

**IN THE COURT OF MS. KIRAN BANSAL,
SPECIAL JUDGE (PC ACT) (ACB)-01, RADC, NEW DELHI**

**CC No.183/2019
CNR No.DLCT11-000885-2019**

State (Govt. of NCT of Delhi)

VERSUS

1. Tara Dutt

S/o Sh. Tikaram

R/o 1/190, Khichripur

Delhi.

2. Mukul Kumar

S/o Sh. Ramesh Kumar

R/o H. No. 1/212, Khichripur

Delhi.

3. Ramesh Kumar

S/o Late Ram Chander

R/o H. No. 1/212, Khichripur

Delhi.

4. Daya Nand Sharma

S/o Sh. B.R. Sharma

Special Metropolitan Magistrate (Retired)

SDMC, Najafgarh Zone, New Delhi-43.

Also at : Kothi No.1631, Sector-6

HUDA-B Kaushal Niwas, Bahadurgarh

Haryana-124507. (Proceedings abated vide order dated 07.05.2019)

**FIR No. : 215/2017
U/s : 12 Prevention of Corruption Act
r/w Section 120B IPC
PS : Subzi Mandi**

Date of Institution on : 25.10.2017

Judgment reserved on : 25.08.2021

Judgment delivered on : 27.09.2021

J U D G E M E N T

1. Brief facts revealed from the charge-sheet are that on 26.08.2017, SHO/Insp. Ranbir Singh received a complaint dt. 26.08.2017, vide DD No.23A, which was written to The Ld. District & Sessions Judge (HQ), Tis Hazari Courts, Delhi by Sh. Chandra Shekhar, ASJ, Tis Hazari Courts, Delhi with Subject:- Delivering of an envelope by ASI Tara Dutt (Special Branch), Delhi Police containing of photocopy of Roll No.1341116218 of candidate Mukul Kumar s/o Ramesh Kumar R/o H.No.212, Block-ND, Khichripur, East Delhi and an amount of Rs.50,000/- in denomination of Rs.2000 (2000*25). In complaint, it was stated that HC Surender Kumar had come to the chamber of Ld. ASJ, Sh. Chandra Shekhar and asked him if he knows someone with the name Sh. Daya Nand Sharma. Ld. ASJ, Sh. Chandra Shekhar told HC Surender that he does not know any such person. Ld. ASJ, Sh. Chandra Shekhar was informed that one ASI Tara Dutt wants to contact him on the direction of Daya Nand Sharma but he told to HC Surender Kumar that since he does not know anybody with the name Sh. Daya Nand Sharma, he cannot meet anybody and left for lunch, telling the Naib Court HC Surender Kumar that may be ASI Tara Dutt came to meet someone else. In complaint, it is stated that in the presence of HC Surender Kumar outside the court room ASI Tara Dutt contacted Sh. Daya Nand Sharma telephonically and confirmed that he had come to meet Sh. Chandra Shekhar only. It is further stated that ASI Tara Dutt had shown the visiting card of Daya Nand Sharma to HC Surender Kumar but ASI Tara Dutt refused to give the said visiting card to HC Surender Kumar, therefore, HC Surender Kumar photocopied the same. It is further stated that ASI Tara Dutt had thereafter, handed over one envelope to HC Surender Kumar stating that the same should be delivered only to Sh. Chandra Shekhar, Ld. ASJ. On his asking HC Surender Kumar had opened the same and found containing photocopy of interview letter of candidate Mukul Kumar and 25 currency notes

in the denomination of Rs.2,000/- each. It is further stated that as the contents of the complaint were related to Prevention of Corruption Act, panch witness namely Sh. Rahul Kumar s/o Sh. Om Prakash R/o H.No.178, Gali No.11, Village Wazirabad, Delhi – 110084 posted as LDC in Department of Welfare of SC/ST/OBC, GNCT of Delhi, B-Block, 2nd Floor, Vikas Bhawan, I.P. Estate, New Delhi was called. HC Surender Kumar, Naib Court had produced the currency notes found in a sealed envelope given by ASI Tara Dutt to Sh. Chandra Shekhar, Ld. ASJ, Tis Hazari Courts, Delhi (Complainant) with a photocopy of letter for interview on which a Roll No.1341116218 and Application No.364477430265 with a list of 25 currency notes of Rs.2,000/- (2000/25) in the presence of panch witness. 25 GC notes were seized and sealed in an envelope Mark-A with a seal of 'GNT' and documents were kept in separate envelope Mark-B. FIR was registered under Section 12 of Prevention of Corruption Act, 1988 r/w Section 120B of IPC against the accused ASI Tara Dutt and Mukul Kumar. During investigation, it was revealed that Sh. Daya Nand Sharma, Special Metropolitan Magistrate, S.D.M.C. Najafgarh Zone, New Delhi-110043 R/o Kothi No.1631, Sector-6, H.U.D.A. B Kaushal Niwas Bahadurgarh, Haryana - 124507 is relative (*chacha sasur*) of accused Tara Dutt. Specimen signature of Tara Dutt and Mukul Kumar were sent to FSL, Rohini for comparison and as per certified CDR of ASI Tara Dutt, on 26.08.2017 at around 13:14:00, he had contacted Dayanand Sharma and his mobile location was at Tis Hazari Courts, Opp. Shankar Market, Delhi – 110054 which establishes that ASI Tara Dutt talked to Sh. Dayanand Sharma. As per call details, Tara Dutt contacted Dayanand Sharma first time on 19.08.2017 at around 14:47:39 and 15:06:52 and just after talking with Dayanand Sharma, he contacted Mukul on his mobile number 8076205534 at 15:10:40. During investigation. Dayanand Sharma, Ramesh and accused Mukul joined the investigation and all were interrogated separately. Dayanand Sharma told that he had worked as a court master at Delhi High Court and

retired in 2011 and after that he had worked as Special MM for MCD and retired from his services in 2015. It was revealed that ASI Tara Dutt is his relative and when he was posted at Delhi High Court as Court Master, he met Sh. Chandra Shekhar, Ld. ASJ two-three times and became known to each other, however, they were not in contact after his retirement. It was revealed that in August 2017, Tara Dutt contacted him to talk with Sh. Chandra Shekhar, who was the member of Interview Board for recommendation in favour of someone regarding interview for the post of peon in Delhi District Courts. ASI Tara Dutt wanted to contact the complainant on the direction of Dayanand Sharma and as per Naib Court HC Surender Kumar, ASI Tara Dutt made a phone call to Dayanand Sharma in his presence outside the court room and confirmed that he had to contact the complainant only. Accused Tara Dutt had also shown visiting card of Dayanand Sharma to the Naib Court HC Surender. Tara Dutt had contacted Dayanand Sharma for the interview of Mukul Kumar and Sh. Ramesh Kumar, father of Mukul Kumar, had given Rs.50,000/- to ASI Tara Dutt in the evening of 25.08.2017 for selection of his son Mukul as Peon in Delhi District Courts. Sh. Ramesh Kumar had withdrawn Rs.20,000/- from his Andhra Bank and remaining Rs.30,000/- cash in his hand. Ramesh Kumar revealed the fact that he is neighbour of Tara Dutt and his son Mukul had passed the exam for the post of peon in Delhi District Courts and was called for interview on 27.08.2017. On 26.08.2017, Tara Dutt told that he had done their work and had given Rs.50,000/- to Sh. Chandra Shekhar for favouring Mukul in the interview. Accused Mukul during interrogation told that he is student and was unable to arrange Rs.50,000/- as he has no source of income and was fully dependent on his father's earnings. Sh. Mukul alongwith his father Sh. Ramesh Kumar had approached and contacted ASI Tara Dutt to get selected in interview at Tis Hazari Courts, Delhi on 27.08.2017. As per CDR's, there were regular conversations between Dayanand Sharma, Mukul and Tara Dutt. After investigation, sufficient

material was found to charge-sheet accused Dayanand Sharma and Ramesh Kumar under Section 120B IPC and supplementary charge-sheet was filed against them.

2. During trial proceedings accused Dayanand Sharma expired on 17.04.2019 and thereafter, proceedings against him stood abated vide order dated 07.05.2019.

Death certificate of accused Dayanand Sharma is Ex.PW14/B.

3. Cognizance of the offences was taken against accused Tara Dutt, Mukul Kumar, Ramesh Kumar and Dayanand Sharma (since deceased) vide order dated 22.10.2018. Thereafter, accused persons were summoned and after hearing the arguments on charge, charge for the offences under Section 12 of Prevention of Corruption Act read with Section 120B IPC was framed against all the four accused persons on 21.01.2019 to which they pleaded not guilty and claimed trial.
4. Prosecution in order to prove its case against the accused persons examined 22 witnesses and the accused no. 1 Tara Dutt has examined five witnesses in defence.
5. PW-1 ASI Satish Chander is the duty officer who registered the present FIR. Copy of FIR and rukka is Ex.PW-1/A & Ex.PW-1/B. The certificate under Section 65B of Indian Evidence Act regarding the FIR is Ex.PW-1/C and copy of DD No.9-A is Ex.PW-1/D. It is stated by the PW1 that DD No.9A (kayami) was lodged by himself.
6. PW-2 Sh. Israr Babu, Alternate Nodal Officer, Vodafone Mobile Services proved the CDR of mobile no. **8447462346** as Ex.PW2/B alongwith certificate under section 65B Indian Evidence Act Ex.PW2/C. He further deposed that the said mobile number is subscribed in the name of **Ramesh Kumar** and the certified copy of CAF is Ex.PW2/D. He also proved letter dated 27.04.2018 Ex.PW2/F in pursuance to notice under Section 91 Cr.P.C. of Insp. Anant Kiran, PS Subzi Mandi and deposed that he had provided the certified CDR of

mobile number **9210986901** for period from 01.08.2017 to 27.08.2017 Ex.PW2/G(colly), certificate under Sec. 65B of Indian Evidence Act is EX.PW2/H and certified copy of CAF with I/D proof is Ex.PW2/I. As per CAF and ID proof, the mobile number **9210986901** was registered **in the name of Ms. Kusum, mother of accused Mukul.**

7. During his cross examination, he deposed that he had provided the certified copy of call detail record to IO after retrieving the same from his official computer at his seat and that data provided by him is genuine and he had issued the certificate under Section 65B of Indian Evidence Act by applying his mind.
8. PW-3 HC Surender Kumar was posted as Naib Court in the court of Sh. Chander Shekhar, Ld. ASJ, Central District, Delhi at Tis Hazari Courts Complex, Delhi at that time and on 26.08.2017, ASI Tara Dutt told him that Ex-Magistrate namely Dayanand Sharma had sent him to meet Sh. Chandra Shekhar, Ld. ASJ. He told the entire facts of coming of ASI Tara Dutt to Sh. Chandra Shekhar, Ld. ASJ but Ld. ASJ denied of knowing any Dayanand Sharma. Ld. ASJ told PW-3 to verify clearly if ASI Tara Dutt wanted to meet him or somebody else. He further submits that ASI Tara Dutt again made a phone call to some person and confirmed that he had called to Dayanand Sharma to confirm about name of the judge. He further submits that ASI Tara Dutt had produced one visiting card of Ex-Magistrate Dayanand Sharma and handed over an envelope to him to deliver it to Sh. Chandra Shekhar on the instructions of Dayanand Sharma. He further submits that he had asked ASI Tara Dutt to leave the visiting card of Dayanand Sharma with him but he denied and he had thereafter got the photocopy of said visiting card and noted down the name and mobile number of ASI Tara Dutt on the back side of it and thereafter went back to attend his duty. On the same day at around 04.15 p.m., he took the envelope given by ASI Tara Dutt inside the chamber of Sh.

