

**IN THE COURT OF SUSHANT CHANGOTRA
SPECIAL JUDGE (P.C. ACT) (CBI)-22, ROUSE AVENUE
COURT COMPLEX, NEW DELHI.**

Case No. : 214/2019
RC No. : 8A/2010/ACU-V/CBI/ND
CBI Vs : Radhey Shyam Sharma & Ors
U/s : 120-B IPC & 11 & 12 of PC Act

CNR No. : DLCT11-001238-2019
Date of Institution : 29.07.2013
Date of Judgment reserved on : 09.03.2026
Date of Judgment : 19.03.2026

Brief Details Of The Case

**Offence complained of
or proved** : 120-B IPC and 11 & 12 of
PC Act, 1988

Name of the accused : 1. Radhey Shyam Sharma
S/o Sh. Rameshwar
Sharma R/o Flat no.
A-601, IRWO, Westend
Tower, Sector-47, Sohna
Road, Gurgaon, Haryana.

2. Raj Kishore Gupta
S/o Sh. Gauri Shanker
Gupta R/o E-109, Japyee
Greens, Greater Noida,
201306.

3. Lavina Gupta

D/o Dr. S. Saran
R/o E-109, Jaypee
Greens, Greater Noida,
201306.

Plea of the accused : Plead not guilty
Final Order : Acquitted

JUDGMENT

1. The brief facts of the case as stated in the chargesheet are that an FIR bearing no. RC-8(A)/2010 CBI/ACU-V/New Delhi was registered against accused Radhey Shyam Sharma i.e. Director (Provisioning), Ministry of Home Affairs, New Delhi, directors of M/s Anjani Technoplast Ltd. (**M/s ATL**) i.e. Raj Kishore Gupta and Ms. Lavina Gupta, Sh. Bhuwanish Kumar i.e. DGM (Marketing), M/s ATL and unknown officials of MHA as well as against M/s Anjani Technoplast Ltd.

2. It is alleged that accused Raj Kishore Gupta was dealing in supply of hardware i.e. ballistic protection products, armoured panels etc., to the defence and central para forces. He alongwith his wife accused Lavina Gupta, Bhuwanish Kumar and others were indulging in corrupt practices with several public servants of defence and paramilitary forces by offering illegal gratification and gifts to them and thereby they were able to secure contracts.

3. The Ministry of Home Affairs (MHA) floated Tender No. U-II.794/2009-10 dated 03.07.2009 for procurement

of 59,000 light-weight bulletproof jackets for Central Paramilitary Forces. It is alleged that during the process, a private company, namely M/s S.M. Group, procured a favourable trial report by wrongful means. M/s ATL lodged a complaint with MHA alleging unfair and discriminatory trials and manipulation during the evaluation process. Consequently, the earlier product evaluation and trial report were cancelled, leading to re-evaluation and retrial.

4. It was alleged in the FIR that during the said period, M/s ATL remained in regular contact with accused Radhey Shyam Sharma who provided regular updates and extended undue favours in the retrial process and related matters. In return, M/s ATL allegedly provided him with illegal gratification as a reward for abuse of his official position. Even after the order for retrial, Radhey Shyam Sharma remained in continuous contact with Raj Kishore Gupta, Lavina Gupta, and employees of the company, including Bhuwanish Kumar, and continued to demand and accept illegal gratification.

5. It is further alleged that an earlier FIR No. 11/2010 under Section 120-B IPC read with Sections 7 and 13 of the Prevention of Corruption Act, 1988, was registered by the Anti-Corruption Branch, GNCT of Delhi, on 11.03.2010. The ACB had received a CD from an unknown source on 22.01.2010. The allegations pertained to a criminal conspiracy between manufacturers/suppliers and government officials/experts to secure undue advantage in the procurement process of 59,000

bulletproof jackets initiated by the offices of DG, CRPF, BPR&D, and TBRL, Chandigarh. The said FIR was later transferred to the CBI and merged with the present case.

6. During investigation, on 28.04.2010, searches were conducted at seven locations, including the residential and official premises of the accused persons. Accused Radhey Shyam Sharma, Raj Kishore Gupta, and Lavina Gupta were arrested on 29.04.2010. Accused Radhey Shyam Sharma was also arrested and pursuant to his disclosure, jewellery of worth Rs. 9.75 lakhs and cash amounting to Rs. 25,000/- were recovered from the garage of the residence of Radhey Shyam Sharma.

7. It is alleged that on 24.01.2010, accused Radhey Shyam Sharma contacted Raj Kishore Gupta and demanded a bribe of Rs. 10 lakhs. Thereafter, accused Lavina Gupta directed the company secretary of M/s ATL, Sh. Vinod Raina, to arrange the said amount. Vinod Raina contacted his friend Praveen Garg (also a company secretary), who agreed to arrange the cash on a commission of 3% including TDS. Praveen Garg, in turn, contacted Mr. Pankaj Jain, Chartered Accountant of M/s Pankaj Sumit & Associates, who agreed to raise a bill in the name of M/s Varun Associates in favour of M/s ATL on a commission of 2%. Accordingly, bank account details of M/s Varun Associates (Axis Bank) were shared and communicated to Vinod Raina.

8. As per the allegations, on 27.01.2010, Vinod Raina was asked to issue a cheque in favour of M/s Varun Associates for

the required amount along with an additional 3% commission. On the directions of accused Lavina Gupta, a service order of Rs. 11,91,240/- was raised in favour of M/s Varun Associates under the pretext of repair of an extrusion machine, and a cheque for the said amount was issued. After the cheque was cleared, Praveen Garg collected cash amounting to Rs. 10,56,175/- (after deductions) from Pankaj Jain and handed over Rs. 10,44,262/- to Vijay Sharma, an employee of M/s ATL. Vijay Sharma, on the directions of Lavina Gupta, delivered the said amount to accused Radhey Shyam Sharma at his residence in Railway Colony, New Delhi.

9. It is alleged that accused Radhey Shyam Sharma failed to provide any plausible explanation regarding receipt of the aforesaid amount. He also did not intimate his department about any loan transaction of Rs. 10 lakhs during the period 2009 to 28.04.2010, nor he gave intimation of purchase of jewellery.

10. The mobile phone numbers of accused Raj Kishore Gupta were placed under surveillance by the Special Unit of CBI, New Delhi, after obtaining requisite authorization from the competent authority. Raj Kishore Gupta was using mobile number 9811012858 and Lavina Gupta was using mobile number 9811012859. The original CD of intercepted conversations, transcripts thereof, certificate under Section 65-B of the Indian Evidence Act, and approval orders of MHA were collected.

11. During investigation, specimen voice samples of Radhey Shyam Sharma, Raj Kishore Gupta, Lavina Gupta, and other witnesses were recorded and sent to CFSL, New Delhi, for examination. The CFSL report bearing No. CFSL-2010/P-599 dated 01.09.2011 was collected.

12. It is alleged that accused Radhey Shyam Sharma had official dealings with M/s ATL Pvt. Ltd. and was involved in procurement processes relating to:

- (i) procurement of 40,353 BPJs in 2006 (later scrapped);
- (ii) procurement of 20,000 BPJs on an urgent basis in 2008–2009; &
- (iii) procurement of 20,000 units of riot control equipment from M/s ATL and MKU for supply to Nepal Police in 2008.

13. In the chargesheet, it is further stated that accused Radhey Shyam Sharma was dealing with the files pertaining to tender no. U-II.794/2009-10 for procurement of 59,000 light weight Bullet Proof Jackets for Central Para Military Forces in MHA. A lot of private companies responded to the tender and several communications and complaints relating to the procurement were being dealt by him. However, during investigation no role was found to have been played by accused Radhey Shyam Sharma in showing any specific favours in this process to M/s ATL.

14. It is further alleged that besides taking illegal gratification, accused Radhey Shyam Sharma had also obtained other favours from M/s ATL in the form of vehicle for his personal use on several occasions. During investigation no criminality on the part of Sh. Bhuwanish Kumar was found. It is stated that he did not have any role in arranging the payment of illegal gratification or giving of any favour to accused Radhey Shyam Sharma nor there is any evidence to suggest that he had knowledge of payment of illegal gratification to accused Radhey Shyam Sharma by Raj Kishore Gupta and Lavina Gupta.

15. During investigation certain deviations were found in the process of procurement of 59,000 light weight Bullet Proof Jackets for Central Para Military Forces. The ballistic test of Bullet Proof Jackets were conducted at Terminal Ballistic Research Laboratory (TBRL) of DRDO at Ramgarh but the said deviations attributed to negligence of the officials of TBRL and members of Technical Evaluation Sub-Committee for Ballistic Evaluation. Such lapses were general and not specific nor the same were confined to any single firm so as to show favour or disfavour to any individual firm or specific vendor.

16. During investigation, statements of witnesses were recorded and documents as well as articles were collected. The sanction for prosecution of accused Radhey Shyam Sharma u/s 19 of Prevention of Corruption Act, 1988 was received from the competent authority. Accordingly, chargesheet u/s 120 (B) of IPC r/w section 11 & 12 of PC Act, 1988 was filed.

17. Upon completion of investigation, the chargesheet was filed in the court on 29.07.2013 and the Id. predecessor of this court vide order dated 24.08.2013 took cognizance of offences and accused were summoned to face trial. Compliance of Sec. 207 Cr.PC was done. Thereafter, vide detailed order dated 31.05.2014, charges for commission of offences u/s 120-B of IPC r/w section 11 & 12 of PC Act as well as u/s 11/12 of The PC Act were framed against all three accused persons, to which they pleaded not guilty and claimed trial.

Prosecution Evidence :

The prosecution examined thirty witnesses to prove its case. The gist of the depositions of the prosecution witnesses are as follows: -

18. PW-1 Sh. M.C. Kashyap deposed that he was posted in Special Unit, CBI, New Delhi for collection of intelligence and telephonic surveillance between November 1997 to February 2014. In January 2010, certain phone numbers being used by accused R. K. Gupta (A-2) and Lavina Gupta (A-3) and others were put on telephonic surveillance pursuant to the orders of Union Home Secretary dated 08.01.2010. In May 2010, on receipt of information a case was registered against accused R. K. Gupta (A-2) and Lavina Gupta (A-3) and 36 recorded voice calls were burnt in a CD. The said CD contained 36 voice calls, recorded call information report in respect of said 36 calls, Certificate u/Sec. 65 (B) Indian Evidence Act with regard to the

telephone calls alongwith the details of recorded calls as well as two original orders of Union Home Secretary dated 08.01.2010 and 11.03.2010. The said CD was given to Insp. Shailender Singh in sealed cover on 20.05.2010 which was taken into possession vide seizure memo dated 20.05.2010 Ex.PW1/A. The certificate u/s 65 (B) IEA & details of the recorded calls (Annexure A) Ex.PW1/B, recorded calls information report Ex.PW1/C, order dated 08.01.2010 of Secretary, Ministry of Home affairs in respect of telephone nos. 98101-85003, 94175-13496, 98110-12859, 98110-12858 and 99360-11122 Ex.PW1/D and order dated 11.03.2010 of Secretary, Ministry of Home affairs in respect of telephone nos. 98738-00739 and 97171-96229 Ex.PW1/E were exhibited in his evidence. He also stated that copy of the aforesaid CD containing 36 voice calls was also handed over to the IO in open condition for day to day investigation. He identified the CD in the court Ex. P-1 as the same CD which was handed over by him to IO. He also identified the inlay card i.e. Ex.P-2 and protective cover Ex.P-3.

In his cross-examination by ld. defence counsel, PW-1 Sh. M.C. Kashyap further admitted CDR of mobile no. 9811012859 Ex.PW1/DA, CDR of mobile no. 9811012858 Ex.PW1/DB and CDR of mobile no. 9873800739 Ex.PW1/DC.

19. PW-2 Sh. Tapan Kumar Satpati deposed that he was posted as Section Officer in Administration-I Section, Ministry of Home Affairs (MHA) w.e.f. August 2006 to November 2012. He was looking after establishment work of gazetted officers of MHA

i.e. maintenance of service book and personal files of such officers. Vide letter no. F.No.20/G/2728-AD-I dated 09.08.2010 Ex. PW2/A, original service book and personal file of accused Radhey Shyam Sharma were forwarded to CBI. He also identified service book and personal file of accused Radhey Shyam Sharma i.e. Ex.PW2/B and Ex.PW2/C respectively. He deposed that accused Radhey Shyam Sharma was on Central Deputation to MHA under Central Staffing Scheme w.e.f. 12.12.2005 and the CCS (Conduct) Rules were applicable to him. He also deposed that as per personal file of accused Radhey Shyam there was no intimation/ mention of taking of any loan of Rs.10 lacs nor any intimation about purchase of jewellery of Rs.9.7 lacs (approx) had been given by him.

20. PW-3 Sh. Ram Krishan Gupta deposed that he was working as Chief Section Supervisor in Sanchar Haat for last about 12 years. He was looking after the work of sale of new Trump connections, Trump Re-charge Sale Counter, issuance of SIM cards and booking of new connections, etc. The agreement form alongwith photocopy of passport (no. E-2460448) Ex. PW3/A was submitted by accused Radhey Shyam Sharma for Trump Pre-Paid Cellular Mobile Connection and thereby a pre-paid Tump mobile connection/ sim card bearing no. 9868364920 was issued to accused Radhey Shyam Sharma. He also stated that SIM card / connection no. 9868364920 was issued on 08.07.2004. After issuance of SIM card/ connection to the subscriber i.e. accused Radhey Shyam, the application form alongwith documents

submitted therewith were forwarded to the Idgah Exchange Building i.e. Head-Quarter of Trump Connections from where the connection was activated.

21. PW-4 Sh. Sunil Tirkey deposed that in April 2010, he visited the office of CBI. He was told that he will have to be a witness and he was given two mobile phones i.e. one of make Motorola and the other make of Nokia and his introductory voice was recorded. Thereafter, three persons i.e. Radhey Shyam Sharma, Lavina Gupta and R.K. Gupta were called. A memory card was inserted in the mobile. Thereafter, his introductory voice was recorded and specimen voice of all the afore-stated persons were recorded by making a call vide specimen voice recording memo dated 30.04.2010 Ex. PW4/A. Then the said memory card was removed from the mobile and it was sealed in an envelope with a seal and the said seal was handed over to him. He identified the case property i.e. memory card of 512 MB of make NOKIA as Ex.P-1 and stated that it was the same memory card in which specimen voice of accused persons were recorded.

22. PW-5 Sh. Sunil Kumar deposed that in July 2013, he was posted as Director (D&A), Railway Board, Ministry of Railways. The President of India was the appointing and removal authority of the officers of the rank of Senior Administrative Grade (SAG). The President of India was the authority competent to remove accused Radhey Shyam Sharma from service as he was then posted as Chief Workshop Manager (of the rank of SAG), Harnaut, East Central Railway, Hajipur. He also stated that being

Director (D&A) he was competent to authenticate the order of the President of India granting sanction for prosecution of accused Radhey Shyam Sharma, as per Authentication (Orders and Other Instruments), Rules 2002. In that capacity, he prepared the formal Sanction Order dated 19.07.2013 Ex. PW5/A on the basis of the sanction granted by Hon'ble Minister for Railways on behalf of the President of India and he identified the said sanction order in the court.

23. PW-6 Sh. S.S. Prasad deposed that in the year 2010, he was working as Section Officer (Provisioning-1), MHA, Jaisalmer House, New Delhi. On 28.04.2010, the searches were carried out by the CBI at the office premises of accused Radhey Shyam Sharma in Room No. 28, Jaisalmer House, New Delhi and the documents mentioned in the search list Ex. PW6/A were seized. He also stated that during his posting with accused Radhey Shyam Sharma he had seen said accused writing and signing. Therefore, he also identified signatures of accused Radhey Shyam Sharma on a note-sheet of File No. IV-20011/12/01-PROV-1 Part (regarding procurement of 20,000 numbers of BPJ through single tender enquiry) on page 5N i.e. Ex.PW6/B. He further identified signature of accused Radhey Shyam Sharma on page 6N i.e. Ex.PW6/C (D-13, page 975), as well as on pages 7N, 12N, 16N, 17N, 18N, 19N, 21N, 24N, 26N, 27N, 28N, 33N, 35N, 37N, 38N, 39N, 40N, 42N, 43N, 47N, 48N, 50N, 53N, 56N, 57N, 61N, 62N, 64N, 65N, 66N, 69N, 71N, 73N and 74N (i.e. Ex.PW6/D, colly).

PW-6 Sh. S.S. Prasad also identified signatures of accused Radhey Shyam Sharma on the documents i.e. letter dated 26.12.2008 Ex.PW6/E, letter dated 07.01.2009 Ex.PW6/F, letter dated 09.01.2009 Ex.PW6/G, letter dated 16.01.2009 Ex.PW6/H, letter dated 16.01.2009 Ex.PW6/I, letter dated 16.01.2009 Ex.PW6/J, letter dated 16.01.2009 Ex. PW6/K, letter dated 30.01.2009 Ex. PW6/L and letter dated 10.04.2009 Ex. PW6/M. He further identified signatures of accused Radhey Shyam Sharma on note-sheet at pages 1384 to 1386 i.e. Ex.PW6/N and on letter dated 16.01.2009 Ex.PW6/O.

24. PW-7 Sh. Himanshu Rastogi deposed that in the year 2010, he was posted as Deputy Manager, Axis Bank, Greater Noida, U.P. He had handed over the original Account Opening Form of current account no. 624010200006255 i.e. Ex. PW7/A of M/s Anjani Technoplast Ltd vide seizure memo dated 13.05.2010. Accused Raj Kishore Gupta and Ms. Lavina Gupta were the authorized signatories of the said current account. He handed over certified copy of the account statement for the period 01.01.2009 to 30.04.2010 (Ex. PW7/B), five cheques bearing no. 042023, 042047, 042067, 042133 and 042209 in the name of Varun Associates (Ex. PW7/C to Ex. PW7/F and Ex. PW-7/H respectively) and one cheque bearing no. 042260 in the name of Janki Associates (Ex. PW7/G) to CBI vide seizure memo dated 13.05.2010 (Ex. PW7/I).

25. PW-8 Sh. Rajiv Verma deposed that in the year 2010, he was posted as Manager in Dena Bank, Lodhi Road, New

Delhi. On 30.04.2010, he visited the office of CBI, Lok Nayak Bhawan, New Delhi and met Insp. N.K. Mishra, ACU-V, New Delhi. Accused Radhey Shyam Sharma was introduced to him by Insp. N. K. Mishra. Accused Radhey Shyam Sharma disclosed that after receiving the aforesaid amount he alongwith his wife visited Tanishq showroom and purchased jewellery and remaining amount was lying at his home. He stated that disclosure memo of accused Radhey Shyam Sharma i.e. Ex. PW8/A was prepared by the IO.

PW-8 Sh. Rajiv Verma further deposed that thereafter he alongwith Insp. N. K. Mishra and Sh. Pradeep Ahlawat, Credit Officer, Dena bank and some other CBI officers went to residence of accused Radhey Shyam Sharma at Panchkuian Road and accused disclosed that above-stated jewellery was kept in the garage. They remained outside the garage and the garage was opened by accused Radhey Shyam and a trunk was found there. From the trunk accused Radhey Shyam took out a briefcase which contained a 'potli' having jewellery. Some keys, passbook and cash were seized by the IO and a pointing out /recovery and seizure memo Ex. PW8/B was prepared by the CBI official at the house of accused Radhey Shyam. He also stated that before preparing the seizure memo, CBI official called one employee of Tanishq Jewellers. The said person brought the invoices of purchase of jewellery. The said invoices were seized vide production memo dated 30.4.2010 Ex.PW8/C. He also identified the said invoices Ex.PW8/D. He identified the case property i.e. file in plastic

folder having a list of jewellery items Ex.PW8/E, second file in yellow colour having some papers on the pad of Om Prakash Malhotra i.e. govt. registered valuer of jewellery Ex.PW8/F, passbook of Vijaya Bank Ex.PW8/G, black colour key pouch with key ring having key of make 'Godrej' Ex.PW8/H. He identified currency notes of Rs. 25,000/- Ex.PW8/J (colly). He also identified one bangle with studded stone of green colour Ex.PW8/K, one pair of ear buds and one gold necklace studded with red colour stone Ex.PW8/L, one pair of ear tops and one gold necklace studded with white colour stone Ex.PW8/M, one pair of gold bangles studded with red colour stone Ex.PW8/N and one pair of ear buds and one gold necklace studded with green colour stone Ex.PW8/P.

26. PW-9 Sh. Vijay Sharma deposed that he was working in M/s Anjani Technoplast Ltd., 6A, Sector 40/41, Eco Tech-I, Gautambudh Nagar, UP since 1995 as a Peon. His nature of duties were to carry the file from one officer's table to another officer's table. He also stated that accused Raj Kishore Gupta and Ms. Lavina Gupta were the Directors/owners of M/s Anjali Technoplast Ltd. He also stated that his statement was recorded by the Id. Metropolitan Magistrate. He turned hostile and did not support the case of prosecution. In his cross-examination by Id. PP for CBI, he denied all the suggestions given to him as per his statement u/s 161 Cr. PC Mark A.

27. PW-10 Vinod Raina deposed that he was posted as Company Secretary in M/s Anjani Technoplast Ltd. From 2006 to

October, 2010. Accused R. K. Gupta and Ms. Lavina Gupta were the directors in the said company. He identified both of them in the court. He was looking after the affairs and finances of M/s Anjani Technoplast Ltd. In the month of January, 2010, Lavina Gupta informed him that she required a cash of Rs. 10 lacs and told him to talk to someone for arranging the said money. Thereafter, he spoke to Sh. Praveen Garg, Company Secretary in practice who promised to give Rs. 10 lacs in cash against the cheque. Accordingly, a cheque was issued by Ms. Lavina Gupta in the name of M/s. Varun Associates for a sum of Rs.11 lacs approx. Sh. Vijay Sharma was told to go to the office of Sh. Praveen Garg for collecting the cash. The witness deposed that his statement Ex. PW10/A was recorded by Id. Magistrate.

