused Sanjeev and went inside a room where they found accused Ramesh Kumar present. Accused Ramesh Kumar demanded money from the complainant. The witness stated in his evidence that accused Ramesh asked for Rs 3000/- (“*Ramesh ne paise maang liye, teen hazar rupaye*”). The witness deposed that he told accused Ramesh that he had forgotten the money (“*paise to main bhool aaya*”), while putting hands in the pockets of his pant and, thereafter, he came out of the room. Witness deposed that PW 9 told everything to CBI and he also repeated the same. The witness deposed that after this he i.e. PW8 and other team members returned to the office of CBI office, where one blank CD was arranged. The recording in the digital voice recorder (DVR) was transferred to the CD with the help of a laptop. PW11 Insp. Nikhil Malhotra heard the entire conversation and prepared a transcription of the same. The verification memo of the

proceedings was prepared. The memo is **Ex.PW8/B**, the witness deposed that the memo was signed by him (also) and a seal was put on the same; it was then put in a packet and then FIR was registered. PW9 has given a similar account of verification proceedings and so has PW 11. In his cross examination the witness denied that he had gone to CBI office on 31-01-2012 or on 30-01-2012. He denied that Ex PW8/A was fabricated after destroying his complaint dated 30-01-2012 as it lacked basic requirements. He stated that after 23-01-2012 he had gone to SDM office on 02-02-2012. He denied the suggestion that he had gone to SDM office on 23-01-2012 to deposit the documents. He said that he did not remember if he was carrying Rs. 3000/with him on 02-02-2012; adding that he was told by Inspector Nikhil not to pay the money during verification proceedings. He said that he had reached the CBI office at 10:30- 11:00 AM and that he did not remember exact time but they had left the CBI office around 12:00 to 2:00 PM and had returned around 3:00 to 4:00 PM, which was nearer in approximation with the timings given by other witnesses. In his cross examination dated 22-01 -2016 & 16- 03 -2016 the complainant gave a different version. He said that he did not remember the date of his first visit to CBI office. He contradicted his earlier statement. While maintaining that he had gone to the office of CBI at 10: 30-11:00 , he stated that he came back to his home at 1:00 PM. He stated that no proceedings were carried on 02-02-2012 as the CBI officials were busy on that date. PW9 said in his cross said that they had left the CBI officer at around 2:30 and had returned around 5:00 PM; though the date said by him was 30-01-2012. It is not clear from the evidence as to whether this date was given by counsel or said by witness. Had the counsel stated the date of incident the answer would have come that they had left for verification on 30th; however, it

appears that the witness was misled by the date given in the question. He clarified in his re-examination that the date in fact was 02-02-2012.

30. [Role of Accused Sanjeev in verification proceedings]

Verification was carried in two steps. At the first instance the complainant spoke with accused Sanjeev Kumar from the office of CBI. It was alleged in the charge-sheet that accused Sanjeev Kumar had told the complainant to come to his office and not to talk on phone. This part of verification did not implicate A-1.

Regarding the verification call it was submitted that the complainant has alleged that accused Sanjeev Kumar had told him to come his office and had also stated that '*aisi baatey phone par nahi hoti*', when in fact he did not say so; he had merely asked the complainant to come to his office. The transcript of this conversation was not placed on record by the prosecution. The CD containing the recording of the conversations was played in court on 08.01.2020. The file containing conversation is 120202_004 of 53 seconds where the complainant (Person 1) is heard saying '*kya seva kar du*' and accused Sanjeev (Person 2) is heard saying '*kya baat kar rahe ho*' and **telling him to come to the office only**. The version of the complainant is exaggerated in saying that the accused said that such conversations are not made on phone. In the verification memo it is written that the accused had refused to talk on phone, which is the fact. Small variations in the evidence cannot be held sufficient to discard the whole testimony of the witness. Admittedly no action was taken against the accused for his non participation in the conversation on phone.

The second part of the verification (at the office of the accused persons) also had nothing against accused Sanjeev as is stated in charge-sheet also. The FIR as such was registered against A-2 only.

31. [Verification Proceedings: Role of Ramesh A-2.]

PW-8 has specifically stated in his examination in chief that accused Ramesh had asked for money and the witness had told him that he had forgotten the money. This part of the testimony of the witness is corroborated by the recorded conversation, which was transferred in the CD **(Ex-P-2) and was played** in the court on 08-01-2020. The complainant identified voice of accused Ramesh contained in folder 120202_006 of CD Ex P-2, which was taken out from the sealed envelope Mark- Q-1. The evidence says that the content of the recording were same as transcript barring a few words here and there. PW8 had got exhibited the voice identification-cum-transcription memo as **Ex.PW8/F** and the transcript as **Ex.PW8/G**. He had said in his evidence that specimen voice of accused Sanjeev and co-accused Ramesh were also taken.

32. Ld. Counsel submitted that all the material documents such as Recovery Memo **Ex.PW-8/E**, Voice Identification cum Transcription Memo **Ex.PW-8/F** and transcriptions **Ex.PW-8/G & Ex.PW-8/H** were put to the complainant for the purpose of identification of his signature, during cross examination by the state. He said the documents should have been put to the witness before (sic) declaring him hostile.

In **Bhagwan Singh v State of Haryana [AIR 1976 SC 202]** the hon'ble Supreme Court held that merely because the Court gave permission to the Public Prosecutor to cross examine his

own witness describing him as hostile does not completely efface his evidence. The evidence remains admissible in trial and there is no legal bar to base conviction upon the testimony of such witness. [also relied are **AIR 1977 SC 170 Rabindra Kumar Dey vs State of Orissa & Lahu Kamlakar Patil & Anr vs State of Maharashtra Crl A No 114 of 2018 (SC) decided on 14-12-2012.**]

The law related to hostile witness has to be applied in correct perspective. A witness may give a statement in the court which is not same as given by him during the investigation. There can be additions or omissions or variances. He might forget certain facts due to fading memory; or might be unable to express everything in the terms in which a legal person understands them. There may be a broken sequence or language. Not in every case will a witness be declared as hostile to the case of prosecution without going into the reason of such variations. As against the witness giving a completely different story from what the prosecution case proposes, or contradicting the version of the prosecution on material aspects; a witness who forgets to give broader details or forgets some relevant parts is not required to be declared hostile because he is factually not hostile to the case of prosecution. And though the oral evidence of such witness to the extent of direct suggestions given by the prosecutor is to be considered cautiously; the parts of evidence so recorded which draw the attention of the witness to documents prepared during investigation can be accepted, if the witness accepts the creation/existence of such documents; the evidence being corroborative of such documents. Understandably such evidence is adding value to the document which exists on record and is not plain oral testimony of a fact not pre-existing on record in form of a document duly prepared and signed during the investigation.

33. Ld counsel submitted that PW-9 has not supported the prosecution on the aspect of transcript.

The witness had stated in his cross-examination dated 12-07-2016 that transcription **Ex.PW8/G** and memo **Ex.PW-8/F (also Ex PW8/H**, which shall not be dealt with again while considering the evidence of trap) were lying prepared when he reached the office of CBI on 28-03-2012.

Ld. Counsel further submitted that the transcriptions **Ex.PW-8/G & Ex.PW-8/H** are not proved on record because these transcriptions are stated to be prepared on 28.03.2012, whereas copies (**Ex.PW-5/DB**) thereof were already sent to CFSL which are exact copies of transcriptions **Ex.PW-8/G & Ex.PW-8/H**. It is pertinent to mention here that Exhibits were sent to CFSL vide letter dated 07.02.2012. It is not possible that transcriptions (**Ex.PW-8/G & Ex.PW-8/H**) **which allegedly were** prepared on 28.03.2012 vide proceedings **Ex.PW-8/F** had been sent to CFSL on 07.02.2012.

There are no doubt contradictory statements made by the witnesses in respect of date of creation of these documents. PWs 12 & 13 are both claiming that the documents were prepared by them. Ld Prosecutor has argued that rough transcriptions of the recordings were prepared initially to aid further investigation. It appears that PW 13 used these transcriptions lying on record on 28-03-2012. It appears to be so since PW 9 has also said in his evidence that the documents were lying prepared.

The documents are merely corroborative in nature. Their veracity could be and was tested by playing the CD and finding them (the transcripts, EX PW8/G and also 8/H) to be as per the recording in CD. The argument thus does not help the defense much. The transcripts are purely corroborative and the veracity of the same stands proved in evidence and that the case of the

prosecution would not have been affected much even if these transcripts were not on record at all. Their existence is primarily to let the court form prima facie views and to avoid the playing of the CD every now and then. It is relevant, however, to mention that the investigating officer did act irresponsibly in using an already created document after merely putting a date on it

34. [FIR]

PW11 Nikhil Malhotra stated in his evidence that since as per recording (of verification proceedings) demand of bribe was revealed on part of accused Ramesh he had recommended registration of FIR against him under Section 7 of PC Act. The FIR has been exhibited in the evidence of PW8 as **Ex PW8/C**.

Ld. Counsel submitted that column No.3 of the FIR is blank, which is talking about “**day, date & time of suspected offence**”. As per CBI Crime manual “**Rule 10.15**”, the FIR should contain the time & date of commission of offence. Ld. Counsel for accused further submitted that there is no evidence on record that copy of the FIR was received in the special court within 24 hours of its registration. The FIR **Ex.PW-8/C** is not legally proved as the recording officer is not brought on record. The SP/ACB cannot be termed as Crime Clerk/ recording officer of FIR. He anyway was also not produced as witness to prove FIR. The TLO (PW-12) had not enquired about the person, who recorded FIR. The defence thus is challenging the registration of FIR primarily on the ground that the person who recorded the same was not produced. There are three witnesses who have deposed about the registration of FIR. PW 8 stated that FIR was registered after all the proceedings on 02.02.2012. PW 11 stated that he had recommended registration of FIR. He also stated that the case was marked to S. K. Khullar PW 12 after the

registration of FIR. This witness thus is proving the recommendation as well as registration of FIR. Further non proving of the fact that the FIR was sent to the CBI judge is a mere irregularity, which does not disprove the FIR which has been filed on record. There aren't any serious issues of date and time involved in this case; which would have required cross examination of the person who recorded the FIR. The non-examination of this witness does not prejudice the prosecution case adversely. As regards non mentioning of date & time etc. the same are reflected from the contents of the FIR. Though non mentioning of the same in the respective columns appears to be a careless act; the same cannot be a ground to disbelieve the registration of FIR.

35. [Pre Trap proceedings (relevant witnesses PW8, PW9, PW11 & PW12)]

PW8 deposed that on 02-02-2012 (after the verification proceedings), he was directed to report on the next day. On 03.02.2012, he had reached the CBI office, where one more witness namely Javed Khan (PW10) working with Delhi Jal Board was present. He says that a demonstration of sodium carbonate powder and other material was shown changing the water into pink. The complaint was read over again and he again appeared before SSP who again formed a team. The team this time was consisting of seven/eight persons including Mr. Khullar (PW12), Nikhil Malhotra (PW11), two shadow witnesses Abhishek Kumar (PW9) and Javed Khan PW10, Mr. Pankaj and one more official. The witness further testified that one leather bag was arranged by the CBI officials in which bottles (containing chemicals) and other articles were kept. The team left for the SDM office in a vehicle and parked it near Police Station Shakar Pur. They were carrying with them the DVR; which was given to the complainant to record the conversation

between him and the accused persons. The complainant was instructed to inform Insp. Sanjay Kumar Khullar (completion of the transaction) by giving a missed-call. PW-8 had stated in his chief examination that before leaving the CBI office he had given six currency notes of Rs.500/- each, of which (serial) numbers were noted down. He also stated that he was searched by Mr. Javed and was instructed to keep the money in his right side pant pocket. His other belongings, except phone, were removed from his pant pockets. The witness had not given the details of proceedings that took place at the CBI office and the prosecutor had cross examined him on these aspects. This part of testimony in so far as it is ocular with no corroborative evidence of other witness or document shall not be read in the evidence against the accused persons.