Chandra Shekhar, Ld. ASJ and produced the photocopy of visiting card of Daya Nand Sharma alongwith the envelope given by ASI Tara Dutt to Sh. Chandra Shekhar, Ld. ASJ. On the asking of Ld. ASJ, Sh.Chandra Shekhar, he opened the envelope which was found containing one folded paper having currency notes and the folded paper in which currency notes were lying was photocopy of roll number of one candidate namely Mukul. Thereafter, on further asking of Ld. ASJ he counted 25 currency notes of Rs.2,000/- denomination and on the direction of Ld. ASJ again he noted down the serial numbers of the said 25 currency notes on a paper and prepared photocopy of the said document also. He further stated that the currency notes and documents remained in his custody whereas Ld. ASJ proceeded to the chamber of Ld. District and Sessions Judge (HQ) and disclosed all the facts to Ld. District & Sessions Judge (HQ) telephonically. Thereafter, a complaint was prepared in the court of Ld. District and Sessions Judge (HQ) which was sent to the police station Subzi Mandi through special messenger on the instructions of Ld. District and Sessions Judge (HQ). He further submits that on the directions of Ld. ASJ, he went to PS Subzi Mandi alongwith the photocopy of roll number of the candidate as well as currency notes and after reaching police station Subzi Mandi at about 6.00 p.m. he kept on waiting for IO/ ACP Rajinder Prasad Gautam till 9.00 p.m. who thereafter called him in the SHO room and asked him to wait for panch witness. Thereafter, in between 01.30 a.m. to 02.00 a.m., one panch witness Rahul came to PS Subzi Mandi. In the presence of the said panch witness, IO seized the roll number and 25 currency notes, tallied the serial numbers with the list prepared by PW-3 and annexed with the complaint of Ld. ASJ. Thereafter, the currency notes and roll number were kept in two separate envelopes and both the said envelopes were sealed with the seal of 'GNT', by the IO and seal after use was handed over by IO to the panch witness. IO had given specific markings to both the envelopes. Both the sealed envelopes were seized vide seizure memo Ex. PW-3/A bearing

his signatures at point 'A' and 'A-1', photocopy of roll number of candidate Mukul Kumar is Ex. PW-3/B, envelope handed over to him by ASI Tara Dutt containing the said roll number and currency notes is Ex.PW-3/C, photocopy of visiting card of special magistrate Dayanand Sharma is Mark PW-3/X and the name and mobile number of ASI Tara Dutt written by him overleaf the said document is Ex. PW-3/D. IO prepared the site plan of the place of occurrence which is Ex. PW-3/E. Thereafter, he alongwith IO, SI G.N. Tiwari and other staff went to Khichri Pur, Delhi at the address given in roll number of candidate Mukul. After reaching the address, IO made enquiry from said candidate Mukul, who told that the said roll number belonged to him and ASI Tara Dutt resides near his house. Thereafter, on reaching the house of ASI Tara Dutt, accused Mukul pointed out ASI Tara Dutt and enquiry was made by IO from ASI Tara Dutt. He also identified ASI Tara Dutt. ASI Tara Dutt and Mukul were arrested by IO in PS Subzi Mandi vide arrest memo of ASI Tara Dutt Ex. PW-3/F and personal search memo Ex. PW-3/G. Accused Mukul Kumar was also arrested vide arrest memo Ex. PW-3/H and his personal search was conducted vide memo Ex. PW-3/I. In personal search of accused Tara Dutt and Mukul Kumar, their mobile phones were also seized. The disclosure statement of both the accused persons were recorded by the IO by making enquiry from them separately. Disclosure statement of accused Tara Dutt is Mark PW-3/J and disclosure statement of accused Mukul is Mark PW-3/K. The same visiting card of Dayanand Sharma was also recovered from ASI Tara Dutt and was seized by the IO vide seizure memo Ex. PW-3/L. He further stated that the list showing details of 25 government currency notes in his handwriting duly signed by him is Ex. PW-3/M. Thereafter, he correctly identified both the accused persons namely Tara Dutt and Mukul Kumar and also identified his signature on the envelope containing 25 currency notes of Rs.2000/- denomination, the serial numbers of currency notes also tallied with list Ex.PW3/M and seizure memo Ex.PW3/H was found correct.

9. During cross-examination, he stated that on 26.08.2017 he entered the court room between 12:00 Noon to 01:00 PM from prosecution branch and saw accused ASI Tara Dutt standing near the door of the court room and Ahlmad seat and Tara Dutt was inside the court room and asked him as to whether he (PW-3) was the Naib court. It is stated that accused Tara Dutt had spoken to him for around 25-30 seconds near the door of the court room and had shown his ID card while introducing himself. On 26.08.2017, accused had again visited him at around 01:45 PM inside the court room no.336. He denied that ASI Tara Dutt had not handed over any envelope to him. He further stated that he had only made one photocopy of the visiting card of Ex. Magistrate Sh. Dayanand Sharma. He further stated that he had not prepared any photocopy of the roll number/interview letter, copy of which was inside the envelope, neither prepared a photocopy of list of the serial number of the currency notes on 26.08.2017 but handed over the original list to Ld. Presiding Officer after signing the same. He further stated that Ld. Presiding Officer had taken all the documents alongwith the list of serial number of the currency notes and copy of the roll number/interview letter with him when he went to meet Ld. District & Sessions Judge but currency notes were with him at that time and Ld. District & Sessions Judge had not made any inquiry from him. Thereafter, a complaint was got typed and sent to the police station. He further stated that he had taken the currency notes to the police station. He has correctly identified the currency notes, envelope having the words mentioned as "SECRET", copy of roll number/interview letter handed over to him by ASI Tara Dutt and photocopy of visiting card of Special Magistrate Dayanand Sharma. He further stated that the envelope was handed over to him by accused ASI Tara Dutt. He further stated that inquiries were made from accused Mukul Kumar and Mukul Kumar took police officials to the house of ASI Tara Dutt. He further stated that Mukul and Tara Dutt were arrested in the police station. He denied that visiting card of Sh. Dayanand Sharma was not

recovered from the possession of accused ASI Tara Dutt or that the same was given by him to the police and was planted upon the accused ASI Tara Dutt in his connivance. He accepted that he was posted in Security Branch of Delhi Police from Sep. 2003 to Sep. 2006 but denied of having knowledge about posting of accused ASI Tara Dutt in the Security Branch at that time. He denied that accused ASI Tara Dutt was known to him prior to 26.08.2017. He also did not know the name of wife of accused ASI Tara Dutt or any knowledge regarding matrimonial dispute between Tara Dutt and his wife and other cases filed against Tara Dutt by his wife Geeta. He denied that he used to favour wife of accused Ms. Geeta in the matrimonial dispute and also denied that he had a dispute with accused ASI Tara Dutt while they were both posted at Security Branch. He denied that due to his enmity and grudge against accused ASI Tara Dutt, he had falsely implicated him or that on 26.08.2017 accused was on duty and had not visited him in the court and that the entire story was concocted.

10. PW-4 HC Vijender Kumar was posted as Incharge of CCTV Control room, Tis Hazari Court at that time and had handed over the CCTV footage of 26.08.2017 of two CCTV cameras one installed in gallery near Court no. 336 and other installed near Juice shop, Central Hall in CD and identified the CD/DVD containing CCTV footage dt. 26.08.2017, Ex.PW11/B. During his cross-examination, he disclosed that he had handed over the DVD on the written directions of Chairman of the committee having domain of CCTV footage to IO/Tiwari sahib and no seizure memo or any other document was prepared at that time. He again stated that he had not perused the CCTV footage contained in the DVD after handing over the DVD to IO and does not remember number of files and folders saved in the DVD.
11. PW- 5 ACP Ranbir Singh was posted as SHO, PS Subzi Mandi, Delhi in the year 2017 who deposed that on 26.08.2017, he had received one sealed envelope from office of Ld. District & Sessions Judge (HQ) found containing

one complaint with some documents pertaining to offence punishable under Prevention of Corruption Act and forwarded the same to ACP, Sadar Bazar is Mark PW-5/A. A forwarding letter of said complaint is Ex. PW-5/A. During his cross-examination, he accepted that he had lodged the FIR on direction of Ld. District & Sessions Judge (HQ) but denied that he lodged the said FIR under pressure.

12. PW- 6 Shri Rahul Kumar S/o Shri Om Parkash was Posted as LDC in Department of welfare of SC/ST/OBC GNCT of Delhi, B- Block, 2nd floor, Vikas Bhawan, I P Estate, New Delhi on 26.08.2017 and deposed that he was assigned as panch witness in Anti Corruption Branch, Delhi and on 27.08.2017 at about 01.00 a.m., he had received a telephone call from Anti Corruption Branch and directed to reach at ACB, Civil Lines, Delhi. He stated that he had assigned his attendance in ACB and thereafter, he was taken to PS Subzi Mandi and met ACP Rajinder Prasad Gautam and Insp. Ranbir Singh, who introduced him to HC Surender Kumar, Naib Court who told him about Tara Dutt posted as ASI in Delhi Police, Special Branch, who had handed over one envelope to him and also told him that when the said envelope was opened in presence of Ld. ASJ, Shri Chandra Shekhar, it was found containing 25 GC notes of Rs. 2000/- denomination. He further stated that he checked the serial numbers of said currency notes and the same alongwith interview letter were seized by ACP Rajinder Prasad Gautam vide seizure memo Ex. PW-3/A, thereafter, currency notes were kept in one white colour envelope, interview letter was kept in another envelope and both got sealed with seal of GNT. Thereafter, ACP Rajinder Prasad Gautam handed over seal after use to him and he returned it to SI G.N. Tiwari on 13.09.2017. He identified his signatures on envelope containing 25 GC notes of Rs.2000/- denomination and tallied the serial numbers of currency notes. The currency notes are Ex. PW-6/Article- 1 (colly.) and the envelope is Ex. PW-6/Article-2. He identified his signatures on the photocopy of interview letter Ex.PW-6/Article-3 and

photocopy of visiting card of Dayanand Sharma Ex.PW-6/Article-4. During his cross-examination, he stated that he had joined the investigation at the given time and date and signed the documents and memos at a particular time.

13. PW-7 Sh. Ajay Kumar, Nodal Officer proved two Customer Application Forms of mobile No.9910043160 and 9818332644 issued in the name of one Sh. Gaurav Sharma s/o Sh. D.N. Sharma, r/o 3278, Mamman Street, Bada Haweli, Pahari Dheeraj, Delhi-110006, photocopy of the same are Ex.PW7/A(Colly) and Ex.PW-7/B(Colly).

14. PW-8 SI G.N. Tiwari depose before the court that on 27.08.2017, he was posted at P.S. Subzi Mandi and at around 01.45 a.m. night, HC Surender Naib Court of court room no. 336, Tis Hazari Court, in presence of panch witness Rahul, produced one envelope containing a complaint, an interview letter and 25 currency notes of Rs. 2,000/- each before ACP Rajinder Prasad Gautam and the currency notes were tallied with the list which was annexed with the complaint and converted into a parcel with seal 'GNT'. Interview letter was also taken into police possession vide seizure memo already Ex. PW-3/A. He stated that he accompanied IO ACP Rajinder Prasad Gautam, HC Surender and reached at Tis Hazari Court room no. 336 and at the instance of HC Surender, IO prepared the site plan. He further stated that on reaching the address mentioned in interview letter, they met one Mukul and on enquiry, it revealed that ASI Tara Dutt was residing near Mukul's house who was taking coaching classes for preparing and clearing the exam of peon in Tis Hazari Court and ASI Tara Dutt had received a sum of Rs. 50,000/- to get Mukul's selection for the post of peon. Thereafter, Mukul led them to the house of ASI Tara Dutt, where, ASI Tara Dutt was found present and HC Surender identified ASI Tara Dutt and clarified that ASI Tara Dutt was the same person who had given him envelope containing 25 currency notes and an interview letter. He further stated that he, HC Surender alongwith ASI Tara Dutt and Mukul returned back to PS Subzi Mandi where ACP Rajinder Prasad Gautam interrogated ASI Tara

Dutt thoroughly and after interrogation, IO arrested ASI Tara Dutt and Mukul Kumar. Disclosure statement of accused ASI Tara Dutt and Mukul Kumar were also recorded. He further stated that on 26.10.2017, he accompanied IO ACP Rajinder Prasad Gautam and reached in the court of Ld. Spl. Judge Ms. Poonam Chaudhary, where with permission of the Court, specimen handwriting of ASI Tara Dutt was taken on 10 sheets and he also put his signatures on the same as witness, 10 specimen handwriting sheets of ASI Tara Dutt is Ex. PW-8/A (colly.). Similarly, on 07.12.2017, specimen handwriting of Mukul Kumar was taken on 05 sheets, 05 specimen handwriting sheets of Mukul Kumar is Ex. PW-8/B (colly.). He has also identified envelope Mark 'B' in which Ex. PW-6/Article-3 was kept at the time of seizure by the IO. He has also identified envelope already Ex. PW-3/C in which accused ASI Tara Dutt had given 25 currency notes of Rs. 2,000/- each, photocopy of interview letter. He has also identified 25 currency notes of Rs. 2,000/- each wrapped in a paper envelope already Ex. PW-6/Article-2 as the same was produced by HC Surender in his presence before IO ACP Rajinder Prasad Gautam, currency notes already Ex. PW-6/Article-1 (colly.). He has also identified the list bearing number of currency notes already Ex. PW-3/H which were got tallied at the time of seizure of currency notes.

15. During his cross-examination, he disclosed that on 27.08.2017, he had seen the complaint sent by the District Judge and all the enclosures attached with the complaint for the first time in the possession of ACP Rajinder Prasad Gautam. During investigation he alongwith ACP Rajinder Gautam and HC Surender reached in court premises at about 8.00 a.m. or 9.00 a.m. in the morning and he did not know whether other staff also accompanied them at that time or whether any CCTV camera was installed outside court room no. 336 or in corridor of Tis Hazari Courts. He further stated that it took 45 minutes to one hour to reach to the house of accused Mukul from Tis Hazari Court and they found father of accused Mukul Kumar present there, however, they did not

obtain signatures of his father on any paper. He further stated that visiting card was recovered from accused Tara Dutt. He denied that accused persons were falsely involved in the case without proper investigation or verification of the contents of the complaint or he concealed material facts.