PW-10 Vinod Raina identified signatures of accused Lavina Gupta on cheques no. 042023 Ex. PW7/C, 042047 Ex. PW7D, 042067 Ex. PW7/E, 042133 Ex. PW7/F, 042209 Ex. PW7/H and 042260 Ex. PW7/H. He also identified his signature on general voucher dated 16.03.2010 Ex. PW10/B. He handed over the documents Ex. PW10/B, Ex. PW10/D and Ex. PW10/E vide production-cum-seizure memo dated 28.04.2010 Ex. PW10/C.

28. PW-11 Sh. Hemraj deposed that he was posted as Sales Executive in Titan Industries Ltd, E-04, Inner Circle, Connaught Place, New Delhi. On 30.04.2010 CBI officials visited the aforesaid office and asked him to join the investigation. Thereafter, he accompanied the CBI team and went to one flat at

Panchkuian Road, Railway Officers' Quarters and found that some persons were already sitting there. In the aforesaid flat, CBI officials showed him bills of purchase of jewellery and asked whether those jewellery items were purchased from their showroom. He checked the said bills and told the CBI officials that those bills were issued by their showroom M/s Titan Industries Ltd., E-04, Inner Circle, Connaught Place, New Delhi. The CBI officials also showed jewellery to him and he identified those jewellery articles. He handed over the invoice no. CPD/CM/11889 dated 27.01.2010 Ex. PW11/A and retail invoice Ex. PW11/B to Insp. Shailender Singh Mayal, CBI which were seized vide seizure-cum-production memo dated 30.04.2010 Ex. PW8/C.

29. PW-12 Sh. Praveen Garg deposed that he was Company Secretary by profession and the proprietor of M/s Praveen K. Garg & Co. since 2002. In April 2010, the CBI officials had interrogated him in their office. He was inquired about his profession, business and working and about one Pankaj Jain. He stated to CBI officials that he used to work for the client companies of Pankaj Jain and he knew Sh. Pankaj Jain, Chartered Accountant who was working under the name and style of M/s Pankaj Sumit & Associates, Pratap Nagar, Jail Road in the year 2010. He was partner in the partnership firm M/s SRP & Co. situated at 406, Manglam Paradise, Manglam Place, Sector-3, Rohini, New Delhi. Earlier the name of his firm was M/s Pankaj Sumit & Associates and it was the proprietorship concern and he was the proprietor of said firm.

The said witness did not support the case of prosecution and he was cross-examined by Id. PP for CBI. In his cross-examination by Id. PP, he denied the suggestion that he knew Vinod Raina. He also denied all the suggestions given to him as per his statement u/s 161 Cr. PC Mark PW12/A.

30. PW-13 Pankaj Jain deposed that he had told CBI officer that Varun Kumar Jha was working with him as Account Assistant in his sole proprietorship concern and at that time said Varun Kumar Jha was also having his own proprietorship concern in the name and style of M/s Varun Associates at Uttam Nagar, New Delhi, but he did not know about the nature of work of said firm. He handed over some documents to CBI relating to M/s Varun Associates.

He was also cross-examined by Id. PP for CBI. He denied the suggestion that he had opened the firm i.e. M/s Varun Associates in December, 2007. He admitted the suggestion that he had never provided cab services on behalf of M/s Varun Associates to M/s Anjani Technoplast. He denied the remaining suggestions given to him by Id. PP for CBI.

31. PW-14 Varun Kumar Jha deposed that he used to work for Pankaj Sumit & Associates as Accounts Trainee from August 2007 to 2010. He did not open any account in Axis Bank on his own, the account was opened at the instance of Pankaj Jain. Later on he came to know that the aforesaid account was opened in the name of Varun Associates having address of his house

A-691, Mahavir Enclave, Part-III, Gali no. 18, Uttam Nagar, New Delhi. He did not have any knowledge about transaction done through aforesaid bank account by anyone. He did not know any person by the name of Praveen Garg. The photographs pasted on the current account opening form Ex. PW14/A were obtained from him by Pankaj Jain by saying that he will open his salary account in Axis Bank. He also stated that the signature on the said account opening form was not put by him.

PW-14 Varun Kumar Jha further deposed that the invoice dated 03.02.2010 Ex. PW10/D on the pad of Varun Associates for repair and maintenance charges of sheet extrusion machines did not bear his signature and it was not issued by him. He also stated that he had never done the repair and maintenance of sheet extrusion machine.

32. PW-15 Deepak Kumar Tanwar, Sr. Scientific Officer, CFSL, New Delhi deposed that he had done M.Sc (Physics), M. Phil (Physics) and certificate course of Forensic Science from University of Delhi and he was working in the field of Voice Examination for more than 20 years. He stated that during this period, he had examined voices of 1000 persons and had opined on them. He had undergone one month training on the subject "Speaker Identification and Allied Areas" from University of Trier, Germany.

In the present case, his office had received a letter no. 4489/8(A)/2010/ACU(V)/CBI/New Delhi dated 24.08.2010

alongwith three sealed parcels marked A-1, A-2 and Q-1, transcripts of the recorded conversation and specimen seal impression for voice examination from SP, CBI, ACU-V, New Delhi. The seals on the parcels were tallied with the specimen seal impression and were found intact. The parcel marked Q-1 was opened and it contained a Compact Disk of Sony CD-R make, which was played and it contained 36 recorded conversations marked from Q-1(1) to Q-1(36). After examining the abovesaid exhibits marked Q-1, A-1 and A-2, they were returned to the forwarding authority along with their original packing/parcels in three sealed parcels, sealed with his official seal alongwith his report bearing CFSL-2010/P-599 dated 01.09.2011 i.e. Ex. PW15/A. He confirmed the contents of his report Ex. PW15/A. He proved the office copy of the letter vide which the aforesaid parcels were forwarded to CFSL as Ex. PW15/B.

PW-15 also deposed that Parcel Q-1, sealed with the seal of the court "PAB", was produced by Insp. Ranjeet Kumar Tank. He identified the said parcel Q-1 i.e. marked as Ex. PW15/C and identified his signatures on it. He also identified the CD marked as Ex.P-1 along with its inlay card and stated that it was the same CD Ex. P-1 which he had examined. He further identified envelope (marked as Ex. PW4/B) in which he had received the memory card in sealed condition. He identified a memory card already marked as Ex.P-1A as the same memory card he had examined. He identified another CD Ex. PW15/G and

yellow-coloured envelope (marked Ex.PW15/F) in which CD Ex. PW15/G was received.

33. PW-16 Mohd. Hussain Ansari deposed that he was Deputy Director in the Procurement Wing of Police Modernization (PM) Division of Ministry of Home Affairs in Jaisalmer House from April 2008 to March 2012. He explained the functioning and duties of Director Provisioning. He stated that the Police Modernization was headed by Joint Secretary, Division of Ministry Home Affairs and it consisted of 4 sections i.e. (i) PM and reforms headed by Director (PMR), (ii) VIP security headed by Director (VS), (iii) Provisioning headed by Director (Prov.) and (iv) Procurement headed by Deputy Director General (procurement). The Director Provisioning was to process various proposals of Central Paramilitary Forces (CPMFs) for obtaining financial sanction so that the CPMFs can initiate procurement action. The proposal was signed in Provisioning Section for the following issues i.e. (i) Existing scale and sanction qualities, (ii) Deficiency – whether due to fresh requirements or due to normal wear and tear, (iii) Mode of procurement – whether single, limited or opened tender and (iv) Finalization of specifications – if not existing. He also stated that once the proposal is critically examined by the Director (Provisioning), administrative approval is obtained from the Joint Secretary (PM) of the MHA. Then, the proposal is sent to the Integrated Finance Division (IFD). After due examination by the IFD, the approval of the competent authority depending on the total value is obtained, and a Finance

Sanction Order is issued to the concerned CPMF. Thereafter, tenders are floated by the concerned CPMF and are finalized for procurement process.

PW-16 Mohd. Hussain Ansari identified accused Radhey Shyam in the court and stated that he was the Director Provisioning when he joined the department as Dy. Director. Accused remained posted in that capacity till April, 2010. During his posting as Deputy Director in Police Modernization Wing of MHA, a proposal for purchase of light weight bullet proof jackets came from CRPF and he had also dealt with the said file i.e. File no. IV-21011/10/09-Prov-I. He identified the aforesaid file no. IV-21011/10/09-Prov-I as Ex. PW16/A (colly) which contained notings, pages 01 to 32 and also a file containing pages 01 to 158. These files were maintained in their office in usual course of business. He stated that as per note-sheet, the aforesaid proposal for purchasing light weight bullet proof jackets was initialed by accused Radhey Shyam Sharma on 06.05.2009 and then processed by said accused on 12.05.2009, 20.05.2009, 21.05.2009, 27.05.2009, 28.05.2009, 02.06.2009, 15.06.2009, 18.06.2009, 10.07.2009, 15.07.2009, 17.07.2009, 20.07.2009, 31.07.2009, 05.08.2009, 11.08.2009, 12.08.2009, 21.08.2009, 26.08.2009, 27.08.2009, 16.10.2009, 21.10.2009, 22.10.2009, 12.11.2009, 16.11.2009, 04.12.2009, 09.12.2009, 17.12.2009 and finally on 21.12.2009. He identified signatures of accused Radhey Shyam on the above-said notings.

He identified his letter dated 24.11.2009, written by him to the Director (Provisioning) and stated that the Home Secretary had directed examination / investigation of the matters relating to purchase of light weight bullet proof by CRPF as MHA had received various representations. He also identified representation dated 16.11.2009 given by M/s Anjani Technoplast Ltd. The said representation was received by them and the said representation was marked to SO (Provisioning-I) by accused Radhey Shyam Sharma.

34. PW-17 Sh. Prempal, Asst. General Manager, Central, MTNL deposed that in the year 2012, he was working as Commercial Officer (C-1), Central, Eastern Court, Janpath, New Delhi. During this period, CBI had sought two files pertaining to two landline numbers issued by MTNL i.e. one installed at office of MHA, Jaisalmer House and the other installed at the residence of accused Radhey Shyam Sharma. He had provided aforesaid two files to CBI which were seized vide a seizure memo Ex. PW17/A. He identified the first file Ex. PW17/B on the court record pertaining to MTNL telephone no. 23365639 and note-sheet pages 1 to 3 which was seized by CBI. He handed over the said file to CBI. He deposed that the aforesaid telephone connection i.e. 23365639 was earlier installed in Ministry of Railway and from there it was transferred on 10.02.2006 to the MHA on the request of MHA and consent of Ministry of Railway. He also stated that the said telephone connection with no. 23365639 was transferred from Ministry of Railway to MHA but it continued to be physically

installed at 254/1-B, Railway Officer's Flat, P. K. Road, New Delhi in the name of accused Radhey Shyam Sharma. He identified letter Ex. PW-17/B.

PW-17 Sh. Prempal also identified the 2nd file Ex. PW17/C pertaining to MTNL telephone no. 23386191 which was seized by CBI vide seizure memo Ex.PW-17/A. He stated that connection of telephone no. 23386191 was earlier installed at the North Block with no. 3092132 and from there it was transferred on 25.10.2002 to Jaisalmer House on the request of MHA. Due to change of the area and exchange, the initial number of aforesaid connection was changed from 3092132 to 23386191. He also stated that the telephone no. 23386191 was installed at the office of accused Radhey Shyam Sharma in Room no. 06, Double Storey Building, Jaisalmer House, New Delhi.

35. PW-18 Sh. Rakesh Soni deposed that in October 2010, he was posted at Tis Hazari Telephone Exchange as J.T.O (CDR). He had provided the CAF alongwith CDR of mobile no. 9868364920 for the period from 01.01.2010 to 30.04.2010 to CBI vide letter dated 08.10.2010 Ex. PW18/A. He also stated that as per copy of CAF alongwith copy of passport Ex. PW3/A, the aforesaid connection of mobile no. 9868364920 was issued in the name of Radhey Shyam Sharma R/o Flat no. 254/1B, P. K. Road Railway Officers Colony, New Delhi. He had requisitioned the attested copy of CAF already Ex. PW3/A from Idgah Telephone Exchange since CAF unit was situated there. He had also handed over the computer generated CDR of mobile phone no.

9868364920 for the period 01.01.2010 to 30.04.2010 to CBI vide his letter Ex. PW18/A. He proved the said CDR as Ex. PW18/B. He also stated that he himself generated the printout of the CDR from the computer system as he was authorized to access the system.

36. PW-19 Mr. Israr Babu, Retd. Asst. Nodal Officer, Vodafone deposed that in May, 2010, he was posted as Executive in Vodafone. He had handed over certain documents to CBI vide seizure memo Ex. PW19/A. He also handed over the documents mentioned in the seizure memo to CBI on the asking of then Nodal Officer Sh. Anuj Bhatia. The CAF pertaining to mobile no. 98110125859 was issued in the name of Sh. R. K. Gupta. He handed over the said CAF to CBI vide aforesaid seizure memo Ex. PW19/A. He proved the said CAF as Ex. PW19/B He had also handed over the CDR of mobile no. 9811012859 for the period 01.09.2009 to 30.04.2010 already Ex. PW-1/DA to CBI vide seizure memo Ex. PW19/A.

PW-19 Mr. Israr Babu further deposed that he had handed over CAF of mobile no. 9873800739 issued in the name of Anjani Technoplast Ltd to CBI vide seizure memo already Ex. PW19/A. He proved the said CAF alongwith enclosure as Ex. PW19/C (colly). He also handed over the CDR of said mobile no. 9873800739 for the period 01.09.2009 to 30.04.2010 i.e. Ex. PW1/DC. He also stated that he had handed over CAF of mobile no. 9873666139 issued in the name of Anjani Technoplast Ltd alongwith enclosures to CBI vide seizure memo already Ex.

PW19/A. He proved the CAF of mobile no. 9873666139 as Ex. PW19/D (colly). He also handed over CDR of said mobile no. 9873666139 for the period 01.09.2009 to 30.04.2010 i.e. Mark PW19/1. He handed over CDR of mobile no. 9811012858 for the period 01.09.2009 to 30.04.2010 (Ex. PW1/DB) to CBI vide seizure memo Ex. PW19/A.

37. PW-20 Sh. B. L. Meena, Under Secretary, MHA deposed that in March 2005, he was posted as Section Officer, Provisioning-II in the Ministry of Home Affairs. Provisioning-II was dealing with the allocation of arms & ammunition to State Police Organization and Central Paramilitary Forces. Being Section Officer, he was overall In-charge of this desk. He was responsible for processing of the case/proposals received from State Police and Central Paramilitary Forces and he was the custodian of the files pertaining to this desk. He identified accused no. 1 and stated that during his tenure as Section Officer in Provisioning-II, accused Radhey Shyam Sharma was the Director (Provisioning). He was directly reporting to said accused.

PW-20 Sh. B. L. Meena also deposed that he had dealt with file no. IV-13018/4/2004-Prov-II-Pt bearing subject - "Proposal Govt of India's Assistance to Nepal Police", pertaining to Provisioning-II desk i.e. Ex.PW-20/A (colly). He also dealt with another file no. IV-13018/4/04-Prov-II-Pt, bearing subject - "Proposal Govt of India's Assistance to Nepal Police" i.e. Ex. PW-20/B (colly) and file bearing subject - "Proposal Govt of India's Assistance to Nepal Police" pertaining to Provisioning-II

desk i.e. Ex. PW-20/C (colly) which was the correspondence portion. He stated that all the above three files i.e. Ex. PW-20/A, Ex. PW-20/B and Ex. PW-20/C were part files of the subject “Proposal Govt of India's Assistance to Nepal Police”. The correspondence file Ex.PW-20/B (colly) contained letter no. 82/846/NGO dated 19.07.2007 of Preeti Saran, Joint Secretary (North), Ministry of External Affairs, New Delhi i.e. Ex. PW20/B-1 vide which Ministry of External Affairs had intimated that they had received a request from Govt. of Nepal for Arms and Ammunition and some riot control gears for use of Nepal Civil Police. It was also informed that the matter was discussed by Foreign Secretary with Home Secretary and it was decided that a team of officials of MHA and MEA will visit Nepal within next 10 days to make an assessment of the requirement of Nepal Govt. Vide aforesaid letter Ex. PW20/B-1, Ms. Preeti Saran, Joint Secretary, MEA requested MHA to indicate possible set of dates for visit as well as to nominate suitable officials for the visit. Vide his noting dated 26.07.2007 i.e. Ex. PW20/A-1 he proposed nomination of suitable officers from MHA and possible set of dates for the visit and also submitted the file to the Director (Provisioning). Below his noting Ex. PW20/A-1, accused Radhey Shyam made noting dated 30.07.2007 Ex. PW20/A-2 vide which said accused had proposed to nominate suitable officers from MHA and for dates to be decided by MEA. Accused Radhey Shyam marked the said file to JS (M). Below noting Ex. PW20/A-2 of accused Radhey Shyam, JS (PM) also made noting

dated 30.07.2007 Ex. PW20/A-3 and proposed nomination of accused Radhey Shyam Sharma. He identified noting of Ms. Anita Chaudhary, Additional Secretary (CS) dated 13.08.2007 i.e. Ex. PW20/A-4 and identified noting dated 06.09.2007 i.e. Ex. PW20/A-5 of accused Radhey Shyam with respect to visit undertaken by the team including accused Radhey Shyam.

PW-20 Sh. B. L. Meena identified noting dated 18.09.2007 i.e. Ex. PW20/A-6 of accused Radhey Shyam with respect to putting up of the minutes of meeting held on 17.09.2007 for assistance to Nepal Police. Vide aforesaid noting Ex. PW20/A-6 accused Radhey Shyam highlighted that: (i) Riot control equipments may be procured from 2 firms at the last purchase date at which they supplied it to CRPF and both the firms are willing to supply this item at the LPR within a month and (ii) AS & FA (Home) stated that let MEA make the payment directly to all agencies. He stated that he made noting dated 21.08.2007 Ex. PW20/A-7 with respect to taking the financial approval of AS & FA (Home) for deputation of team to visit Nepal. After his noting dated 21.08.2007 Ex. PW-20/A-7, he lastly dealt with this file on 27.11.2009 and made noting Ex. PW-20/A-8.

PW-20 Sh. B. L. Meena deposed that between 21.08.2007 to 27.11.2009, the files Ex.PW-20/A (colly), Ex. PW-20/B (colly) and Ex. PW-20/C (colly) were not in his custody. In the first week of November 2009, he inquired about the files from his subordinate staff in the section. Files were not found in the record of the section. He then personally inquired about the

files from accused Radhey Shyam Sharma and said told him that the aforesaid files were with him in his almirah. Thereafter, accused Radhey Shyam took out the files from his almirah and handed over the same to him. After receiving the files, he made noting dated 27.11.2009 Ex. PW-20/A-8. He also stated that vide noting dated 06.05.2008 Ex. PW20/A-9 accused Radhey Shyam had marked this file to him. He also stated that the file Ex. PW20/A was not received by him after the noting Ex. PW20/A-9. He received the said file only in November, 2009.

PW-20 Sh. B. L. Meena deposed that in the noting Ex. PW20/A, there was mention of the last purchase price of riot control gear by CRPF @ Rs. 6,000/- from DRDO approved firm i.e. M/s MKU, Kanpur and M/s Anjani Technoplast, Noida.

PW-20 Sh. B. L. Meena identified letter dated 21.02.2008 of Director (North), MEA alongwith annexures 'A' & 'B' as Ex. PW20/A-10. He stated that as per annexure 'A' estimate of price was Rs. 6,000/- per unit for riot control equipment. However, the letter Ex. PW20/A-10 and annexures were silent about the purchaser or the seller or the rate approver or approved price.

38. PW-21 Prem Singh i.e. driver of M/s Anjani Technoplast Ltd. deposed that in the year 2010, he was taken to the office of CBI at Lok Nayak Bhawan and CBI officials inquired from him regarding the present case. He informed the CBI that he was working under the HR department of M/s Anjani Technoplast

Ltd. since the year 1998 as a driver. He also informed the CBI that he was only driving the vehicles including a bus and cars of make – Skoda, Tata Sumo, Santro. The CBI officials asked him about the details of the occupants of various vehicles which were driven by him and the destination of said travels. He was specifically asked about the travel to Haridwar, but he could not tell the details of persons who had travelled with him or the number of times he had visited Haridwar. The entries in the log books were made by Sh. Ashok Panda, incharge of HR/Admin in the said company.

PW-21 identified the log books of vehicles (i) Tata Sumo – UP 16 P 3832 M-198/ 10/RC-8(A)/ 10-ACU V. and (ii) Santro 7687 M-197/10/RC-8(A)/10-ACU V i.e. Ex. PW21/1 and Ex. PW21/2 respectively. He stated that he was familiar with above-log books and these related to Anjani Technoplast Ltd as the same were brought from the record of the company by the CBI officials, but he failed to identify the person who used to make entries in it. He stated that CBI had taken his voice sample, but upon hearing the CD Ex. PW15/G, he stated that it was not his voice.

He was cross-examined by Id. PP for CBI and he denied the suggestions vis-a-vis different places he had visited and the persons who had accompanied him to said places.

39. PW-22 Ravi Dewan deposed that in the year 2009-2011 he was working with a Anjani Technoplast Company. CBI officials took him to their office and inquired about description of

vehicles driven by him for the company. He also stated that CBI officials also asked him about the occupants and destination of such travels. He was also specifically asked about him having taken a passenger namely Sh. R. S. Sharma. He identified the log book of vehicle Tata Sumo – UP 16 P 3832 M-198/10/RC-8(A)/10-ACU V i.e. already Ex. PW21/1. He also stated that he was familiar with said log book as it was brought from record of the company by CBI officials.