36. PW 8 was accompanied by PW- 9 who has spoken in greater detail in his evidence. He stated that he (again) attended the office of CBI on 03.02.2012, where he met Insp. Nikhil Malhotra who informed him that a team had been constituted. Javed Khan from Delhi Jal Board (PW10) was also present there and PW12 Insp. Sanjay Kumar Khullar was Incharge of the team. The trap team was mutually introduced with each other. He corroborated the version of the complainant regarding the complaint having been shown to everyone and added that verification memo was also shown to all members. He deposed that purpose of assembly i.e. of laying a trap was also explained. PW9 Abhishek Kumar deposed that complainant had produced Rs.3000/- comprising six numbers of GC Notes of Rs.500/- each and the number of GC notes was noted down in the handing over memo. He deposed that the CBI team directed the complainant to make a negotiation with accused Sanjeev Kumar in paying the bribe amount. He deposed that thereafter a demonstration was given by one CBI official to explain the significance of phenolphthalein powder with the sodium carbonate in water. The GC Notes so produced were

treated with the phenolphthalein powder. Thereafter independent witness Javed Khan (PW-10) was asked to touch the tainted bribe amount with his right hand, which was washed in a freshly prepared solution of sodium carbonate and water and on doing the same, the solution turned pink. Thereafter, the reaction was explained and **the solution was thrown away**. Personal search of complainant Vijender was conducted and he was not allowed to keep anything incriminating except mobile phone and the mutual search of all the trap team members was also carried out. PW9 Abhishek Kumar deposed that the tainted bribe amount of Rs.3000/- was then put in right side pant pocket of complainant Vijender by Javed Khan (PW 10) and he was directed not to touch the bribe amount and also to give the bribe amount to accused Sanjeev and accused Ramesh on specific demand. PW9 Abhishek Kumar further deposed that thereafter, one DVR and one blank CD were arranged and the introductory voice of Javed Khan (PW10) and him (PW9 Abhishek Kumar) was recorded in the DVR and the DVR was handed over to the complainant with direction to switch it on after reaching at the spot and to record the conversation taken place between him and accused persons. PW9 Abhishek Kumar further deposed that all the team members washed their hands with soap and water. He was directed to act as a shadow witness and to remain with complainant to overhear the conversation that was to take place at the spot. PW9 Abhishek Kumar deposed that he was directed to give signal by rubbing his face with hands after the transaction was over, if the trap team was visible or to make a call on the mobile phone of PW12 Insp. Sanjay Kumar Khullar. PW9 Abhishek Kumar further deposed that a leather bag was arranged and empty glass bottles, sodium carbonate, sealing material, copy of FIR and some stationery materials were kept and, thereafter, all the trap team members, including him (PW9 Abhishek Kumar), PW10 Javed Khan and the complainant left

for the spot in government vehicle. He deposed that a handing over memo was prepared and they all signed on the memo, (Ex.PW8/D), which bears his (PW9 Abhishek Kumar) signatures at point B on all pages. PW9 Abhishek Kumar further deposed that CBI team reached at the office of Chairman, District Development Committee, East Delhi near Geeta Colony at about 02.00 PM and after reaching the spot, vehicles were parked and DVR in switched on mode was given to the complainant, who kept it in his shirt and CBI team spread in discreet manner.

In his cross examination the witness said that he did not remember the name of the official who had applied powder to the currency notes. He stated that first page of handing over memo and recovery memo were as such when he signed the same.

37. PW10 is the other independent witness. This witness turned hostile. His evidence, therefore, shall be read only in those portions, which are corroborative of testimony of other witnesses whether in support or against the case of prosecution and are found reliable. The witness said in his statement that he had visited the CBI office on 03-02-2012. He also deposed that some chemical reaction was demonstrated. He admitted the presence of PW 9 & PW 12 in the room. He stated that the entire team had gone to the office of SDM. And that the entire team remained outside and complainant alongwith PW9 went inside the SDM office. He corroborated the evidence of PW-8 & 9 regarding the instruction given to the two witnesses to give a missed call if the transaction got materialized. He also stated that they were given some instrument (DVR). He corroborates the evidence of other witnesses regarding receiving of missed call and he entering the SDM office building alongwith other team members.

38. It was submitted by Ld. Counsel that PW9 has failed to tell the name of the CBI officer who had applied powder on currency notes at CBI office. It is an admitted fact that there were 7-8 officials in the office and a lot of action/ documentation happened in the office. It was important to prove what all took place and not who did what. The defence has not pleaded how the fact that X applied the powder or Y did it would have affected the merit of the case. The witness not remembering who put the powder on the notes is immaterial if he is saying that it was done in the office on the stated date and time. PW 11 did mention the name of the officer (Pankaj Vats) who applied the powder on the notes. However, it was argued that this person has not been examined as a witness. In every criminal case there would always be scope of something additionally to be done or some witness to be additionally examined. What remains relevant for the decision is whether any miscarriage of justice happened because of what/who was left to be done/examined. The defence has not pleaded as to what was the relevance of examination of this witness, when there were other witnesses who had witnessed and could prove what was done by this person.

PW 11 & 12, the other two witnesses have corroborated the evidence of PW8 & 9 on all material aspects.

39. It was submitted that there are contradictory statements of witnesses on direction given to PW 8 regarding entering into a bargain with accused Sanjeev. It is argued that PW8 and PW9 have given contradictory statements regarding the directions given by the CBI officials to the complainant to negotiate the bribe amount with accused Sanjeev Kumar. The complainant has specifically stated in his cross-examination that he had negotiated the money on his own be-

cause he did not want to give Rs.3000/-. He also stated that he was directed by CBI officials to give the entire amount of Rs.3000/- and not a lesser amount. Ld.counsel relied upon the judgment in **Parmanand Vs CBI Crl Appeal No. 132 of 2004 decided on 03.07.2013 wherein**, it was observed that:-where there was material contradiction in the testimony of the only witness with regard to demand; the prosecution was concluded to have not been able to prove the demand at the time of raid beyond reasonable doubt. Ld Counsles have relied upon several judgments on the issue, which are fact specific and are not being mentioned here. The

40. There is admitted contradiction in the testimony of these witnesses (PW-8&9) on this aspect of reduced bribe money. The fact, however, remains that whatever be the motive/reason of reducing the amount; there is no denial that the complainant did strike a bargain with the accused and this part has been proved in the evidence. The contradictions would not make any difference on the fact of acceptance of Rs 2500/ by accused Ramesh. PW11 and other witnesses (except Javed Khan, who has been declared hostile) have stated that Javed Khan on the direction had recovered the amount of Rs.2500/- from the accused. There was as such no confusion about the demand which was Rs 3000/and the acceptance of Rs. 2500/ after bargain.

41. The only other cross examination of the witness on pre trap proceedings is about the demonstration solution to which he first said that it was kept in bottles but again said that he did not remember exactly. PW Javed Khan is hostile. There are three other witnesses, who have stated that the solution was thrown away. There is no material cross examination of the witnesses on the pre trap proceedings. It is, therefore concluded that the team as mentioned in the evidence of the witnesses was constituted. The GC notes were brought by PW8. Their numbers were noted

down. They were treated with phenolphthalein and were put in the pocket of PW -8. It also stands proved that the working of phenolphthalein and sodium carbonate was explained to the team members. And the team had left for the spot together with bag containing bottles solution etc.

[Trap]

42. Complainant PW8 alongwith PW9 Abhishek Kumar were the part of actual trap. Both have deposed that after reaching the SDM office they had moved towards the office of accused persons, and remaining team took their respective position.

43. PW8 deposed that on reaching the office of accused Sanjeev Kumar, they found that he was sitting and was talking with someone over the phone. He talked with him (accused Sanjeev Kumar), who gave him a signal by gesture to meet accused Ramesh Kumar. This witness further testified that when he met accused Ramesh in the office, he asked from him about his work (“*vo ho gya mera kaam*”) on which accused Ramesh asked for money (“*paise laya hai*”). The complainant stated that he replied that it was difficult (“*bahut muskil hai, teen hazar rupaye*”). During discussion, accused Ramesh reduced the amount by Rs.500/- and took Rs.2500/- from him and kept the said amount in right side pocket of his jeans. This witness further stated that they (he and independent witness Abhishek) came out of the room and gave a missed-call to Mr. Khullar (PW-12). The CBI team came inside and caught hold of accused Ramesh. The witness after this part deposed about the role of accused Sanjeev and said that before coming out of the room, he spoke with accused Sanjeev Kumar and told him that he had given Rs. 500/ less to which accused Sanjeev had said it was alright (*theek hai, koi aur kaam ho to batana, itna*

chalta hai”). PW8 says again that thereafter he came out of the room and given the signal to the CBI officer. The corroborating evidence is of PW-9 who has deposed that he (PW9 Abhishek Kumar) and complainant had entered inside the office (of the accused). PW9 Abhishek Kumar further deposed that on entering in the office of accused Sanjeev, complainant had asked accused Sanjeev about registration certificate of the society and accused asked him to contact accused Ramesh Mali who was sitting with accused Sanjeev.

44. No cross examination of the witnesses was conducted regarding the presence of both the accused in the room. Though it was told to the complainant in his cross examination and he admitted that accused Sanjeev was not **in his chair** at his first entering the room but nowhere does he say that accused was not present in the room. PW 9 confirmed in his cross examination dated 12-07-2016 that on the day of raid when they (PW8&9) had entered the room of accused Sanjeev, at that time he was conversing on telephone with someone. He also said that the accused continued to talk on phone till the time he was arrested. PW 9 was confronted with Ex PW8/ E but not regarding the presence of either of the accused in the room at the time of transaction. The presence of both the accused inside the room at the time of transaction thus stands proved.

45. PW8 & 9 both have said in their examination in chief that accused Sanjeev was talking to someone on telephone throughout. This part of the testimony of the witnesses has also not been challenged by either accused in their respective cross examinations. In fact this part was got admitted by the counsel for accused Sanjeev in the cross examination of PW 9. The testimony of both the witnesses on this aspect also finds corroboration from the recording of the trap pro-

ceedings, admissibility of which shall be discussed in detail later. The CD Ex P-6 containing the relevant part of the conversation contained in folder no 120203_003 was played in the court and was found to be more or less in terms of the transcript Ex PW8/H barring a few words here and there. The recording clearly showed that there was someone talking on phone and conversation was going on between two persons initially. This person continues to be on phone throughout as per the transcript also except for when he speaks with PW-8, which part again shall be discussed in the next para. The persons were identified as PW8, A-2 and A-1

It, therefore, stands proved from the examination in chief of PW 8, PW 9; cross examination of PW 9 and the recording in CD transcript of which is on record that accused Sanjeev was talking on phone with someone while PW8 & PW9 were inside his room.

46. PWs 8 & 9 have both stated that when they entered the room accused Sanjeev was there. The complainant had asked from him about his certificate and he had directed the complainant to accused Ramesh Mali who was also present in the room. While PW 8 said that Sanjeev Kumar had signaled him by gesture; PW 9 has said that accused Sanjeev asked the complainant to contact accused Ramesh Mali who was sitting in the room. PW 8 in his cross examination dated 16-03-2016 stated that on 03-02-2012 there was no communication between him and accused Sanjeev; that accused Sanjeev had not asked him to contact accused Ramesh. This is the part of cross examination where the witness had turned against the case of prosecution and is to be read with caution since the witness stated later in the court that he was receiving threats. The testimony of the witness shall be read as a whole and alongwith the testimony of shadow witness PW-9.