16. PW-9 Sh. Ashok Kumar, Ld. MM, NI Act, South-East District, Saket Courts, Delhi on 05.07.2018, recorded the statement under Section 164 Cr.P.C. of witness Gaurav Sharma after ascertaining the capabilities of witness Gaurav Sharma and his voluntariness, and completed the proceedings, Ex.PW9/A. Application of the IO for recording statement of witness Sh. Gaurav Sharma is Ex.PW9/B.
17. PW-10 Sh. Raj Kumar Pankaj, Branch Manager, Andhra Bank, Mayur Vihar Phase-III, Delhi has produced account opening form of Account No. 208610100011030 in the name of one Sh. Ramesh Kumar alongwith statement of account from 24.02.2014 to 18.03.2019 and certificate U/s 65B of Indian Evidence Act read with Bankers Books Evidence Act. Copy of the account opening form including copy of ID proof etc. is Ex.PW10/A (OSR), statement of account is Ex.PW10/B and certificate U/s 65B of Indian Evidence Act read with Bankers Books Evidence Act is Ex.PW10/C.
18. PW-11 Sh. Rajinder Prasad Gautam, Retired ACP has deposed that on 26.08.2017, he was posted as ACP, Sub-Division- Sadar Bazar and received a complaint from PS Subzi Mandi from Sh. Chandra Shekhar, Ld. ASJ, Tis Hazari Courts alongwith enclosures i.e. photocopy of letter of interview, photocopy of visiting card of Dayanand Sharma, list of details of the currency notes and white colour envelope mentioning the word "SECRET" which was received from the Office of District & Sessions Judge, Tis Hazari Courts with direction to register the FIR which was produced by HC Surender Kumar. Considering the contents of complaint, he called panch witness Sh. Rahul Kumar from ACB and in his presence, HC Surender Kumar produced 25 currency notes in the denomination of Rs.2,000/- each alongwith photocopy of

visiting card in the name of Dayanand Sharma, photocopy of interview letter and the envelope mentioning the word "SECRET". Thereafter, he kept the aforesaid 25 currency notes in an envelope Mark-A and remaining documents were kept in separate envelope Mark-B. Envelope Mark-A and photocopy of letter for interview were seized vide seizure memo already Ex.PW3/A. He made endorsement Ex.PW11/A with direction to duty officer for registration of FIR whereupon present FIR No. 215/17 Ex.PW1/A was registered. He has inspected the spot and prepared the site plan and after conducting enquiry arrested both the accused persons and recorded their disclosure statements and seized the case properties i.e. Ex.PW3/Article-1, Ex.PW6/Article-4 and Ex.PW6/Article-3. He has also identified the DVD containing CCTV footage, Ex.PW11/B. During the course of his chief-examination, DVD was played on the laptop which was containing two video files and he identified accused Tara Dutt in the CCTV footage and 25 currency notes of Rs.2,000/- each Ex.PW6/Art.-1. Certificate under Sec. 65B of I.E. Act is Ex.PW19/A.

19. During the cross-examination, he disclosed that the complaint alongwith its enclosures were initially received in PS Subzi Mandi. He has further stated that no evidence qua demand, acceptance, obtainment or agreement to accept came on record on behalf of any public servant before registration of case. He further stated that he has registered the case under the provisions of POC Act and taken currency notes, photocopy of visiting card in the name of Dayanand Sharma, interview letter and the envelope from HC Surender Kumar, Naib Court of Sh. Chandra Shekhar, Ld. ASJ. He accepted that he has not mentioned about the CCTV camera installed outside the gallery of court no. 336 in the site plan. He denied that he had prepared wrong site plan. He stated that he was accompanied by HC Surender, SI G.N. Tiwari and driver and operator during their visit to Khichripur. He stated that on 27.08.2017 at about 12:30 PM, he arrested Mukul Kumar initially and prepared the arrest memo and thereafter, arrested accused Tara Dutt. He further stated that they

apprehended the accused Mukul from his house and accused Tara Dutt was arrested outside the house of Mukul. He further stated that he has not seen the house of accused Tara Dutt. He denied the suggestions that accused Tara Dutt was wrongly arrested at the behest of HC Surender or that accused Mukul was falsely arrested in the present case or that accused persons are innocent. He further stated that the visiting card of Dayanand Sharma was recovered from the pocket of accused Tara Dutt outside the house of accused Mukul. He denied that visiting card of Dayanand Sharma was not recovered from accused Tara Dutt or the same was planted upon him in the PS for making a false case. He accepted that no such fact of taking CCTV footage or CDR were mentioned in the statement U/s 161 Cr.P.C. of G.N. Tiwari or no seizure memo was prepared while taking CCTV footage. He denied that no CDR or CCTV footage was obtained by them or manipulated and fabricated for creating false evidence against accused persons. He denied that DVD Ex.PW11/B was wrongly made part of the record or that he wrongly identified accused Tara Dutt in DVD Ex.PW11/B. He denied that no CCTV footage was handed over to him by the CCTV Computer Committee or that he has planted the copy of Ex.PW11/B showing it to have been taken into possession from the CCTV Computer Committee as the same was under the control of Delhi Police officials only. He further denied that DVD Ex.PW19/B is a copy prepared from Ex.PW11/B and it is forged and fabricated. He further denied that he concealed material facts.

20. PW-12 Sh. Chandra Shekhar, Ld. Special Judge, CBI, Rouse Avenue Court Complex, New Delhi, deposed that in the year 2017, he was posted as Additional District & Sessions Judge in Tis Hazari Courts (Central District), Delhi and **was also a member of Recruitment Committee for recruitment of orderlies at that time.** He has further deposed that he was holding his court in the Room No. 336 of Tis Hazari Courts and on 26.08.2017, his Naib Court HC Surender Kumar visited his chamber and asked him if he knew someone in

the name of Dayanand Sharma to which he replied no. He has further deposed that on the asking of HC Surender Kumar for a meeting with ASI Tara Dutt, he replied that he does not know any Dayanand Sharma and refused to meet ASI Tara Dutt. Thereafter, at about 04:15 pm, HC Surender Kumar visited him again and disclosed the factum of making phone call by Tara Dutt to Dayanand Sharma and that Dayanand Sharma told that Tara Dutt was to meet Sh. Chandra Shekhar. He also told that Tara Dutt refused to give the visiting card of Dayanand Sharma on his asking and therefore, he had taken a photocopy of the same. PW-12 further deposed that he asked HC Surender to open the white colour envelope which was given by Tara Dutt to HC Surender Kumar to handover to PW-12. After opening, it was found that the said envelope was containing a photocopy of an interview letter of one Mukul Kumar alongwith 25 currency notes of Rs.2,000/- denomination each and thereafter, he reported the matter to Ld. District & Sessions Judge, Tis Hazari Courts, Delhi for appropriate action. His complaint is Ex.PW12/A and Ld. District & Sessions Judge had made endorsement at point F at page no. 3 of aforesaid Ex.PW12/A directing SHO, PS Subzi Mandi for registration of the FIR and taking appropriate action. PW-12 further deposed that on his directions, before writing complaint Ex.PW12/A, HC Surender Kumar had noted down the numbers of the currency notes. **He has further deposed that on 28.08.2017, he had written a letter to Ld. District & Sessions Judge for preserving the CCTV footage of area nearby court room no. 336. Copy of that letter is Mark-PW12/B and reply to the said letter is Ex.PW12/C.** He has identified the white colour envelope mentioning the word "SECRET" on it, particulars of this case and FSL and stated that particulars of this case FIR and FSL were not mentioned at that time on envelope Ex.PW3/C. He has also identified photocopy of interview letter Ex.PW6/Article-3, photocopy of visiting card in the name of Dayanand Sharma Ex.PW6/Article-4, list of details

of currency notes Ex.PW3/H.

21. During his cross examination, he deposed that he did not personally know Dayanand Sharma nor he had personally met him or even talked to him. He further deposed that nobody had approached him for helping Mukul in the interview before that incident. He has further deposed that he had enquired from HC Surender Kumar that ASI Tara Dutt had insisted after talking to one Dayanand Sharma telephonically to hand over the envelope to him only and if PW-12 refused to take the same, then ASI Tara Dutt will collect it back next day from HC Surender Kumar. He has further deposed that he has no knowledge if the facts of incident dated 26.08.2017 told to him by HC Surender Kumar in relation to the present case were true or not. He has further deposed that he had apprised Ld. District & Sessions Judge about facts of complaint alongwith its enclosures and same was got typed in his court room. He has further deposed that he had not taken back the enclosures or the complaint from the Ld. District & Sessions Judge and that the currency notes were in the hands of HC Surender Kumar when they visited the office of Ld. District & Sessions Judge, who perused the same. He has further deposed that currency notes were not sealed in separate envelope by Ld. District & Sessions Judge. He had no knowledge at what time HC Surender Kumar went to the PS on 26.08.2017. He has further deposed that he had visited the office of Ld. District & Sessions Judge after 05:00 pm but he could not tell at what time the complaint alongwith the enclosures were dispatched to the SHO concerned. He has further deposed that he has revealed the true facts and **he had perused the CCTV footage of that day.**

22. PW- 13 Shri Ram Mehar Singh, ACP Sadar Bazar has deposed that in the month of April 2018, he was assigned the case file of the present case and main charge-sheet was filed by the earlier IO ACP Rajinder Prasad Gautam. He further deposed that he had collected the FSL result, sought admitted

handwriting of accused persons of contemporary period, FSL report dated 31.01.2018 is Ex. PW-13/A. CDR and CAF of mobile no. 9210986901 alongwith certificate 65 B Indian Evidence Act were already Ex. PW-2/I , Ex. PW-2/H and Ex. PW-2/G with covering letter of VODAFONE already Ex. PW-2/F. He has further deposed that specimen handwriting of accused Tara Dutt and Mukul received back alongwith FSL report Ex. PW-13/A were filed by way of supplementary charge-sheet. During investigation, he had received CDR and CAF of mobile no. 9910043160 which was issued in the name of Gaurav Sharma, same is Ex. PW-7/A. He has further deposed that since 01.08.17 to 27.08.17, there were regular conversation of Tara Dutt through his mobile number 9871159076 to the mobile number 8076295534 which was reflected in true caller in the name of Mukul. Call details of accused Tara Dutt, Dayanand Sharma, Ramesh and Mukul were analyzed and supplementary charge-sheet was prepared thereafter. On the basis of call detail records, he had issued notice to all the accused persons and interrogated all the accused persons and during interrogation it was revealed that accused Tara Dutt was son-in-law of Dayanand Sharma's cousin brother, therefore, Dayanand Sharma had given his visiting card to father in law of Tara Dutt. During investigation, it was also revealed that accused Ramesh had handed over Rs.50,000/- to Tara Dutt in the presence of Mukul. He has further deposed that Ramesh Kumar had withdrawn Rs. 20,000/- from his account of Andhara bank on 25.08.17 and certified Bank Account Statement to this effect is Ex. PW-10/B which was received alongwith account opening form Ex. PW-10/A vide covering letter Ex. PW-10/C. He has further deposed that mobile no. 9210986901 was in the name of Kusum, mother of Mukul, who disclosed that the same was used by her son Mukul. **On enquiry from Shri Kesar Dutt Joshi, father-in-law of Tara Dutt**, it was revealed that he had handed over visiting card of Dayanand Sharma to Tara Dutt. Attested copy of statement of Gaurav Sharma under Section 164 Cr.PC is Ex. PW-13/B. He has further deposed that during

investigation, he had found sufficient material against accused Dayanand Sharma and Ramesh and charge-sheeted them by way of supplementary charge-sheet.

23. During cross-examination, he deposed that CDRs of HC Surender and Ld. ASJ Sh. Chandra Shekhar were not requested and he had never made any enquiry from HC Surender and Ld. ASJ Sh. Chandra Shekhar. He has further deposed that he had not obtained specimen handwriting of HC Surender to ascertain as to whether the word "Secret" mentioned on the envelope was in his handwriting or not. Request/notice U/s 91 Cr.P.C. was in his writing. He denied the suggestions that CDRs were manipulated in order to fill up the lacuna in the prosecution case or that the CDRs were not having correct and actual details of their respective numbers or that mobile no. 9871159076 was used by Smt. Geeta W/o accused Tara Dutt or that the phone number 8076295534 was used by mother of Mukul namely Kusum and mobile no. 9910043160 was also used by wife of Dayanand Sharma. He denied the suggestion that he has concealed true facts regarding user of the CDRs or that Rs.50,000/- were not handed over to accused Tara Dutt by accused Ramesh in the presence of Mukul or neither accused Mukul or Ramesh had handed over Rs.50,000/- to Tara Dutt. He denied that he has wrongly recorded the statement of Kusum, mother of Mukul. No suggestion has been given to the IO PW-13 that Kesar Dutt Joshi is not the father in law of Tara Dutt or that Smt. Saroj was given in adoption to Sh. Harish Chand Sharma.