He identified his signature on entry for the date 04.02.2010 in log book, but HR Manager namely Sh. Ashok Panda had made the said entry. As per procedure of their company, the drivers used to affix their signatures to the entries corresponding to the travel made by them as drivers for the company. He also stated that he had affixed his signature after completing the travel.

40. PW-23 Neer Kumar, Driver deposed that in the year 2009-2010, he was taken to the office of CBI at Lok Nayak Bhawan and the CBI officials had inquired from him regarding the present case. He informed the CBI that he had worked with M/s Anjani Technoplast Ltd. from the year 2006 as a driver till 2019-20 and he used to drive Honda City and Skoda vehicles for the company. He was driving the Honda City vehicle for children of his owner. He identified the log book of vehicle bearing registration No. DL-4CR-9071 i.e. Ex. PW-23/1, but could not tell who had recorded the said entry or had driven the vehicle as

described in the said entry. He also failed to recognize the signature of the person in the said entry.

He stated that CBI officers had played certain audio recordings to him. He failed to identify his voice in two audio files, but identified his voice recording sample in the folder bearing name – “Nir Kumar” in CD Ex. PW15/G.

He was cross-examined by Id. PP for CBI. In his cross-examination by Id. PP, PW-23 Neer Kumar admitted that a Tata Sumo vehicle was operating for the said company. The other drivers namely Prem Singh, Ravi Diwan and Shyam Thapa were also working in the company. He and other drivers were informed regarding the identity and name of the person they were supposed to drop or pick up from any particular destination. He admitted that he used to pick up and drop guests on the instructions of Mr. Bhuvnesh Kumar on several occasions and had visited multiple locations during the course of his official duty for dropping or picking up guests including places like Vrindavan, Jind, Agra, Jaipur, Lucknow, Dehradun and Mussoorie etc. He also stated that it was also a part of his duties to visit the IGI Airport, New Delhi. However, he stated that he did not visit the residence of Radhey Shyam Sharma and Panchkuian Road for picking him up or for dropping him. He identified his signatures on the log book Ex. PW23/1. In his cross-examination by Id. Defence counsel he stated that he was beaten up by CBI officials and was threatened with his life for giving a statement.

41. PW-24 Om Prakash, Retd. ASI, RPF deposed that he had accompanied the CBI officials for a raid at the premises of accused Raj Kishore Gupta on 28.04.2010. He alongwith CBI team entered the premises at about 8:00 am and the search continued till 1:00 pm. The bed room of accused R. K. Gupta situated at first floor was searched during the raid and the articles were recovered during the said search were recorded on Ex. PW24/1. He identified his signature on the search list Ex. PW24/I (D23).

42. PW-25 Harjeet Singh, Manager, HUDCO, IHC deposed that in the year 2010, he was posted as Stenographer at HUDCO, India Habitat Centre, Lodhi, Road, New Delhi and on the instructions of his senior officials, he joined the proceedings at CBI Office, Khan Market, New Delhi. Voice samples of Sh. Bhuvanish Kumar, Prem Singh, Sh. Neer and Sh. Vijay Sharma were taken by IO Inspector Shailender Singh in the CBI office on 13.08.2010 vide specimen recording memo Ex. PW21/3. The said voice recordings were saved as four separate files in the laptop of CBI and were transferred to the CD. Thereafter, the CD was sealed by the IO. He also signed the said CD and he identified the said CD as Ex. PW15/H.

43. PW-26 Subhash Chandra deposed that in April 2010, he was working as Sr. Office Manager at STC of India Ltd., Jawahar Vyapar Bhawan, Tolstoy Marg, New Delhi-110001. He had joined the investigation in the present case with CBI officials towards the end of April 2010. On that day, at about 9:30 am, he

had accompanied the investigation officer namely Rajpal Singh to an address at a high rise building in Gurgaon, Haryana. They were accompanied by other officials of STC namely Sanjeev Kumar, Kamal Singh and Bir Bahadur. He and the other officials from the STC had taken part in the said proceedings upon the written instructions issued by the Personnel Department of the STC. The CBI officials had searched the address in question and prepared a search list dated 28.04.2010 Ex. PW26/1 of the articles seized from the said premises. He identified his signature on the said search list.

44. PW-27 Amarjeet, Retd. Dy. Manager, SBI deposed that in the year 2009, he had joined the Noida branch of SBI. On 15.12.2009, he had produced certain documents relating to current account No. 10829466487 in the name of M/s Anjani Technoplast Limited. He identified signatures of Sh. Sushil Khurana, Chief Manager at point A on the letter dated 12.05.2010 (Ex. PW-27/1). He also stated that he handed over original account opening form (Ex. PW-27/2), certified copy of statement of account for the period 01.01.2009 to 30.04.2010 (Ex.PW-27/3), original cheque No. 614226 dated 18.03.2010 for an amount of Rs. 3,00,292/- (Ex. PW-27/4), all in the name of M/s Anjani Technoplast Limited to CBI. He also stated that the authorized signatories of above-said account were accused Raj Kishore Gupta and Lavina Gupta being directors of the company. The said cheque was cleared by Mr. S. K. Aggarwal. He also proved the documents i.e. seizure memo of statement of account dated 18.03.2010 and RTGS record form Ex.

PW27/5. He also proved statement of accused dated 18.03.2010 Ex. PW27/6 and RTGS record Ex. PW27/7.

45. PW-28 Bhuwanish Kumar deposed that he had joined M/s Anjani Technoplast Limited in the year 2007 as Assistant General Manager (Armoury Division) in the Marketing Department. His job profile included marketing of the entire range of armoury products including bullet-proof jackets, helmets, shields, body protectors, vests, bomb helmets and body protectors. He was also required to meet officials from Para-military forces, Police, Ministry of Home Affairs, Army, Navy, Air Force and PSUs. He used to look after the work of making presentations and participating in the sale/tender process of various such articles. During the course of his official work, he met accused R. S. Sharma i.e. Director in MHA at that time who was posted at Jaisalmer House, New Delhi. He identified accused Radhey Shyam Sharma in the court. MHA had given two orders for equipment to their company M/s Anjani Technoplast Limited during his tenure. The first order related to riot control equipments and the second order related to bulletproof jackets. Two companies were involved in the riot control equipment order i.e. M/s Anjani Technoplast and M/s MKU. The value of the said order was above Rs. 4 crore approximately. He was involved in the process of riot control equipment order. The riot control equipment order was an emergency order for supply by the Indian Government to Nepal, therefore, the process for the said emergency order had been

assigned to accused Radhey Shyam from the MEA and said accused was looking after its provisioning.

PW-28 Bhuwanish Kumar further deposed that the second order for bulletproof jackets was for about Rs. 45 crore. He was involved in the documentation of the bulletproof jackets order on behalf of M/s Anjani Technoplast Limited. The role of accused Radhey Shyam Sharma in both the above-said orders came at the end of the process after the Cabinet Committee on Security had sanctioned the same. Accused Radhey Shyam Sharma had signed the above-said orders at the last stage. Other persons/entities were also involved in the above-said two orders. CBI obtained his specimen voice samples and a memo dated 13.08.2010 Ex. PW21/3 was prepared in that regard. He also identified his signatures on the envelope Ex. PW-15/F as well as on the CD Ex. PW-15/G. He also deposed that the CBI had also played multiple audio conversations to him.

PW-28 Bhuwanish Kumar also deposed that his voice sample had been recorded in the CBI office. After hearing the "Track01.cda" from the CD in the court, he deposed that the voice sample heard by him in the court from "Track01.cda" was similar to what he had stated as a voice sample. He also stated that the voice of the said recording appeared to be similar to his voice. The CBI official had given him specific written content to speak for the voice sample. He also stated that the audio file 10-162453-0-14-20100127-018610.wav contained voices of two males and "Neer" mentioned in the recording was a driver at M/s Anjani

Technoplast who was known to him for 3–4 years. Vijay was an employee of M/s Anjani Technoplast Ltd. and was handling work related to finance. He also stated that Vijay was in the nature of ‘runner’ and was assigned the duties of going to banks. Their company had 5-6 vehicles including Tata Sumo. He also knew one Vijay Gupta who was relative of R. K. Gupta. However, he failed to identify the voices of any of the accused as well as of driver Neer in the recordings played in the court. He was also cross-examined by Id. PP for CBI, but he once again stated that he could not identify the voices played in the court.

46. PW-29 Nishant Kumar Mishra, the then Inspector, CBI deposed that FIR of this case was registered and investigation of the case was entrusted to him on 24.04.2010. He identified the signatures of Sh. D. S. Shukla, Superintendent of Police, CBI, ACU-V, New Delhi on the FIR Ex. PW-29/1. The FIR was registered against accused Radhey Shyam Sharma (being the then Director Provisioning, MHA), Sh. R. K. Gupta, Director, M/s Anjani Technoplast, Smt. Lavina Gupta W/o Sh. R. K. Gupta and Sh. Bhuwanish Kumar, DGM Marketing, M/s Anjani Technoplast. It was alleged that accused Radhey Shyam had been obtaining illegal gratification regularly from Sh. R.K. Gupta, Smt. Lavina Gupta, and other employees of M/s Anjani Technoplast while having direct official dealings with that company. Searches were conducted at the residential as well as official premises of accused persons and other relevant places and accused persons were arrested. He prepared disclosure memo dated 30.04.2010 of

accused Radhey Shyam i.e. Ex. PW8/A. Accused Radhey Shyam disclosed that he had used Rs. 9.75 lakh from the bribe money for purchasing jewellery from Tanishq showroom on the same day and he had kept the jewellery and the remaining Rs.25,000/- in a suitcase in the garage of his official residence. At the instance of said accused, independent witnesses were requisitioned and accused took the CBI team to his garage, pointed out a suitcase with a cloth cover, and stated that the lock code of said suitcase was '000'. Thereafter, the suitcase was opened with code '000' and it was found containing jewellery and Rs.25,000/- as disclosed by said accused. Accused Radhey Shyam also informed the location of Tanishq showroom from where the above-said jewellery was purchased. Tanishq showroom staff produced a copy of the official invoice stating that jewellery worth Rs. 9.75 lakh was purchased. The 'pointing out, recovery and seizure memo' dated 30.04.2010 i.e. Ex. PW-8/B was prepared. The retail invoice and transaction slip for the gold jewellery worth Rs. 9,79,286/- were seized vide seizure and production memo dated 30.04.2010 i.e. Ex. PW-8/C and Ex. PW-8/D. He proved the seizure memo of documents, bank vouchers and invoice dated 28.04.2010 prepared by him Ex. PW10/C and the documents mentioned in it were produced by Sh. Vinod Raina of M/s Anjani Technoplast.

PW-29 Nishant Kumar Mishra also deposed that the general vouchers of M/s Anjani Technoplast (Ex. PW-10/B), invoice of M/s Varun Associates (Ex. PW-10/D) and bank voucher

of Anjani Technoplast Ltd. (Ex. PW-10/E) were produced by Vinod Raina and they were used to generate Rs. 10 lakh bribe by way of false book entries. The above-mentioned documents were seized vide production cum seizure memo dated 28.04.2010 Ex. PW-10/C. The statements of Vinod Raina and Vijay Sharma u/s 164 Cr. PC were recorded. He also recorded the statements of Vinod Raina, Praveen Garg, Pankaj Jain, Varun Kumar Jha, Devender Pandey, and Bhuwanish Kumar u/s 161 Cr. PC.

47. PW-30 Shailender Singh Mayal, Dy. Superintendent of Police, CBI deposed that in the year 2010, he was posted as Inspector in CBI, AC-II, New Delhi and was attached with this case on 28.04.2010. He conducted search at the office of accused Radhey Shyam in Room No. 28, Jaisalmer House, New Delhi. He had seized the documents vide search list already Ex. PW6/A. On 30.04.2010, he recorded specimen voice of all three accused persons in the presence of independent witness namely Sumit Tirkey vide specimen voice recording memo Ex. PW-4/A. During recording proceedings, he had used two mobile phones – Nokia N72 and a Motorola and a new 512 MB memory card was unsealed in the presence of an independent witness. The introductory voice of Sumit Tirkey was recorded and thereafter the specimen voice of the three accused persons were recorded. He stated that subsequently the case was transferred to him from Inspector N.K. Mishra on 06.05.2010. During investigation, he moved an application for recording the statements of Sh. Vinod Raina and Sh. Vijay Sharma under Section 164 CrPC and

thereafter their statements i.e. Ex. PW-10/A and Ex. PW-9/A were recorded.

PW-30 Shailender Singh Mayal further deposed that on 13.08.2010, he recorded the specimen voice of Sh. Bhuwanish Kunwar, Prem singh, Sh. Nir and Sh. Vijay Sharma vide specimen voice recording memo Ex. PW21/3. The recordings were done in the presence of independent witness Sh. Harjeet Singh and all the accused had volunteered to give the specimen voice samples. The CD containing specimen voice of aforementioned persons was sealed in yellow colour envelope. He identified signatures of Sh. Harjeet Singh and Sh. Vijay Sharma on the aforementioned memo as they had signed the same in his presence.

He stated that vide letter no. 4489/8(A)/2010/ACU/(V)/ CBI/ New Delhi dated 24.08.2010 Ex. PW15/B (D16) the exhibits mentioned at column "Description of exhibit" were sent to CFSL for opinion. He collected the CFSL report no. T-1464 dated 01.09.2011 Ex PW15/A. He also stated that case no. RC 8(A)/2010 CBI ACU-V, New Delhi was registered on 24.01.2010 against accused Radhey Shyam, the then Director (Provisioning), MHA, Sh. R. K. Gupta and Smt. Lavina Gupta (Directors of M/s Anjani Technoplast as well as against Sh. Bhuvnesh Kanwar, DGM (Marketing). Vide seizure memo dated 13.05.2010 (D-6), already Ex. PW-7/I, he collected documents pertaining to account no. 624026255 of M/s Anjani Technoplast Ltd. These documents included cheque no. 44209 for Rs. 11,79,328 in the name of M/s Varun Associates. The said cheque was used to generate cash

amount of Rs.10 lakhs which was paid by Sh. R.K. Gupta and Smt. Lavina Gupta to accused Radhey Shyam as illegal gratification on 27.01.2010. The CDs and other documents containing intercepted telephone calls were collected from the Special Unit of CBI vide seizure memo dated 20.05.2010 already Ex. PW-1/A. He also prepared a transcript from the CD i.e. Ex. PW30/C.

PW-30 Shailender Singh Mayal deposed that from the telephonic conversation dated 24.01.2010, it was revealed that accused Radhey Shyam had demanded illegal gratification of Rs.10 lakhs from Sh. R.K. Gupta. It was also revealed that the said illegal gratification of Rs. 10 lakhs was delivered to accused Radhey Shyam by Sh. Vijay i.e. employee of M/s Anjani Technoplast on the instructions of Smt. Lavina Gupta at his official residence i.e. Railway Officers Colony, Panchkuian Road, New Delhi. It was also revealed that demand for illegal gratification of Rs. 10 lakhs was made in code language i.e. “ek das ka intjaam ho sakta hai”. Subsequently, on 27.01.2010 accused Radhey Shyam had informed Smt. Lavina gupta in code language i.e. “*Ha prashad mil gaya mereko*”.

During investigation CDRs and CAFs of the mobile numbers used by accused persons were collected through seizure memo dated 31.05.2010 already Ex. PW-19/A. The CDR of mobile no. 9811012859 used by Smt. Lavina Gupta and 9811012858 used by Sh. R.K. Gupta were also collected. The details of CDR of mobile no. 9811012859 confirmed that accused Radhey Shyam had contacted Smt. Lavina Gupta on 24.01.2010.

The details of CDR of mobile no. 9811012859 and 9811012858 of Ms. Lavina Gupta and Sh. R. K. Gupta confirmed that they had talked to accused Radhey Shyam on his mobile number, office phone number and his residential phone number on 27.01.2010.

PW-30 Shailender Singh Mayal deposed that during investigation he also collected CAF and CDR of mobile number 9868364920 from MTNL, New Delhi. He received the said documents through letter Ex. PW-18/A. The CDR of mobile no. 9868364920 confirmed that accused Radhey Shyam had contacted Smt. Lavina Gupta on 27.01.2010. He collected original files pertaining to landline telephone nos. 23365639 (residence) and 23386191 (office) of accused Radhey Shyam vide seizure memo dated 25.09.2012 i.e. Ex. PW-17/A. He collected personal file and service book of accused Radhey Shyam through letter dated 09.08.2010 Ex. PW-2/A.

He stated that accused Radhey Shyam had joined MHA in the year 2005 on deputation and was posted as Director (Provisioning), Police Modernization from 2005 till 15.04.2010. He received relevant files in three parts from MHA through letter dated 20.05.2010. He identified the file parts exhibited as Ex. PW-20/A, PW-20/B and PW-20/C. He seized the documents from Axis Bank regarding M/s Varun Associates vide memo dated 04.06.2010 Ex. PW-30/D. The said account confirmed that Rs. 11,79,328 was transferred from M/s Anjani Technoplast to Varun Associates on 27.01.2010. He also seized the documents from Titan Industries Ltd., Connaught Place vide memo dated

28.01.2011 Ex. PW-11/A. The said document was the advance receipt of payment made towards of jewellery items which were purchased in the name of Smt. Surekha Sharma i.e. wife of accused Radhey Shyam. The original retail invoice dated 27.01.2010 was also seized and it was prepared on 27.01.2010 at 3:43 PM.

PW-30 Shailender Singh Mayal deposed that he collected certified documents from SBI i.e. original account opening form, statement of account and cheque no. 614226 from CBI through letter dated 12.05.2010 Ex. PW-27/A. The said account pertained to M/s Anjani Technoplast and the cheque of Rs. 3,00,292 was issued by M/s Anjani Technoplast Ltd. on 18.03.2010.

During investigation he also received CAF of mobile no. 9811012858 i.e. in the name of M/s Anjani Technoplast Ltd. from Vodafone Mobile Services Ltd i.e. Ex. PW30/E. He stated that vide seizure memo dated 14/5/2010 i.e. Ex.PW27/5 statement of account no. 10829466487 of M/s Anjani Technoplast dated 18.03.2010 and certified copy of fund transferred of Rs. 3,00,292/- from Anjani Technoplast to the accused Varun Associates were seized. He recorded statements of witnesses namely Sh. Neer Kumar, Prem Singh, Shyam Thapa, Ravi Diwan, Bhuwanish Kumar. Sh Barun Bhattacharya the then Inspector CBI, ACU-IV, New Delhi had recorded statement of Sh. Vijay Sharma S/o Sh. Hari Prakash Sharma. He identified signature of Sh. Rajpal Singh, the then Inspector on the search list dated 28.04.2010 Ex. PW26/1. He also identified signatures of Sh. Harikesh, the then DSP on

Ex.PW-24/1. He stated that as per investigation, accused Radhey Shyam (Director, Provisioning) alongwith R. K. Gupta and Lavina Gupta, Directors of M/s Anjani Technoplast Ltd were involved in commission of offence in this case.

48. PE was closed on 22.04.2025 after completion of examination of all the prosecution witnesses.

Statement of Accused U/s 313 Cr. PC:

49. Upon completion of entire prosecution evidence, the incriminating evidence was put to all the accused persons in their respective statements recorded u/s 313 Cr. PC.

Accused Radhey Shyam Sharma denied the incriminating evidence and took a plea that he was falsely implicated on account of the fact that other accused had lodged an FIR against certain officials with Anti-Corruption Branch, Delhi. The investigation was taken up by CBI in order to take vengeance and he was made to suffer on the basis of hand picked witnesses.

Accused Raj Kishore Gupta and Lavina Gupta also denied the incriminating evidence and they pleaded that they were the whistle blowers as they had provided information regarding malpractices in procurement of bulletproof jackets which led to registration of FIR no. 11/2010 by ACB, Delhi against officials of TBRL. An audio conversation of Mr. R. K. Verma i.e. the official of TBRL, Chandigarh containing malpractices was also given to ACB, Delhi. They had followed their complaint which led to re-

trial of equipments. However, the IO conveniently closed the said investigation and lodged a false FIR against them for targeting them for making a complaint. In addition, Ms. Lavina Gupta stated that she was director in M/s ATL Pvt. Ltd for name sake and had not participated in management or operations of company.

Defence Evidence:

50. All the accused persons opted to lead defence evidence. However, only accused no. 1 Radhey Shyam Sharma examined defence witness i.e. DW-1. DW-1 ASI Chanchal Kumar, DO, CBI, AC-II, Branch, New Delhi. He brought the summoned recorded i.e. unbound file containing two copies of FIR No. RC8 (A) / 2010/ACU-V dated 24.04.2010 already Ex. PW29/1(D1). He deposed that the serial number and book number of the RC prior to the RC of the present case bears book number 695 and serial no. 01 and the RC no. RC7(A)/2010/ACU-V dated 07.01.2010. The serial number and book number of the RC after the RC of the present case bears book number 697 and serial no. 04 and the RC no. RC 9(A) / 2010/ACU-V dated 22.05.2010. He also proved the copy of general diary dated 24.10.2010 bearing serial no. 0389158 i.e. DW1/A (OSR).

51. Accused no. 1 closed his DE on 01.12.2025. Accused no. 2 & 3 did not examine any witness in defence evidence and closed their DE on 01.12.2025.

Arguments:

Arguments of Ld. PP for CBI -

52. Ld. PP for CBI argued that the prosecution has proved its case beyond reasonable doubt. PW-1 Sh. M.C. Kashyap proved the CD containing the conversations recorded between the accused persons, which categorically shows that accused no. 1, being a public servant made a demand of Rs. 10 lakhs from accused no. 2. The specimen voice samples of the accused persons and witnesses were sent to CFSL for comparison and a positive report was given by CFSL.