The presence of accused Sanjeev in the room has not been disputed. He was the senior person in the room and was undeniably dealing with the file of the complainant. It is less probable in such a situation that complainant would enter the room and not speak with him or accused would not notice the complainant; more so when they had spoken a day before and the accused had told him to come to the office. Even if it is admitted for the sake of argument that the accused did not direct complainant to accused Ramesh, the conversation and transaction of bribe happening inside the room, it is unacceptable that the accused if he were not a party to the transaction would not have asked the complainant and accused Ramesh as to what they were doing. It is not the case of either of the accused that they were not present in the room. Noticeably in the recorded conversation of CD Ex P-6 of which the portion of conversation heard in court is 120203_003 and of which the transcript is Ex PW8/H, the complainant was heard saying to the accused Ramesh that he wants to talk with accused Sanjeev (*Sir, Sir se baat karni hai*). Going back to the evidence of both the witnesses (PW8 in his chief & PW 9) are corroborating each other on the fact that accused Sanjeev had directed the complainant to accused Ramesh Mali. PW 8 says it was through gesture, PW 9 has not clarified whether it was through words or gestures, which should not make any difference since the crux of both the statements is that accused Sanjeev did direct complainant to accused Ramesh Mali.

47. Next is the conversation between complainant and accused Ramesh Mali. PW 8 said that when he asked Ramesh about his work, Ramesh Mali asked him about the bribe money. He further deposed that he conveyed to the accused that he could not bring Rs.3000/- and he could arrange Rs.2500/- only. PW9 Abhishek Kumar deposed that when complainant asked about the certificate from accused Ramesh Mali, he demanded money. He also deposed that the complainant

said that he could not could not bring Rs. 3000/and he could arrange only Rs.2500/. Ramesh mali demanded Rs 2500/ from the complainant and complainant delivered the same to accused Ramesh Mali, whereafter Ramesh Mali delivered the registration certificate. In the cross examination dated 19-01-2016 a suggestion was given to PW 8 that he did not meet accused Ramesh on 23-01-2012 or on the date of verification but not that they did not meet on 03-01-2012. A general suggestion that there was no communication between the complainant and accused Ramesh was given without any specification of date. The testimony of PW8 & 9 on this aspect is corroborated by the recorded conversation of the incident (Mark Q-2: CD Ex P-6 folder 120203_003) & the transcript **Ex PW 8/H**. The complainant was heard conversing with accused Ramesh in this part of transaction while accused Sanjeev was heard talking with someone on phone. Accused Ramesh was heard twice asking the complainant to give three, (*Kuchh baat nahi teen de de mujhe and again teen de de*).

48. Ld. Counsel has submitted that CD containing specimen voices of the accused persons were not allowed to be played by the court on 22.01.2016 for want of certificate U/s 65-B Indian Evidence Act. But the Hon'ble High court of Delhi was pleased to allow playing of recordings and PW-8 was recalled and re-examined by CBI on 08.01.2020. The examination in chief is itself against the CBI because PW8 failed to identify the introductory voices in Folder 120203_001 & 120203_002. He has rather destroyed CBI case by referring Sh. Javed Khan as shadow witness, though he was recovery witness.

Non identification of the voices of witnesses in introductory messages by the complainant cannot be termed as a material defect. This conversation had not taken place with the complainant,

though in his presence, unlike the one between him and the accused persons where he was participating in the conversation actively. He could thus relate with the two voices. The introductory voices have been identified by PW 11 & 12, the official witnesses. Ld. Counsel had argued that these witnesses (PW-9 & 10) should have been examined to identify their voices. These witnesses are giving their own identities in this part and not saying anything in respect of the facts of the case. Their examination for identification of their voices was thus not essential. More so when both of them have not denied their presence at the CBI office on the stated date at the stated time. Their voices have been identified by PW 11 & 12.xxx

Ld. Counsel further argued that the witness PW8 was unable to identify the voices in Folder 120202_006 and Folder 120203_003 in the beginning, but identified during repeated playing of CD. Submitting that this was enough to cast doubt about such statement of PW-8.

The CD was played in the court and there were some disturbances. The witness did say in the beginning that he could not identify the voice (in CD, Ex P-2) and that there were several sounds and that he was not able to understand/identify the content (in CD Ex P-6). It was then that the recordings were played again on louder volume and the witness was able to identify the voices of both the accused persons and also his own voice.

49. It was argued by Ld. Counsel that PW8 had identified the voice of the accused persons on the tutoring of the CBI official. It was argued that the accused was sitting in the room of Ahlmad of the court where he was tutored by PW 11 Nikhil Malhotra. Both the witnesses (PW 8 & PW 11) admitted in their respective cross examinations that they were sitting in the room of ahlmad of the court before the evidence was taken up. PW 8 also stated that he was told that he has to

identify the voices. He nevertheless denied the suggestion that he was told as to whose voices he was to identify. None of the facts stated above prove that there was any tutoring of the witness. The witness said categorically that he was not told whose voices he had to identify. Identifying the voices and relating them to the accused persons was in the discretion of the witness; which he exercised during the evidence.

50. Ld. Counsels argued that the complainant is not a truthful witness. He has changed his version as per his convenience. He falsely identified the voice of accused persons as he was tutored and has made false deposition in contradiction with his testimony. It was also argued by Ld.counsel that no explanation was sought by this Court or the CBI (prosecutor) from this witness for his contradictory statements at two occasions.

To discard the evidence of PW-8 Ld Counsels have relied on the judgment of Hon'ble Supreme Court in **AIR 1979 SC 1408 (14) Suraj Mal Vs. State**. In the cited judgment the prosecution witness initially implicated three persons but during cross examination spoke only against two, exonerating the third. It was in such circumstances that the Supreme Court held that the witness appeared to have lost credibility. They have also relied upon the judgments in **1(2008) DMC 806 (15) Pyare Lal Vs. State, 1987 (Supple) SCC 266 (16) G. V. Nanjundiah Vs. State, 1995 Cr.LJ 3623 (SC) (17) State Vs. Kumud Chandra** where similar findings in respect of the prosecution witnesses were given.

51. The issue raised is to be dealt with on the facts, which are peculiar to this case. In the present case the complainant was supporting the prosecution case on material aspects till 19-01-2016.

The cross examination on the said date was being conducted by Sh. Sanjay Gupta Ld. Advo-

cate. His cross examination was deferred further as he wasn't available after lunch. On the next date i.e. 22-01-2016 the counsel for the other accused A-2 started cross examination. It is nowhere recorded that the cross examination on part of A-1 was complete. It is also not written in the order sheet of 22-01-2016 that Ld. Counsel for A-1 was unavailable. On this date the witness suddenly started going against the case of the prosecution. He did not support the prosecution case on 16-03-2016 also. Ld counsel for A-1 adopted the cross examination conducted by counsel for A-2. It would have been easier to apply the judgments cited by Ld.Counsel if the things had ended like that on 16-03-2016 itself. Thereafter, however, prosecution was granted opportunity by Hon'ble High Court to cross examine the witness qua the contents of CD. The witness was summoned and examined u/s 311 Cr.P.C. on 08-01-2020. The witness when he started to depose on 08-01-2020 he said that he was receiving threats and was apprehensive about the security of his and his family members. Since it was not clear as to who was threatening the witness; everyone i.e. the prosecutor, advocates and accused were asked to leave the court. The witness was specifically asked as to who was threatening him and he gave his version and also that he was earlier also asked to change his version. Since the matter was at final stage, the entire version was not brought on record to ensure that no prejudice is caused to any party on account of the statement of witness. It was, however, recorded that DSLSA and prosecution shall ensure the safety of the witness; which did indicate that the threat was from the side of accused only. The court in spite of this has made an effort not to let the statement affect the merit of the case and has considered the testimony of witness in an unbiased way; testing it on the law of evidence instead of discarding the part completely or using it against the accused.

The evidence of the witness, therefore, cannot be discarded completely terming him as unreliable witness.***

52. The witness in his cross examination dated 16-03-2016 stated that no communication by gesture or orally had taken place between him and accused Sanjeev and that accused Sanjeev had not asked him to go, see and contact accused Ramesh. The witness stated in his cross-examination that he had entered in the room of accused Sanjeev Kumar while Abhishek remained outside. He had stated that he remained in the room for 5-7 minutes and that accused Sanjeev was not present in his chair at the time of his entering the room.

There are several statements in this regard- the statement of complainant in his examination in chief; his above statement in cross examination; statement of PW-9; cross examination of PW-9 and the recording in the CD. Except for this statement in cross examination, it is stated everywhere that communication had taken place between complainant and accused Sanjeev. The evidence of PW-8 is dealt with in detail herein above also. It would, therefore be unwise to believe one version of complainant as against the other when there is sufficient evidence available to corroborate the first statement of his. Same would be my finding regarding the version of complainant where he said that he alone had entered the room, contradicting his examination in chief against the version recorded in recovery memo ExPW8/E; while PW-9 has remained consistent that he had accompanied the complainant.

53. Ld. Counsel for the accused argued that complainant has said that accused Sanjeev was not present on his chair at his first entering in the room. He does not say that accused Sanjeev was not present in the room at all; also it is not clarified as to how many chairs were in the room.

Also PW-9 has corroborated the version of complainant in his examination in chief that accused Sanjeev was present in the room and was talking on phone; which presence is also corroborated by the recording in CD Ex P-6.

54. It was argued that the independent witness is not supporting the involvement of accused Sanjeev in the demand. Admittedly PW-9 has not witnessed the part of incident where the complainant spoke to accused Sanjeev about paying lesser amount. He, however, has specifically mentioned in his examination in chief that accused Sanjeev was present in the room, the complainant had spoken to him after entering the room and he had asked the complainant to speak with accused Ramesh. The details of this part of evidence have been dealt with above. Accused Sanjeev thus was a part of transaction and it was on his direction that the complainant spoke to accused Ramesh. It is not the case of the defence that this accused was not present in the room. In fact the suggestion given to the witness is also that accused was not sitting on his chair at the beginning; and not that, he was not present in the room. The accused thus was present in the room and was cognizant of what was happening inside his room. Regarding the part of testimony of the complainant where he speaks of informing accused Sanjeev about Rs. 2500/ and not 3000/ paid by him. The witness stated in his evidence that he had met Sanjeev and had told him this fact.

From the chronology as given in his evidence, it appears that after the acceptance of bribe money by Ramesh PW-9 came out of the room and PW-8 spoke to Sanjeev to inform him about the reduction. There are two sentences spoken, which would have taken hardly few seconds. No effort was made by the defence to seek clarity on how the sequence went and as such the se-

quence as can be derived from the evidence of the witnesses will be accepted. The testimony of PW-8 is supported by the recording in CD where complainant is heard informing Sanjeev that he has paid Rs. 500/ less and Sanjeev is heard saying *itna to chalta hai*.

55. Ld. Counsel for the accused argued that PW-9 said in his evidence that after the transaction accused Ramesh had handed over the certificate to complainant, which is contradictory to the recovery memo, where the certificate has been shown to have been handed over by accused Sanjeev. Certain confusions in the mind of witnesses who were examined after a period of four years of incident are natural. Accused Sanjeev has been charged for the offence of conspiracy and as such even if his active role in the demand and acceptance is not visible, his presence and conduct are sufficient to conclude his involvement in the offence.