24. PW-14 Sh. Gaurav Sharma deposed that mobile No.9910043160 was issued in his name by Airtel company and Sh. Dayanand Sharma, his father was using the same. He has further deposed that in the month of August 2017 also, his father was using the aforesaid number. During his cross-examination, he disclosed that the above said phone used to remain at home and his mother also used to use it, though they have a landline phone at home. He has further deposed that he had never seen his father using any visiting card,

Ex.PW3/Article1 at any point of time. During his re-examination by Ld. Addl. PP for state, he accepted that his statement under Section 161 Cr.P.C. was recorded after inquiry but he did not disclose that his mother also used to use the said mobile number in it. Statement under Section 161 Cr.P.C. from police file is Ex.PW14/A. He has further deposed that the said number was used by his father but occasionally his mother also used to use it but he did not disclose it in his statement under Section 164 Cr.P.C. He has further deposed that his father was not having any visiting card. He accepted all the particulars except the address on the visiting card Ex.PW3/Article-1 as they do not refer words 'HUDA' in their address but sector number 6 was planned by HUDA and on seeing the death certificate Ex.PW14/B of Dayanand Sharma, he clarified the contents i.e. word 'HUDA' is mentioned in the address.

25. PW-15 Smt. Kusum, W/o Sh. Ramesh deposed that mobile number 9210986901 was in her name and she was using the said mobile and does not know anything else about this case. She did not support the prosecution case (being mother of accused Mukul and wife of accused Ramesh). She further stated that nobody inquired from her about the present case. During cross-examination by Ld. Addl. PP, Ms. Kusum denied inquiry by SI Naveen on 28.04.2018 and her statement under Section 161 Cr.P.C. Ex.PW15/A. She further denied that Mukul (her son) had exclusively used the said mobile number in the month of August 2017. She further stated that she does not know Tara Dutt and used to talk to Ms. Geeta through mobile number 9871159076 who resides in her neighbourhood and they met in a kirtan mandali. Ms.Geeta is aged about 30-35 years. She further stated that her son Mukul is studying and was not taking coaching in the year August 2017. She denied that her son Mukul was using her mobile number 9210986901 and conversation between her son Mukul and Sh. Tara Dutt took place from mobile number 9871159076. On seeing CDR Ex.PW2/G, she stated that she does not remember any of the phone numbers. She denied the use of mobile numbers

reflected in CDR Ex.PW2/G by Mukul at any point of time.

26. PW-16 Ms. Shobha, JJA – Purchase Cell, Tis Hazari Courts, Delhi has provided the attendance register from January 2016 till date containing attendance of August 2017 and true copy of relevant page containing the attendance of Gaurav Sharma, JJA in the month of August 2017 from judicial record is Ex.PW16/A.
27. PW-17 Sh. Pankaj Sharma, Nodal Officer has provided Customer Application Form issued **in the name of Mukul Kumar** S/o Sh. Ramesh Kumar for mobile number **8076205534** alongwith call detail record from 01.08.2017 to 28.08.2017 with certificate under Section 65B of Indian Evidence Act to IO. CAF is Ex.PW17/A, CDR is Ex.PW17/B, certificate under Section 65B of I.E. Act is Ex.PW17/C and cell ID chart is Ex.PW17/D. He has also provided Customer Application Form issued in the name **of Tara Dutt** for mobile number **9871159076** alongwith call detail record from 01.08.2017 to 28.08.2017 with certificate under Section 65B of Indian Evidence Act to IO. CAF is Ex.PW17/E, CDR is Ex.PW17/F, cell ID chart is Ex.PW17/G and certificate under Section 65B of I.E. Act is Ex.PW17/H. During his cross-examination, he deposed that he had received two separate letters in respect of different phone numbers. He further deposed that he had retrieved the data related to CAF and CDR of both the mobile numbers himself through desktop installed in his office. He further deposed that he has no idea about the person who used to look after or maintain the server at Bombay but he is provided with a user ID and password to retrieve data. He has further deposed that format of certificate under Section 65B of I.E. Act was provided to them by company and Cell ID chart was being prepared after matching from the excel sheet and he himself took a print-out. He further deposed that he has provided correct data and same was not prepared at the instance of IO, and certificate under Section 65B of I.E. Act is as per mandate of law.

28. PW-18 Sh. Kamal Kumar, Nodal Officer has deposed that he has provided Customer Application Form in the name of Sh. Gaurav Sharma, S/o Sh. D.N. Sharma of mobile number 8700172544 alongwith its call detail record from 01.08.2017 to 28.08.2017 with certificate under Section 65B of Indian Evidence Act and cell ID chart to IO. CAF is Ex.PW18/A, CDR is Ex.PW18/B, cell ID chart is Ex.PW18/C and certificate under Section 65B of I.E. Act is Ex.PW18/D. His cross-examination is on similar lines as PW-17.
29. PW-19 HC Vishnu Dev has deposed that he has provided one DVD containing CCTV footage dated 26.08.2017 of Camera installed in the main gallery near Court No.336 for a period from 12:00 Noon to 02:00 PM and near juice shop at ground floor for period from 01:30 PM to 01:32 PM which was taken out from recording of camera fed in computer system of CCTV control room, Tis Hazari Courts and he has also issued one certificate under Section 65B of Indian Evidence Act with respect to the aforesaid electronic record / CCTV footage contained in the DVD make WRITEX, Ex.PW19/B. Certificate under Section 65B of Indian Evidence Act is Ex.PW19/A.
30. During his cross-examination, he deposed that he was Incharge of control room and his work was to handle DVR and he remained posted in CCTV Control Room, Tis Hazari Courts since March 2019 till mid of August 2019. He further deposed that he has no idea as to how many DVR's were installed in the control room. He has further deposed that they preserve only those recordings in the folder in computer system for which written directions were issued and he himself had prepared DVD from the saved recordings. He further deposed that recordings can be directly copied in the DVD with the help of CD drive. He was not posted in the control room in the year 2017. He further deposed that he has no idea on whose written directions the footages of CCTV camera near Juice Shop at ground floor were preserved/saved in DVD on 17.07.2019. He further deposed that at that time monitors were of Snyder Company and computer system installed in the control room and operating

system in computer was UBUNTU. He further deposed that he does not know the capacity of hard disc installed in the computer system. He has further deposed that the data contained in DVD Ex.PW19/B was retrieved by him.

31. PW-20 Sh. Rajinder Singh Yadav, Incharge-Computer Branch has deposed that on 09.07.2019 he had received an application for providing CCTV footage dated 26.08.2017 by retired ACP Sh. Rajinder Prasad Gautam which was marked to Sh. Raj Kumar Dahiya, JJA, Dealing Official CCTV room to which Sh. Raj Kumar Dahiya produced an official note dated 11.07.2019 and thereafter Sh. Sunil Beniwal, Ld. ADJ/Member of the Computer Committee, Central District, THC gave approval to provide the CCTV footage to Sh. Rajinder Prasad Gautam. Copy of notesheet regarding note dt. 11.07.2019 is Ex.PW20/A. Copy of application by SI G.N. Tiwari dt. 28.08.2017 is Ex.PW20/B. During his cross-examination, he deposed that work of preservation of CCTV footage was not assigned to him. He further deposed that the same was dealt by Delhi Police official posted at CCTV Control Room after receiving approval / directions of the Chairman, Computer Committee. He again deposed that his statement is purely on the basis of the record / documents.
32. PW-21 HC Harender has provided the original Register No.19 for 2017 and relevant entries pertaining to present FIR in the Register No.19 at Srl. No.2004 vide which case property was deposited into maalkhana by IO/ACP Rajinder Prasad Gautam. Photocopy of relevant part of register no.19 is Ex.PW21/A. During his cross-examination, he denied of having any personal knowledge about present case.
33. PW-22 Sh. Sachin, JJA, Recruitment Cell, Tis Hazari Courts, Delhi has produced the file concerning Application Form and Admit Card of Mukul Kumar s/o Sh. Ramesh Kumar for written exam held on 11.06.2017 for the post of Peon/Orderly/Dak Peon in the office of District & Sessions Judge (HQ), Delhi. He has deposed that they had received a request letter from PS

Sadar Bazar to produce original application form of Mukul Kumar, Roll No.1341116218 for the post of Group-C, Recruitment Year 2017 and on the approval of Ld. District & Sessions Judge (HQs), they sent the required document to concerned ACP by Sh. D.P. Nidaria, Sr. Administrative Officer (Judl.), Recruitment Cell, Tis Hazari Courts, Delhi. He has further deposed that he had identified the signatures of Sh. D.P. Nidaria, as he had seen him signing and writing. Original letter bearing No. 79324/Rectt.Cell/Group-C/2017dt. 16.11.2017 is Ex.PW22/A, **copy of application form and admit card of written examination held on 11.06.2017 of Mukul Kumar is Ex.PW22/B and Ex.PW22/C respectively. He has also produced photocopy of original admit card retained during the course of examination but could not identify signatures of the invigilator as the name of invigilator was not mentioned on the admit card of Mukul Kumar Ex.PW22/D.** He has produced certificate under Section 65B of Indian Evidence Act with regard to the electronic data regarding admit card and OMR sheet filled up by Mukul Kumar having Roll No.1341116218 for examination. Certificate under Section 65B of Indian Evidence Act is Ex.PW22/E and OMR sheet filled by Mukul Kumar is Ex.PW22/F.

34. During his cross examination, he deposed that record of appearance after registration of candidates for the post of Peon/Orderly/Dak Peon for year 2017 were maintained by an outsourced agency namely HT Media. He has further deposed that original admit card was deposited in the office of District & Sessions Judge after collecting it from the candidates in the examination hall by outsourced agency. The IP address from which the application was filed online is mentioned in the registration slip but he cannot say as to what was the IP address mentioned in the application form of Mukul Kumar and the same is with the outsourced agency. He has further deposed that the copy of data maintained with the outsourced agency regarding online application of Mukul

Kumar was provided by HT Media in a pen drive and a copy in the form of printout is Ex.PW22/B. He denied that copy of Ex.PW22/B was provided to their office by prosecution and the same was not provided by HT Media. He has further deposed that he himself had prepared certificate under Section 65B of Indian Evidence Act Ex.PW22/F and same was prepared after going through the provisions of Section 65 of Indian Evidence Act. He has further deposed that he cannot reveal the details of computer system used by HT Media and does not remember the specifications of computer system by which printouts were taken.

35. After completion of the prosecution evidence, statement of accused persons namely Tara Dutt s/o Sh. Tika Ram, Mukul Kumar s/o Sh. Ramesh Kumar and Ramesh Kumar s/o Late Sh. Ram Chander were recorded under Section 313 Cr.P.C. in which all the incriminating evidence was put to the accused persons which they denied as false and incorrect and stated that they were falsely implicated in the present case and police arrested them for filling up the lacuna in the prosecution case. They further submitted that the police officials and other witnesses deposed falsely against them. Accused Tara Dutt further submitted that PW-3 HC Surender Kumar had worked with him in Security Branch, Delhi Police and was known to him. Accused Tara Dutt further submitted that he was having a matrimonial dispute with his wife and PW-3 HC Surender intervened in the same and took side of his wife and therefore, PW-3 was bearing grudge against him and he falsely implicated him (accused) in the present false case and knowingly deposed falsely.
36. In order to prove their defence, accused persons examined five witnesses i.e. ASI Anil Kumar as DW-1, SI Rameshwar Dayal as DW-2, Sh. Veer Singh, JA as DW-3, Sh. Harish Chand Sharma as DW-4 and DW-5 HC Arun Kumar Chauhan.
37. DW-1 ASI Anil Kumar had produced the photocopy of RTI application dated 22.11.2018 for seeking information by SI Tara Dutt with its reply, same are

- Ex.DW1/1. He has further deposed that he has no personal knowledge about present case.
38. DW-2 SI Rameshwar Dayal had produced the details of posting of ASI Tara Dutt and record pertaining to complete attested bio-data of accused ASI Tara Dutt.
39. DW-3 Sh. Veer Singh deposed that he was posted as JA, Record Room (Criminal) since year 2017. He had produced the case file of **Saroj Mangaoi Vs. Tara Mangaoi, Misc. Petition No.117/3/2008 PS Karol Bagh under Section 125 Cr.P.C. decided on 18.05.2009** having Goshwara No. 98/2009 M.Court, Ex.DW3/1 and copy of ordersheet is Ex.DW3/2.
40. DW-4 Sh. Harish Chand Sharma S/o Sh. Mathura Dutt Sharma has deposed that accused Tara Dutt is his son-in-law. He has further deposed that he had met one Surender, employee of Delhi Police in the year 2006 when he visited the office of accused Tara Dutt in order to convince him to mend his relationship with his **adopted daughter Smt. Saroj Mamgaoi**. He has further deposed that he sought help from Surender to counsel accused Tara Dutt to mend his relationship with his daughter but accused refused the same. He has further deposed that he was meeting Surender first time at that time. He has further deposed that in May 2008, he alongwith his daughter filed a case for maintenance against accused Tara Dutt **which was settled and withdrawn later on** and for the same Surender referred them the Advocate Sh. Sanjay Gahlot. During his cross-examination, he deposed that he had voluntarily sought help of Surender to counsel accused Tara Dutt for proper upkeep of his daughter by accused Tara Dutt and he had not taken any help from Surender except the said issue. **He has further deposed that he has not met or spoke to Surender after the year 2008** or he has no personal knowledge of present case.
41. DW-5 HC Arun Kumar Chauhan has deposed that he was posted as Seniority

Clerk/Head Constable in SIP Branch (Personal Branch) of Special Branch, Police Bhawan and has brought the computerized printout of bio-data including posting details of accused ASI Tara Dutt having PIS No. 27010042, same is Ex.DW5/A. He has further deposed that he had taken the printout of details of bio-data of personnels posted in Special Branch and details therein were maintained in the office computer in normal official work. He has further deposed that as per record, ASI Tara Dutt was posted in Security Branch from 21.02.2005 to 01.01.2009, however, he has no personal knowledge about the present case.