He further argued that the recovery of gold jewellery from the premises of accused no. 1 has also been proved. As per case of prosecution, accused no. 2 and 3 had generated cash of Rs. 10 lakh which was given to accused no. 1 through PW-9 Vijay Sharma. He argued that the prosecution has proved that accused no. 1 had purchased gold jewellery of Rs. 9.70 lakhs from Tanishq Jewellers. Accused no. 1 did not submit any information or intimation regarding the purchase of said jewellery to his department. The CDR and CAF of the mobile numbers used by the accused persons have also been proved by PW-19. The prosecution has also proved the money trail showing the generation of money by accused no. 2 and 3 for payment of Rs. 10 lakh to accused no. 1. PW-14 Varun Kumar Jha deposed that a fake bank account was opened in his name by Pankaj Jain. He further stated that he had not carried out any business with M/s ATL and he had not carried out any repair or maintenance work of machine of M/s ATL.

Ld. PP further argued that although PW-9 Vijay Sharma did not support the case of the prosecution, but he had turned hostile as he was employee of accused no. 2 and 3. However, his statement under Section 164 Cr.P.C. was recorded before the Ld. Metropolitan Magistrate. The prosecution has also proved the notings which show that accused no. 1, being a public servant, had participated in the process of procurement of light-weight jackets in favour of M/s Anjani Technoplast.

Ld. PP for CBI also argued that the prosecution has also established that accused no. 1 had used the vehicles of accused no. 2 and 3. PW-5 has proved the sanction order for prosecution of accused no. 1 Radhey Shyam Sharma. Thus, he argued that the prosecution has proved its case beyond reasonable doubt against accused persons. Accordingly they may be convicted for the offences charged.

Arguments For Accused no. 1 -

53. The ld. Counsel for accused no. 1 vehemently argued that investigating officer had carried out unfair investigation and had falsely implicated the accused persons. He has argued that the evidence led on record categorically shows that accused no. 2 & 3 were falsely implicated with ulterior motive. As per the deposition of IO, accused no. 1 Radhey Shyam Sharma was apprehended on 28.04.2010 and on the same day search was conducted at his official residence i.e. 254/1B, Panchkuian Road, Railway Colony, Delhi, but as per case of prosecution evidence

nothing was recovered from the said house. The prosecution has not proved any document relating to search at the aforesaid premises on 28.04.2010. Further cross-examination of IO reveals that accused as well as his wife were taken to office of CBI and they remained there on 29.04.2010 and finally the recovery of gold jewellery was planted on accused on 30.04.2010. He argued that arrest memo of accused has not been proved on record to substantiate the allegation that accused no. 1 was infact arrested on 30.04.2010 and not earlier. He further argued that as per case of prosecution, the recovery was effected from a suitcase kept in garage of the official residence of accused no. 1, but no site plan was prepared to show the location of the said garage nor any explanation has been given as to why the aforesaid recovery was not effected during the earlier search which was conducted on 28.04.2010. As per case of prosecution and deposition of PW-29 Insp. Nishant Kumar Mishra, he was not present at the time of said raid/ inspection of property. No videography/ photography of recovery was done. He argued that the said facts reveal that the recovery was planted on accused no. 1 so as to falsely implicated him. The said gold jewellery was infact taken on 28.04.2010 from the residence of accused no. 1 from the possession of his wife from Gurugram, Haryana.

He argued that the IO had acted with total malice. The perusal of relied upon document i.e. D2 (ii) shows that other articles belonging to wife of accused were also found in search and

the IO falsely stated that the same were returned, but he did not prepare any document in that regard.

He also argued that the prosecution tried to prove the orders granting permission for phone tap through PW-1 PW-1 Sh. M.C. Kashyap who was posted in surveillance unit of CBI. There is neither any evidence nor any material on record to show that the aforesaid orders were infact put up before the Review Committee. The said witness admitted that these orders was neither signed in his presence nor he had seen the file. Therefore, the said orders have neither been proved nor the same are valid in the eyes of law.

Ld. Counsel for accused no. 1 also argued that PW-1 M. C. Kashyap deposed about handing over of 36 calls, but admitted that there were numerous other calls which were intercepted. PW-1 further stated that he was not aware about the contents of FIR, therefore, this witness could not have been in position to cherry pick the random calls. Since all the intercepted calls were not produced before the court, therefore, it is a deliberate attempt of the investigating agency to conceal the relevant material so as to paint a different picture.

He also argued that the data of call records so collected by the IO on the face of it shows that it is false and fabricated. There is a distinct difference of time in the calls logs as recorded in CD as compared to logs of Service Provider. The said difference run from few seconds to 5 minutes. PW-1 M. C.

Kashyap admitted that the timings of the logs could not have been different and the prosecution has not able to explain the said difference in timings.

Ld. Counsel for accused no. 1 also argued that as per case of prosecution, the IO i.e. PW-30 Insp. Shailender Singh had prepared the transcriptions, but the copy of CD of IO on the basis of which it was prepared was not produced in the court. He also argued that voice identification memos were not prepared. No known person from the office of accused no. 1 or any other person known to him was examined for the purpose of identification of his voice. The prosecution had examined PW-16 Md. Hussain Ansari and PW-20 Sh. B. L. Meena from the office of accused no. 1, but they were not examined vis-a-vis identification of voice of accused no. 1.

Lastly, he argued that the report of CFSL vis-a-vis accused no. 1 is also not conclusive as the expert had only opined that the voices compared appear to be probable voices of accused.

Ld. counsel for accused no. 1 also placed reliance upon the following judgments: (i) **Vedivelu Thevar & Anr. vs. State of Madras (AIR 1957 SC 614)**; (ii) **P. Sirajuddin vs. State of Madras ((1970) 1 SCC 595)**; (iii) **Suraj Mal vs. State ((1979) 4 SCC 725)**; (iv) **Sharad Birdhichand Sharda vs. State of Maharashtra ((1984) 4 SCC 116)**; (v) **Ram Singh vs. Col. Ram Singh (1985 Supp. SCC 611)**; (vi) **State of Haryana vs. Bhajan Lal (1992 Supp (1) SCC 335)**; (vii) **C. M. Girish Babu vs. State ((2009) 3 SCC 779)**; (viii) **Banarsi Das vs. State of Haryana ((2010) 4 SCC 450)**; (ix) **Ashok Tshering Bhutia vs. State of Sikkim ((2011) 4 SCC 402)**; (x)

Neeraj Dutta vs. State (GNCT of Delhi) ((2023) 4 SCC 731); (xi) Manoj Kumar Soni vs. State of M.P. ((2024) 17 SCC 401); and (xii) M. Sambasiva Rao vs. State of A.P. (2025 SCC OnLine SC 1463).

Thus, ld. counsel for accused no. 1 argued that prosecution has failed to prove its case beyond reasonable doubt and benefit of doubt may be extended to accused and he may be acquitted of the offences charged against him.

Arguments For Accused no. 2 & 3 -

54. Ld. Senior Advocate for accused no. 2 and 3 vehemently argued that the case of the prosecution is primarily based on phone tapping. He submitted that for this purpose the prosecution was required to prove the orders of the Union Home Secretary by which permission for phone tapping was granted. However, the prosecution has neither examined the Union Home Secretary nor any other official who could identify his handwriting or signatures. He argued that mere exhibition of a document does not amount to proof of the document. PW-1 M. C. Kashyap stated in his deposition that the said orders were neither signed in his presence nor had he seen the file in which such permission was granted and the witness stated that the said orders were not handed over to him and that they were only shown to him by his superior. However, he failed to disclose the name of the superior who had informed him about the interception orders. Thus, he argued that the prosecution has failed to prove the interception orders by which the alleged permission was granted. Accordingly, the

telephonic conversations relied upon by prosecution are invalid and inadmissible.

Ld. Senior Advocate further argued that the investigating agency had contravened the procedure provided under Rule 419(A) of the Indian Telegraph Rules, 1951, as the said orders were not placed before the Review Committee, which renders them invalid and inadmissible in the eyes of law.

He further argued that PW-1 M. C. Kashyap had selected only a few intercepted calls, which shows mala fide on the part of the investigating agency in manufacturing a false case and this is contrary to the law laid down in ***Ram Singh vs. Col. Ram Singh***, 1985 SCC OnLine SC 351.

He also argued that the prosecution has failed to prove the chain of custody of the intercepted calls. There is no material on record to show whether the CD allegedly seized by the IO from PW-1 M. C. Kashyap was deposited in the Malkhana as the prosecution has failed to prove the relevant Malkhana record. Thus, he argued that the interception orders and the records pursuant thereto have not been proved in accordance with law.

Ld. Senior Advocate also argued that the sanctity of the procedure for collection of voice samples was not maintained. As per the case of the prosecution, the seal of the sealed documents was handed over to PW-4 Sh. Sunil Tirkey, but he failed to produce the same before the court despite opportunities which casts serious doubt on the integrity of the chain of evidence.

As per the case of the prosecution, the intercepted calls were seized by the IO on 20.05.2010, but during his examination before the court, the IO stated that he had used the intercepted conversations on 30.04.2010 while recording the voice samples. If the intercepted calls were seized on 20.05.2010, the same could not have been used 20 days earlier. This fact show that the entire process of recording voice samples was manipulated by the IO.

The Id. Senior Advocate further argued that the IO had taken the voice samples illegally in contravention of the law laid down in **Ritesh Sinha vs. State of U.P., (2019) 8 SCC 1**. It was also argued that the prosecution has failed to prove that the voices of accused no. 2 and 3 were identified by any person known to them at the time of collection of voice samples. PW-28 Bhuwanish Kumar did not support the case of the prosecution. Moreover, the primary devices alleged to have been used for recording the voice samples were neither seized nor produced in the court. The perusal of specimen voice recording memo Ex. PW-4/A shows that the IO had installed a software called “Total Recall” for recording the voice samples of the accused persons. However, the said mobile phones were also not sent for forensic examination. Therefore, the installation, utility, compatibility and purpose of the said software remain unverified. It was further argued that the call recording machine allegedly used by PW-1 was also not produced before the Court. In the absence of primary evidence, the secondary evidence in the form of output data is inadmissible.

Ld. Senior Advocate also argued that the prosecution has miserably failed to establish the sequence of events so as to prove the generation of the alleged bribe amount. The prosecution examined four witnesses in this regard, but PW-12 Praveen Garg and PW-13 Pankaj Jain did not support the case of the prosecution and turned hostile. PW-10 Vinod Raina partly supported the case of the prosecution but stated that he was not aware of the purpose for which the funds were required. It was further argued that the alleged banking transactions have not been proved on record, as the documents relied upon are computer-generated documents which were tendered without a certificate under Section 65-B of the Indian Evidence Act. Hence, the prosecution completely failed to establish that the amount of Rs. 10 lakhs was generated at the instance of accused no. 2 and 3.

Ld. Senior Advocate further argued that as per the case of the prosecution, PW-9 Vijay Sharma had handed over the cash amount of Rs. 10 lakhs to accused no. 1 at the instance of accused no. 2 and 3. However, the said witness did not support the case of the prosecution. He categorically deposed that he was beaten by CBI officials and was threatened to give a false statement before the Ld. Metropolitan Magistrate. It was argued that in any case the statement of PW-9 recorded under Section 164 Cr.P.C. is not substantive evidence and cannot be relied upon during trial.

He also argued that the prosecution has failed to lead any reliable or cogent evidence to show that accused no. 1 had

used the vehicles allegedly provided by accused no. 2 and 3 at any point of time. It was further argued that the case of the prosecution is neither based on information received from the surveillance unit nor on source information in a proper manner. As per FIR Ex. PW-29/1, the case was registered on 24.04.2010 on source information, whereas the said FIR does not contain reference to the alleged interception orders dated 08.01.2010 and 11.03.2010 granting permission for recording intercepted calls. Since the case was allegedly based on source information, as per the CBI Manual a preliminary inquiry was required to be conducted.

Ld. Senior Advocate argued that the prosecution has failed to prove that any specific favour was extended by accused no. 1 to accused no. 2 and 3. Therefore, it has failed to establish the allegations of commission of offences under Section 12 of the PC Act and Section 120-B IPC. The chargesheet itself admits that no specific favour could be ascertained or disclosed which was allegedly extended by accused no. 1 to accused no. 2 and 3 or to their company. In view of the law laid down in **Neeraj Dutta vs. State (NCT of Delhi), (2023) 4 SCC 731**, the prosecution was required to establish “obtainment”, which in turn entails proof of demand.

Ld. Senior Advocate argued that the company of accused no. 2 and 3 had earlier made a complaint regarding illegalities in the tendering process of a project of Armed Services, pursuant to which an FIR was registered by ACB, Delhi. The Investigating Officer, without any authority or direction, usurped

the investigation of the said case and merged it with the present case, even though the accused herein were the complainants in that matter. He brushed aside those allegations by stating in the chargesheet that only procedural irregularities were found in the said process. The cross-examination of the IO shows that Sh. R. K. Verma, an official from TPRL, Chandigarh, was named as an accused in the said FIR bearing no. 11/2010, but he was neither arrayed as an accused in the present case nor cited as a witness. The IO acted with mala fide against the whistle-blowers and had falsely implicated accused no. 2 and 3 in the present case.

Ld. Sr. Advocate for accused nos. 2 and 3 also placed reliance upon the following judgments: (i) **Central Bureau of Investigation v. V.C. Shukla** ((1998) 3 SCC 410); (ii) **Kishor Khachand Wadhvani and Anr. v. State of Maharashtra** (Bombay High Court, Writ Petition No. 2925 of 2019); (iii) **N.A. Abdul Rahiman v. State of Kerala** (Kerala High Court, CRL.A. No. 52 of 2006(C)); (iv) **P. Kishore v. Secretary to Government of India and Ors.**; (v) **Vinit Kumar v. Central Bureau of Investigation** (2019 SCC OnLine Bom 3155); (vi) **K.L.D. Nagasree v. Govt. of India, Ministry of Home Affairs, New Delhi** (2006 SCC OnLine AP 1085); (vii) **People's Union for Civil Liberties (PUCL) v. Union of India** ((1997) 1 SCC 301); (viii) **Ram Singh and Ors. v. Col. Ram Singh** (1985 SCC OnLine SC 351); (ix) **CBI v. Kehar Singh** (CC No. 121/2019, RC No. 2016-A-011); (x) **Nilesh Dinkar Paradkar v. State of Maharashtra** ((2011) 4 SCC 143); (xi) **Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke and Ors.** ((2015) 3

SCC 123); (xii) *Jatinder Pal Singh v. Central Bureau of Investigation* (Delhi High Court, CRL.M.C. No. 3118/2012); (xiii) *Tharamel Peethambaran & Anr. v. T. Ushakrishnan & Anr.*; (xiv) *Jagmail Singh v. Karamjit Singh* ((2020) 5 SCC 178); (xv) *Sanjeev Saxena v. State (NCT of Delhi)* (2015 SCC OnLine Del 9564); (xvi) *Ravindra v. Central Bureau of Investigation* (2025 SCC OnLine Bom 4833); (xvii) *Banarsi Das v. State of Haryana* ((2010) 4 SCC 450); (xviii) *Neeraj Dutta v. State (Govt. of NCT of Delhi)* ((2023) 4 SCC 731); (xix) *Mahabir Prasad Verma v. Dr. Surinder Kaur* ((1982) 2 SCC 258); (xx) *State v. Ravi @ Munna & Ors.* (Delhi High Court, 2000 CrL. LJ 1125); (xxi) *Ajay Gupta v. State* (Delhi High Court, CrL. A. No. 469/2003); (xxii) *N. Vijaykumar v. State of Tamil Nadu* ((2021) 3 SCC 687); (xxiii) *State of Punjab v. Madan Mohan Lal Verma* ((2013) 14 SCC 153); (xxiv) *Sudhir Chaudhary v. State (NCT of Delhi)* ((2016) 8 SCC 307); (xxv) *Rakesh Bisht v. Central Bureau of Investigation* (2007 SCC OnLine Del 13); (xxvi) *Ritesh Sinha v. State of U.P.* ((2019) 8 SCC 1); (xxvii) *Om Prakash Berlia and Anr. v. Unit Trust of India and Ors.* (1982 SCC OnLine Bom 148); (xxviii) *Narbada Devi Gupta v. Birendra Kumar Jaiswal and Anr.* ((2003) 8 SCC 745); and (xxix) *Rajesh Yadav and Anr. v. State of U.P.* ((2022) 12 SCC 200).

Accordingly, Ld. Senior Advocate argued that prosecution has failed to prove its case and accused no. 2 and 3 may be acquitted of the offences charged against them.

Rebuttal Arguments -

55. In rebuttal, Ld. PP for CBI argued that the factum of purchase of gold jewellery is not disputed by accused no. 1. He submitted that the question whether the jewellery was recovered from Gurugram or from the official residence of accused no. 1 is not of much significance in the present case.

56. He further argued that accused no. 1 denied the receipts issued by the jewellery showroom from where the jewellery was purchased, but he did not discharge the burden of proving that the said receipts were forged as the burden had shifted upon him. It was also argued that accused no. 1 had not intimated his department regarding the purchase of said jewellery items which corroborates the prosecution version.

Ld. PP further argued that PW-9 Vijay Sharma was employee of accused no. 2 and 3 and therefore he turned hostile despite the fact that his statement under section 164 Cr.P.C. had been recorded earlier. In support of his arguments, Ld. PP for CBI placed reliance upon the judgments in **B. Hanumantha Rao vs. State of A.P., 1992 AIR 1201** and **R. M. Malkani vs. State of Maharashtra, 1973 AIR 157**.

Appreciation of Evidence:

57. I have considered the oral arguments, written submissions and judgments so relied upon by the Ld. PP for CBI and the Ld. defence counsels. I have also carefully gone through the chargesheet and evidence lead on record.

Public Servant and his Involvement in the Process -

58. In order to attract the applicability of provisions of The Prevention of Corruption Act, 1988 in this case, the prosecution had to prove that accused Radhey Shyam Sharma was a public servant as he was posted as Director (Provisioning), Ministry of Home Affairs, New Delhi at the time of commission of offence. It was also required to prove that accused Radhey Shyam Sharma being a public servant was involved in the procurement process of light weight jackets etc.

59. The perusal of material on record shows that the aforementioned facts have not been disputed by any of the accused. Further perusal of prosecution evidence shows that PW-2 Sh. Tapan Kumar Satpati (i.e. Section Officer in MHA during the relevant period) deposed that accused no. 1 was on central deputation to MHA w.e.f. 12.12.2005.

60. As regards the involvement of accused no. 1 in the procurement process is concerned, PW-16 Mohd. Hussain Ansari i.e. Deputy Director in the Procurement Wing of Police Modernization, Division of MHA proved the concerned notesheets relating to file no. IV-21011/10/09-Prov-I. Thereby the prosecution established that accused Radhey Shyam Sharma had initiated and processed the said notings. PW-16 also deposed that

the representation given by M/s ATL Pvt.Ltd. was marked by accused Radhey Shyam Sharma to SO (Provisioning-I).

61. Similarly, PW-20 Sh. B.L. Meena i.e. Section Officer, Provisioning-II, MHA identified handwriting and initials of accused Radhey Shyam Sharma in the file no. IV-13018/4/2004-Prov-II-Pt i.e. relating to “Proposal of Govt. of India’s Assistance to Nepal Police”. He deposed that accused no. 1 had dealt with the file (i.e. notings Ex.PW20/A-2, Ex.PW20/A-5, Ex.PW20/A-6 & Ex.PW20/A-9) and he had also written or received letters in relation thereto (i.e. Ex.PW20/B-1 & Ex.PW20/A-10). He further deposed that between 21.08.2007 to 27.11.2009 the files i.e. Ex.PW20/A, Ex.PW20/B and Ex.PW20/C were not in his custody and the same were also not found in the record section and he personally inquired from accused no. 1 who handed over the files after taking out the same from his almirah.

62. It is not disputed that accused no. 2 Raj Kishore Gupta and accused no. 3 Lavina Gupta were the directors of M/s Anjani Technoplast Pvt. Ltd (M/s ATL) and the said company had made complaint against allotment of order vis-a-vis procurement of 59,000/- light weight bullet proof jackets to another company i.e. M/s S. M. Group alleging that M/s S.M. Group had procured a favourable report by use of wrongful means.

63. The above-stated oral and documentary evidence shows that accused Radhey Shyam Sharma in his capacity as a

public servant had dealt with the files which had concern with accused Raj Kishore Gupta & Lavina Gupta respectively.

Sanction for Prosecution -

64. Before proceeding to evaluate the role played by accused Radhey Shyam Sharma, it is necessary to probe the validity of compliance vis-a-vis mandate provided u/s 19 of the Prevention of Corruption Act, 1988. Section 19 of the Act mandates that no court shall take cognizance of the offences punishable u/s 7, 10, 11, 13 and 15 alleged to have been committed by public servant except with previous sanction accorded by the competent authority. The provision is reproduced below:-

19. Previous sanction necessary for prosecution. -

(1) No Court shall take cognizance of an offence punishable under [sections 7, 11, 13 and 15] alleged to have been committed by a public servant, except with the previous sanction,

(a) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] [Substituted 'who is employed' by Act No. 16 of 2018, dated 26.7.2018.] in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] [Substituted 'who is employed' by Act No. 16 of 2018, dated 26.7.2018.] in connection with the affairs of a State and is not removable from his office save by or with sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.”

65. At the outset, it has to be noted that neither of the accused had advanced arguments qua validity of the sanction so accorded u/s 19 of the PC Act. However, the court is duty bound to examine its validity as the grant of sanction is not acrimonious exercise and the sanction order must reveal the application of mind by the competent authority. In **CBI Vs. Ashok Kumar Aggarwal (2014) 14 SCC 295**, while dealing with the issue, the Hon’ble Supreme Court held that grant of sanction for prosecution is a **solemn and sacrosanct act**. In **Prakash Singh Badal Vs. State of Punjab & Ors (2007) 1 SCC 1**, it was held that:

“The sanction order must show basic application of mind, however, the specific offences need not be listed separately in the sanction order as that is to be done at the stage of framing of charge. The law only requires that the sanctioning authority must be provided with all the material to make an informed decision.”