56. It was submitted by Ld. Counsel that as per “**Rule 14.16**” of **CBI Crime Manual**, a direction is mandated for the TLOs to take steps to get the pre & post trap proceedings photographed & videographed. The recovery memo & statement of witnesses to the trap are silent about any such exercise being done. However TLO (PW-12) has admitted that no such exercise was done by him. It was submitted that **In - AIR 1998 SC - Vineet Narayan Vs. State, it has been held that:-**

12. The CBI Manual based on statutory provisions of the Cr. P.C. provides essential guidelines for the CBI's functioning. It is imperative that the CBI adheres scrupulously to the provisions in the Manual in relation to its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the concerned officials.

57. Ld counsel has also relied upon the judgment in **Crl. A.1355/2015 dated 14.10.2015 SCN.**

Sukana Vs. State of AP, wherein it was observed that:-

“As far as possible, the crime scene, steps during the course of investigation such as pre- trap and post-trap proceedings, search proceedings should be photographed as well as videographed. The rule also provides the provision for preservation of such recording depending upon it being still or digital photography/videography. The rule also specifies the purpose of such recording in clear terms; it being preventing the public witnesses from turning hostile during the course of trial.”

58. The police manuals are prepared to generalize the rules and procedures of the investigation with an idea of bringing in uniformity and reliability in the proceedings of the investigation. It is expected of the police officers to follow such instructions/ directions contained in the manuals. However, these manuals are not statutory documents; they are merely directory in nature. Non-compliance of the directions/ guidelines though should be avoided; it does not invalidate the proceedings completely. Such defaults in the prosecution case at best can be termed as irregularities and not illegalities going to the root of the case. In so far as judgment in **Vineet Narayan (supra)** is concerned, the judgment says that the consequence of not following the manual is disciplinary inquiry. The judgment does not say that such default would per se invalidate the investigation. Even in **Sukana’s** case (supra), the court has not made the videography or recording mandatory. The words used are “as far as possible”. The accused, therefore were to show how the non-recording of the proceedings has affected them adversely and have also to justify as to how would they have not been able to challenge the investigation if it was recorded, when they are not admitting the existing recording of the conversations.

59. [Recovery and related evidence]

PW-8 stated that (after the money was handed over to accused Ramseh) they (he and independent witness Abhishek) came out of the room and gave a missed-call to Mr. Khullar (PW-12).

PW 8 said in his cross examination dated 19-01-2016 that he had not given any missed call to anyone on the date of raid; apparently the call was made by PW9 who has stated so in his chief examination and has also confirmed it in his cross examination dated 22-09-2016. The fact is recorded so in the recovery memo Ex PW8/E also.

PW-9 was cross examined about the phone no. with which he had made the call. He could not give his mobile number and he said that he was using two mobile numbers at the relevant time. Suggestion was given to the witness that he could not tell the number (with which the call was made) because he never made the call; the fact is that the witness was not asked to provide the numbers after he said that he was having two numbers, thus a conclusion that he did not remember his phone numbers cannot be drawn. All that is proved is that the witness did not remember from which number out of the two numbers that he had, did he make the call to the TLO.

60. Ld. Counsel argued that PW-8 said in his evidence that he gave the signal but PW-9 says that the call was made by him. It appears to be a case of bad translation at best. At the first instance PW-8 has said that “we came out and gave the call”, not specifying who made the call. In between he remembered about his conversation with accused Sanjeev, he stated that part and then said it was after this that he had come out and gave signal. PW-9 on the other hand has said

clearly that it was he, who made the call. The reading of the evidence together would show that it was PW-9 who had made the call.

61. PW- 8 says further that (after the team came in) Ramesh and Sanjeev got nervous. Search of Ramesh was taken. Sanjeev was also apprehended. CBI officials had asked Ramesh how much money he had but he could not tell. PW- 9 deposed that CBI team rushed in the office and complainant indicated to Insp. Khullar towards accused Ramesh, who had demanded and accepted the bribe amount (sic). He deposed that Insp. Sanjay Kumar Khullar challenged accused Ramesh for demanding and accepting the bribe amount and that the complainant had also pointed towards accused Sanjeev. PW9 Abhishek Kumar further testified that PW12 Insp. Sanjay Kumar Khullar also challenged accused Sanjeev and both accused were caught hold by their hands by CBI team. The complainant informed PW12 Insp. Sanjay Kumar Khullar that accused Ramesh had accepted the amount and kept the same in his pocket. PW9 Abhishek Kumar deposed that PW12 Insp. Sanjay Kumar Khullar also asked him about the incident which he had narrated.

This part of the evidence of the witness is corroborated by PW11 & 12 also. A minor contradiction being that PW-9 has not said that accused persons had become nervous on seeing the police officials; though other witnesses have said it categorically.

62. PW-8 says that upon search the money was recovered from the pocket of accused Ramesh. PW- 9 elaborated in his evidence that on the direction of PW12 Insp. Sanjay Kumar Khullar, independent witness PW10 Javed Khan recovered the bribe amount from the left side pocket of accused Ramesh, which was found to be Rs.2500/-. PW9 Abhishek Kumar further deposed that

on being asked, complainant stated (to the IO) that as it was discussed, he negotiated the bribe amount and accused Ramesh agreed to accept Rs.2500/- and the balance Rs.500/- was with complainant only and the complainant produced the GC note of Rs.500/- to PW12 Insp. Sanjay Kumar Khullar. PW 10 stated in his chief examination that he was not shown the verification memo or the complaint at the CBI office. He stated that after receiving a call when CBI team and he entered the building, they were told that some transactions had taken place. One CBI officer told him that some money was recovered from one Ramesh. He stated that no money was recovered in his presence. Nothing came out in the cross-examination of the witness as the witness denied all the suggestions given to him in the cross-examination conducted by the Ld. Prosecutor. Even if it is accepted though is against the record that PW10 was informed by some police officer about the recovery, he having admitted that recovery took place at the office itself and having been informed to him around the time when it occurred becomes a relevant fact. There are five witnesses of recovery four of them supported the case of the prosecution broadly. PW10 has been declared hostile; his testimony cannot be read over the testimony of the remaining four witnesses.

63. Regarding PW 8 he did sway from his examination in chief during the cross examination conducted by Ld counsel for accused Sanjeev. Even if this statement is considered though not being accepted against the version of other witnesses, the witness said in his cross examination that the GC notes were recovered from one file lying on the table. It is not the case of defence that the place from where recovery was made was a public place or several persons had come and gone out of there. There is no explanation coming from either accused as to how the money came to land on the file in the room; while both the accused were present inside the room. The

defence taken by the accused, therefore, is going against him only. There is otherwise no reason to dispute the concurring testimony of PW-9, 11 & 12 corroborated by chief examination of PW-8 the complainant.

64. Relying upon the judgment of Hon'ble Supreme Court in **N. Sunkana Vs State of A.P in Cr.A no 1355 of 2015 decided on 14.10.2015** Ld counsel argued that recovery even if accepted does not constitute any offence in absence of proof of recovery. In **Selvaraj Vs State of Karnataka Crl A. 1172/2018 decided on 18-08-2015**, the complainant had died and the corroborative evidence was not strong enough to prove the demand; there was a discrepancy on where the money was recovered from; the colour of wash was not pink etc. In **Parmanand Vs CBI Crl Appeal No. 132 of 2004 decided on 03.07.2013** the briefcase from which the recovery was effected could not be connected with the accused. In **Sunil Sharma Vs State 139 (2007) DLT 407** the tainted money was not recovered from the possession of the accused. In **State of Kerala & anr. Vs. C.P. Rao 2011 (6) SCC 450** mere recovery was considered insufficient to convict the accused. The decisions in each of the mentioned cases were on the facts of the respective case; which are distinguishable. The demand by accused Ramesh on behalf of accused Sanjeev has been proved by the testimony of witnesses in this case. Recovery is thus accompanied by demand and the cited judgments do not help the defence.

65. It was argued by Ld counsel that during cross examination by State on 22.01.2016, while putting currency notes Ex.PW-8/PX, PW-8 was given suggestion that currency notes were recovered from accused Sanjeev. This appears to be a typographic error and is ignorable.

66. Ld. Counsel has submitted that it is mandatory as per CBI crime manual for the trap team to offer their search to the accused before effecting recovery. No such search was offered to the accused Ramesh in the present case and as such possibility of plantation cannot be ruled out. As stated above the faults on the part of the investigating team during the investigation makes them liable for departmental action. These irregularities on their part do not disprove the prosecution case, if proved by other strong & reliable evidence. The witnesses have anyways deposed that they had searched each other before starting for the raid.

67. Presumption u/s 20 of the Act.

Though it was argued by Ld. Counsels that the acceptance of bribe and the demand were not proved. It was submitted that presumption u/s 20 of PC Act could not be raised in absence of proof of demand and judgments and support were cited; the same are not be re-produced as it has been held that both demand and acceptance proved and the recovery was effected from accused Ramesh. The judgments would be of no help for the accused. The acceptance of the bribe money on demand and recovery thereof from accused Ramesh made him liable to explain how the bribe money came to be in his possession. He has failed to give any explanation for the same. A presumption under section 20 of the PC Act, therefore, will be drawn in favour of the prosecution case. It was for the accused to have prove how the money came to be in his possession. It was for him to have to the circumstances under which he could be held innocent and in spite of the bribe money having been recovered from him. (**B Hanumant Rao v. State of Andhra Pradesh – AIR 1992 SC 1201**).

68. PW8 deposed that both hands of Ramesh were dipped in a glass and the water turned pink. The said water was transferred in a bottle and all formalities were completed. PW9 deposed that after transaction for the bribe amount hand washes of accused Ramesh were taken in a freshly prepared solution of sodium carbonate and the water turned pink and was transferred in a bottle marked 'RHW', Ex. P14, Similarly left hand wash of his also turned pink and was transferred in a bottle marked 'LHW', Ex. P15. Both glass bottles were sealed with the seal of CBI and the paper label pasted on the bottles were signed by PW9 Abhishek Kumar. The evidence is corroborated by the testimony of PW 11 & 12.

Ld. Counsel for accused Sanjeev argued that his hand wash was not taken, which is an admitted fact. Ld. Counsel for accused Ramesh Mali submitted that PW10 stated in his evidence that pink solution of pre-trap proceedings was kept / preserved in bottles. He argued that if it was so, then the possibility of plantation of hand washes cannot be ruled out.

PW 10 has been declared hostile by the prosecution. His testimony though cannot be discarded out rightly, it needs stronger corroboration from the documents/ circumstances/ or other witnesses. No such corroboration is available hence this version of his cannot be accepted against the statement of other witnesses (PW-9, 11 & 12), who have said that the solution was discarded.

69. It was argued that PW9 has stated he had not made offer of search nor any other team member including independent witness Javed made search offer before affecting the search of the accused persons. Ld. Counsel further argued that it is mandatory as per CBI crime manual that the trap team should offer their search to the accused before effecting recovery. No such search was

offered to the accused Ramesh in the present case and as such possibility of plantation cannot be ruled out.

As has been discussed above the non-conforming to the guidelines does not invalidate the proceedings; what is relevant is if such non-compliance caused serious prejudice to the accused.

70. It was argued that the Recovery memo is showing the source of transfer of wash in the bottle “LHW” as Right Hand Wash from portion DX-2 to DX-2. It is enough to falsify the washes. This would have been a serious flaw if only one hand had given a positive result to the test. Both hand washes having turned pink, there was practically no distinction drawn between the contents of the two bottles.

71. The chemical analysis report in respect of the liquids was tendered in evidence under section 293 of Cr.P.C without calling the witness to the court. Ld. Counsel has submitted that the Chemical Analysis Report cannot be read in evidence as it is not legally proved. PW-13, the IO was not competent to tender the said report as the expert was not covered U/s 293 Cr.P.C. it was submitted that no explanation is put forward by the CBI as to why Expert from Chemical Division of CFSL was not called and examined before the court. Section 293 provides for exemption of examination of expert witnesses, when there is nothing in their report, which requires a cross examination. A mere objection that the witness should have been called would not serve the purpose of defence. The defense needs to clarify what cross-examination, if at all was required to be conducted. Why did the accused not tell the court at the time when the report was being tendered that he wants to cross examine the witness?