42. Arguments on behalf of Ld. Addl. PP for the State as well as Sh. Sandeep Sharma and Sh. Dharam Singh, Ld. Counsels for the accused persons heard. Written arguments filed on behalf of accused persons also perused.
43. Ld. Addl. PP for the State argued that from the statement of PW-3 HC Surender, PW-6 Rahul, PW-12 Sh. Chandra Shekhar and other witnesses, examined during trial, supported with documentary evidences i.e. CCTV footage and call records connecting accused persons with one another, it has been duly proved that accused persons after entering into criminal conspiracy with one another committed offence under probe.
44. Ld. Addl. PP for the State further argued that PW-22 Sh. Sachin, JJA, Recruitment Cell, Tis Hazari Courts, Delhi duly proved that accused Mukul Kumar had applied for the post of Peon/Orderly/Dak Peon in the office of District & Sessions Judge (HQ), Delhi and was allotted Roll No.1341116218 for the post of Group-C, Recruitment Year 2017. Ld. Addl. PP for the State further submitted that PW-3 HC Surender has categorically stated that accused Tara Dutt met him on 26.08.2017 between 12:00 PM to 01:00 PM and told that he was sent by accused no. 4 Sh. Dayanand Sharma (deceased) and insisted to meet the Presiding Officer / PW-12 Sh. Chandra Shekhar and later on when he could not meet PW-12, accused Tara Dutt left an envelope containing currency notes wrapped in a printout of the roll number of accused

Mukul Kumar for aforesaid examination.

45. Ld. Addl. PP for State further submitted that PW-12 Sh. Chandra Shekhar has also supported the version of PW-3 and submitted that on the relevant date i.e. 26.08.2017 he was member of recruitment committee for the post of Group-C, Recruitment Year 2017, in the office of District & Sessions Judge (HQ), Delhi and was holding his court in the Room No. 336 of Tis Hazari Courts, when his Naib Court/PW-3/ HC Surender Kumar visited his chamber and asked him if he knew someone in the name of Dayanand Sharma and asked him that accused ASI Tara Dutt wanted to meet him when he replied that he does not know any Dayanand Sharma and refused to meet ASI Tara Dutt. Thereafter, at about 04:15 pm, PW-3/HC Surender Kumar visited him again and produced one white colour envelope handed over to him by accused ASI Tara Dutt to further hand it over to him, which on opening by PW-3 on his directions found containing a photocopy of an interview letter of one Mukul Kumar alongwith 25 currency notes of Rs.2,000/- denomination each and thereafter, he reported the matter to Ld. District & Sessions Judge, Tis Hazari Courts, Delhi for taking appropriate action and forwarded complaint Ex.PW12/A. He has further deposed that, on 28.08.2017, he had written a letter to Ld. District & Sessions Judge for preserving the CCTV footage of area nearby court room no. 336.
46. Ld. Addl. PP for the State further submitted that statement of witnesses are further supported by the CCTV footage seized in the present case which was got preserved and lateron handed over to the investigating agency. Ld. Addl. PP further submitted that the call detail records and customer application forms of the mobile numbers used by all three accused persons and Sh. Dayanand Sharma (since deceased) well establishes that all the accused persons were known to one another and were in touch at and before the relevant time in question i.e. 26.08.2017.
47. Ld. Addl. PP for the state further argued that the defence taken by the accused is baseless and afterthought and not supported by any evidence. He further

submitted that relying upon testimony of PW-3, PW-12 and other witnesses and other evidences placed on record all the three accused persons are liable to be convicted for the offence under Section 120B IPC and Section 12 POC Act r/w Section 120B IPC.

48. Ld. Defence counsel has relied upon the following judgments in support of their contentions :-

- (a) Anvar P.V. vs. P.K. Basheer (2014) 10 SCC 473;
- (b) Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and Ors., Civil Appeal Nos.20825-20826 of 2017 dated 14.07.2020;
- (c) Acche Lal Yadav vs. State of Delhi 2014(8) LRC 236 (Delhi) DB;
- (d) Subhash Chand and Ors. vs. CBI MANU/DE/0060/2005;
- (e) State vs. Ravi @ Munna 2000 [1]JCC [Delhi] 115;
- (f) Pritam Singh and Ors. vs. State of Punjab MANU/SC/0119/1995;
- (g) Anand Ramchandra Chougale vs. Sidarai Laxman Chougale with State of Karnataka vs. Sidarai Laxman Chougale & others dated 06.08.2019;
- (h) Kishan Chand Verma vs. State through CBI CRL. A 788/2000 dt. 04.07.2019 DHC;
- (i) V.D. Jhingan vs. State of Uttar Pradesh Air 1966 Supreme Court 1762;
- (j) State of Maharashtra vs. Dnyaneshwar Laxman Rao Wankhede 2009(4) RCR (Criminal) SC 217;
- (k) Prem Singh Yadav vs. CBI 2011 (2) JCC 1059;
- (l) T. Subramanian vs. State of T.N. (2006) 1 SCC 401;
- (m) Babuda vs. State of Rajasthan AIR 1992 SC 2091;
- (n) Swinder Singh vs. State of Punjab AIR 1992 SC 669;
- (o) Varkey Joseph vs. State of Kerala 1993 CR.L.J. 2010(SC);
- (p) N.Vijayakumar vs. State of Tamil Nadu in Crl.A. S.L.P. (Crl.)

Nos.4729-30 of 2020 dt. 03.02.2021; and

(q) Tara Dutt vs. Govt. of NCT of Delhi & Ors. O.A. No.1114/2021
dt. 17.06.2021.

**THE ARGUMENTS OF THE LD. DEFENCE COUNSEL ARE DEALT WITH
HENCEFORTH :**

EVIDENTIARY VALUE OF CALL DETAIL RECORDS (CDRs) :

49. Ld. Defence counsel has argued that none of the PW's i.e. PW-2, PW-7, PW-17 and PW-18 being the Nodal Officers of respective Telecommunication Companies, have produced legally sustainable/admissible certificate under Section 65-B of Indian Evidence Act. It is a settled principle of law that certificate under Section 65-B of Indian Evidence Act must comply the conditions specified in Section 65-B (2) & (4) of Evidence Act and in this respect defence has relied upon the judgment passed by Hon'ble Supreme Court **Anvar P.V. vs. P.K. Basheer (2014) 10SCC 473** and **Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and Ors.**, Civil Appeal Nos.20825-20826 of 2017 dt. 14.07.2020. Ld. Defence counsel has further argued that without proper compliance of the provisions of clause (a) to (d) of sub section (2) of Section 65-B or sub section (4) of Section 65-B of Evidence Act, CDR's are inadmissible and cannot be looked into as per the judgment laid down in case titled as **Acche Lal Yadav vs. State of Delhi – 2014 (8) LRC 236 (Delhi) DB**. Ld. Defence counsel has also argued that the contents of certificate Ex.PW2/C, Ex.PW2/H, Ex.PW17/C, Ex.PW17/H and Ex.PW18/D reveals that the conditions mentioned in Section 65-B (2) & (4) of Indian Evidence Act are neither mentioned nor complied, thus making the CDR's of respective mobile numbers inadmissible in evidence.
50. In case titled as **Anvar P.V. Vs P.K. Basheer, AIR 2015, SC 180**, on the issue of certificate under section 65B of Indian Evidence Act regarding digital evidence/electronic record, it has been observed that :

*“Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original. **The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65B(2).** Following are the specified conditions under Section 65B(2) of the Evidence Act :*

- (i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;*
- (ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;*
- (iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and*
- (iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.*

Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following

conditions are satisfied :

- (a) There must be a certificate which identifies the electronic record containing the statement;*
- (b) The certificate must describe the manner in which the electronic record was produced;*
- (c) The certificate must furnish the particulars of the device involved in the production of that record;*
- (d) The certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act; and*
- (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.*

*It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc. pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. **All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.”***

51. The above judgment was again discussed in the case **Shafhi Mohammad Vs State of Himachal Pradesh**, in Special Leave Petition (Crl.) No.2303 of 2017 by Hon'ble Supreme Court and vide order dated 30.01.2018 the Hon'ble Supreme Court observed as follows :

*“We may, however, also refer to judgment of this Court in **Anvar P.V. Vs P.K. Basheer and Others, (2014) 10 SCC 473**, delivered by a Three-Judge Bench. In the said judgment in para 24 it was observed that :*

“Electronic evidence by way of primary evidence was covered by Section 62 of the Evidence Act to which procedure of Section 65B of the Evidence Act was not

admissible. However, for the secondary evidence, procedure of Section 65 B of the Evidence Act was required to be followed and a contrary view taken in Navjot Sindh (supra) that secondary evidence of electronic record could be covered under Sections 63 and 65 of the Evidence Act, was not correct. There are, however, observations in para 14 to the effect that electronic record can be proved only as per Section 65B of the Evidence Act.

Though in view of Three-Judge Bench judgments in Tomaso Bruno and Ram Singh (supra), it can be safely held that electronic evidence is admissible and provisions under Section 65A and 65B of the Evidence Act are by way of a clarification and are procedural provisions. If the electronic evidence is authentic and relevant the same can certainly be admitted subject to the Court being satisfied about its authenticity and procedure for its admissibility may depend on fact situation such as whether the person producing such evidence is in a position to furnish certificate under Section 65B (h).

Sections 65A and 65B of the evidence Act, 1872 cannot be held to be a complete code on the subject. In Anvar P.V. (supra), this Court in para 24 clarified that primary evidence of electronic record was not covered under Sections 65A and 65B of the Evidence Act.

The applicability of procedural requirement under Section 65B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Section 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said Sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in absence of certificate under Section 65B(4) of the Evidence Act, which party producing cannot possibly

secure. Thus, requirement of certificate under Section 65B(h) is not always mandatory.

Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by Court wherever interest of justice so justifies.”

52. Thus, the Hon'ble Supreme Court in the above **case of Shafhi Mohammad**, after discussing the judgment in **Anvar P.V. Case** held that requirement of certificate under section 65(B) is not mandatory and applicability of the requirement of certificate being procedural can be relaxed by the court wherever interest of justice so justifies.
53. The requirement of certificate under section 65B Evidence Act is to rule out any tampering with the electronic evidence produced on record. Source and authenticity are the two hallmarks pertaining to any electronic record sought to be used as evidence.
54. Hon'ble Supreme Court in **Arjun Pandit Rao Khotkar Vs Kailash Kushanrao Gorantyal & Ors. in Civil Appeal no. 20825-20826 of 2017** in its decision dated 14.07.2020, after discussing both the above judgments, on the issue of certificate under section 65B Indian Evidence Act, observed :

“.....We may reiterate, therefore, that the certificate required under Section 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V. (supra), and incorrectly clarified in Shafhi Mohammed (supra). Oral evidence in the place of such certificate cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor (1876) 1 Ch.D 426, which has been followed in a number of the judgments of this Court, can also be applied. Section 65B(4) of the Evidence Act clearly states that secondary

evidence is admissible only if lead in the manner stated and not otherwise. To hold otherwise would render Section 65B(4) otiose.....”

55. Thus, for the admissibility of any secondary evidence in digital form, the certificate under section 65B Indian Evidence Act is a mandatory requirement.

56. In **Achchey Lal Yadav Vs State (Supra)**, relied upon by Ld. Counsel for the accused persons, Hon'ble Delhi High Court has observed :

The normal rule of leading documentary evidence is the production and proof of the original document itself. Secondary evidence of the contents of a document can also be led under Section 65 of the Evidence Act. Under Sub-clause "d" of Section 65, secondary evidence of the contents of a document can be led when the original is of such a nature as not to be easily movable. Computerised operating systems and support systems in industry cannot be moved to the court. The information is stored in these computers on magnetic tapes (hard disc). Electronic record produced there from has to be taken in the form of a print out. Sub-section (1) of Section 65B makes admissible without further proof, in evidence, print out of a electronic record contained on a magnetic media subject to the satisfaction of the conditions mentioned in the section. The conditions are mentioned in Sub-section (2). Thus compliance with Sub-section (1) and (2) of Section 65B is enough to make admissible and prove electronic records.

Thus, if witnesses depose concerning computer print outs of call details generated they must speak the facts to establish that clauses (a) to (d) of sub-section (2) of Section 65B or sub-Section (3) thereof, as the case may be, are satisfied. It is not enough to say 'I have seen the call details of the aforesaid three telephone connection on the record. The said calls details are Ex.PW-21/A, Ex.PW-21/B and Ex.PW-21/C respectively. The details are correct as per our record maintained in our office.