66. In order to prove the requisite sanction for prosecution of accused no. 1, the prosecution examined PW-5 Sh. Sunil Kumar, Director (D&A) Ministry of Railways (Railway Board). The witness deposed that the Hon’ble President of India was the competent authority for removal of officers of the rank of Senior Administrative Grade (SAG) and accused no. 1 was then posted in the aforestated rank of SAG. He being the director was competent to authenticate the order of sanction as per Authentication (Orders & Other Instruments), Rules 2002 and in that capacity he prepared the formal sanction order dated

19.07.2013 i.e. Ex.PW5/A on the basis of sanction granted by the Hon'ble Minister for Railways on behalf of the Hon'ble President of India. The witness was cross examined at length, but nothing material came out in his cross examination which could cast a shadow of doubt qua validity and authenticity of sanction order Ex.PW5/A. Infact the perusal thereof shows complete application of mind by the competent authority.

67. Hence, it has to be said that the prosecution has successfully established that a valid sanction for prosecution of accused Radhey Shyam Sharma was granted by the competent authority.

Charge of Criminal Conspiracy -

68. All accused have been charged with allegations of having committed criminal conspiracy with the object of providing regular updates by accused Radhey Shyam Sharma to the other accused with respect to following procurement processes i.e. :-

- a. Procurement of Bullet Proof Jackets in the year 2008-09; &
- b. Procurement of Riots Control Equipment for supplying to Nepal Police in the year 2008.

69. Section 120-B of IPC defines criminal conspiracy: -

120-B Punishment of criminal conspiracy – (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous

imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

70. As regards the proof of criminal conspiracy, it is aptly said that conspiracy is generally hatched in secrecy and there can hardly be any direct evidence of existence of conspiracy. In this regard, in **Kehar Singh & Ors. v. State (Delhi Administration) (1988) 3 SCC 609**, the Hon'ble Supreme Court held that the conspiracy can be proved by circumstantial evidence as well as by direct evidence and that though the conspiracy is hatched in secrecy, the prosecution must prove some physical manifestation of agreement although it may not be necessary to prove actual meeting of two persons or the words by which the two persons communicated. Further, in **Ram Sharan Chaturvedi vs. State of M.P., AIR 2022 SC 4002**, the Hon'ble Supreme Court held that:

*“22. The principal ingredient of the offence of criminal conspiracy under Section 120B of the IPC is an agreement to commit an offence. **Such an agreement must be proved through direct or circumstantial evidence.** Court has to necessarily ascertain whether there was an agreement between the Appellant and A-1 and A-2. In the decision of *State of Kerala v. P. Sugathan and Anr.2*, this Court noted that an agreement forms the core of the offence of conspiracy, and it must surface in evidence through some physical manifestation:*

“12. ...As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused

beyond reasonable doubt. ...A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy...

71. The case of prosecution qua existence of criminal conspiracy amongst all accused is based on two premises i.e. (i) extension of favours in the form of regular updates by accused Radhey Shyam Sharma to the remaining accused; & (ii) Obtainment of favours by accused Radhey Shyam Sharma from the other accused.

Providing Regular Updates -

72. The allegations qua providing of regular updates by accused Radhey Shyam Sharma relating to procurement process of 20,000 bullet-proof jackets in the year 2008-09 and 20,000 riots control equipment in 2008 finds mention in the FIR Ex. PW-29/1. However, in the charge-sheet i.e. after detailed investigation it has been categorically mention that the investigation did not disclose any role played by accused Radhey Shyam Sharma in showing favours to M/s ATL. For the purpose of clarity, the relevant portion of the chargesheet is reproduced below:-

“The investigation has not disclosed any role played by Sh. Radhey Shyam Sharma in showing any specific favours in this process to M/s Anjani Techonoplast Ltd.”

73. Thus, as per conclusions arrived in the investigation and as stated in the final report, accused Radhey Shyam Sharma did not extend any favour to other accused. Since charge was

framed against accused persons even to that extent, therefore, prosecution evidence demanded careful scrutiny in this regard. However, the evidence brought on record shows that prosecution did not lead any evidence in this regard nor it relied on any material to show that accused Radhey Shyam Sharma had shown any favour to M/s ATL or had provided any updates with respect to procurement processes as stated above. There is not even a whisper of said allegation in the depositions of any of the prosecution witnesses including the IO i.e. PW30 Sh. Shailender Singh Mayal. On the contrary, in his cross-examination, the IO failed to respond to a direct question as to what material was found during investigation to show as to what specific favour had been given by accused Radhey Shyam Sharma to the company.

74. Therefore, in such circumstances the uncontroverted statement in the charge-sheet that no role was found to have been played by accused Radhey Shyam Sharma in showing favours to M/s ATL, infact, disproves the case against accused persons that accused no. 1 Radhey Shyam Sharma had given updates to remaining accused.

Obtaining Favours -

75. The next limb of the case of prosecution qua criminal conspiracy is also based on the allegation that accused no. 1 had committed offence u/s 11 of the PC Act as he had obtained valuable things in the form of cash and favours without consideration from accused no. 2 Raj Kishore Gupta & no. 3

Lavina Gupta, who were concerned in the proceedings transacted by accused no. 1 Radhey Shyam Sharma. Accordingly, accused no. 2 & 3 are also alleged to have abetted the commission of offence u/s 11 by accused no. 1. On the basis of the above-set of allegations, it is also alleged that all accused had entered into criminal conspiracy to commit the said offence. Therefore, the pith and substance of the above stated allegations qua criminal conspiracy also stem from the case of prosecution qua commission of offence u/s 11 of the PC Act, 1988.

76. Before advertent to the facts involved in the case, it will be worthwhile to reiterate the statutory provisions which we are about to deal with here. Section 11 of the PC Act provides that:

11. Public servant obtaining undue advantage, without consideration from person concerned in proceeding or business transacted by such public servant

Whoever, being a public servant, accepts or obtains or attempts to obtain for himself, or for any other person, any undue advantage without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions or public duty of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

“Section 12: Punishment for abetment of offences.—Whoever abets any offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punishable with

imprisonment for a term which shall not be less than three years, but which may extend to seven years and shall also be liable to fine.”

77. It is the settled proposition of law that prosecution has to establish the guilt of accused beyond reasonable doubt. In **Sharad Briduchand Sarda Vs. State of Maharashtra 1984 (4) SCC 116**, the Hon’ble Apex Court had laid down that:

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’ as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793] where the observations were made:

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all

human probability the act must have been done by the accused.”

78. The prosecution had to establish above-stated allegations either by way of oral or documentary evidence, so as to form a complete chain and sequence of facts which could establish the guilt of the accused persons beyond reasonable doubt.

79. As discussed earlier, the edifice of the case of prosecution is based on the allegations that : (i) accused no. 1 had obtained a sum of Rs.10 Lacs from accused no. 2 & 3; & (ii) accused no. 1 made personal use of vehicles belonging to M/s ATL and accused no. 2 & 3 respectively. For ensuring clarity in discussion, I shall deal with both the set of allegations separately.

Taking of Cash Amount of Rupees Ten Lakhs -

80. The prosecution has relied very heavily on the alleged recordings of intercepted telephonic conversations between accused no. 1 and accused no. 2 & 3 respectively for establishing that accused no. 1 Radhey Shyam Sharma had taken a sum of ten lakhs rupees from accused no. 2 & 3.

Orders Permitting Interception of Telephone Conversations-

81. The case of prosecution is that accused no. 1 Radhey Shyam Sharma made a demand of ten lakh rupees from accused no. 2 Raj Kishore Gupta on telephone and the said conversation was intercepted and recorded by the Special Unit of CBI.

82. It is the settled proposition of law that the audio recordings of conversations constitute documents and can be relied upon by prosecution. However, the law mandates and provides a system of checks and balances for ensuring protection of privacy of individuals in this process.

83. The seminal issue i.e. whether telephone tapping constitutes invasion of individual's privacy and thus is violative of right to privacy (i.e. a part of fundamental right to 'Life & Personal Liberty' enshrined under Article 21 of the Constitution) was dealt with by the Hon'ble Apex Court in **People's Union of Civil Liberties Vs. Union of India and Anr. AIR 1997 SC 568**. In its landmark judgment, the Hon'ble Supreme Court held as follows :

“18. The right to privacy – by itself- has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case. But the right to hold a telephone conversation in the privacy of one's home or office without interference can certainly be claimed as "right to privacy". Conversations on the telephone are often of an intimate and confidential character. Telephone-conversation is a part of modern man's life. It is considered so important that more and more people are carrying mobile telephone instruments in their pockets. Telephone conversation is an important facet of a man's private life. **Right to privacy would certainly include telephone-conversation in the privacy of one's home or office. Telephone-tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law.**”

84. Section 5 (2) of the Indian Telegraph Act provides the procedure to be employed for valid interception of telephone calls. It is as follows:-

“5. Power for Government to take possession of licensed telegraphs and to order interception of messages:-

*(2) On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government or any **officer specially authorised** in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, **by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order:***

Provided that press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section.”

85. Rule 419 (A) of the Indian Telegraph Rules, 1951 makes provision for the authorities who are competent to authorize call interceptions as required in Section 5 (2) of the Indian Telegraph Act. It is as follows:-

“419-A. (1) Directions for interception of any message or class of messages under sub-section (2) of Section 5 of the

Indian Telegraph Act, 1885 (hereinafter referred to as the said (Act) shall not be issued except by an order made by the Secretary to the Government of India in the Ministry of Home Affairs in the case of Government of India and by the Secretary to the State Government in-charge of the Home Department in the case of a State Government. In unavoidable circumstances, such order may be made by an officer, not below the rank of a Joint Secretary to the Government of India, who has been duly authorized by the Union Home Secretary or the State Home Secretary, as the case may be.”

86. Rule 419 (A) of The Telegraph Rules encapsulates the entire mechanism of checks and safeguards which have to be complied with as well as the consequences which flow from its non-compliance. However, at this stage we will stick to the competency of the authorized persons to pass such orders and its proof in the course of trial.

Proof of Orders Passed U/s 5 (2) of The Indian Telegraph Act R/w Rule 419 (A) of The Indian Telegraph Rules -

87. As stated above, the prosecution had to prove that either the Secretary to the Government of India, Ministry of Home Affairs or the Joint Secretary of MHA had passed order/ orders permitting the interception of the phone conversations in this case. In this context, the prosecution has asserted that afore-stated telephonic conversations were recorded in pursuance of earlier orders dated 08.01.2010 Ex.PW1/D and dated 11.03.2010 Ex. PW1/E passed by the worthy Union Secretary, Ministry of Home. On the contrary, the defence argued that the said orders have neither been proved on record nor the same are admissible in evidence being invalid in totality.

88. It is a settled proposition of law that mere production of the document does not amount to its proof in a trial. Accordingly, the prosecution was under obligation to prove the afore-mentioned orders dated 08.01.2010 and 11.03.2010 which were purportedly issued and signed by the Union Secretary, Ministry of Home Affairs.

89. Section 61 of the Indian Evidence Act stipulates that contents of documents may be proved either by primary or by secondary evidence. Section 61 and 62 of Indian Evidence Act read together shows that the contents of a document ought to be proved by primarily producing it in the court, but truth of its contents cannot be proved by mere production of the document. Section 67 of Indian Evidence Act further provides the procedure for proof of signature and handwriting of the person who is alleged to have signed or written the document. In addition, section 47 of the Act mandates that when the court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of such person is a relevant fact.

90. In order to prove the documents i.e. orders dated 08.01.2010 and 11.03.2010, the prosecution was duty bound to either examine the author of the documents or any other person who could identify the signatures of said author of the document. Admittedly, neither the worthy Union Secretary of Home nor any official from his office were cited as prosecution witnesses in the chargesheet. Infact, the prosecution aimed to prove above-stated

orders by way of deposition of PW-1 Sh. M.C. Kashyap. PW-1 M. C. Kashyap was not posted in MHA and rather he was posted in the Special Unit of CBI for collection of intelligence and telephonic surveillance.

91. The perusal of examination-in-chief of PW-1 shows that he did not state that the afore-stated orders were signed in his presence or he had seen the worthy Union Secretary of Home signing at any point of time. Instead in his cross-examination, PW-1 categorically stated that the Home Secretary had not signed the orders in his presence nor he had seen the file in which said orders were issued. He also deposed that he had not sent any request to MHA for permitting telephone interception of the phone numbers involved in this case. He also failed to identify the officer of CBI who had made such a request for passing of orders dated 08.01.2010 and 11.03.2010 respectively.

92. Therefore, the evidence lead on record shows that PW-1 M.C. Kashyap had neither seen the Union Secretary, Ministry of Home Affairs signing the aforestated orders nor he was acquainted with his handwriting or signatures.

93. The net result thereof is that the prosecution has failed to discharge its basic duty i.e. to prove the handwriting and signature of the officer who had purportedly signed those orders.

94. It is a settled proposition of law that mere exhibition of the document cannot amount to proof of the same. The documents have to be proved in accordance with law. In **Sudhir**

Engineering Company Vs. NITCO Roadways Ltd. 1995 II AD Delhi 189, the Hon'ble High Court of Delhi held that, "*The mere marking of an exhibits does not dispense with the proof of documents*". Also in **Om Prakash Berlia and Anr. Vs. Unique Trust of Indian & Anr. 1982 SCC Online Bom, 148** it was held that, "*Mere admission of a document or making it an exhibit does not dispense with requirement of proving it in accordance with law.*".

95. In absence of evidence to that effect, it has to be concluded that the prosecution has failed to prove that the aforestated orders were infact passed by the Union Secretary, Ministry of Home Affairs.

Validity and Admissibility of Orders dated 08.01.2010 and 11.03.2010 -

96. Even if the issue relating to proof of orders is ignored, still the prosecution had to cross the next hurdle by showing that the said orders were valid and legally admissible. The said question can only be decided on the touchstone of compliance of mandatory rules framed in this regard.

97. As per Rule 419-A of the Indian Telegraph Rules, the order passed by the Home Secretary granting permission to intercept telephonic conversations had to be forwarded to the Review Committee within seven days of the passing of the order, for the purpose of being reviewed by the Committee. The relevant rules in this regard are reproduced below:-

"Rule 419 (A) (16) The Central Government and the State Government, as the case may be, shall constitute a Review

Committee. The Review Committee to be constituted by the Central Government shall consist of the following, namely:

(a) Cabinet Secretary — Chairman

(b) Secretary to the Government of India Incharge, Legal Affairs — Member

(c) Secretary to the Government of India, Department of Telecommunications — Member

The Review Committee to be constituted by a State Government shall consist of the following, namely:

(a) Chief Secretary — Chairman

(b) Secretary Law/Legal Remembrancer Incharge, Legal Affairs — Member

(c) Secretary to the State Government (other than the Home Secretary) — Member

(17) The Review Committee shall meet at least once in two months and record its findings whether the directions issued under sub-rule (1) are in accordance with the provisions of sub-section (2) of Section 5 of the said Act. When the Review Committee is of the opinion that the directions are not in accordance with the provisions referred to above it may set aside the directions and orders for destruction of the copies of the intercepted message or class of messages.

98. The perusal of charge-sheet and documents annexed with it shows that there is no averment that above-stated orders were sent to the Review Committee. The prosecution has also not filed, let alone prove any document that the said orders were infact sent to the Review Committee or the Review Committee had passed any orders either affirming or disagreeing with the orders purportedly passed by the Secretary Home.

99. In his cross-examination conducted on 04.03.2025, the IO i.e. PW-30 Sh. Shailender Singh Mayal categorically stated that he did not verify during investigation if the interception orders were forwarded to the Review Committee or not. The exact statement of the witness is reproduced below:

“I did not verify during investigation if the interception order was forwarded to the Review Committee or not.”

The afore-stated categorical statement of the IO and the complete absence of any material on record to show that the orders were sent to the Review Committee raises adverse inference against the prosecution to the effect that the said orders were infact not sent to the Review Committee and thereby the mandate of Rule 419-A (16) & (17) was not complied with.

100. The consequences of non-compliance of the Rules as referred above are well settled now. In **People’s Union of Civil Liberties Vs. Union of India (supra)**, the Hon’ble Supreme Court laid down mechanism of checks and balances vis-a-vis exercise of power permitting telephone tapping. The Hon’ble Supreme Court had directed that states shall constitute Review Committees which shall meet within two months of passing of order u/s 5 (2) of the Act for determining the validity of such orders and it was also given powers to set aside the order under scrutiny. Subsequently, the legislature framed rules under the Indian Telegraph Rules,

which were in conformity with the abovenoted directions of the Hon'ble Apex Court.

101. The issue of non compliance of Section 5(2) of the Indian Telegraph Act, 1885 r/w Rule 419-A of the Indian Telegraph Rules, 1951 has also been dealt with at length by the Hon'ble Delhi High Court in **Jatinder Pal Singh Vs. Central Bureau of Investigation 2022 SCC OnLine Del 135**. The relevant portion of the order of the directions passed is as follows :

“63. As per Rule 419A of the Rules framed under the Telegraph Act, the order of the Home Secretary granting permission to intercept telephonic conversations is to be forwarded to the Review Committee within seven days of passing the order, for the purpose of being reviewed by the Committee. This Court does not find any material on record to establish that any review of the order of the Home Secretary was conducted in compliance of the aforesaid rules framed under the Telegraph Act. Therefore, this Court is convinced that the Special Judge while passing the impugned orders has totally ignored the provisions of the aforesaid rules.

64. This Court is of the view that as per Section 5 (2) of the Telegraph Act, an order for interception can be issued on either the occurrence of any public emergency or in the interest of the public safety as per the law laid down by the Hon'ble Supreme Court in the case of PUCL (Supra). After the perusal of the records, this Court is satisfied that in peculiar facts of the instant case, the mandatory requirements laid down by law for placing reliance on such audio conversations, have not been fulfilled. It is an admitted position that Rule 419(A)(17) which provides for destruction of intercepted message also adopt the said directions. The court below while passing the impugned orders has also ignored the settled

legal positions and directions of the Hon'ble Supreme Court.

65. It is also relevant to add here that if the directions of the Hon'ble Supreme Court in PUCL (Supra) which are now re-enforced and approved by the Hon'ble Supreme Court in K.S. Puttaswamy (Supra) as also the mandatory rules in regard to the illegally intercepted messages/audio conversations pursuant to an order having no sanction of law, are permitted, it would lead to manifest arbitrariness and would promote the scant regard to the procedure and fundamental rights of the citizens, and law laid down by the Hon'ble Supreme Court.

.....

81

(iv) Tape records of the calls intercepted in the instant case are not admissible since the due procedure for such interception as mandated by the Telegraph Act and the Rules framed thereunder has not been followed. Further, even the same has not been verified in the FSL report. No further witness/evidence to implicate the petitioner is on record.”

102. Thus, as per the above-referred decision of the Hon'ble Delhi High Court, the non-compliance of Rule 419-A of the Indian Telegraph Rules qua the orders (passed u/s 5 (2) of the Act) not having being sent to the Review Committee is fatal to the case of prosecution as it makes the said orders invalid and inadmissible.

103. The Id. PP for CBI had relied upon the judgment of the Hon'ble Supreme Court in **R. M. Malkani Vs. State of Maharashtra AIR 1973 SC 157** to buttress his argument that even if the said orders passed by the Secretary Home were invalid, it does not make them inadmissible. However, the issue with respect

to admissibility of orders passed u/s 5 (2) of the Telegraph Act which are in contradiction of Rule 419-A of the Telegraph Rules vis-a-vis the scope of law laid down in R. M. Malkani's case was dealt with in detail by the Hon'ble Bombay High Court in **Vinit Kumar Vs. CBI and Ors 2019 SCC Online Bom 3155** and by the Hon'ble High Court of Madras in **P. Kishore Vs. Secretary to Government of India & Ors 2025 Online Mad 3053**.

104. The conclusions arrived at by the Hon'ble Bombay High Court and the Hon'ble High Court of Madras with respect to afore-stated issue will have to be reiterated here at some length. In the case of **Vinit Kumar Vs. CBI (supra)**, the Hon'ble Bombay High Court while dealing with the issue relied upon the judgment of the Hon'ble Apex Court in PUCL (supra) and K. S. Puttaswamy (supra) and held that:

“7. These directions not only forge procedural safeguards into the matters of infringement of right to privacy, but also provide for a just and reasonable procedure. These directions also provide procedural guarantee against the abuse of any illegal interference by the guaranteed destruction of the copies of the intercepted material, in a case where prerequisite for invoking [Section 5\(2\)](#) i.e. "occurrence of any public emergency" or "in the interest of public safety" is non-existent. Needless to say that the aforesaid directions are binding on us in view of [Article 141](#) and enforceable through India under [Article 142](#) of the Constitution of India.

The proposition that illegal tapping of telephone conversation violates right to privacy is now accepted and reinforced as guaranteed fundamental right under [Article 21](#) of the Constitution of India, by a nine Judge Constitution Bench decision in [K. S. Puttaswamy versus Union of India \[\(2017\) 10 SCC 1\]](#), by overruling the earlier Constitution

Bench judgments, which did not consider right to privacy as fundamental rights, analogues to the American Fourth Amendment, viz. [M. P. Sharma versus Satish Chandra](#) [AIR 1954 SC 300] , or held that invasion of privacy is not an infringement of fundamental right guaranteed by Part III of the Constitution viz. Kharak Singh [AIR 1963 SC 1295]. It has now been held by the Constitution Bench in [K. S. Puttaswamy](#) (supra) that the right to privacy is protected by the Constitution as an intrinsic part of the right to life and personal liberty under [Article 21](#) of the Constitution of India and as a part of the freedom guaranteed by Part-III of the Constitution of India.