72. It was argued by Ld counsel for accused Sanjeev that the testimony of witnesses especially PW-9 is not clear on where the negotiation took place (inside the office of accused Sanjeev or outside with accused Ramesh Mali). It is also not clear as to when the complainant left him (PW-9) and when he went to meet accused Sanjeev. Reliance has been placed on **2007 (3) Crimes 160 Delhi Sunil Sharma Vs. State.**

The testimony of PW-9 is clearer than that of complainant; he says that accused Ramesh Mali was sitting with accused Sanjeev. In fact his testimony is showing that accused Sanjeev and Ramesh Mali were together since he says the two were together till the time of arrival of the team inside the room when he says that complainant had pointed towards accused Ramesh and then towards accused Sanjeev after the team arrived. The statements have been recorded as per the versions of the witnesses. Agreeably if they are read in isolation, they appear vague on the aspects of time & place; however if read in totality there appears no confusion on when and where the incidents took place. The complainant says that Sanjeev Kumar signalled him to see Ramesh. He does not say thereafter that he came out of the room, which would mean that accused Ramesh was sitting nearby. The Cd corroborates the version since accused Sanjeev is heard talking in background while complainant is negotiating the amount of bribe with accused Ramesh indicating that all three were in the same room. Both the accused were found in the same room when the raiding team entered the room. The complainant says that the call was given after coming out of the room, which would again show that they were outside the room itself and there was no scope of anyone having gone in and out of the room. There were anyways no suggestions given to the witnesses to seek any clarification on the aspect of place of incident or pointing out any confusion on this aspect.

73. It was argued that the independent witness is not supporting the involvement of accused Sanjeev in the demand. Admittedly PW-9 has not witnessed the part of incident where the complainant spoke to accused Sanjeev about lesser amount paid. He, however, has specifically mentioned in his examination in chief that accused Sanjeev was present in the room, the complainant had spoken to him and he had asked the complainant to speak with accused Ramesh. The details of this part of evidence have been dealt with above. Accused Sanjeev thus was a part of transaction and it was on his direction that the complainant spoke to accused Ramesh. It is not the case of the defence that this accused was not present in the room. In fact the suggestion given to the witness is also that accused was not sitting on his chair at the beginning; and not that, he was not present in the room. The accused thus was present in the room and was cognizant of what was happening inside his room. Regarding the part of testimony of the complainant where he speaks of informing accused Sanjeev about Rs. 2500/- and not 3000/- paid by him. The witness stated in his evidence that he had met Sanjeev and had told him this fact. From the chronology as given in his evidence, it appears that after the transaction PW-9 came out of the room and PW-8 went to Sanjeev to inform him about the reduction. There are hardly two sentences spoken, which would have taken place in few seconds. No effort was made by the defence to seek clarity on how the sequence went and as such the sequence as can be derived from the evidence of the witnesses will be accepted. This part of testimony of witness is supported by the recording in CD where complainant is heard informing Sanjeev that he has paid Rs.500/ less and Sanjeev is heard saying itna to chalta hai.

74. Ld. Counsel for the accused argued that PW-9 said in his evidence that after the transaction accused Ramesh had handed over the certificate to complainant, which is contradictory to the

recovery memo, where the certificate has been shown to have been handed over by accused Sanjeev. He also argued that prosecution has made several improvements to incorporate statements showing involvement of accused Sanjeev Kumar when there was none. The manipulations create doubts about the case of the prosecution.

Certain confusions in the mind of witnesses who were examined after a period of four years of incident are natural. Accused Sanjeev has been charged for the offence of conspiracy and as such even if his active role is not visible, his presence and conduct are sufficient to conclude his involvement in the offence.

75. [Recovery and related evidence]

PW-8 stated that (after the money was handed over to accused Ramseh) they (he and independent witness Abhishek) came out of the room and gave a missed-call to Mr. Khullar (PW-12).

PW 8 said in his cross examination dated 19-01-2016 that he had not given any missed call to anyone on the date of raid; apparently the call was made by PW9 who has stated so in his chief examination and has also confirmed it in his cross examination dated 22-09-2016.

The witness cross examined about the phone no. with which he had made the call. He could not give his mobile number as he said that he was using two mobile numbers. Suggestion was given to the witness that he could not tell the numbers because he never made the call; the fact is that the witness was not asked to provide the numbers after he said that he was having two numbers, thus a conclusion that he did not remember his phone numbers cannot be drawn.

76. Ld. counsel argued that PW-8 said in his evidence that he gave the signal. It appears a case of bad translation at best. At the first instance PW-8 has said that “we came out and gave the call”, not specifying who made the call. In between he remembered about his conversation with accused Sanjeev, he stated that part and then said it was after this that he had come out and gave signal. PW-9 on the other hand has said clearly that it was he, who made the call. The reading of the evidence together would show that it was PW-9 who had made the call.

77. PW- 8 says further that (after the team came in) Ramesh and Sanjeev got nervous. Search of Ramesh was taken. Sanjeev was also apprehended. CBI officials had asked Ramesh how much money he had but he could not tell.

78. PW- 9 deposed that CBI team rushed in the office and complainant pointed to PW12 Insp. Sanjay Kumar Khullar towards co-accused Ramesh, who had demanded and accepted the bribe amount and PW12 Insp. Sanjay Kumar Khullar challenged co-accused Ramesh for demanding and accepting the bribe amount and complainant also pointed towards accused Sanjeev. PW9 Abhishek Kumar further testified that PW12 Insp. Sanjay Kumar Khullar also challenged accused Sanjeev and both accused were caught hold by their hands by CBI team. The complainant informed PW12 Insp. Sanjay Kumar Khullar that accused Ramesh had accepted the amount and kept the same in his pocket. PW9 Abhishek Kumar deposed that PW12 Insp. Sanjay Kumar Khullar also asked him about the incident which he had narrated.

This part of the evidence of the witness is corroborated by PW11 & 12 also. A minor contradiction being that PW-9 has not said that accused persons had become nervous on seeing the police officials; though other witnesses have said it categorically.

79. PW -8 says that on search money was recovered from the pocket of accused Ramesh. PW-9 elaborated in his evidence that on the direction of PW12 Insp. Sanjay Kumar Khullar, independent witness PW10 Javed Khan recovered the bribe amount from the left side pocket of co-accused Ramesh, which was found to be Rs.2500/-. PW9 Abhishek Kumar further deposed that on being asked, complainant stated (to the IO) that as it was discussed, he negotiated the bribe amount and co-accused Ramesh agreed to accept Rs.2500/- and the remaining balance of Rs.500/- was with complainant only and the complainant produced the GC note of Rs.500/- to PW12 Insp. Sanjay Kumar Khullar.

80. Ld. Counsel argued that as per CBI story, the bribe money was recovered by independent witness Javed Khan (PW10) but Javed Khan has categorically denied even the recovery of money in his presence. PW 10 is talking about information given by CBI official about recovery of money. There are five witnesses of recovery four of them supported the case of the prosecution broadly. PW 10 has been declared hostile; his testimony cannot be read over the testimony of the remaining four witnesses.

81. Regarding PW 8 he did sway from his examination in chief during the cross examination conducted by Ld counsel for accused Sanjeev. Even if this statement is considered though not being accepted against the version of other witnesses, the witness said in his cross examination that the GC notes were recovered from one file lying on the table. It is not the case of defence that the place wherefrom recovery was made was a public place or several persons had come and gone out of there. There is no explanation coming from either accused as to how the money came to land on the file in the room; while both the accused were present inside the room. the

defence taken by the accused, therefore, is going against him only. There is otherwise no reason to dispute the concurring testimony of PW-9, 11 & 12 corroborated by chief examination of PW-8.

82. It was argued by Ld counsel that during cross examination by state on 22.01.2016, while putting currency notes Ex.PW-8/PX, PW-8 was given suggestion that currency notes were recovered from accused Sanjeev. This appears to be a typographic error and is ignorable.

83. Ld. Counsel for accused Sanjeev argued that his hand wash was not taken, which is an admitted fact. Ld. Counsel for accused Ramesh Mali submitted that PW10 has destroyed case when he stated that pink solution of pre-trap proceedings was kept / preserved in bottles. He argued that if it was so, then the possibility of plantation of hand washes cannot be ruled out.

PW 10 has been declared hostile by the prosecution. His testimony though cannot be discarded out rightly, it needs stronger corroboration from the documents/ circumstances / or other witnesses. No such corroboration is available hence this version of his cannot be accepted against the statement of other witnesses (PW-9, 11 & 12), who have said that the solution was discarded.

84. It was argued that PW9 has stated he had not made offer of search nor any other team member including independent witness Javed made search offer before affecting the search of the accused persons. Ld. Counsel further argued that it is mandatory as per CBI crime manual that the trap team should offer their search to the accused before effecting recovery. No such search was offered to the accused Ramesh in the present case and as such possibility of plantation cannot be ruled out.

85. As has been discussed above the non conforming to the guidelines does not invalidate the proceedings; what is relevant is if such non-compliance caused serious prejudice to the accused. In a recovery proceeding where only police witnesses are involved, such a lapse would look serious indicating possibility false implication. In a case like present, however, where police witnesses were accompanied by one complainant and two independent witnesses the non-compliance did not cause as much harm.

86. It was argued that the Recovery memo is showing the source of transfer of wash in the bottle “LHW” as Right Hand Wash from portion DX-2 to DX-2. It is enough to falsify the washes. This would have been a serious flaw if only one hand had given a positive result to the test. Both hand washes having turned pink, there was practically no distinction to be drawn between the contents of the two bottles.

87. The chemical analysis report in respect of the liquids was tendered in evidence under section 293 of Cr.P.C without calling the witness to the court.

88. Ld. Counsel has submitted that the Chemical Analysis Report cannot be read in evidence as it is not legally proved. PW-13, the IO was not competent to tender the said report as the expert was not covered U/s 293 Cr.P.C. No explanation is put forward by the CBI as to why Expert from Chemical Division of CFSL was not called and examined before the court. – Reliance was placed on **AIR 1986 SC 3 (22) Ram Singh Vs. Colonel Ram Singh (para 108/113)**

Section 293 provides for exemption of examination of expert witnesses, when there is nothing in their report, which requires a cross examination. A mere objection that the witness should

have been called would not serve the purpose of defence of denying this report. The defense needs to clarify what cross-examination, if at all was required to be conducted. Why did the accused not tell the court at the time when the report was being tendered that he wants to cross examine the witness. The argument as such is discarded.

89. Describing the events further PW-8 stated that SDM was called at the spot and he had asked what was happening. On being apprised of the matter he scolded accused Sanjeev and Ramesh. This not a very relevant fact of the case; yet it gives credence to the statement of the witness, who appears to be speaking about everything that happened as per his memory.

90. PW-9 has deposed that he and Javed had tallied the number and denominations of GC Notes recovered from accused Ramesh. Thereafter the office of accused was searched. He also deposed that site plan of the spot was prepared, which was signed by him. This document is **Ex PW9/A**.