57. In **Achchey Lal Yadav's** case the CDRs were produced but no certificate under section 65B Indian Evidence Act was produced in support of the CDRs

and therefore, the Hon'ble High Court had remanded back the case to the trial court with a direction that further evidence be led concerning the various CDRs and thus, the facts of Achchey Lal Yadav is distinguishable from the facts of the present case in as much as in the present case, PW-2, PW-17 and PW-18 have produced certificate under Section 65B Indian Evidence Act in support of computer generated records/CDRs/CAFs etc.

58. PW-2 Israr Babu has categorically stated that the records pertaining to the CDRs is maintained in the main server of the company which is situated in Pune. **He further stated that server was maintained properly and there was no error in the server otherwise he would not have been able to retrieve the data.** He further stated that he has retrieved the same from his official computer at his seat with the help of his user ID and password. He denied the suggestion that the data produced by him is manipulated or not genuine. The CAF of mobile numbers 9910043160 and 9818332644 both in the name of Gaurav Sharma were produced by PW-7 and testimony of this witness remained unrebutted as this witness was not cross-examined at all.
59. PW-17 Pankaj Sharma, Nodal Officer during his cross-examination has stated that he has used his own desktop installed at his office seat for retrieval of the data and that the data is saved on the server installed at Bombay. He further stated that they have been provided with the user ID and password with the help of which they retrieve the data. He further stated that the cell ID chart has been prepared after matching from the excel sheet. Similar is the testimony of PW-18 Sh. Kamal Kishore, Nodal Officer and thus, all these witnesses have produced the computer generated output/CDRs with the help of their user ID and password alongwith the certificate under section 65B Indian Evidence Act. The source as well as authenticity of electronic record produced by them has been established on record and there is no reason to doubt that the record produced by them is not correct or genuine. The court has perused the contents

of the certificates under section 65B of Indian Evidence Act Ex.PW2/C, Ex.PW17/C, Ex.PW17/H and Ex.PW18/D etc. In the certificate Ex.PW2/C, it has been clearly stated that the CDR of the said mobile number are processed and contained in the electronic records and fed into the computer server in the ordinary course of providing telecom service by the company and that the information is a true extract in printed form of CDR as lawfully created and processed. It is further stated that the access to the server is made through Computer System and the data stored therein is controlled by pre-defined user permissions exercised through unique ID and associated password and that the server and computer system was operating properly. It is also stated that information is best to the knowledge and belief and till date is in the lawful control of the company and is password protected. The above contents of the certificate under section 65B Indian Evidence Act are sufficient to fulfill conditions as laid down under section 65B (2) and section 65B (4) of Indian Evidence Act. Similar are the contents of the other certificates under section 65B of the Indian Evidence Act proved on record and therefore, the CDRs as well as CAFs of the mobile numbers i.e. 8076205534 of accused Mukul Kumar, 9871159076 of accused Tara Dutt, 8447462346 of accused Ramesh Kumar, 9210986901 of Smt. Kusum W/o Ramesh Kumar, have been duly proved on record and are admissible being reliable documentary evidence.

EVIDENTIARY VALUE OF CD/DVDs EX.PW11/B & EX.PW19/B :

60. Ld. Counsel for the accused persons has further argued that no certificate under section 65B of Indian Evidence Act has been produced by the prosecution in respect of CD Ex.PW11/B. It is further argued that the CD Ex.PW19/B was produced by the prosecution at a belated stage and as far as certificate under section 65B Indian Evidence Act Ex.PW19/A is concerned, the conditions mentioned in Section 65B (2) & (4) Indian Evidence Act have not been complied with which is bad in law, thus, the CD Ex.PW19/B is

inadmissible in evidence. In support of the above arguments, Ld. Counsel for the accused persons has relied upon Arjun Panditrao Khotkar Vs Kailash Kushanrao Gorantyal & Ors. (supra) wherein it has been held that a certificate under section 65B Indian Evidence Act should be filed with the chargesheet **and after filing of the chargesheet, the additional evidence/documents can only be allowed to be filed in rare circumstances keeping in view that no serious or irreversible prejudice be caused to the accused.** It is further argued that in the present case neither the CD/DVD of CCTV footage was mentioned in the chargesheet nor the same was relied upon by the prosecution while filing the chargesheet. It is further argued that the CD/DVD Ex.PW11/B and Ex.PW19/B were produced on 30.09.2019 and 29.08.2019 and thus, till the examinations of PW-3 HC Surender Kumar and PW-12 Sh. Chandra Shekhar, no CD/DVD was produced on record nor any attempt was made by the prosecution to prove such CDs and therefore, the defence was clueless till the examinations of these two material witnesses about the existence of any such CD/CCTV footage and was given a surprise by the prosecution by producing Ex.PW11/B and Ex.PW19/B at much later stage and that too without following the law. It is further argued that the production of Ex.PW11/B and Ex.PW19/B on record is clear violation of principles of natural justice.

61. As far production of Ex.PW11/B and Ex.PW19/B during the trial is concerned, the relevant ordersheets and testimonies are reproduced hereinbelow :

(i) Relevant portion of ordersheet dated 07.12.2017 :

*“.....Copy of chargesheet is supplied to the accused Mukul Kumar. Copy of deficient chargesheet is supplied to the accused Tara Dutt. **It is stated that CCTV footage has not been supplied to both the accused persons.** It is stated by the IO that copy of CCTV footage shall be supplied alongwith supplementary chargesheet.....” (emphasis supplied)*

(ii) Relevant portion of ordersheet dated 24.07.2018 :

“.....Supplementary chargesheet filed by IO Insp. Anant Kiran. Copy of supplementary chargesheet supplied to accused. Ahlmad to report.....”

(iii) Relevant portion of ordersheet dated 05.11.2018 :

“.....Copy of chargesheet as well as supplementary chargesheet supplied to accused Ramesh Kumar and Dayanand Sharma.....”

(iv) Relevant portion of ordersheet dated 30.11.2018 :

*“..... All the four accused on bail with Ld. Counsels Sh. Sanjay Gupta and Sh. Sandeep Sharma.
Fresh vakalatnama filed by Sh. Sanjay Gupta on behalf of accused Dayanand Sharma.
It is stated that copies are complete.....”*

(v) Relevant portion of ordersheet dated 04.07.2019 :

*“.....ACP Ram Mehar, Sadar Bazar is directed to send a laptop on the next date of hearing for playing the CD in the court for viewing the CCTV footage.
It is also submitted by Ld. Counsel for accused that copy of CD containing CCTV footage has not been supplied to them. IO be also called to supply the copy of CD containing CCTV footage.....”*

(vi) Relevant portion of ordersheet dated 09.07.2019 :

*“.....MHC(M) from PS Subzi Mandi is present alongwith the laptop and the CD placed in judicial file containing the CCTV footage has been played in the court.
Ld. Defence Counsel submits that they have not been provided the CCTV footage.
It is also stated by the IO that they had not prepared any working copy of the said CCTV footage of 26.08.2017 of the two CCTV cameras installed in the central hall at ground floor and corridor of Tis Hazari Court near Room No.336, IIIrd Floor of the relevant timings. IO to take steps for collecting the CCTV footage from the Nodal Officer (Computer), Central District, Tis Hazari Courts, Delhi alongwith certificate under Section 65B of Indian Evidence Act and produce the same in the court on the NDOH.
In the interest of justice, data contained in the CD which has been placed in the judicial file has been copied by the Ld. Defence Counsel in his own pen drive today itself with the help of the laptop produced from PS Subzi Mandi and, thus, a copy of the CCTV footage duly stands supplied to the accused persons.....”*

(vii) Relevant portion of ordersheet dated 11.07.2019 :

*“.....IO/Retd. ACP Sh. Rajinder Gautam is also present and submits that they have moved an application for supply a copy of CCTV footage alongwith certificate under Section 65B of Indian Evidence Act.
IO/ACP Ram Mehar Singh be also called for the next date of hearing and he is directed to provide the relevant CCTV footage before the court.....”*

(viii) Relevant portion of ordersheet dated 29.07.2019 :

“.....Report regarding providing of CCTV footages dated 26.08.2017 filed, copy supplied to accused persons.....”

“.....IO/Retd. ACP Rajinder Gautam is present and has filed the envelope containing the CCTV footage in a CD sealed with the seal of RK alongwith certificate under Section 65B of Indian Evidence Act of HC Vishnu Deo Prasad Sinha and a letter of Sh. Rajinder Yadav, Incharge-Computer Branch, Tis Hazari Courts, Delhi.

Copy of the letter of Sh. Rajinder Yadav, Incharge-Computer Branch, Tis Hazari Courts, Delhi as well as certificate under Section 65B of Indian Evidence Act of HC Vishnu Deo Prasad Sinha be supplied to the accused persons today.”

62. As far as the argument that the accused persons were taken by surprise when the CD/CCTV footage was produced is concerned, the ordersheet dated 07.12.2017 reveals that even before the framing of charge or filing of supplementary chargesheet, the accused persons were aware that the CCTV footage was there when they had stated that the copy of CCTV footage was not supplied to them. However, due to some inadvertence it seems that the copy of the same was not supplied to the accused persons before framing of the charge. Also, name of PW-4, Incharge, CCTV is mentioned in the list of witnesses at serial no. 7 in the main/first chargesheet. As far as certificate under section 65B Indian Evidence Act is concerned in the case of **Arjun Panditrao Khotkar (Supra)**, Hon'ble Supreme Court has itself held that the filing of the certificate can be allowed, after the filing of the chargesheet, keeping in view that no serious or irreversible prejudice is caused to the accused. Perusal of the record shows that the IO appeared on 09.07.2019 and had submitted that they had not prepared any working copy of the CCTV footage dated 26.08.2017. The IO was thereafter, directed to take steps for collecting CCTV footage alongwith the certificate under section 65B Indian Evidence Act. The data contained in the CD Ex.PW11/B was supplied in the pendrive of Ld. Defence counsel on 09.07.2019. The documents related to the CD Ex.PW19/B were supplied to the accused persons on 29.07.2019. After the copy of CCTV footage was supplied to Ld. Defence counsel, in fact Ld. Defence counsel also sought permission and sought time to further cross-examine PW-11 as he

stated that he wanted to go through the contents of the CD/DVD before further cross-examination of PW-11. Let us examine the evidence recorded in this respect to ascertain whether any serious or irreversible prejudice has been caused to accused persons or not.

(ix) Relevant portion of Testimony of PW-11 dated 30.09.2019 :

“.....On 27.08.2017, I alongwith SI G.N. Tiwari reached at Tis Hazari Courts Complex. On the instance of HC Surender Kumar, I inspected the spot and prepared site plan already Ex.PW3/E bearing my signature at point B. I also visited CCTV Control Room, THC Complex and after contacting HC Vijender Singh, I alongwith SI G.N. Tiwari and HC Surender reached at Khicharipur Colony and apprehended accused Mukul Kumar and after interrogation, I arrested him vide memo already Ex.PW3/H bearing my signature at point C.....”

“.....I sent SI G.N. Tiwari to Tis Hazari Court for getting the CCTV footage of Room No.336 and Central Hall, Tis Hazari Courts.....”

“.....CCTV footage was received in a CD from CCTV Control Room, Tis Hazari Courts. I can identify the case property, if shown to me.....”

“.....Witness has also identified one DVD containing CCTV footage which was received from CCTV Control Room, Tis Hazari Courts Complex (objected to by Ld. Counsel for accused on the point of proving the DVD as the same was not part of the charge-sheet nor the same was lateron produced on record by moving any application or taking permission of the Hon'ble Court). Vol. I had collected this DVD during the course of investigation and placed the same alongwith the charge-sheet. The DVD is exhibited as Ex.PW11/B.....”

(x) Relevant portion of Testimony of PW-11 dated 11.10.2019 :

“.....At this stage, DVD Ex.PW11/B taken out from judicial file in unsealed condition and played on the laptop. The same contained two video files. Both the video files are played.

In the first video file which is of the CCTV camera installed near Juice Shop at ground floor Tis Hazari Courts, accused Tara Dutt can be seen to be coming from the gallery and going out of Central Hall at about 01:30 PM.

Second video file which is of the CCTV camera installed at the Third Floor gallery of Tis Hazari Courts, the accused can be seen in the gallery at 12:15 PM. He can be seen to be going towards central hall from the back and then turning back and going again towards western side gallery of the third floor. He can be again seen to be returning and entering the corridor of court room No.336 from the gallery at around 12:25 PM.

The accused can be seen again coming out of the corridor to the gallery and going towards central hall side at 01:00 PM.

He can be seen again to be returning from the central hall side at 01:09 PM and has again entered the corridor where court no. 336 is situated. Accused is seen to be coming out of the corridor at 01:26 PM and can be seen to be using his mobile phone and going down from the staircase.....”

“.....During the course of trial, I had moved an application before CCTV

Computer Committee to provide CCTV footage dt. 26.08.2017 pertaining to the present case.

On my application, concerned officials of CCTV control Room provided me CCTV footage contained in the DVD in a sealed parcel alongwith certificate under Section 65B of Indian Evidence Act which I tendered before the Hon'ble Court.