10. Thus, now the judgment in [PUCL](#) (supra) has to be seen in the light of observations contained in the nine Judge Constitution Bench judgment. The nine judge judgment also noticed the earlier judgments in [R. M. Malkani v. State of Maharashtra](#) (1973) 1 SCC 471 and observed as under :

"51. Among the early decisions of this Court following Kharak Singh was [R M Malkani v State of Maharashtra](#). In that case, this Court held that [Section 25](#) of the Indian Telegraph Act, 1885 was not violated because : ([R.M.Malkani](#) Case, SCC p. 476, para 20) "20. Where a person talking on the telephone allows another person to record it or to hear it, it cannot be said that the other person who is allowed to do so is damaging, removing, tampering, touching machinery battery line or post for intercepting or acquainting himself with the contents of any message. There was no element of coercion or compulsion in attaching the tape recorder to the telephone."

This Court followed the same line of reasoning as it had in Kharak Singh while rejecting a privacy based challenge under [Article 21](#). Significantly, the Court observed that : ([R.M.Malkani](#) Case, SCC p. 479, para 31) "31. [Article 21](#) was invoked by submitting that the privacy of the appellant's conversation was invaded. [Article 21](#) contemplates procedure established by law with regard to deprivation of life or personal liberty. The telephone conversation of an innocent citizen will be protected by Courts against wrongful or high handed interference by

tapping the conversation. The protection is not for the guilty citizen against the efforts of the police to vindicate the law and prevent corruption of public servants. It must not be understood that the Court will tolerate safeguards for the protection of the citizen to be imperilled by permitting the police to proceed by unlawful or irregular methods."

In other words, it was the targeted and specific nature of the interception which weighed with the Court, the telephone tapping being directed at a guilty person. Hence the Court ruled that the telephone conversation of an innocent citizen will be protected against wrongful interference by wiretapping.

[Emphasis supplied]

11. Evidently, the nine Judge Bench was of the view that the judgment in [R.M. Malkani](#) (supra) follows the same line of reasoning as it held in [Kharak Singh](#) (supra), as attaching tape recorder to the telephone was not considered as invasion of fundamental right to privacy under [Article 21](#) of the Constitution of India. [Kharak Singh](#) (supra) has now been overruled.

.....

14. It is at this stage, it is pertinent to note that directions contained in [PUCL](#) (supra) are in consonance with the aforesaid 4 tests.

15. After the judgment in [PUCL](#) (supra) and before the judgment in [K.S.Puttaswamy](#) (supra), Rules were also framed by the Central Government. Relevant Rules introduced by G.S.R. 193(4) dated 1st March, 2007 (w.e.f. 12th March, 2007) read as follows :

....

21. Having held so, the next question arises is as to whether any directions for destroying the intercepted messages are warranted in a particular case or the instant case. The answer to the said issue would lie in ascertaining whether following directions contained in [PUCL](#) case (supra) which are now upheld by the constitution bench decision in [K. T.](#)

Puttaswamy (supra) are mandatory :

"35. We, therefore, order and direct as under :-

There shall be a Review Committee consisting of Cabinet Secretary, the Law Secretary and the Secretary, Telecommunication at the level of the Central Government. The Review Committee at the State level shall consist of Chief Secretary, Law Secretary and another member, other than the Home Secretary, appointed by the State Government.

(a)

(b) If on an investigation the Committee concludes that there has been a contravention of the provisions of Section 5(2) of the Act, it shall set aside the order under scrutiny of the Committee. It shall further direct the destruction of the copies of the intercepted material."

22. We find that there is no scope to presume that aforesaid directions are not mandatory. It is an admitted position that Rule 419(A)(17) which provides for destruction of intercepted messages also adopt the said directions. We can neither permit the Respondents to continue to ignore the directions of the Hon'ble Apex Court nor can we ignore the same. Having held that the impugned interception orders have been issued in contravention of the provisions of section 5(2) of the Act, we have no option but to further direct the destruction of intercepted messages.

34. In KLD Nagashree v. Government of India [AIR-2007 AP 102] while considering the rules as existed before 12.7. 2007 and directing the destruction of intercepted messages pursuant to the illegal direction, it was observed in paragraphs 35 to 38 :

"35. Keeping in view the object and purpose of the said Rules as declared in People's Union for Civil Liberties's case (supra) and particularly since the violation of the said provisions would result in infraction of right to privacy of an individual which is a part of the right guaranteed under Article 21 of the Constitution of India, I am of the opinion that Rule 419-A though procedural in nature is mandatory and the non-compliance of the same would vitiate the entire proceedings.

36. It is also relevant to note that under Sub-rule (9) if the Review Committee is of the opinion that the directions are not in accordance with the provisions of Rule 419-A, it is empowered to set aside the directions and order for destruction of the copies of the intercepted message. **The fact that the consequences of non-compliance of the procedure prescribed under Rule 419-A are also provided under the same Rule further makes clear the intention of the Legislature to make the said procedure mandatory. Hence, the non-compliance of the procedure under Rule 419-A is undoubtedly fatal.**

37. At any rate, since the impugned order is also in contravention of the substantive law as laid down in Sub-section (2) of [Section 5](#) of the Act and is declared illegal, the consequential action of the respondents 2 and 3 in intercepting the mobile telephone of the petitioner is automatically rendered unauthorised. Hence, whatever information is obtained pursuant to the order dated 17-11-2003 cannot be taken into consideration for any purpose whatsoever.”

35. We are in complete agreement with the view taken by the Andhra Pradesh High Court which considers the rules providing for consequences for non compliance, as well as the directions of the supreme Court in [PUCL's](#) case (supra) while deciding this issue.

....

38. Similarly, Navjot Sandhu (supra) was a case of prevention of terrorist activities. It was serious case relating to the national security. It was nobody's case that ingredients of [section 5\(2\)](#) of the Act could not be satisfied or there was complete lack of jurisdiction under [section 5\(2\)](#) of the Act as in the instant case. Moreover, the said judgment is only prior to decision in [K. T. Puttaswamy](#) (supra). It in paragraph 154, it relies on [R. M. Malkhani](#) (supra) which as noticed in paragraph 51, [K. T. Puttaswamy](#) (supra) followed the same line of reasoning as in Kharak Singh (supra) while rejecting the privacy based challenge under [Article 21](#) of the constitution of India, which now stands overruled.

....

42. We may also add here that if the directions of the Apex Court in PUCL'case (supra) which are now re-enforced and approved by the Apex Court in [K. T. Puttaswamy](#) (supra) as also the mandatory rules in regard to the illegally intercepted messages pursuant to an order having no sanction of law, are permitted to be flouted, we may be breeding contempt for law, that too in matters involving infraction of fundamental right of privacy under [Article 21](#) the Constitution of India. To declare that dehorse the fundamental rights, in the administration of criminal law, the ends would justify the means would amount to declaring the Government authorities may violate any directions of the Supreme Court or mandatory statutory rules in order to secure evidence against the citizens. It would lead to manifest arbitrariness and would promote the scant regard to the procedure and fundamental rights of the citizens, and law [laid down by](#) the Apex Court.”

105. Thus, in nutshell the Hon'ble Bombay High Court held that the orders passed u/s 5 (2) of the Act which are in contravention of the Rules framed under the Indian Telegraph Rules vis-a-vis the orders not being sent to the Review Committee makes the said orders totally inadmissible and it cannot be relied upon by the courts.

106. Similarly, in **P. Kishore Vs. Secretary to Government of India & Ors 2025 Online Mad 3053**, the Hon'ble High Court of Madras also dealt with the same issue in light of the judgment of Hon'ble Supreme Court in R. M. Malkani's case (supra). The excerpts of the judgment relevant for deciding the issue in controversy herein are as follows:

“63. This Court is unable to accept this submission since the boundaries for invasion of a fundamental right through the medium of enacted law is a function of the Legislature and not the Court. Section 5(2) of the Act has set out the Lakshman Rekha and the role of the Court is confined to seeing as to whether the threshold is not crossed. As sentinels on the qui vive, the Courts are gatekeepers of Fundamental Rights. Gate keepers cannot become gate makers to reposition the gates as and when the Executive requires without the intervention of the Legislature as pointed out by H.R.Khanna,J in the case of Godavari Sugar Mills Ltd. Vs. S.B.Kamble [reported in 1975 (1) SCC 696], which reads thus :

"Any provision which has the effect of making an inroad into the guarantee of fundamental rights in the very nature of things should be construed very strictly and it would not, in our opinion, be permissible to widen the scope of such a provision or to extend the frontiers of the protected zone beyond what is warranted by the language of the provision."

64. That apart, the above contention cannot be accepted since this Court is bound by the interpretation put upon Section 5(2) of the Act in paragraph 28 of the decision of the Hon'ble Apex Court in People's Union for Civil Liberties, which has also been approved by the Constitution Bench decision of the Hon'ble Supreme Court in K.S. Puttaswamy Vs. Union of India [reported in 2019 (1) SCC 1].

65. The decision of the Hon'ble Supreme Court in People's Union for Civil Liberties has been cited with approval in the decision of the Hon'ble Apex Court in Anuradha Bhasin Vs. Union of India [Reported in 2020 (3) SCC 637]. This case is concerned with the validity of the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 framed under Section 7 of the Act. These Rules permit the restriction of telecom services including access to the Internet. Rule 2(2) the said Suspension Rules contains safeguards, which are akin to Rule 419- A of the Rules. One of the safeguards is the forwarding of the reasoned order of the Competent Authority to a Review Committee, which has been set up under the said Suspension Rules within one

working day. Rule 2(6) requires the Review Committee concerned to meet within five working days of issuance of the order suspending the telecom services and record its findings as to whether the order issued under the said Suspension Rules is in accordance with the provisions of the main Statute viz. Section 5(2) of the Act.

68. In the decision in People's Union for Civil Liberties, the Hon'ble Supreme Court had issued various directions/procedural safeguards under Article 142, which were required to be mandatorily followed in all cases of phone tapping. These directions were incorporated into the Rules as Rule 419- A by virtue of the Indian Telegraph (Amendment) Rules, 2007.

69. Advertising to these Rules, it was submitted by Mr. Sharath Chandran, learned counsel appearing on behalf of the petitioner that Rule 419-A of the Rules required the intercepted material to be placed before a Review Committee to examine as to whether the interception was carried out in accordance with Section 5(2) of the Act. The attention of this Court was drawn to Rule 419-A(17) to (19), which reads as follows:

"(17) The Review Committee shall meet at least once in two months and record its findings whether the directions issued under Sub- Rule (1) are in accordance with the provisions of Sub- Section (2) of Section 5 of the said Act. When the Review Committee is of the opinion that the directions are not in accordance with the provisions referred to above it may set aside the directions and orders for destruction of the copies of the intercepted message or class of messages.

(18) Records pertaining to such directions for interception and of intercepted messages shall be destroyed by the relevant competent authority and the authorized security and Law Enforcement Agencies every six months unless these are, or likely to be, required for functional requirements.

(19) The service providers shall destroy records pertaining to directions for interception of message within

two months of discontinuance of the interception of such messages and in doing so they shall maintain extreme secrecy."

70. The attention of this Court was also drawn to the decision of the Hon'ble Supreme Court in Anuradha Bhasin wherein similar procedural requirements as contained in the said Suspension Rules, 2017 framed under the Act were held to be mandatory.

72. In the decision of the Hon'ble Supreme Court in Anuradha Bhasin, the Supreme Court considered a similar review mechanism contemplated under Rule 2(2) of the said Suspension Rules, 2017. It was held thus:

"96. The second requirement under Rule 2(2) is the forwarding of the reasoned order of the competent authority to a Review Committee which has been set up under the Suspension Rules, within one working day. The composition of the Review Committee is provided under Rule 2(5), with two distinct Review Committees contemplated for the Union and the State, depending on the competent authority which issued the order under Rule 2(1). Rule 2(6) is the final internal check under the Suspension Rules with respect to the orders issued thereunder. Rule 2(6) requires the Review Committee concerned to meet within five working days of issuance of the order suspending telecom services, and record its findings about whether the order issued under the Suspension Rules is in accordance with the provisions of the main statute viz. Section 5(2) of the Telegraph Act."

73. Emphasizing on the mandatory nature of the procedural safeguards, in the case of Anuradha Bhasin, the Supreme Court held thus:

"106. We also direct that all the above procedural safeguards, as elucidated by us, need to be mandatorily followed. In this context, this Court in Hukam Chand Shyam Lal case [Hukam Chand Shyam Lal v. Union of India, (1976) 2 SCC 128], observed as follows: (SCC p. 133, para 18) '18. It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be

exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature....”

74. In the instant case, the respondents have, by their own admission, failed to comply with the mandatory requirement of placing the intercepted material before the Review Committee as contemplated under Rule 419-A(17) of the Rules. The requirement of placing the matter before the Review Committee is not a mere formality but is a crucial safeguard to ensure that the power of interception under Section 5(2) of the Act is not abused or exercised arbitrarily. The non-compliance with this mandatory procedure, by itself, vitiates the entire exercise of interception and renders the same illegal.

76. It is also relevant to note that under Sub- Rule (9), if the Review Committee is of the opinion that the directions are not in accordance with the provisions of Rule 419- A of the Rules, it is empowered to set aside the directions and order for destruction of the copies of the intercepted message. The fact that the consequences of non- compliance of the procedure prescribed under Rule 419- A are also provided under the same Rule, which further reinforces the intention of the Legislature to make the said procedure mandatory. Hence, the non- compliance of the procedure under Rule 419- A is undoubtedly fatal.

77. At any rate, since the impugned order is also in contravention of the substantive law as laid down in Sub-Section (2) of Section 5 of the Act and is declared illegal, the consequential action of respondents 2 and 3 in intercepting the mobile telephone of the petitioner is automatically rendered unauthorised. Hence, whatever information is obtained pursuant to the order dated 12.8.2011 cannot be taken into consideration for any purpose whatsoever.

82. This Court may also add here that if the directions of the Hon'ble Apex Court in the case of People's Union for Civil Liberties, which are now re- enforced and approved by the Hon'ble Apex Court in the case of K.S.Puttaswamy Vs. Union of India reported in 2019 (1) SCC 1] as also the

mandatory Rules in regard to the illegally intercepted messages pursuant to an order having no sanction of law, are permitted to be flouted, we may be breeding contempt for law, that too in matters involving infraction of fundamental right to privacy under Article 21 of The Constitution of India. To declare that de- hors the fundamental rights, in the administration of Criminal Law, it would amount to declaring the Government Authorities to violate any directions of the Hon'ble Supreme Court or mandatory Statutory Rules in order to secure evidence against the citizens. It would also lead to manifest arbitrariness and would promote the scant regard to the procedure and fundamental rights of the citizens and the law laid down by the Apex Court.

83. It was brought to the notice of the Court that this judgment is now pending consideration before the Hon'ble Supreme Court. However, the same view has been taken by the Rajasthan High Court in the case of Shashikant Joshi Vs. State of Rajasthan, [2023 SCC Online Raj 1108 : (2023) 3 RLW 23331 and recently in the case of Rakesh Kumar Meena Vs. State of Rajasthan, [2025 SCC Online Raj 448].

What is the effect of evidence collected in violation of Section 5 (2) of the Act?

87. Mr. AR. L. Sundaresan, learned Additional Solicitor General of India appearing on behalf of the respondents would submit that even assuming that the order under Section 5(2) of the Act was without jurisdiction, the evidence so collected is admissible since it is a well settled proposition of law that even illegally collected evidence is admissible provided it is relevant. He placed strong reliance on the decision of the Hon'ble Supreme Court in R.M.Malkani.

89. In R.M.Malkani, the Hon'ble Supreme Court dealt with an appeal against conviction. Considering an argument of the violation of the right to privacy, it was held thus:

"There is no scope for holding that the appellant was made to incriminate himself. At the time of the conversation there was no case against the appellant. He was not compelled to speak or confess. Article 21 was invoked by submitting that the privacy of the appellant's conversation

was invaded. Article 21 contemplates procedure established by law with regard to deprivation of life or personal liberty. The telephonic conversation of an innocent citizen will be protected by Courts against wrongful or highhanded interference by tapping the conversation. The protection is not for the guilty citizen against the efforts of the police to vindicate the law and prevent corruption of public servants. It must not be understood that the Courts will tolerate safeguards for the protection of the citizen to be imperilled by permitting the police to proceed by unlawful or irregular methods. In the present case there is no unlawful or even irregular method in obtaining the tape- recording of the conversation."

90. This decision may not aid the case of the respondents for more than one reason. In the first place, the decision of the Hon'ble Supreme Court in R.M.Malkani was a case of an appeal against conviction where the presumption of innocence did not apply. It is in this context that the Hon'ble Supreme Court had observed that the protection against phone tapping is not available to a guilty citizen. Here, the petitioner is only accused of an offence. The presumption of innocence still applies in his favour.

91. Secondly, as pointed out above, the decision was rendered during the time when the judgment of the Hon'ble Apex Court in M.P.Sharma was holding the field. It has been pointed out by the Nine Judges' Bench of the Hon'ble Supreme Court in K.S.Puttaswamy Vs. Union of India [reported in 2017 (10) SCC 1] that the decision in R.M.Malkani had rejected the argument based on privacy under Article 21 by placing reliance on the decision of the Majority in Kharak Singh. As already seen, the decision in K.S.Puttaswamy Vs. Union of India [reported in 2017 (10) SCC 1] was significant because it (a) overruled the majority view in the decision in Kharak Singh and (b) affirmed the existence of a right to privacy under Article 21.

92. Thus, the jurisprudential basis of the decision of the Hon'ble Apex Court in R.M.Malkani having been altered, it remains to be seen as to what is the effect of the decision in K.S.Puttaswamy on the evidence that is collected by

unconstitutional methods. The question was considered by the First Bench of this Court in SNJ Breweries wherein it was observed there as follows:

"Thus, it needs to be examined if the recent judgment of 9 Judge Bench in Puttaswamy's case recognizing right to privacy to be part of Article 21 of the Constitution of India necessitates a revisit of Pooran Mal, to see the impact of the judgment in Puttaswamy with regard to the view that illegally obtained evidence can be used. We say so, since violation of the safeguards relating to search would now render the search not just illegal but unconstitutional. The sequitur of an unconstitutional action is that it is rendered void."

Having observed as above, the First Bench of this Court remitted the matter to the learned Single Judge for consideration of the said issue. Where the tapping of phones is found to have been done in violation of Section 5(2) of the Act, the order would be clearly unconstitutional. An unconstitutional order is void under Article 13 and no rights or liabilities can flow from it.

94. Leaving aside the broader question of the general admissibility of evidence obtained by unconstitutional means, this case can be decided on a narrower basis i.e., on the basis of Rule 419- A of the Rules. As has been pointed out earlier, one of the guidelines issued by the Hon'ble Supreme Court in People's Union for Civil Liberties, dealt with this issue and it reads as follows:

"35.

(9)....

(a)....

(b) If on an investigation the Committee concludes that there has been a contravention of the provisions of Section 5(2) of the Act, it shall set aside the order under scrutiny of the Committee. It shall further direct the destruction of the copies of the intercepted material."

95. Rule 419-A(17) of the Rules also authorizes the destruction of intercepted messages/calls if it is found that the action is not in accordance with Section 5(2) of the Act. Noticing these provisions, the learned Single Judge of the

Andhra Pradesh High Court, in K.L.D.Nagasree, had declared that the material obtained in violation of Section 5(2) of the Act and Rule 419- A of the Rules cannot be used for any purpose whatsoever. As noticed earlier, this decision has been affirmed right up to the Supreme Court. Similarly in the Division Bench decision of the Bombay High Court in Vinit Kumar and the two decisions of the Rajasthan High Court in the cases of Shashikant Joshi and Rakesh Kumar Meena, directions were issued for destruction of records.

96. The very fact that the intercepted material was not even placed before the Review Committee for its scrutiny would show that the respondents have clearly acted in brazen violation of the law. In view of the above discussions and as was done in the decision of the Hon'ble Andhra Pradesh High Court in K.L.D.Nagasree, it would suffice for this Court to declare that the intercepted material collected pursuant to the impugned order in violation of Section 5(2) of the Act and Rule 419-A(17) of the Rules shall not be used for any purposes whatsoever.

107. Therefore, the Hon'ble High Court of Madras also held that the intercepted material collected pursuant to impugned order which are in violation of Section 5 (2) of the Act and Rule 419-A (17) of the Rules framed under the Act cannot be used for any purpose whatsoever.

108. Thus, in view of the above-stated propositions of law, since the material on record shows that the impugned orders dated 08.01.2010 and 11.03.2010 were not placed before the Review Committee, therefore, the same are in contravention of the mandatory rules and thereby are inadmissible and cannot be relied upon for any purpose.

109. It has to be noted that generally the act of IO in not citing official of MHA as a prosecution witness for identification of handwriting / signature of Secretary, Home and also in not carrying out investigation qua the alleged orders being sent to the Review Committee might sound inconspicuous. However, in the facts of the present case in light of the peculiar manner in which the present FIR was lodged and the allegations of accused no. 2 & 3 in the FIR no. 11/2010 of ACB, Delhi were brushed aside raises clouds of suspicion vis-a-vis such lapses.

110. The observance of timelines of the present case shows that as per prosecution version, the alleged transaction of delivery of cash took place on 27.01.2010 and by that time another wing of CBI was already intercepting telephone calls of accused persons. In normal circumstances, the FIR ought to have been registered soon after the alleged incident, but in this case the FIR came to be registered after a gap of three months. There is absolutely no explanation regarding the reasons for non-registration of the FIR for such a long period of time. There is nothing on record to show as to why the investigating agency waited for so long.

111. The very timing of the FIR of present case creates a lot of doubts. The FIR of present case was registered on 24.04.2010 i.e. after accused Raj Kishore Gupta had sent a CD to ACB, GNCTD on 22.01.2010 alleging malpractices in the tender

process in which another commercial entity had procured a favourable report. As per allegations, the said CD contained audio recording of an official of TBRL i.e. institute responsible for conducting tests. On the basis of complaint and CD, ACB, Delhi registered an FIR on 11.03.2010.