[Arrest, Documentation and related evidence]

91. PW-8 deposed that they returned to the CBI office where some proceedings were conducted. Recording was transferred into CD and Transcription was prepared. His signatures were obtained on the documents. CD was packed and sealed with *lakh*. He said it was evening by then and he returned to his home. PW-9 stated that CBI team left the spot for CBI office and in the CBI office, accused Sanjeev Kumar and accused Ramesh were arrested vide arrest memos Ex.PW3/DA and Ex.PW9/B respectively. This witness (PW9) further deposed that in the CBI office, pant wash of co-accused Ramesh was taken in a fresh colour less solution of sodium carbonate, which turned pink and the same was transferred in a glass bottle and sealed. Paper slip was pasted and PW9 Abhishek Kumar signed the same. The bottle was marked as 'LSJPW',

Ex.P13 and the entire proceedings were recorded in a recovery memo, Ex.PW8/E. It was argued that the fact that water had turned pink was not mentioned in the recovery memo. The witness testified about it and the report also supports the fact.

92. Ld. Counsel has pointed out that accused persons had protested their arrest and claimed that they were innocent, which indicates non guilty mind of the accused persons. PW-9 said that he did not remember any such thing, while PW-8 said in his chief examination that the accused had become nervous. PW-9 saying that he does not remember would not have same effect as of admitting the suggestion. No inference can be drawn about the whole incident on account of these statements of the witnesses.

93. Ld. Counsel submitted that there was noncompliance of direction of Supreme Court regarding arrest memos. It was directed by Hon'ble Supreme Court that copies of recovery memo and arrest papers are required to be filed with record application on production of accused in court after arrest but no such exercise was done by PW-12. PW- 12 has stated that he had filed the arrest papers before the court, but he did not file the recovery memo. There is nothing on record to suggest that the Judge concerned had not taken note of the recovery memo at the time of first remand. This argument is of no help for the accused at this stage.

94. It was submitted that PW12 failed to tell, who and how family members of the accused persons were informed about their arrest. [Reliance was placed on **AIR 1997 SC 610 (34-B) D.K. Basu Vs. State.**] Ld. Prosecutor submitted that the IO having forgotten such minor detail after a long gap is natural. However, the name of the persons informed is written in the arrest memo. It was also submitted by Ld. Counsel that arrest memo of accused Ramesh is simply showing "WIFE"

against column No.11 [the arrest memo is **Ex.PW9/B.**] Ld. Prosecutor stated that generally a man has only one wife and, therefore non- mentioning of her name does not raise any question about her identity. He also submitted that the name of brother of accused Sanjeev is mentioned in his arrest memo [**Ex PW 3/A**] as there is always a probability of a person having more than one brother.

95. Ld. Counsel further argued that PW11, Insp. Nikhil Malhotra admitted that no acknowledgements of handing over of arrest memos and recovery memo to the accused persons were available on the recovery memo. PW 12 stated that he did not remember whether the copies (of recovery memo & arrest memo) were handed over to the accused or not. It would be relevant to mention at this stage that after the accused were arrested they would have been produced before the Special CBI Judge within 24 hours. The accused had a right to point out the lapses, if any, then and there. There are witnesses who are deposing that the documents were prepared at the CBI office and were signed by them. Not supplying the same to the accused persons immediately might be an irregularity but does not cast doubt on the documents in view of other available evidence.

96. Ld. Counsel is relying upon the statement of PW-8, which he gave in his cross examination conducted by counsel for A-1 dated 22.01.2016. The witness stated that signatures were obtained by CBI officials on 04.02.2012 on Ex.PW8/B, Ex.PW8/D and Ex.PW8/E which documents were not prepared in his presence. Relevantly the cross examination does not suggest that the documents were shown to the witness before he gave the statement. The witness has admitted his signature on the documents. PW-9 has stated that these documents were prepared on

03-02-2012 so are the statements of PW 11 & 12; PW-10 in his cross examination by Ld. Prosecutor admitted his signatures on the documents. In the cross examination dated 21-12-2016 by Ld Counsel for accused PW-10 said that he had gone to CBI office on 04-02-2012 and had signed the documents Ex PW8/D, E. 9/B, 3/DA and 9/A. All these documents bear date of 03-02-2012. Unlike PW-8 this witness has not given any reason for having written the date of 03-02-2012 on the documents if he had signed them on 04.02.2012. PW 10 was a government officer. It was not expected of him to have committed the error of signing a document on back date even if it were on the asking of CBI officers. He, however, irresponsibly says that he did so and does not even give a reason for doing so. It is settled law that against a written document oral evidence is inadmissible unless supported with reasoning. The evidence of PW-10 that he signed the documents on 04-02-2012 is therefore discarded. He having admitted his signatures on the documents, it shall be presumed that the signatures were made on the date mentioned in the document. It was argued that PW-9 also says that he signed the documents as everyone else was also signing. The witness, however, clarified immediately that it was requirement of CBI (and so he had signed the documents).

There is sufficient evidence thus on record to conclude that there was no irregularity in the preparation of the documents.

97. [Recordings/ CDs and related evidence]

The case of the prosecution is that the conversations implicating the accused were recorded in the DVR, which was handed over to the complainant. These conversations were then heard in

the office of CBI; rough transcripts were prepared and the recordings were transferred to CDs. These CDs were prepared on 2nd and 3rd February, 2012 in respect of the verification proceedings and trap.

98. The CDs were sought to be played in the evidence of witnesses concerned, however since certificates under section 65-B of the Indian Evidence Act in respect of the CDs had not been filed, Ld Predecessor relying upon the Judgment of Hon'ble Supreme Court in **Anwar P.V. Vs P. K. Basheer 2014 SCC 732** did not grant permission to the prosecution to play the CD, holding it unnecessary. Later an application u/s 311 Cr.P.C. was filed by the prosecution seeking permission to tender certificate in support of the electronic evidence (preparation of CD). This application was dismissed by Ld. Predecessor. The prosecution preferred revision against the order being Criminal Revision petition no 793/2019, which revision petition was allowed by Hon'ble High Court vide order dated 23-09-2019. The defence then took a plea before this court that only certificate u/s 65-B was allowed to be tendered. However, on the application of the accused, Hon'ble High Court clarified that the prosecution had a right to play the CD and prove on record the conversations contained in them. It was then that evidence of PW-8, 11 and 12 was recorded again (u/s 311 Cr.P.C.) and the recordings were put to the witnesses, who identified the voices of the accused persons.

99. The CDs were played in the court and on playing the CD Ex. P-10 (Mark-S-1) Folder no. 120203_004, duration 4 min. 37 sec., PW-11 stated that the audio contained introductory voice of independent witness Abhishek and Javed Khan and sample voice of accused Ramesh and that the witness was present at the time when the sample was taken. On playing the CD Ex. P-

14 (Mark-S-2) Folder no. 120203_005, duration 3 min. 11 sec., PW-11 stated that the audio contained introductory voice of independent witness Abhishek and Javed Khan and sample voice of accused Sanjeev Kumar. He also stated that he was present at the time when the sample was taken. The witness also identified voices of complainant, accused Sanjeev & accused Ramesh in the CDs exhibited Ex P-2 & Ex P-6.

100. PW12 deposed that after conducting the spot/trap proceedings at the spot they returned to CBI office and the recording contained in the DVR was played and heard by him along with CBI trap team in the presence of complainant and independent witness. The complainant and independent witness identified the voice of accused Ramesh & accused Sanjeev and complainant Vijender in the said recording. On the cloth *pullanda* Ex. P-8, PW12 Sanjay Kumar Khullar identified his signature at point D. He also identified his signature on CD Ex. P-6 at point D. On playing the CD Ex. P-6 (Mark-Q-2) Folder no. 120203_001, duration 11 sec., PW-12 identified the voice of Abhishek Kumar, independent witness. On playing the CD Ex. P-6 (Mark-Q-2) Folder no. 120203_002, duration 13 sec., PW-12 identified the voice of Javed Khan, independent witness. On playing the CD Ex. P-6 (Mark-Q-2) Folder no. 120203_003, duration 13 min. 58 sec., (from 7:31 mins. to 13:06 min), **PW12 stated** that the audio contained voices of three persons, i.e., the complainant, accused Sanjeev and accused Ramesh. **PW11** further stated that the audio was played in his office in his presence before being transferred to CD immediately after reaching the office. At that time the complainant had stated that one of the voices was his and had identified the other voices to be of accused Sanjeev and accused Ramesh. On the cloth *pullanda* Ex. P-12, **PW12 Sanjay Kumar Khullar** identified his signature at point D. He also identified his signature on CD Ex. P-6 at point D. On playing the CD

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U/s 120B IPC & 7, 13 (2) r/w 13 (1)(d) PC Act

Ex. P-10 (Mark-S-1) Folder no. 120203_004, duration 4 min. 37 sec., PW12 stated that the audio contained introductory voice of independent witness Abhishek and Javed Khan and sample voice of accused Ramesh and he was present at that time when the samples were taken. On the cloth pullanda Ex. P-16, PW12 Sanjay Kumar Khullar identified his signature at point D. He also identified his signature on CD Ex. P-14 at point D.

On playing the CD Ex. P-14 (Mark-S-2) Folder no. 120203_005, duration 3 min. 11 sec., PW-12 stated that the audio contained introductory voice of independent witness Abhishek and Javed Khan and sample voice of accused Sanjeev Kumar. He also said that he was present at that time when the sample was taken.

101. PW-9 stated in his cross examination dated 12-07-2016 that he had visited the office of CBI. On that day Insp. Nikhil Malhotra had made a telephone call, which was recorded in DVR and converted in CD. Said CD was kept in seal Pulanda, sealed and signed by all present. The witness mentioned the date of this proceeding as 30-01-2012, however he was re-examined by Ld. Prosecutor on 22/09/2016 to get the date clarified and he stated that the proceedings did take place on 02-02-2016 and that the mentioning of date of 30-01-2016 was inadvertent.

102. PW-9 stated that he did not remember if the specimen voice sample of the accused persons were taken or not. The witness was put a leading question that the specimen voice was taken and it was so mentioned in recovery memo. The witness stated that though it was mentioned in the recovery memo but he did not remember it. PW-9 has nowhere stated that he had signed recovery memo without reading it. He is a government officer and has deposed responsibly, even when he said about transcripts EX PW8/ G & H that they were not prepared in his presence and

were lying prepared when he reached the CBI office, which fact has been found reliable herein-above. It is thus being presumed that the witness had signed the document after finding its contents to be correct; and his statement that “he did not remember” need not be read as “it did not happen”.

103. Ld. Counsel for the accused submitted that PW-8 said that in his presence no specimen voice of accused persons namely Sanjeev and Ramesh were obtained by CBI. Ld. Counsel further argued that PW8 has categorically stated about non preparation of CDs Ex.P-2, Ex.P-3, Ex.P-10 & Ex.P-14 in his presence. He has even denied playing of CDs in his presence. He denied his signatures on CD.

PW-8 said in his cross examination by Ld. Prosecutor said that he did say (about recording of sample voice) in his statement to the IO and did not say that no samples in fact were taken. The CDs were also to be tendered in his evidence, but were not permitted by the court. The situation would have been clear if the CDs were played on the date of examination of the witness itself. Be it whatever the witness later changed his version, which part is contradictory to other evidence on record and cannot be accepted overlooking the other reliable evidence in this regard. Relevantly neither accused took any objection before the court claiming that their voice samples were not taken by the I.O.; or tendering the voice samples for the comparison before the court. Voice sample could be taken any time during investigation had the accused taken an early objection. If the accused feared false implication on part of I.O. and the better evidence was in his possession, he was expected to have offered it. The objection regarding sample voice having not been taken at the fag end of the case will not be entertained.

In Hazari Lal Vs Delhi Administration 1980SCR (2) 1051 it was held that there is no rule of prudence which has crystallized into a rule of law, nor indeed any rule of prudence, which requires that the evidence of a police officer should be treated on the same footing as evidence of accomplices and there should be insistence on corroboration.