At this stage, one DVD already Ex.PW19/B lying in yellow colour unsealed open envelope annexed with judicial file is shown to witness who identified the same. Witness has also identified his signature on the envelope at point A.

At this stage, copy of the DVD Ex.PW19/B has been provided to accused and the counsel for accused has copied the data in his pen drive with the help of the laptop.

DVD Ex.PW19/B is played on the laptop. Witness submits that contents of the DVD Ex.PW19/B are same as in DVD Ex.PW11/B.

The said DVD is already Ex.PW19/B and certificate under Sec. 65B of I.E. Act is already Ex.PW19/A.

XXX by Sh. Sandeep Sharma, Ld. Counsel for accused persons.

Cross examination is deferred at request of Ld. Defence Counsel stating that he seeks some time to go through the contents of DVD Ex.PW19/B before cross-examination of witness.

(xi) Relevant portion of ordersheet dated 11.10.2019 :

".....PW-11 Sh. Rajinder Prasad Gautam is also present, his chief examination is concluded today. Cross examination of witness is deferred at request of Ld. Defence Counsel stating that he seeks some time to go through the contents of DVD Ex.PW19/B before cross-examination of witness....."

(xii) Relevant portion of Cross-Examination of PW-11 dated 28.01.2020 :

".....I do not remember whether G.N. Tiwari stated to me when I recorded his statement that he was sent for getting CCTV footage of Room No. 336 and Central Hall, Tis Hazari Court."

".....It is correct that no such fact of taking CCTV footage or CDR were mentioned in the statement U/s 161 Cr.P.C. of G.N. Tiwari recorded by me. No seizure memo was prepared while taking CCTV footage. It is wrong to suggest that no CDR or CCTV footage was obtained by us or that both of them were manipulated and fabricated for creating false evidence against the accused persons....."

".....I have made CCTV footage and the CDRs as the part of the chargesheet filed by me. I do not remember whether I have mentioned about them in the list of documents or list of articles. I do not remember whether I have mentioned these facts about the obtaining or perusal of CCTV footage or CDR in the contents of my chargesheet. It is wrong to suggest that I am deliberately evading to answer and improving our case in respect to the seizure of CCTV footage and CDR....."

".....It is wrong to suggest that the DVD Ex.PW11/B was wrongly made part of the record after getting the same fabricated having a fabricated digital file. It is wrong to suggest that I have wrongly identified accused Tara Dutt in the DVD Ex.PW11/B.

I have observed in the DVD that HC Surender called accused Tara Dutt when accused Tara Dutt came for the second time. HC Surender was not seen coming from downstairs towards the court room 336 during the lunch hour....."

“.....During trial when I moved an application for procuring CCTV footage, I had already retired. I have moved this application on the direction of Hon'ble court. It is wrong to suggest that no CCTV footage was handed over to me by the CCTV Computer Committee or that I have planted the copy of Ex.PW11/B showing it to have been taken into possession from the CCTV Computer Committee as the same was under the control of Delhi Police officials only. It is wrong to suggest that DVD Ex.PW19/B is the copy prepared from Ex.PW11/B which itself was forged and fabricated.....”

(xiii) Relevant portion of Testimony of PW-12 Sh. Chandra Shekhar, the then Ld. ASJ, dated 15.05.2019 :

“.....On 28.08.2017, I had also written a letter to Ld. District & Sessions Judge for preserving the CCTV footage of the area nearby court room no. 336. Copy of the same is marked as Mark-PW12/B. I had received reply of the said letter stating that the requisite CCTV footage has been preserved. The same is Ex.PW12/C. I identify the signatures of Sh. Abhilash Malhotra, Ld. MM/Nodal Officer, Computers, Tis Hazari Courts, Delhi at point A on Ex.PW12/C.....”

“.....I had perused the CCTV footage of that day. The CCTV footage was not covering the corner of the gallery outside room no. 336.....”

(xiv) Relevant portion of Testimony of PW-19 HC Vishnu Dev dated 29.08.2019 :

“.....In the present case, I have provided one DVD containing CCTV footage dated 26.08.2017 of Camera installed in the main gallery near Court no.336 for the period from 12:00 Noon to 02:00 PM and near juice shop at ground floor for the period from 01:30 PM to 01:32 PM which I have taken out from the recording of the camera fed in the computer system of CCTV control room, Tis Hazari Courts and I have also issued one certificate under Section 65B of Indian Evidence Act with respect to the aforesaid electronic record / CCTV footage contained in the DVD. Certificate under Section 65B of Indian Evidence Act is Ex.PW19/A bearing my signature at point A.

I can identify the aforesaid DVD if shown to me. At this stage, one yellow colour envelope sealed with the seal of R.K. annexed with the judicial file is opened and one DVD make WRITEX bearing endorsement “CCTV footage of main gallery near R.N.336 & near Juice shop ground floor of dated 26.08.2017 FIR 215/17. PS.Subzi Mandi”. Witness identified the DVD and same is Ex.PW19/B.”

Relevant portion of Testimony of PW-19 HC Vishnu Dev, cross-examination on behalf of accused persons dated 10.10.2019 :

“..... The DVR Control Room in respect of the CCTV cameras installed at Tis Hazari Courts is in Room No.44. I am posted in CCTV Control Room, Tis Hazari since March 2019 and remained posted there till mid of August 2019. We handle the DVR. Any technical problem is resolved by the engineer concerned. I was the Incharge of the control room. Normally the recording are preserved for seven days

but if the recordings are saved then they can be preserved for a long duration. If the recordings are not saved then they are automatically deleted after seven days.....”

“.....Only those recordings are preserved, regarding which any written directions are issued. The footages are preserved in the folder in computer system. I have retrieved the saved recordings from the computer myself for preparation of the DVD. I do not remember in which drive of the computer the recordings were saved. The recordings were not first taken in pen drive. It was directly copied in the DVD with the help of CD drive.....”

“.....The same were retrieved and saved on the directions of the concerned ASJ who was the Incharge, however, I do not remember the name of the concerned Judge. Vol. Letter was received from Incharge Computer Branch i.e. Sh. Rajinder Yadav.”

“.....The monitors were of the Snyder Company but I do not remember the specifications i.e. make and model of the computer system. The computer system is installed in the control room. The operating system is UBUNTU in the computer system.....”

“.....It is wrong to suggest that the data contained in the DVD Ex.PW19/B was not retrieved by me from the computer system installed in the control room as stated by me or that I have simply produce the DVD which was provided to me by the police. It is further wrong to suggest that I am a planted witness and I have deposed falsely at the instance of prosecution to fill up the lacuna in the case. I was not posted in any police station when I was posted at Tis Hazari control room. The contents of the certificate were got typed by the IO in my presence. It is wrong to suggest that DVD Ex.PW19/B contained fabricated data or that certificate under Sec.65B of I.E. Act Ex.PW19/A has been given mechanically.....”

(xv) Relevant portion of Testimony of PW-20 Rajinder Singh Yadav, Incharge, Computer Branch, Tis Hazari Court, dated 29.08.2019 :

“.....In the present case, on 09.07.2019, retired ACP Sh.Rajinder Gautam had moved an application for providing CCTV footage dated 26.08.2017. This application was marked to Sh. Raj Kumar Dahiya, JJA, Dealing Official CCTV room and Incharge, CCTV Room for necessary action.

Sh. Raj Kumar Dahiya produced an official note dated 11.07.2019 on which Sh. Sunil Beniwal, Ld. ADJ/Member of the Computer Committee, Central District, THC gave approval for providing available CCTV footage to applicant Sh. Rajinder Gautam.”

Relevant portion of Testimony of PW-20 Rajinder Singh Yadav, Incharge, Computer Branch, Tis Hazari Court, dated 10.10.2019 :

*“.....Today, I have brought the office file pertaining to the preservation of CCTV footage dt. 26.08.2017. Copy of notesheet running into four pages is taken on record and same is exhibited as Ex.PW20/A (Colly). **This file also contains the copy of application of SI G.N. Tiwari dt. 28.08.2017.** Copy of the same is taken on record and exhibited as Ex.PW20/B (Original file seen & return). Copy of all documents also supplied to the Ld. Defence Counsel.*

XXXX by Sh. Sandeep Sharma, Ld. Counsel for all accused persons.

I am posted as Incharge, Computer Branch at Tis Hazari since year 2012. I had not done the work of preservation of CCTV footage. The same was done by Delhi Police official posted at CCTV Control Room. The preservation was done after the approval / directions of the Chairman, Computer Committee and the directions were conveyed to the Delhi Police officials.....”

63. The above cross-examination reveals that Ld. Defence counsel has cross-examined PW-11, PW-19 and PW-20 with respect to the CD/DVD Ex.PW11/B and Ex.PW19/B. As far as cross-examination of PW-12 Ld. Judge is concerned, in his chief examination he clearly stated that on 28.08.2017 he has written a letter to Ld. District Judge for preserving the CCTV footage nearby the court room no.336. He was also cross-examined regarding the CCTV footage and during the cross-examination Ld. Judge has clearly stated that he has perused the CCTV footage of that day. If the accused wished to confront PW-3 and PW-12 with the footage contained in CD/DVD Ex.PW11/B and Ex.PW19/B, they could have moved an application under section 311 Cr.P.C. or made an oral request but no such application was moved nor any request was made to the court that they wish to confront PW-3 and PW-12 about the existence of any such CD/CCTV footage.
64. As far as not getting a copy of Ex.PW11/B made for accused and not supplying the same alongwith the chargesheet under section 207 Cr.P.C. is concerned, it is also settled law that for certain defects in investigation, the accused cannot be acquitted. This aspect has been considered in various decisions. In **C. Muniappan and Others Vs State of Tamil Nadu, 2010 (9) SCC 567**, the following discussion and conclusion are relevant which are as follows :

*“.....There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and **whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is***

given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence de hors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.....”

65. In **Dayal Singh and Others Vs State of Uttaranchal, 2012(8) SCC 263**, the

Hon'ble Supreme Court held :

“Merely because PW-3 and PW-6 have failed to perform their duties in accordance with the requirements of law, and there has been some defect in the investigation, it will not be the benefit of the accused persons to the extent that they would be entitled to an order of acquittal on this ground.....”

66. In **Gajoo Vs State of Uttarakhand, 2012(9) SCC 532**, while reiterating the

same principle again, Hon'ble Supreme Court held that defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused, should not be an aspect of material consideration by the Court. In **Sathi Prasad Vs State of U.P., (1972) 3 SCC 613**, Hon'ble Supreme Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the court to see if the evidence given in court should be relied upon and such lapses ignored. In **Dhanaj Singh Vs State of Punjab, (2004) 3 SCC 654**, Hon'ble Supreme Court observed that in the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting

an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.

67. In view of the above case law, no benefit can be given to the accused due to the lapses on the part of the IO regarding DVD/CCTV footage contained in Ex.PW11/B and Ex.PW19/B.
68. It is further argued by Ld. Defence counsel that the CD Ex.PW11/B and DVD Ex.PW19/B are not admissible in evidence as their authenticity was not got verified by way of examining the same from any expert as provided under section 45A of Indian Evidence Act and thus, without the examination and expert opinion, the CD/DVDs Ex.PW11/B and Ex.PW19/B are not admissible in evidence. It is further argued that neither specimen i.e. admitted photograph of the accused was taken by the prosecution nor any such footage was got examined by any expert for verifying the contents/footage of Ex.PW11/B and Ex.PW19/B and in this regard reliance has been placed upon **Subhash Chand & Ors. Vs CBI, MANU/DE/0060/2005 as well as on State Vs Ravi A. Munna, 2000(1) JCC (Delhi) 115**. In both these cases, the digital evidence was in the form of tape recorded conversation which is certainly different from CCTV footage and thus, the observation made in those cases is not applicable to the facts of the present case as the above cases are distinguishable on facts from the present case.
69. Ld. Counsel for the accused persons has also argued that the case of the prosecution in respect to collection of Ex.PW11/B and Ex.PW19/B is full of contradictions and doubts, which is clear from the deposition of PW-20 Sh. Rajinder Singh Yadav who deposed that SI G.N. Tiwari moved an application dated 28.08.2017 Ex.PW20/B for preservation of CCTV footage dated 26.08.2017. However, this application has not been duly proved by the prosecution as no one identified the signature or handwriting of G.N. Tiwari

over it. He further argued that PW-11 Sh. Rajinder Prasad Gautam deposed that on 30.09.2019 he sent SI G.N. Tiwari for collecting the CCTV footage of Room no. 336 and Central Hall, Tis Hazari Courts and he received the same. However, PW-8 SI G.N. Tiwari did not depose anything on this aspect. He further argued that during the cross-examination on behalf of defence, PW-8 stated that he does not remember whether any CCTV camera was installed outside court room no. 336 or in the corridor. It is argued that had SI G.N. Tiwari collected or moved any application of CCTV footage, he should not have deposed in the cross-examination that he does not remember whether any CCTV camera was installed outside the court room no. 336 or in corridor. He further argued that SI G.N. Tiwari even in his statement under section 161 Cr.P.C. has not disclosed any such fact of procuring, collecting or preservation of CCTV footage. Thus, in such circumstances, the possibility of planting fabricated documents, CD and DVD by the prosecution for filling the lacuna in their case and wrongly identifying somebody else as accused Tara Dutt cannot be ruled out. Though, SI G.M. Tiwari PW-8 has not deposed about the CCTV footage being got preserved or collected by him but the complainant PW-12 has clearly stated that he had sent an application to the Ld. District & Sessions Judge to get the relevant CCTV footage preserved. Moreover, PW-20 Incharge, Computer Branch has proved the official note to provide the CCTV footage after approval from the Chairman, Computer Committee. PW-4 has also deposed that he had supplied copy of relevant CCTV footage during investigation. In view of the testimony of PW-4, PW-12, PW-11, PW-19 and PW-20 regarding the preservation and supply of CCTV footage/DVDs to the IO, non-deposition of facts in this respect by PW-8 SI G.M. Tiwari is inconsequential.