112. In the given context, the defence version that the FIR was lodged in this case to pin the complainant / whistle blowers appears probable. It also leads to a possibility that perhaps the alleged orders dated 08.03.2010 and 11.03.2010 may not have been passed by the Secretary Home and that is why the IO did not cite any official from MHA nor he conducted investigation qua orders having been sent to Review Committee.

113. The above-stated facts not just make the orders dated 08.03.2010 and 11.03.2010 invalid and inadmissible, but it goes on to create grave doubts qua their authenticity. Thus, as a consequence, the telephone conversations recorded in a CD Ex. P1 cannot be read in evidence.

Voice Recordings -

114. Though as discussed above the orders permitting interception are inadmissible and cannot be relied upon, but as the remaining issues i.e. vis-a-vis authenticity and genuineness of said recordings contained in CD Ex. P1 were advanced at length, now I shall even examine and discuss the said facts.

115. The prosecution had to establish that the voices allegedly recorded in the intercepted telephonic communications were of accused persons respectively.

116. In **Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra & Ors.**, (1976) 2 SCC 17, the Hon'ble Supreme Court had an occasion to deal with admissibility and proof of tape recorded conversations. The Hon'ble Apex Court held that:

"We think that the High Court was quite right in holding that the tape records of speeches were "documents" , as defined by Section 3 of the Evidence Act, which stood on no different footing than photographs, and that they were admissible in evidence on satisfying the following conditions:

(a) The voice of the person alleged to be speaking must be duly identified by the maker of the record or by others who knew it.

(b) Accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory evidence, direct or circumstantial had to be there so as to rule out possibilities of tampering with the record.

(c) The subject matter recorded had to be shown to be relevant according to rules of relevancy found in the Evidence Act."

117. Thereafter, the Hon'ble Supreme Court in another landmark judgment rendered in the case of **Ram Singh and Ors Vs. Col. Ram Singh** 1985 SCC Online SC 351 reiterated the above-stated ratio. It was held that:

"A tape recorded statement is admissible in evidence, subject to the following conditions:-

- 1. The voice of the speaker must be identified by the maker of the record or other persons recording his voice. Where the maker is unable to identify the voice, strict proof will be required to determine whether or not it was the voice of the alleged speaker.*
- 2. The accuracy of the tape recorded statement must be proved by the maker of the record by satisfactory evidence: direct or circumstantial.*
- 3. Possibility of tampering with or erasure of any part of, the tape recorded statement must be totally excluded.*
- 4. The tape recorded statement must be relevant.*
- 5. The recorded cassette must be sealed and must be kept in safe or official custody.*
- 6. The voice of the particular speaker must be clearly audible and must not be lost or distorted by other sounds or disturbances.”*

Serious Contradictions and Aberrations in Collection of Voice Samples -

118. As per prosecution version, the IO had recorded voice samples of accused and other persons including PW-4 Sunil Kumar Tirkey on 30.04.2010 and the IO had also picked certain key words which were allegedly used in the course of telephonic communication for recording of the voice samples. However, interestingly perusal of the seizure memo of the CD i.e. Ex. PW1/A shows that the said CD (containing alleged recordings of telephonic conversations) was seized much later i.e. on 20.05.2010. In his cross-examination, IO PW-30 Shailender Singh Mayal re-affirmed that the said CD was seized on 20.05.2010 which rules out the possibility of inadvertent mistake in writing of date on the seizure memo Ex. PW1/A.

119. Thus, the evidence produced on record shows that the IO without even having seen or heard the alleged recordings of telephonic conversations was able to find out the key words which were required for the purpose of voice samples. The said fact casts a serious dent on the prosecution story qua collection of voice samples.

Voice Identification -

120. In view of the law as laid down in judgments referred above, the prosecution was required to examine witnesses who could identify voice of accused persons in the alleged intercepted telephonic communications.

121. In the course of trial, all accused categorically denied the allegation that the voices heard in the intercepted calls were their voices. They also denied having given voice samples to IO. It is an admitted fact (not even denied in the course of final arguments) that during investigation IO did not record statement of any person who was known to accused Radhey Shyam Sharma and could identify his voice. As regards the voice identification of other accused, the case of prosecution was based entirely on the statement of PW-28 Bhuwanish Kumar. However, PW-28 in his deposition failed to identify the voices played in the court to be that of accused no. 1, 2 & 3 respectively. Infact, the witness stated that he could not identify the voices of any of the persons in all the audio files. In his cross-examination by the Id. PP for CBI, PW-28

Bhuwanish Kumar stated that he had heard the telephonic conversations for the first time in the court and at the time of joining investigation only one audio was played. Thus, the prosecution failed to produce even a single witness who could identify the voices of accused persons in the recorded telephonic conversations which brings the entire evidence qua voice recordings of intercepted calls in teeth with ratio of law as discussed above.

Safe Custody -

122. As per the ratio of law laid down in **Ram Singh & Ors Vs. Col. Ram Singh (supra)**, the prosecution also had to prove that CD Ex. P1 and the voice samples were duly sealed and kept in safe or official custody.

123. The oral and documentary evidence on record shows that the IO had collected the CD Ex. P1 from PW-1 Sh. M. C. Kashyap on 20.05.2010 and then it was sent to CFSL in sealed condition 24.08.2010 alongwith other exhibits. The prosecution has not proved any documentary evidence to show that the said CD was ever deposited in the malkhana of CBI. The prosecution has not brought any evidence to show as to who was the custodian of CD Ex. P1 for more than 3 months.

124. As per case of prosecution, the memory card containing voice samples was sealed with the seal of SSM and the same was handed over to PW-4 Sunil Tirkey. However, the said

witness failed to produce it in the court. It is not improbable for a person to misplace or even loose an article such as sample seal, but in normal circumstances a person who is unable to trace a government property would generally make an attempt to lodge a complaint with the police, but PW-4 Sunil Tirkey admittedly did not lodge any complaint with police regarding loss of seal. The explanation for not producing the seal by PW-4 Sunil Tirkey though is probable, but at the same time it can also be an afterthought.

125. There is no explanation for not producing the record of malkhana. The facts as mentioned above leaves scope for doubt that there can be a possibility of interpolation in the case property i.e. CD etc.

Non-Seizure of Mobile Phones -

126. It is necessary to bear in mind that as per depositions of PW-4 Sunil Tirkey and IO PW-30 Shailender Singh Maiyal two mobile phones i.e. of make 'Motorola' and 'Nokia' were used for recording of sample voices. The IO also stated that he had installed a special software i.e. namely 'Total Recall' in the mobile phones before recording the sample voices. However, neither of the said phones were made part of case property for reasons best known to the IO. Accordingly, the said phones were also not sent to CFSL and the impact of the software so installed upon the alleged recordings has remained unknown.

Contradictory Time Logs -

127. Admittedly the duration of alleged intercepted calls as mentioned in Annexure 'A' of Ex.PW1/C differs materially from the call logs provided by the service provider. PW-1 Sh. M. C. Kashyap i.e. the author of Annexure 'A' was confronted with the aforementioned fact in his cross-examination, but he gave an explanation which is apparently incorrect. PW-1 stated that the time of calls reflected in the call detail record is as per time of the clock of server of the service provider, and the time reflected in Annexure 'A' is as per the time set in the clock of the computer. The said reasoning does not explain the difference in duration of the said call logs which varies from seconds to minutes. The time difference in clocks of two different devices can at best reflect different timings of the calls, but it cannot vary or alter the duration of such calls which are recorded in hours/ minutes/ seconds format. This fact by itself creates a serious doubt that the call logs could have been tampered with.

Incomplete Call Recordings -

128. It is further pertinent to note that as per PW-1 M. C. Kashyap the service provider had forwarded more than 1200 calls relating to mobile number 98110-12859, but only 36 selected calls relating to all the three mobile numbers were handed over to the IO in the CD Ex. P1. Thus, it is clear that complete data which

was allegedly transferred to the CBI by the service provider was not seized during investigation.

129. Although the above-noted fact by itself would not generally assume much significance, but in view of the earlier pointed out discrepancies, it does create some suspicion qua the authenticity and genuineness of the alleged recordings. The said fact coupled with difference in time duration of some of the calls (between the call logs of service provider and as per annexure 'A' of report Ex. PW1/C) does not rule out the possibility of distortion of the context in which subsequent alleged conversations took place.

Evidence of Expert -

130. PW-15 Sh. Deepak Kumar Tanwar, Sr. Scientific Officer of CFSL tendered his expert opinion report Ex. PW15/A. As per settled proposition of law, the evidence of voice identification is a weak form of evidence. In **Nilesh Dinkar Paradkar v. State of Maharashtra, 2011 (4) SCC 143**, the Hon^{ble} Supreme Court held that:

“31. In our opinion, the evidence of voice identification is at best suspect, if not, wholly unreliable. Accurate voice identification is much more difficult than visual identification. It is prone to such extensive and sophisticated tampering, doctoring and editing that the reality can be completely replaced by fiction. Therefore, the courts have to be extremely cautious in basing a conviction purely on the evidence of voice identification. This Court, in a number of judgments emphasised the importance of the precautions,

which are necessary to be taken in placing any reliance on the evidence of voice identification.

131. The perusal of the report Ex. PW15/A as well as the deposition of PW-15 Sh. Deepak Kumar Tanwar shows that he could conduct spectrographic analysis in only one of the fourteen questioned audio files qua accused Radhey Shyam Sharma. Finally, the expert opined that voices of all accused in the questioned files were found to be their 'probable voices'. Thus, the forensic expert could not give a clear and definite opinion that the voices in question were actually the voices of accused persons.

132. Hence, it has to be said that prosecution has also failed to prove that the voices allegedly contained in the recordings were that of accused persons.

CAF / CDR of Mobile Phones -

133. As per case of prosecution, the interception of mobile phone numbers i.e. 98101855003, 9417513496, 9811012859, 9811012858 and 9936011122 was permitted vide order dated 08.01.2010, whereas, interception of telephone mobile numbers 9873800739 and 9717196229 was permitted vide order dated 11.03.2010. Ultimately, PW-1 submitted 36 calls relating to mobile phone numbers 9811012858, 9811012859 and 9873800739. The prosecution theory is that aforementioned three mobile phone numbers were issued in the name of company of

accused no. 2 & 3 or in their personal names and these were operated upon by them.

134. Two witnesses i.e. PW-3 and PW-19 were examined for proving CAF and CDR of mobile numbers. PW-3 Ram Kishan Gupta did not produce the record relating to any of the aforementioned mobile numbers. PW-19 Israr Babu i.e. Nodal Officer, Vodafone produced the record relating to CAF of mobile phone number 9811012859 Ex. PW19/B and CAF of mobile phone number 9873800739 Ex. PW19/C. Thus, the CAF of mobile no. 981101258 has not been proved on record.

135. The perusal of Ex. PW19/C which is purportedly CAF of mobile number 9873800739 shows that it was submitted in the name of M/s Anjani Technoplast and CAF Ex. PW19/B was submitted in the name of accused R. K. Gupta. Both these documents do not show the mobile phone numbers which were allocated on the basis of aforesaid CAF/ applications. No other document from the records of service provider was collected during investigation nor any such document was brought on record during trial to connect the above-stated CAFs/ application forms to any of afore-stated mobile phone numbers.

136. PW-19 Israr Babu orally deposed that mobile number 9811012859 was issued in lieu of CAF Ex. PW19/B and mobile number 9873800739 was issued in lieu of CAF Ex. PW19/C. However, the said witness only stated that he had

handed over the said documents to IO, but he did not state that he had processed either of the said documents at any point of time. Essentially the deposition of PW-19 was on the basis of record, which did not show any material qua allocation of mobile numbers as was orally deposed by him. Therefore, his deposition that mobile numbers 9811012859 was issued in the name of accused R. K. Gupta and mobile number 9873800739 was issued in the name of M/s Anjani Technoplast Ltd cannot be relied upon in the absence of connecting documentary link between the CAFs produced and the mobile phone numbers in question.

137. PW-19 Israr Babu had tendered computer generated printouts of call detail records relating to the aforesaid phone numbers. However, he did not submit requisite certificate u/s 65-B of the Indian Evidence Act in support thereof. Similarly, PW-18 tendered the CDR of the mobile phone belonging to accused Radhey Shyam Sharma bearing no. 9868364920, but he too did not tender the certificate u/s 65-B of the Indian Evidence Act.

138. In **Anvar P.V. V. P.K.Basheer and Others, (2014) 10 SCC 473**, the Hon'ble Supreme Court laid down that :

“18. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65-B of the Evidence Act are not complied with, as the law now stands in India.

.....

20. Proof of electronic record is a special provision introduced by the IT Act amending various provisions under

the Evidence Act. The very caption of Section 65-A of the Evidence Act, read with Sections 59 and 65-B is sufficient to hold that the special provisions on evidence relating to electronic records shall be governed by the procedure prescribed under Section 65-B of the Evidence Act. That is a complete code in itself. Being a special law, the general law under Sections 63 and 65 has to yield.”

139. Since, the certificates u/s 65-B of The Indian Evidence Act have not been filed with respect to CDRs of the aforementioned mobile phone numbers, therefore, as a result the call detail records tendered by the witnesses are inadmissible and cannot be relied upon for any purpose.

140. It is a matter of common knowledge that in the course of lengthy investigations, some discrepancies are bound to occur and all the discrepancies are not material, but in the present case, the case of prosecution suffers from material defects on almost all the aspects relating to proof of alleged telephonic conversation. The case of prosecution suffers from such inherent contradictions and lapses due to which the evidence lead on record vis-a-vis call recordings can by no means be considered as reliable and cogent evidence.

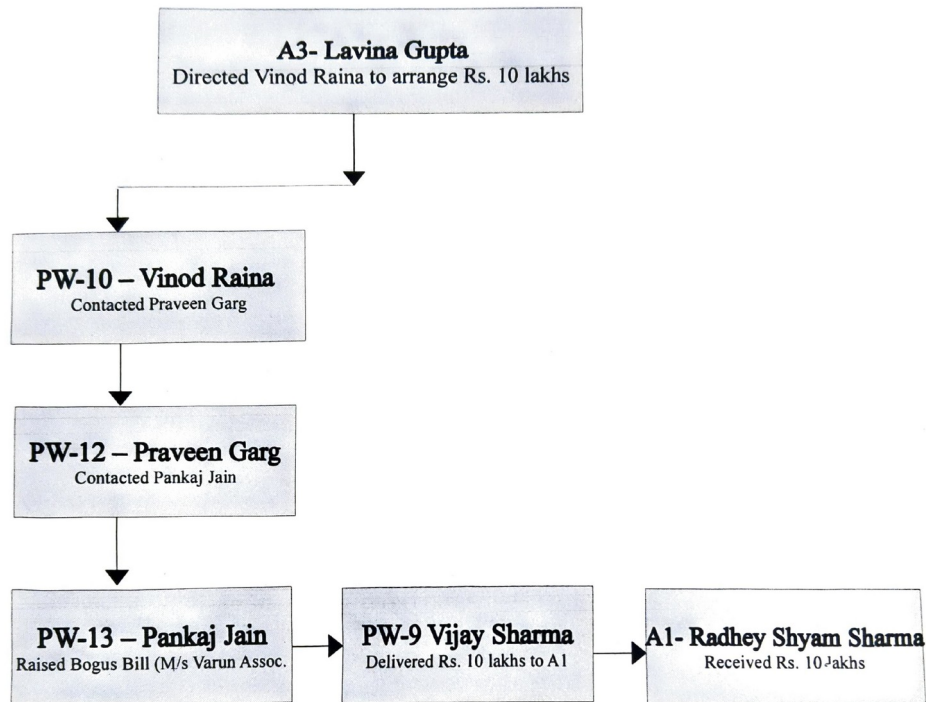
141. Therefore, in light of all the above-mentioned discrepancies including failure of prosecution to identify the voices of accused, serious contradictions / serious infirmities in the process of voice sampling during investigation, the fractured chain of custody of samples and failure of prosecution to establish usage of alleged mobile phones by accused and their CDRs, the

inconclusive report of voice identification of expert cannot be made the basis to hold that accused Radhey Shyam Sharma had made a demand of ten lakh rupees from accused no. 2 Raj Kishore Gupta or the voices in the said recordings were of accused no. 1, 2 & 3 respectively.

Generation and Delivery of Cash -

142. As per allegations in the chargesheet, accused no. 3 Lavina Gupta had asked Vinod Raina to arrange cash amount of Rs. 10 lakhs. As per her instructions, Vinod Raina contacted Praveen Garg, company secretary and he agreed to arrange the amount upon taking commission of 3% and he further contacted Pankaj Jain i.e. CA of M/s Pankaj Sumit and Associates. Pankaj Jain further agreed to raise a bill of M/s Varun Associates in the name of M/s Anjani Technoplast along with commission of 2% over the requisite amount. Accordingly, a cheque of Rs. 11,91,240/- was issued by accused no. 3 Lavina Gupta in favour of M/s Varun Associates on the pretext of repair of extrusion machine and the said cheque was deposited in the account of M/s Varun Associates. Thereafter Praveen Garg collected cash amount of Rs. 10,56,175/- from PW-13 Pankaj Jain and handed over the same to Vijay Sharma who in turn handed over the sum of Rs. ten lakhs to accused Radhey Shyam Sharma.

143. The entire chain of the above-stated sequence of events is depicted below :



144. The afore-stated facts show that as per prosecution version, persons namely Vinod Raina, Praveen Garg, Pankaj Jain and Vijay Sharma formed an integral part of the chain to connect payment of sum of rupees ten lakhs by accused Lavina Gupta to Radhey Shyam Sharma. Therefore, the prosecution examined all four of them so as to establish a clear chain of sequence of events for proving that the cash amount of Rs. 10 lakhs was generated at the instance of accused Lavina Gupta. However, out of the aforementioned four witnesses, PW-12 Praveen Garg and PW-13 Pankaj Jain did not support the case of prosecution. Both of them categorically denied having played any part in the process of generation of cash. PW-12 Praveen Garg categorically denied that

he had played any role in generation of cash at the instance of PW-10 Vinod Raina. PW-13 Pankaj Jain deposed that he had no concern with M/s Varun Associates meaning thereby that it was an independent firm.

145. PW-14 Varun Kumar Jha deposed that he was working with PW-13 Pankaj Jain, but he stated that Pankaj Jain had obtained his photographs and signatures on the account opening form on the pretext that it was an application for opening of a saving bank account. However, in his cross-examination the witness admitted that he had a separate saving bank account in PNB for the purpose of receiving his salary. PW-14 denied his signatures on the invoice but neither the sample signatures of PW-14 were taken during investigation nor the said invoice was sent to CFSL for comparison of his handwriting. In absence thereof, the explanation of PW-14 Varun Kumar Jha does not hold good that he had signed on the account opening form at the instance of a third person when he was already having a salary account in another bank.

146. Even if the depositions of PW-10 Vinod Raina and PW-14 Varun Kumar Jha are believed to be correct to the maximum possible extent, still there is no evidence of connection inter-se them. The void left due to contradictory depositions of PW-12 Praveen Garg and PW-13 Pankaj Jain breaks the chain of events and there is complete lack of continuity in the sequence of

events so as to make it a complete chain. To make the matters worse for prosecution, PW-10 Vinod Raina in his cross-examination admitted that invoice was issued by M/s Varun Associates. No investigation was conducted to show that either M/s ATL Pvt. Ltd. did not have an extrusion machine or that no such work was ever carried out.

147. It is also required to be borne in mind that as per the case of prosecution, PW-10 Vinod Raina, PW-12 Praveen Garg, PW-13 Pankaj Jain and PW-14 Varun Kumar Jha knew that they were participating in commission of the activities relating to generation of cash from cheque for illegal consideration. The said version brings all these four persons under the umbrella of accomplices in the scheme of criminal conspiracy so propounded by the IO.

148. Now, it is no more 'Res Integra' that the investigating officer can cite a person as a prosecution witness instead of arraying him / her as accused, despite the fact that said person had actively participated in the commission of an offence. The Hon'ble Supreme Court had dealt with a similar issue in **Laxmipat Choraria & Ors Vs. State of Maharashtra 1968 AIR 938**, wherein an accused having actively participated in the commission of criminal conspiracy was made a witness by IO instead of arraying her as accused. The Hon'ble Apex Court observed that:

“At the commencement of the trial ‘Ethyl Wong’ was examined as the first witness and gave a graphic account of the conspiracy and the parts played by the accused and her own share in the transactions. Her testimony was clearly that of an accomplice. Although she could have been prosecuted, she was not arraigned and it is her testimony which has been the subject of a major part of the arguments before us.....In these appeals it is, however, admitted that if her evidence is received, it is sufficiently corroborated both generally and in respect of the three appellants before us.”

149. The perusal of depositions of PW-10 Vinod Raina, PW-12 Praveen Garg, PW-13 Pankaj Jain and PW-14 Varun Kumar Jha shows that they had intentionally participated in the commission of alleged criminal conspiracy. Therefore, the statement of PW-10 Vinod Raina and PW-14 Varun Kumar Jha were in fact inculpatory in nature. Thus, their depositions have to be treated as the testimonies of accomplices in the commission of offences.

150. In **Somasundram @ Somu Vs. State (2020) 7 SCC 722**, Hon’ble Supreme Court dealt with evidentiary value of the statement of an accomplice and held that :

“To summarize, by way of culling out the principles which emerge on a conspectus of the aforesaid decisions, we would hold as follows:

*The combined result of Sections 133 read with illustration (b) to Section 114 of Evidence Act is that the Courts have evolved, as a rule of prudence, the requirement that **it would be unsafe to convict an accused solely based on uncorroborated testimony of an accomplice. The corroboration must be in relation to the material particulars***

of the testimony of an accomplice. It is clear that an accomplice would be familiar with the general outline of the crime as he would be one who has participated in the same and therefore, indeed, be familiar with the matter in general terms. The connecting link between a particular accused and the crime, is where corroboration of the testimony of an accomplice would assume crucial significance. The evidence of an accomplice must point to the involvement of a particular accused.