The evidence of police witnesses that the sample voices were taken; and absence on part of accused to raise an early objection are sufficient to conclude that the voice samples were taken as deposed.

104. Continuing further on Voice & CDs **PW5** Amitosh Kumar, Sr. Scientific Officer, Grade-II, CFSL, CGO Complex, Lodhi Road has deposed that he had received four sealed parcels on 07.12.2012, through a letter of Sr. Superintendent of Police, CBI, Delhi. The seal on the parcels was found intact. He further testified that parcels contained four compact discs, Marked Q1, Q2, S1 and S2, said to be containing questioned and specimen voice recordings and these recordings were transferred to an instrument namely Speech Science Lab for examination. The questioned voice contained in CDs Mark Q1 and Q2 were segregated from the recorded conversation and compared with specimen voice record and after comparing and identifying the questioned and specimen voice recording, on the basis of linguistic, phonetic and conducting spectrographic examination, he found that questioned and specimen voice recordings contained in CDs Mark Q1, Q2 and S1 were of the same person (accused Ramesh Mali). This witness further deposed that questioned and specimen voice contained in CDs, Mark Q2 and S2, were also compared on the basis of linguistic, phonetic and conducting spectrographic examination and

were found by him to be of same person (accused Sanjeev Kumar). The detailed opinion given by him in this regard is **Ex.PW5/A**. Four CDs, the envelopes in which the CDs were sealed and the cloth wrappers of the four CDs, were **Ex.P1 to Ex.P16**.

It was submitted that PW12 has not collected any evidence about CFSL notification U/s 79-A I.T. Act. Ld. Counsel submitted that CFSL is not notified **U/s 79-A I.T. Act** enabling its Experts to examine the Electronic Evidence. The bare reading of **Sec.45-A Evidence Act, Sec.2 (1) (t) I.T. Act, Sec.29-A IPC and Sec.79-A I.T. Act**, it would reveal that Expert of Electronic Evidence should be notified to act through Gazette notification. So PW-5 is/was not a competent witness. **The relevant provisions of these Sections** were referred by Ld Counsel and are reproduced herein below:-

The Electronic Evidence is explained in:-

Sec 29-A IPC :- The words “electronic record” shall have the meaning assigned to them in clause (t) of Sub-section (1) of section 2 of the Information Technology Act, 2002.

Sec. 2 (1)(t) IT Act :- “Electronic record” means data, record or data generated, image or sound stored, received or sent in an Electronic Form or Micro Film or computer generate micro fiche;

Similarly qualification of expert is defined U/s 45-A Evidence Act and Sec. 79-A I.T. Act.

Sec. 45-A Evidence Act:- When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer recourse or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in Sec.79-A of the Information Technology Act, 2000 (21 of 2000) is a relevant fact.

Sec.79-A I.T. Act:- Central Government to Notify Examiner of Electronic Evidence- The Central Government may, for the purposes of providing expert opinion on Electronic form evidence before any court or other authority specify, by notification in the Official Gazette, any Department, body or agency of the Central Government or a State Government as a Examiner of Electronic Evidence.

It was submitted that joint reading of Sec.79-A I.T. Act & Sec.45-A Evidence would show that notification U/s 79-A I.T. Act is must.

105. Ld. Prosecutor has pointed out that the word used in section 79 A is “may”. It does not mandate notification of such agencies. Also the agencies already working and having expertise in their fields do not lose their expertise in absence of such notification.

Reliance was placed on **K. Ramajayam @ Appu vs The Inspector of Police in Crl Appeal no 110 of 2015 dated 27-01-2016.**

Ld. Counsel further argued that the CFSL Expert PW5, Sh. Amitosh Kumar was not competent enough or qualified enough to conduct any such voice/ spectrographic examination. PW5 has admitted that he has not done any course from any University in voice examination. The witness also stated that there are no such degree courses available. Defense has also not brought on record any University offering degree course on the subject. The witness said that he was an M.Sc. in Physics. He had done in-service training in Forensic Acrostic and Speaker Identification from CFSL Chandigarh. Ld. Counsel has relied upon the judgment in **State of Sukhdev Singh – 1993 (1) CCC 57 SC, wherein it has been held that training/ experience does not impart qualification.** Other judgments on this aspect have also been filed and all are not being

107. Ld. Counsel argued that PW8 stated that on 04.02.12, when he visited the CBI office, at that time, pullandas of bottles, CDs, GC Notes etc. were sealed in his presence and thereafter, seal was handed over to punch witness Abhishek. The witness thus is admitting that all the articles were seized and sealed. He is saying the date to be 04-02-2012, when the date in fact is 03-02-2012, which is so mentioned by other witnesses.

108. It was argued that no certificate under section 65-B was filed alongwith charge-sheet. The certificates were tendered in the evidence of PW11 & PW12 after the prosecution was granted permission of the same by Hon'ble High Court in the revision preferred by it.

The Hon'ble High Court while granting the permission relied upon the judgment of Hon'ble Supreme Court in **Sonu @ Amar v State of Haryana (2017) 8 SCC 570, wherein** the Hon'ble apex court drew a distinction between the admissibility of a document and the mode of proof of the same. It was observed that Call Detail records were admissible per se; the certificate under I.E Act was only a way of proving this record. This view was reaffirmed by the Supreme Court in **(2018) 16 SCC 273 titled Union of India & Others versus CDR. Ravindra V. Desai.**

The certificate under Section 65-B is merely a mode of proof of a document and can be tendered at any stage during the evidence to prove the creation of document and the contents thereof. In this case also, the certificate was required to prove the creation of CDs and not the contents of it.

109. The certificate regarding preparation of CD Mark Q-1 Ex P-3 was given by PW-11, who stated in his evidence that certificate U/S 65-B Indian evidence Act regarding CD Mark Q-1 bore his signature. The witness said that the certificate was regarding transfer of verification proceedings into the CD. It was asked from the witness if he had taken the permission of the court to play the CD before issuing the certificate. The witness accepted the suggestion that he had not taken any such permission. The purpose of certification as has been explained herein-above is to certify the procedure adopted in creating an electronic document; which it has been certified in this case was by way of transfer from the DVR to CD using a laptop. The certificate is not giving any proof of contents contained in the CD; for which other evidence has been led and considered. There was as such no need for the certificate issuing officer to see or go through the CD before issuing the certificate about how the document was prepared as he was not at that time verifying the contents of the document. All that he is certifying is that on the stated date, day and time, he had created the electronic document EX P-2 (Mark Q-1). Similar objections were taken regarding Mark Q-2 Ex P-6.

110. It was additionally submitted qua Mark Q-2 that the transfer in this CD was carried by PW-11; PW-12, therefore was incompetent to issue the certificate under section 65-B, Ex. PW12/P-1. It was argued that PW 11 has admitted in his evidence that it was he who transferred the contents from DVR, which fact has been reaffirmed by PW-12. Relevant testimony of PW 12 is that he had seen certificate u/s 65B of Indian Evidence Act in RC-4A/2012 regarding CD Mark-Q2 in which the recording pertaining to the spot conversations was transferred by Sh. Nikhil Malhotra, Inspector in the CD in his presence as well as in the presence of independent witness. It bore his signature at point A. The same was exhibited as Ex. PW12/P-1.

The witness deposed that the DVR was used on 03.02.2012 during the trap proceedings in the presence of complainant and independent witness. **The recording contained in the DVR was transferred into the CD by Sh. Nikhil Malhotra, Inspector in his presence as well as in presence of independent witness, namely, Mr. Abhishek Kumar and complainant Vijender using official laptop. He further deposed that he had not** mentioned the fact that Nikhil Malhotra had prepared the CD Mark-Q-2 in the recovery memo.

111. The attention of the witness (PW12) was drawn to his statement u/S 161 of Cr.P.C. and after going through the same he admitted that the fact of Inspector Nikhil Malhotra having prepared CD Mark-Q-2 on his direction was not mentioned in the statement.

What PW 11 is saying about Mark- Q-1 is different from what he says about Mark Q-2. He says that recording in Q-1 was transferred by him in presence of public witnesses. About Q-2 he says that the same was transferred by him on the direction of TLO i.e. PW 12. Thus while transferring data in Mark Q-1 (Ex P-2), he was working independently; in the second case (Mark Q-2), he was working under PW-12. The authority of transfer thus was of PW-12 and the transfer was also made in his presence; similar to the typing of evidence on dictation which, would still be certified by the person giving the dictation. Non mentioning of the fact that Q-2 was prepared by Insp. Nikhil Malhotra in their statements U/s 161 Cr.P.C. does not change the situation adversely for the prosecution. There is no discrepancy in the certificate as such, which has been created under the authority of PW-12 and has been certified so by him.

112. It was submitted that the DVR was neither sealed nor produced in the court. Once the content of the recording were transferred to the CD which is a sturdier mean of storing there was no reason why the DVR should have been preserved, after the CDs of recordings were prepared.

[Conspiracy]

113. It was argued by Ld counsel for accused Sanjeev that he had no role in the entire transaction. It was argued that PW8 said that no communication whatsoever had taken place between him and accused Sanjeev on 03.02.2012 and that accused Sanjeev had not asked him to go, see or contact accused Ramesh. Ld. Counsel submitted that PW9 categorically stated that accused Sanjeev had not directed complainant (PW8) to give any bribe amount to accused Ramesh at any occasion in his presence.

PW9 has also stated that on the day of raid when they entered the room of accused Sanjeev, at that time, he was talking on phone with someone and he continued talking on his mobile till he was apprehended by the CBI. PW-9 also said that he did not remember the time when telephone call was made to accused Ramesh from CBI Office. He again said- he did not know as to whom call was made; since he had not heard the said conversation, therefore, he could not say as to who was the person on the other end in the said conversation. This witness further deposed that he had not heard any conversation or seen accused Sanjeev making demand from the complainant (PW8) at any occasion in his presence. This witness also admitted that accused Sanjeev had never accepted any amount from the complainant. **Ld Counsel relied upon the judgment in State of Rajasthan Vs Mohan Lal 2009 (2) RCR (Criminal), where in** Independent witness stating that he did not hear any conversation between the complainant and

the accused and the accused and he also did not see any transaction, was read against the case of prosecution.

PW11 Insp. Nikhil Malhotra deposed that at about 2.12 pm, a call was made by the complainant from his mobile phone to the mobile phone of accused Sanjeev. However, accused Sanjeev refused to talk to complainant and asked him to come and meet him in his office. He admitted that after the complainant and punch witnesses returned to him, he was informed by them that in the office of SDM, they had neither met nor talked with accused Sanjeev on 02.02.12 as he was not present in the office. He deposed that as recording revealed demand of bribe on the part of accused Ramesh Mali, he made a recommendation for registration of case against him under Section 7 of PC Act. PW 11 admitted that accused Sanjeev had not made any demand and no money was recovered from him and even his hand washes were not taken at the spot. **It was argued that PW12 Insp. Sanjay Khullar** also deposed that no evidence of demand of bribe had emerged against accused Sanjeev and for this reason only FIR was not registered against him. He also admitted the fact that on 03.02.2012 no demand of bribe had emerged on the part of accused Sanjeev and so his hand washes were not taken at the spot.

114. On the other hand Ld Counsel for accused Ramesh argued that this accused had no control whatsoever over the issuance of certificate. His duties w.r.t files were restricted to passing of files from one table to other. He has deposed that the witnesses PW-2 & PW-4 have admitted this fact in their respective testimonies. Thus the accused could not have demanded bribe for something that he was inherently incapable to execute.