It would, no doubt, be sufficient, if his testimony in conjunction with other relevant evidence unmistakably makes out the case for convicting an accused.”

Hence, the depositions of PW-10 and PW-14 required corroboration in material particulars.

151. The best corroborative evidence to the hypothesis of prosecution qua generation of cash was the documentary evidence of transaction and the resultant banking transactions.

152. In order to establish the money trail, the cheques purportedly issued by accused no. 3 were put to PW-10 who identified the signatures of accused Lavina Gupta on the cheque Ex. PW7/H. However, none of the said cheques were sent for comparison to CFSL for a fair conclusion that the signatures on the same were that of accused no. 3. Nevertheless, mere issuance of cheque could not establish that it was presented in the bank or was encashed. The investigating officer could have collected the invoices for establishing that the cheque so encashed was infact taken by Pankaj Jain. The prosecution has also not proved the documents such as cheque returning memos during the trial.

153. In its endeavour to prove the statement of bank account, prosecution examined PW-27 Sh. Amarjeet, Dy. Manager, SBI. This witness tendered the copy of statement of account of M/s ATL Pvt. Ltd. as Ex. PW27/3, but perusal thereof shows that it is a computer generated printout which has not been certified as per Banker's Book Evidence Act.

154. Section 2 (8), 2-A and 4 of the Banker's Book Evidence Act deal with admissibility of banking record. They are reproduced below : -

"2 (8) "certified copy" means when the books of a bank—

(a) are maintained in written form, a copy of any entry in such books together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business and that such books is still in the custody of the bank, and where the copy was obtained by mechanical or other process which in itself ensured the accuracy of the copy, a further certificate to that effect, but where the book from which such copy was prepared has been destroyed in the usual course of the bank's business after the date on which the copy has been so prepared, a further certificate to that effect, each such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title; and

(b) consists of printouts of data stored in a floppy, disc, tape or any other electro-magnetic data storage device, a printout of such entry or a copy of such printout together with such statements certified in accordance with the provisions of section 2A.

(c) a printout of any entry in the books of a bank stored in a micro film, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism obtained by a mechanical or other process which in itself ensures the

accuracy of such printout as a copy of such entry and such printout contains the certificate in accordance with the provisions of section 2A.

2-A. Conditions in the printout.— A printout of entry or a copy of printout referred to in sub-section (8) of section 2 shall be accompanied by the following, namely:—

(a) a certificate to the effect that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager;

(b) a certificate by a person in-charge of computer system containing a brief descriptions of the computer system and the particulars of—

(A) the safeguards adopted by the system to ensure that data is entered or any other operation performed only by authorised persons;

(B) the safeguards adopted to prevent and detect unauthorised change of data;

(C) the safeguards available to retrieve data that is lost due to systemic failure or any other reasons;

(D) the manner in which data is transferred from the system to removable media like floppies, discs, tapes or other electro-magnetic data storage devices;

(E) the mode of verification in order to ensure that data has been accurately transferred to such removable media;

(F) the mode of identification of such data storage devices;

(G) the arrangements for the storage and custody of such storage devices;

(H) the safeguards to prevent and detect any tampering with the system; and any other factor which will vouch for the integrity and accuracy of the system.

(c) a further certificate from the person in-charge of the computer system to the effect that to the best of his knowledge and belief, such computer system operated properly at the material time, he was provided with all the relevant data and the printout in question represents correctly, or is appropriately derived from, the relevant data.

4. Mode of proof of entries in bankers' books.—Subject to the provisions of this Act, a certified copy of any entry in a

banker's book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise."

155. While dealing with the admissibility of statement of bank account not certified under the Banker's Book Evidence Act, the Hon'ble Delhi High Court in **Om Prakash v. Central Bureau of Investigation 2017 VII AD (Del) 649** held that :

*"5.18. A conjoint reading of [Section 34](#) of the Indian Evidence Act, Sections 2(8), 2A and 4 of the Banker's Book Evidence Act and the various pronouncements of the Supreme Court lead to the conclusion that firstly, the prosecution is required to lead admissible evidence to prove the entries in the books of accounts and after having led admissible evidence link the same with other evidence on record to prove the guilt of the accused beyond reasonable doubt. Thus, in case the statements of accounts exhibited on record are accompanied by certificate as envisaged under [Section 2A](#) of the Bankers' Books Evidence Act, the statements of accounts would be admissible in evidence. An objection as to the person exhibiting the said statements of account i.e. an objection to the mode of proof and not admissibility, has to be taken at the time of exhibition of the documents. Therefore if certified copies of the statements of accounts have been exhibited as per the requirement of [Section 2A](#) of the Act, the statement of account would be admissible and in case no objection to the witness proving the same is taken at the time when the document is exhibited, the document would be validly read in evidence. **However, if the statements of accounts have been exhibited without the necessary certificate as contemplated under [Section 2A](#) of the Act, the same being inadmissible in evidence, even in the absence of an objection taken as to the mode of proof during trial, this Court cannot read the same in evidence even though marked as an exhibit."***

156. Since, the statements of account brought on record are inadmissible, therefore, it cannot be looked into evidence. As a result the prosecution has failed to prove the corroborative evidence for establishing the money trail leading to alleged generation of cash. The broken chain of oral evidence of witnesses who as per prosecution's case were accomplices in criminal conspiracy without corroboration in material particulars is not sufficient to discharge the burden of prosecution to prove this limb of its case beyond reasonable doubt. Hence, the prosecution has failed to establish beyond reasonable doubt that the cash amount of Rs. 10 lakhs was generated at the instance of accused no. 3 Lavina Gupta.

Delivery of Money -

157. The third and equally important limb of the prosecution theory was that PW-9 Vijay Sharma had delivered cash amount of Rs. 10 lakhs to accused Radhey Shyam Sharma on 27.01.2010. The case of prosecution to this extent rested solely on the deposition of PW-9 Vijay Sharma. However, he did not support the case of prosecution in its entirety. In his examination in chief, the witness categorically denied having handed over or delivered the aforementioned cash amount to accused Radhey Shyam Sharma at any point of time.

158. In his cross-examination by Id. PP for CBI, initially the witness denied having given a statement u/s 164 Cr. PC to the Id. MM about delivery of cash by him, in his cross-examination

later on he stated that the aforementioned statement was given under the threat and coercion of the CBI officials. The above noted deposition of PW-9 Vijay Sharma does not establish the factum of delivery of cash to accused Radhey Shyam Sharma.

159. In **Vijaya Singh & Anr. Vs. State of Uttarakhand 2024 INSC 905**, the Hon'ble Supreme Court held that:

“The jurisprudence concerning a statement under Section 164 CrPC is fairly clear. Such a statement is not considered as a substantive piece of evidence, as substantive oral evidence is one which is deposed before the Court and is subjected to cross-examination. However, Section 157 of Indian Evidence Act, 1872 makes it clear that a statement under Section 164 CrPC could be used for both corroboration and contradiction.”

160. It is pertinent to mentioned that PW-9 Vijay Sharma in his testimony alleged that he had been given beatings by CBI officials for compelling him to render a false statement u/s 164 Cr. PC as per their requirement. Normally a person making such claims at a belated stage has to be looked upon with suspicion, but in present case, the above-stated allegation of PW-9 Vijay Sharma was supported by PW-10 Vinod Raina who had infact supported the case of prosecution otherwise. In his cross-examination, PW-10 Vinod Raina deposed that Vijay Sharma had told him that CBI officials had given beatings to him. As the case may be, the net result of the entire discussion is that PW-9 Vijay Sharma did not support the case of prosecution.

Recovery of Gold Jewellery and Cash-

161. Since, the prosecution failed to prove that accused Radhey Shyam Sharma had demanded cash of Rs. 10 lakhs which was delivered to him, therefore, the question of recovery of jewellery alleged to have been purchased from the said cash amount becomes irrelevant. Nevertheless as the said aspect was argued at length, I shall proceed to examine and discuss the same as well.

162. The case of prosecution is that on 28.04.2010, a search was conducted at the premises of accused Radhey Shyam Sharma, but nothing incriminating was found during the said search. It is further alleged that subsequently accused Radhey Shyam Sharma was arrested and he made disclosure that the jewellery purchased from Tanishq Jewellers was kept in his garage. As a consequence thereto, a raid was conducted at the same residence of accused Radhey Shyam Sharma on 30.04.2010 and on this occasion a suitcase with a numerical lock of '000' was found. Upon opening it, jewellery of the worth of Rs. 9.75 lakhs and cash of Rs. 25,000/- were found in it.

163. Accused Radhey Shyam Sharma took a plea that the aforementioned jewellery was not recovered from his residence at Panchkuian Road, Delhi but it was taken away from his wife on 28.04.2010 from his residence at Gurugram, Haryana. Although the ownership of recovered jewellery and its recovery is not

disputed, but the date, place and manner of recovery of said jewellery has been denied by accused Radhey Shyam Sharma.

164. It is pertinent to mention that the IO did not file the search memo relating to the search conducted at residence of accused Radhey Shyam Sharma on 28.04.2010 alongwith chargesheet. It has not been averred as to who all had witnessed the said search on 28.04.2010 nor any witness of the said search proceedings was cited in the list of prosecution witnesses. Ultimately, the prosecution did not examine any witness who had conducted the said search or had participated in it. There is complete silence as to which parts of the house were searched by the team of CBI officials on 28.04.2010. The site plan of the searched premises i.e. on 28.04.2010 and 30.04.2010 was not prepared by the IO. It has not been shown whether the garage was a part of the house of accused Radhey Shyam Sharma or not. There is no explanation regarding the following aspects i.e.:

(i) whether the said garage was searched on 28.04.2010?

(ii) if it was not searched, then the reasons for not searching it on that occasion?

(iii) if at all it was searched, then why the said briefcase was not discovered?

The answers to above referred questions ought to have been given in the chargesheet and deposition of the IO. The

absence thereof raises questions qua the authenticity and manner of search.

165. As per case of prosecution, accused Radhey Shyam Sharma made a disclosure statement on 30.04.2010 which led to recovery of jewellery from a garage in his house at Panchkuian Road, Delhi, but IO did not file the arrest memo of accused Radhey Shyam Sharma on record. The accused Radhey Shyam Sharma was admittedly interrogated at length on 28.04.2010 and he alongwith his wife remained present in the office of CBI on 29.04.2010 as well. As per deposition of IO, the detailed examination of accused Radhey Shyam Sharma was conducted on 28.04.2010. This fact also dents the case of prosecution that recovery of jewellery on 30.04.2010 was effected in pursuance of disclosure of accused Radhey Shyam Sharma.

166. As far as allegations qua recovery of Rs. 25,000/- from the garage of accused Radhey Shyam Sharma is concerned, the investigating officer did not collect any material to link the said amount with the alleged delivery of ten lakh rupees.

167. All these facts and the eerie silence of investigating agency qua material aspects relating to alleged discovery of jewellery and cash of Rs.25,000/- creates serious doubts vis-à-vis the alleged manner of recovery of jewellery.

The ld. PP for CBI had vehemently argued that accused Radhey Shyam Sharma did not intimate the purchase of jewellery to his department. In this context, as stated earlier

accused Radhey Shyam Sharma admitted that his wife had purchased the jewellery from Tanishq Jewellers. However, he contended that even as per PW-2 Tapan Kumar Satpati (who was examined by prosecution to prove his service record) such intimations are sent to the parent department and not to the office of deputation. PW-2 in his cross-examination further stated that as per practice in Ministry of Home Affairs, the APR, returns regarding movable properties and intimations regarding loan does not form part of the service book. He further stated that additional documents such as intimations given by accused available with vigilance department had not been forwarded to CBI. He further admitted that the complete service record of accused must be in his parent department. Even if the aforementioned aspects of deposition of PW-2 Tapan Kumar Satpati are ignored in totality, the fact that accused did not give intimation only tantamounts to violation of service rules which by itself does not attach culpability to him.

168. There is no other evidence to substantiate or prove the allegations that a sum of Rs. Ten lakhs was given to accused Radhey Shyam Sharma by accused Raj Kishore Gupta and Lavina Gupta. Therefore, it has to be said that the prosecution has failed to prove that a sum of Rs. 10 lakhs was delivered to accused Radhey Shyam Sharma at the instance of accused no. 2 & 3 and the recovered jewellery had been purchased from the said amount.

Use of Cars -

169. There is no doubt that use of vehicle belonging to another tantamounts to obtainment of favour. It has already been held above that accused Radhey Shyam Sharma being a public servant was involved in the process in which accused no. 2 & 3 were interested. The prosecution had to establish beyond reasonable doubt that accused Radhey Shyam Sharma had used and utilized the cars belonging to accused no. 2 & 3 for his personal use from time to time. In order to prove the above-mentioned allegations, the prosecution examined three witnesses who were the drivers of M/s ATL Pvt. Ltd. i.e. PW-21 Prem Singh, PW-22 Ravi Diwan and PW-23 Neer Kumar.

170. PW-21 Prem Singh admitted that he had worked as driver in M/s ATL Pvt. Ltd, but he turned hostile and did not support the case of prosecution. He denied the particulars of his statement recorded u/s 161 Cr. PC i.e. Ex. PW21/PX1. He categorically denied having taken accused Radhey Shyam Sharma to Haridwar. He also stated that he had not disclosed the identities of persons who had travelled with him for going to Haridwar to the IO. He failed to identify handwriting of the persons who had made entries in log books Ex. PW21/1. As per case of prosecution, the specimen voice sample of PW-21 was also collected by IO during investigation, but in his examination in chief the witness denied his voice sample Ex. PW21/3. The IO did not examine any person for identifying the voice of PW-21 Prem Singh during investigation in compliance of law laid down in **Ram Singh Vs.**

Col. Ram Singh (supra). At the cost of repetition, it is reiterated that earlier it has already been held that the aforementioned telephonic conversations are inadmissible in evidence. Therefore, the testimony of PW-21 i.e. hostile witness did not help the case of prosecution in any manner.

171. PW-22 Ravi Diwan also turned hostile and he too did not support the prosecution version. He deposed that he was working in M/s Anjani Technoplast and CBI had taken him to the office of CBI. He had signed on the entry dated 04.02.2010, but it was made by HR Manager namely Ashok Panda. Perusal of the aforementioned entry at point A to A1 in Ex. PW21/1 shows that it does not bear reference of the name of person who had used the car on that occasion. In his cross-examination, the witness stated that he could not tell whether all travel related entries were duly recorded in the log book as made by HR of the company. Since PW-22 did not specifically depose that he had taken accused Radhey Shyam Sharma in the car, and the entry of log book identified by him also did not bear any reference of said accused, so it cannot be assumed that the said car was used by accused Radhey Shyam Sharma on the given occasions.

172. The third prosecution witness examined in this context was PW-23 Neer Kumar. He also deposed that he was working in M/s Anjani Technoplast Pvt. Ltd as a driver, but he stated that no log book with respect to Honda City Car bearing no.

DL-4CR-9071 was ever prepared. He denied the contents of entry in the log book of the said car Ex. PW23/1 at page no. 11 and stated that he did not know who had made the said entry. In his examination in chief, PW-23 stated that he had never taken accused Radhey Shyam Sharma in the car nor he had taken any other person at the instance of accused Radhey Shyam Sharma.

173. It is alleged that specimen voice of PW-23 Neer Kumar was also taken during investigation. The said witness in his deposition also stated that he did not recognize voice which was played in the court. PW-23 also did not support the case of prosecution and was cross-examined by Id. PP for CBI. In his cross-examination by Id. PP for CBI, he denied having visited places such as Agra, Jaipur, Lucknow, Dehradoon, Mussoorie and Khatu Shyam Mandir. He also denied having knowledge that the residence of accused Radhey Shyam Sharma was at Panchkuian Road, Delhi and specifically denied that he had gone to pick or drop him at the said address. He denied the contents of his statement recorded u/s 161 Cr. PC Ex. PW23/PX1. Rather, in his cross-examination he stated that he was beaten up by CBI officials and was threatened during investigation. He also stated that he did not understand the contents of log book being an illiterate person. Therefore, PW-23 Neer Kumar also did not support the prosecution's case.

174. Besides the aforementioned three witnesses who were working as drivers in the office of M/s Anjani Technoplast Pvt. Ltd., prosecution did not examine any other witness to establish usage of cars belonging to M/s ATL Pvt. Ltd by accused Radhey Shyam Sharma. Even the entries in the log books exhibited on record as Ex. PW21/1, Ex. PW21/2 and Ex. PW23/1 have not been proved in accordance with law.

175. Accordingly, it has to be said that prosecution has failed to prove the allegations that accused Radhey Shyam Sharma had used the cars pertaining to M/s Anjani Technoplast Pvt. Ltd.

Conclusion:

176. In view of the aforementioned discussion, considering the numerous contradictions in the investigation which have been highlighted above, brings the manner and method of investigation conducted by the IO under the spotlight. As held above, admittedly during investigation the IO came to conclusion that accused Radhey Shyam Sharma had not shared any input with either accused Raj Kishore Gupta or Lavina Gupta. This fact makes one wonder as to why accused Raj Kishore Gupta and Lavina Gupta would offer huge amount of money to accused Radhey Shyam Sharma? It is also not disputed that accused Raj Kishore Gupta and Lavina Gupta were the complainants / whistle blowers with respect to tender relating to procurement of defence equipments in the Ministry of Home Affairs, wherein, M/s S. M. Group had procured favourable trial report by wrongful means. It

is also mentioned in the chargesheet that the said tender was scrapped on the basis of complaint made by accused no. 2 Raj Kishore Gupta. It is also stated in the chargesheet that an FIR no. 11/2010 was registered in Anti-Corruption Branch, GNCTD on 11.03.2010 on the basis of a CD which as per deposition of IO was sent by accused Raj Kishore Gupta. However, the IO of the case merged the said FIR with the present case. His cross-examination reveals that he had not received any order from the superior authority for merger of both the FIR's. It is also an admitted fact that the FIR no. 11/2010 related to allegations vis-a-vis tender process which was unconnected with the present case and ultimately the IO gave clean chit to all the accused and suspects of the aforementioned FIR without divulging the basis or material collected by him with respect to it. The fact that the FIR no. 11/2010 was registered on 11.03.2010 i.e. prior to the registration of the FIR in the present case as well as the manner in which investigation of this case was conducted raises serious doubts qua the authenticity of investigation vis-à-vis recording of statements of witnesses, disclosure statements of accused and recovery of documents and other articles. It has to be said that the possibility of these accused being implicated on account of them being whistle blowers cannot be ruled out.

177. The prosecution has failed to discharge its onus to prove the essential elements required for establishing the guilt of accused persons beyond reasonable doubt. It has failed to prove beyond reasonable doubt that accused Radhey Shyam Sharma had

made a demand of Rs. 10 lakhs from accused Raj Kishore Gupta & Lavina Gupta. It has also failed to prove beyond doubt that the afore-stated amount was generated in cash or it was delivered to accused Radhey Shyam Sharma. The prosecution also failed to establish that accused Radhey Shyam Sharma had used the cars belonging to M/s ATL Pvt. Ltd. or its directors i.e. Raj Kishore Gupta and Lavina Gupta. Since the prosecution failed to prove the alleged transactions, therefore, the question of abetment of said transactions which constitute the offences does not arise. In nutshell, the prosecution has also failed to prove the existence of criminal conspiracy to commit offences u/s 11 & 12 of the Prevention of Corruption Act, 1988.

178. As regards the allegation of criminal conspiracy, it has to be noted that the Hon'ble Apex Court in the decision reported as [Esher Singh v. State of A.P. 2004\) 11 SCC 585](#), reiterating the principle laid down in [V.C. Shukla v. State \(Delhi Admn.\) \(1980\) 2 SCC 665](#) held that:

“We are aware of the fact that direct independent evidence of criminal conspiracy may not ordinarily and is generally not available and its existence invariably is a matter of inference except as rare exceptions. The inferences are normally deduced from acts of parties in pursuance of a purpose in common between the conspirators. This Court in V.C. Shukla v. State (Delhi Admn.) [(1980) 2 SCC 665 : 1980 SCC (Cri) 561] held that to prove criminal conspiracy there must be evidence, direct or circumstantial, to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the

circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied on for the purposes of drawing an inference should be prior in point of time than the actual commission of the offence in furtherance of the alleged conspiracy."

As mentioned above, the prosecution has failed to prove the allegations constituting commission of offences u/s 11 and 12 of The Prevention of Corruption Act, 1988 against all accused. The court cannot rely upon few bits and pieces of material which does not lead to inference of hatching of criminal conspiracy by all or any of them. Thus, it has to be concluded that prosecution has failed to prove that all or any of the accused had committed the offence of criminal conspiracy.

179. As a result, since the prosecution has failed to establish the guilt of any of the accused persons beyond reasonable doubt, therefore, accused no. 1 Radhey Shyam Sharma is acquitted of the charge of having committed offences u/s 120-B r/w section 11 & 12 of The Prevention of Corruption Act, 1988 and u/s 11 of The Prevention of Corruption Act, 1988. Accused no. 2 Raj Kishore Gupta & accused no. 3 Lavina Gupta are also acquitted of

the charge of having committed offences u/s 120-B r/w section 11 & 12 of The Prevention of Corruption Act, 1988 and u/s 12 of The Prevention of Corruption Act, 1988 respectively.

180. All accused have furnished bail bonds and surety bonds u/s 437-A Cr.PC. The said bail bonds/ surety bonds shall remain in force for a period of six months.

181. File be consigned to record room after due compliance.

**Announced in open
court on 19.03.2026**

**(SUSHANT CHANGOTRA)
Special Judge (PC Act) CBI
Rouse Avenue Courts,
New Delhi/19.03.2026**