115. All that has been argued by Ld. Counsels is as per record. It is correct that as per record no evidence of **direct** demand has emerged on part of accused Sanjeev in verification or trap proceedings. It is for this reason that this accused has not been charged under provisions of PC Act **directly**. The charge against the accused is of having entered into a conspiracy with accused Ramesh, pursuant whereunto accused Ramesh made the demand and accepted the bribe on behalf of accused Sanjeev. In support of this charge the evidence led by the prosecution is control of accused Sanjeev over the file. The control of accused Sanjeev over the file has been proved by PW-2 and the issue has been dealt with in the relevant para hereinabove. PW 2 has deposed specifically that the file was put before him by accused Sanjeev Kumar always (sic). There was no cross examination of this on this aspect. A direct evidence of conspiracy would hardly be available since the conspiracy is hatched in secrecy. **[Reliance placed Yogesh @ Sachin Jagdish Joshi v. State of Maharashtra (2008) 10 SCC 394]**. The inferences are to be drawn from the evidence available. It is proved that the initial handle of the file was accused Sanjeev Kumar. The complainant has alleged that this accused had directed him to accused Ramesh at the first instance. The evidence of the prosecution is that the complainant met accused on 23.01.2012 when the demand was first made. It was after the transaction was finalised that the file was put for approval by the accused on the said date (Ex PW2/A). Certificate was prepared on 31-01-2012, whereafter the complainant got the call from accused Sanjeev. The complainant had called accused Sanjeev from the office of CBI and accused Sanjeev told him to visit the office. He did not say that the complainant could collect the certificate after paying the requisite fee or that he had already taken the certificate. It is clear thus that the certificate was in custody of accused

Sanjeev and was to be handed over by him. It is nobody's case that the certificate could be in the possession or control of accused Ramesh.

116. Next is the evidence of trap, where both PW-9 & PW-8 (in his examination in chief) said that on reaching the office accused Sanjeev had directed them to accused Ramesh. The evidence suggests that accused Ramesh was present in the same room and was transacting with complainant in presence of accused Sanjeev. The defence is not claiming that anyone else was present in the room or had entered or exited the room. The evidence clearly suggests that the money was accepted by accused Ramesh on behalf of accused Sanjeev. Further complainant had a brief conversation with accused Sanjeev where he mentioned that he had given Rs. 500/- less. Accused said *koi baat nhi*. Accused Ramesh said *koi baat nahi bata to dia hai*. And accused Sanjeev further said *koi nahi yaar, koi tension nahi hai*. There is no explanation from the accused as to what for if not about the reduction of bribe money was he talking with complainant. He does not explain why he allowed accused Ramesh to receive the money in his presence. Above all he does not explain why was complainant directed to accused Ramesh. From the conduct of the accused it is clear that he had a role in the conspiracy though he did not involve himself directly in the demand. [**Reliance placed Mohd. Khalid v. State of West Bengal reported in (2002) 7 SCC 334**].

The prosecution thus has proved that accused Sanjeev was a party to conspiracy w.r.t. demand of bribe of Rs. 3000/- from the complainant for getting his society registered and the certificate was handed over to the complainant only after he had paid the bribe; though a lesser amount of Rs 2500/- after bargaining with accused Ramesh.

[Defence]

117. It is the defence of the accused that there was no delay on the part of accused in issuing the certificate. It has been argued that the delay was all on part of the complainant who was not complying with the letters being issued by the office as per relevant provisions. It was argued that complainant held grudge against the accused though he himself was responsible for delay in registration on account of noncompliance/ fulfilling of shortcomings. Certificate of registration was with the complainant on 31.01.2012.

118. Relevant evidence on this aspect is of PW8 Complainant, who admitted that the application submitted for registration of his society is Ex. PW8/DC. He admitted that there were discrepancies and short comings in the documents submitted by him for registration of the society. He further admitted that the short comings in the documents submitted by him were duly mentioned in the note-sheet dated 30.05.2011 at point A1 of Ex. PW2/A (collectively). He also admitted that the said short comings were made known to him and after approval of DM, a discrepancy memo dated 02.06.11 was issued for removal of the discrepancy in the documents. The said memo dated 02.06.11 is Ex. PW8/DA. He again admitted that despite service of the discrepancy memo, he did not remove the discrepancies. He was again served with the reminder for removal of the discrepancies and final opportunity was granted to him for this purpose. The notice dated 20.12.11 is exhibited as Ex. PW8/DD. The witness admitted that as per record, vide note sheet dated 24.01.12, his file was put up for approval and the same was approved by office superintendent on 27.01.12 and SDM approved registration on 31.01.12 and thereafter he deposited registration fee of Rs. 100/- on 31.01.12 and received the certificate. He also admitted **that** due to several shortcomings pointed out in the documents submitted by him

for registration of his NGO, he had to face several inconvenience in the process and on this account, he was annoyed. It was submitted that complaint of the complainant is dated 02.02.2012, whereas receipt Ex.PW-2/DA (part of file Ex.PW-2/B) (D-15) shows that the society of the complainant was registered much prior to lodging of complaint and a sum of Rs.100/- was deposited by the complainant vide receipt Ex.PW-2/DA on 31.01.2012. It is admitted by PW-2 that certificates are issued only after deposit of the above amount. (Statement dated 21.02.2014). A perusal of Ex PW2/A shows that the certificate was prepared on 31-01-2012 and the fee was also paid on the said date as per Ex PW2/DA, however, the certificate Ex PW6/A bears the receiving of complainant as 03-02-2012. If the certificate was handed over to the complainant on 31-01-2012, there should have been an acknowledgement against receiving of the said date. There is no such document on record in Ex PW2/A. The defence of the accused thus is not reliable. Ld. counsel has relied upon the judgment in **Sunil Kumar Sharma Vs State (CBI) 2007 (3) Crimes 160 Delhi.**, wherein it has been observed that three cardinal principles of criminal jurisprudence are well settled and they are as follows:- (i) That the onus lies affirmatively on the prosecution to prove its case beyond reasonable doubt and it cannot derive any benefit from weakness or falsity of the defence version while proving its case; (ii) That in a criminal trial the accused must be presumed to be innocent unless he is proved to be guilty; and (iii) That the said onus of the prosecution never shifts. It was argued that the Evidence Act also does not contemplate that the accused should prove his case with the same strictness and rigour as the prosecution is required to prove a criminal charge. In fact, from the cardinal principles referred to above, it follows that it is sufficient if the accused is able to prove his case by the standard of preponderance of probabilities as envisaged by Section 5 of the Evidence Act as a result

of which he succeeds not because he proves his case to the hilt but because probability of his version throws doubt on the prosecution case.

119. Weighing the facts on the above scale even if the defence of the accused is accepted on its face and it is admitted that it was the complainant who was at fault; there is still no justification for a demand being raised. It is concluded hereinabove that the prosecution has successfully proved the demand and the acceptance of the bribe. The certificate was handed over to the complainant on 03.02.2012 as per the evidence of PW9 & examination in chief of PW-8 as also **Ex PW6/A**. This fact is also mentioned in the recovery memo. Needless to say that there is sufficient evidence regarding recovery of money from the possession of accused Ramesh.

120. [Other contradictions]

It was submitted by Ld counsel that the complaint was made after a delay. There is no justification given for the delay. The complainant admits in his cross examination that he did not make any complaint to the SDM anytime between 23-01-2012 and 02-02-2012. The complainant has submitted in this regard in his cross examination that he did not make any complaint to the SDM because accused Sanjeev was raising one or the other objection in his application. It was argued that the complainant was confused on whether or not he visited the office of CBI on 31-01-2012. The complainant did not say in his examination in chief that he went to CBI office on 31-01-2012. In his cross examination dated 10-07-2015, he appeared confused on whether he went or not. However, the question was again put to the witness on 11-08-2015 and he said categorically that he did not go to the office of CBI on 31-01-2012. Momentary confusion in the mind of witness regarding the date is natural and cannot be considered as fatal

to the prosecution case. Referring to Ex PW 8/D it was argued that the complainant had in fact approached the agency on 30-01-2012 and since nothing came up against the accused persons that day; those documents were not placed on record. Reference was made to portion DA to DA of Ex PW8/D where the date of verification memo is mentioned as 30-01-2012. Ld. prosecutor submitted that it was a typographical error. The date of 30-01-2012 was inadvertently mentioned in the document. The complainant denied in his cross examination that he had visited the CBI office on 30-01-2012 or that verification proceedings were taken up on the said date. He also said that he could not notice the date of 30-01-2012 on Ex PW 8/D. A question was put to PW-9 about his time of visit to CBI office on 30-01-2012. The witness appears to have related this date with the verification proceedings. In his re-examination by Ld prosecutor he clarified that verification proceedings in fact had taken place on 02-02-2012 and not on 30-01-2012. Relevantly the date of 30-01-2012 was not mentioned by the witness but was suggested by the counsel as it appears from the evidence. Suggestions were given to PW 11 &12 also regarding the date 30-01-2012. Both the witnesses denied that any verification was done on 30-01-2012. The entire evidence and the record shows that the proceedings at the CBI office had started on 02-02-2012, after the receiving of the complaint Ex PW8/A. The submission of Ld. Prosecutor seems reasonable. The date of 30-01-2012 appears in the portion DA to DA appears to be a typographical error.

121. It was argued that PW-8 and PW-12 have stated that the DVR was taken from the complainant after the accused were challenged by the IO, however this part is not recorded in the DVR. Ld prosecutor has submitted that the proceedings were spontaneous, and a confusion on this aspect is possible. Relevantly the witnesses have not deposed the exact chronology of

the incidents especially PW-8 and including PW 12. It was stated that the DVR was taken after the team entered. There would have been a gap of seconds in the two incidents and as such the point raised does not create much doubt about the recordings.

122. It was submitted that it is well settled law that benefit of every fault/dent in the prosecution case should be given to the accused. The CBI case is full with dent and in every criminal case the onus upon the prosecution U/s 105, Indian Evidence Act. There are judgments on either side also. It is settled law that a criminal case is to be decided on its own facts. The judgments in support and against are not being reproduced as they are mostly on the facts of the cases. The finding in this case is that there was no such serious lapse, which could render the prosecution case wholly unreliable.

123. It was submitted that it is held by Hon'ble Supreme Court in catena of judgments that **if two views are available** on record then the one which favours the accused, even in P.C. Act cases, should be given weightage by the court. The totality of the circumstances of the present case clearly emerged with a view which is in favour of the accused. There are judgments on such issues on either side. There are judgments to the effect that the complainant should not be made to suffer for faults of investigating agencies. There are judgments to the effect that no innocent person should be punished even if it amounts to letting some guilty persons go unpunished, is the old school of thought and that the court should make endeavor to see that no guilty persons walk free.

124. In view of above discussion it stands proved that both the named accused persons were involved in conspiracy to commit offence punishable **u/s 120-B, IPC read with Section 7 and**

Section 13 (2) read with Section 13 (1)(d) of the PC Act for demanding bribe of Rs.3000/- and accepting bribe amount of Rs.2500/- from the complainant for getting his NGO registered.

125. It is also proved that accused **Ramesh Mali** was also involved in the commission of offence **u/s 7 PC Act and u/s 13 (2) read with Section 13 (1) (d) of the PC Act** for accepting and receiving bribe amount of Rs.2500/- as illegal gratification from complainant Vijender abusing his position as public servant and benefiting himself while abusing his official capacity which amounts to misconduct.

126. Both accused persons namely Sanjeev Kumar and Ramesh Mali are convicted accordingly.

ANNOUNCED ON 14.07.2020

**ANURADHA
SHUKLA
BHARDWAJ**

Digitally signed by ANURADHA
SHUKLA BHARDWAJ
Date: 2020.07.14 16:59:11
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**(Anuradha Shukla Bhardwaj)
Spl. Judge (PC Act) CBI-21
Rouse Avenue Courts, New Delhi**