70. It is further argued by Ld. Counsel for the accused that identification of accused in CD/DVD Ex.PW11/B by PW-11 Rajinder Prasad Gautam is also inadmissible in evidence. It is submitted that unless and until the identification

is done by any person who is party to the CCTV footage or alleged meeting, the CCTV footage would be treated as no evidence. In the present case, the only witness who could have identified the persons in the CCTV footage Ex.PW11/B would be PW-3 HC Surender Kumar and no CD was played in front of PW-3 for the purpose of identification, therefore, the identification of accused Tara Dutt by PW-11 Rajinder Prasad Gautam is hearsay and is of no value. It is further argued that PW-11 has wrongly identified some person as accused Tara Dutt only for the purpose of creating false evidence to fill up the lacuna in the prosecution case. It is argued that it is a settled law that observation of court cannot substitute the place of evidence and in this regard reliance has been placed upon **Pritam Singh & Ors. Vs State of Punjab, MANU/SC/0119/1995**.

71. As far as the case **Pritam Singh & Ors. Vs State of Punjab** (Supra) is concerned, in the said case Ld. Judge had made the accused to wear a shoe and had given observation that the shoe fitted the accused. Also, when the witness had failed to identify the accused in court, Ld. Judge had compared appearance of the accused with the appearance given in the statement of the witness under section 161 Cr.P.C. and had observed that the appearance of the accused fitted with the description in the statement under section 161 Cr.P.C. The facts of the present case are distinguishable from the facts of the case of **Pritam Singh's Case** (supra) in as much as in the present case PW-3 during his testimony in court had clearly identified the accused Tara Dutt to be same person who had come to hand over the envelope to him. When PW-3 had clearly identified accused no. 1 in the court, identification of accused in CCTV footage by PW-11 is an additional evidence. Also PW-11 has identified the accused Tara Dutt in the CCTV footage when the same was played in the court. Identification of the accused in CCTV footage is different than the identification of accused by matching his appearance/description with the

description given in the statement of the witnesses and therefore, the facts of the present case are distinguishable from the facts of **Pritam Singh's** Case. The court agrees with the Ld. Defence counsel that the observation of court cannot substitute the place of evidence. But in the present case there is clear evidence on record to establish the identification of accused no. 1 in the form of testimony of PW-3 coupled with identification of accused no. 1 by PW-11 in the CCTV footage as well as cell ID chart Ex.PW17/G proved by PW-17 showing the location of the mobile phone of the accused at MTNL Telephone Exchange, Tis Hazari Court at the relevant time. The fact that accused no. 1 is clearly visible in the CCTV footage contained in Ex.PW11/B and Ex.PW19/B, to the court also, is only an additional factor.

72. In **Jitendra Kushwah Vs State of M.P., Crl. Appeal No.5950/2018, decided on 25.10.2018** by Hon'ble Madhya Pradesh High Court, regarding CCTV footage it has been observed as under :

“As far as CCTV footage is concerned, it is a substantive piece of evidence. In the case of Tukaram S. Dighole, Hon'ble Supreme Court has observed that new techniques and devices are the order of the day. Though such devices are susceptible to tampering, no exhaustive Rule could be laid down by which the admission of such evidence may be judged. In Tomaso Bruno & Anr. Vs State of U.P., (2015) 7 SCC 178, Three Judge Bench has observed that advancement of information technology and scientific temper must pervade the method of investigation. Reference was made to the decision of Supreme Court in the case of Mohammed Ajmal Mohammad Amir Kasab alias Abu Mujahid (Supra). In this context, cross-examination of PW-8 and PW-9 namely Akash Sharma and Pratnesh Aathale, attains importance. In cross-examination of Akash Sharma (PW-8) when asked about tampering with the hard disk, he categorically replied that if any attempt to tamper with the hard disk is made, then such hard disk shall get corrupted. He admitted that he had given certification Ex.P/21 and when he had downloaded CCTV footage, then nobody had tampered with DVR. Similarly, Pratnesh Aathale (PW-9) in

para 7 of his cross-examination has admitted that there was no tampering with the footage. If any attempt would have been made to tamper with the footage, then whole data would have gone corrupted. There is no further suggestion or any cross-examination to point out that there was any tampering in the CCTV footage. Therefore, keeping in view the judgments of Hon'ble Supreme Court, use of technology cannot be rejected merely because there is a general presumption that such electronic evidence is liable to be corrupted.

In fact, Dr. Rahul Yadav (PW-18) from whose residence such recording was downloaded by Akash Sharma (PW-9) and Pratnesh Aathale (PW-9) denied suggestion that he had tampered with the hard disk between 21.06.2018 to 23.06.2018 though hard disk was not seized till 23.06.2018.”

73. In the above judgment, it is clearly stated that the CCTV footage is substantive piece of evidence. **In Jitendra Kushwah's Case, the CCTV footage was relied upon by the Hon'ble High Court, despite the fact that the same was not examined by any FSL expert.** As far as admissibility of any digital and electronic evidence is concerned, Hon'ble Supreme Court has already observed that authenticity and source are two hallmarks pertaining to electronic record sought to be used as evidence. The only requirement in law before admissibility of electronic evidence is the requirement of certificate under section 65B Indian Evidence Act as per **Arjun Pandit Rao Khaotpar's** case (Supra) There is no requirement under any law that the examination of the electronic record is must by an FSL expert before it is relied upon by the court. As far as the source of the DVD Ex.PW11/B and Ex.PW19/B is concerned, there is clear evidence on record in the form of testimony of PW-4, PW-12, PW-19, PW-20 and PW-11 in this respect. The relevant CCTV footage was preserved as per rules after taking approval from the Chairman, Computer Committee. PW-19 denied the suggestion that the DVD Ex.PW19/B contained fabricated data. As the CCTV footage has come from authenticated source, a

presumption should rather be that the same contains authentic data and not vice versa. In view of the above discussion, it is held that DVD Ex.PW19/B alongwith certificate under section 65B of Indian Evidence Act Ex.PW19/A are admissible in evidence and can be relied upon by the court to arrive at any particular conclusion.

ABETMENT OF OFFENCE OF BRIBERY :

74. Ld. Defence counsel has argued that in order to prove the charges against the accused persons, the prosecution is bound to prove on record beyond reasonable doubt the following facts :-

- (a) That accused Mukul Kumar was competent enough to apply for the Group C Post, as alleged, and that he actually applied for the said post,
- (b) That accused Mukul Kumar and Ramesh Kumar were known to accused Tara Dutt,
- (c) That accused Tara Dutt, Mukul Kumar and Ramesh Kumar knew that complainant Sh. Chandra Shekhar, the then ASJ, Central District, Tis Hazari Courts, Delhi was concerned with any such recruitment of Group C posts,
- (d) That accused Tara Dutt, Mukul Kumar and Ramesh Kumar conspired together to get favor or disfavor for accused Mukul Kumar in the selection process of Group-C selection,
- (e) That in furtherance of criminal conspiracy on 26.08.2017, accused Tara Dutt handed over an envelope to the Naib Court HC Surender Kumar attached with the court of the complainant on the pretext that the said envelope is containing some documents and showing him visiting card of Special Metropolitan Magistrate Dayanand Sharma in order to abet complainant Sh. Chandra Shekhar, the then ASJ, Central District, Tis Hazari Courts, Delhi to

accept an amount of Rs.50,000/- as undue advantage for abusing his position as public servant by corrupt or illegal means,

(f) That accused Tara Dutt was having knowledge about the contents of alleged envelope in question.

75. Ld. Defence counsel has argued that the prosecution has failed to prove the factum of qualification of accused Mukul Kumar or the fact that accused Mukul Kumar actually applied for Group-C post. As far as the argument that the prosecution has not proved that accused Mukul Kumar has actually applied for the Group-C post is concerned, PW-22 Sh. Sachin, J.J.A. has produced the file concerning the application form and admit card of the accused Mukul Kumar, and the same are Ex.PW22/B and Ex.PW22/C respectively. The original admit card retained during the written examination is Ex.PW22/D. During the cross-examination, PW-22 had clearly stated that the original admit card was collected from the candidates in the examination by the outsourcing agency and thereafter, the same is deposited in the office of District & Sessions Judge. In view of the testimony of PW-22, it has been clearly established on record that the accused Mukul Kumar has applied for the Group-C post and had appeared in the examination held on 11.06.2017 vide Roll no. 1341116218.

76. It is also argued that prosecution witnesses i.e. PW-14 Gaurav Sharma and PW-15 Ms. Kusum have also not supported the prosecution case and turned hostile and it has not been established on record that accused no. 2 and 3 were known to accused no. 1.

77. As far as the testimony of PW-14 Gaurav Sharma is concerned, he has stated that his mobile phone was used by his father Dayanand Sharma and in the month of August 2017 also his father was using the said mobile number. During the cross-examination, he has stated that his mother also sometimes used to use the said mobile phone. Merely on the basis of statement of PW-14 that his mother also sometimes used to use the said mobile number, it cannot

be said that PW-14 has turned hostile. PW-14 though is a prosecution witness but he is also son of accused no. 4, therefore, he has half-heartedly tried to support the accused persons by stating that his mother also sometimes used to use the said mobile phone. The relevant portion of the testimony of PW-14 is reproduced hereinbelow :

“..... One mobile No.9910043160 was got issued by me from Airtel company in my name and I gave the same to my father Sh. Dayanand Sharma and he was using the same. In the month of August 2017 also, my father was using the aforesaid number. My statement under section 164 Cr.P.C. has also been recorded to this effect in Tis Hazari Courts, same is already exhibited as Ex.PW9/A.....”

78. The relevant portion of cross-examination of PW-14 on behalf of accused is reproduced hereinbelow :

“..... The phone used to remain at home and my mother also sometimes used to use it. My mother did not have any other mobile, though we have a landline phone at home. My father did not use to have any visiting card. I have not seen the card Ex.PW3/Article1 with my father at any point of time.

At this stage, Ld. Addl. PP for the state seeks permission to re-examine the witness.

Heard. Allowed.

Re-examination of the witness by Ld. Addl. PP for state.

It is correct that IO of this case had inquired me and recorded my statement under Section 161 Cr.P.C. on 30.06.2018.

I did not state in my statement under Section 161 Cr.P.C. to the IO that my mother also used to use the aforesaid mobile number. Vol. IO had asked me as to who used to use the aforesaid mobile number.”

“.....Q. Have you stated in your statement under Section 161 Cr.P.C., Ex.PW14/A, that your mother used to use the mobile number 9910043160.

Ans. I had not stated so. Vol. No such question was asked.....”

“.....Q. Have you deposed in your statement under Section 164 Cr.P.C. already Ex.PW9/A recorded on 05.07.2018 as to whether your mother also used to use aforesaid mobile number apart from your father?

Ans. Is number ko mere father use karte the or meri mother bhi kabhi kabhi use karti thi. Ye baat mene MM sahab ko 164 Cr.P.C. statement mein nahi batai thi.

Q. Have you any reason for which you concealed this fact while deposing under Section 164 Cr.P.C.?

Ans. I might have forgotton.

(Court observation: witness is being evasive in his answers.)

*It is wrong to suggest that my mother never use the aforesaid mobile number therefore I did not state the same in my statement under Section 164 Cr.P.C. that my mother also used to use the said number. Vol. **Jyadatar father hi use karte the, mother kabhi kabhar hi use karti thi.** I did not give any subsequent information to the IO or to the concerned Ld.MM who recorded my statement under Section 164 Cr.P.C. to the effect that I had forgotton to depose that my mother also used to use the aforesaid mobile number. I had not stated anything about the visiting card Ex.PW3/Article-1 in my statement under Section 161 Cr.P.C. Same is my reply regarding the statement under Section 164 Cr.P.C.*

My father never have any visiting card.....”

“.....On seeing the Ex.PW3/Article-1, witness submits that all the particulars are correct in the visiting card except the address as our correct address is 1631, B-Kaushal Niwas, Bahadurgarh, Haryana and we do not refer words 'HUDA' in our address. The sector number 6 was planned by HUDA.....”

“.....On seeing the death certificate Ex.PW14/B, witness submits that on the death certificate of his father the contents i.e. word 'HUDA' is mentioned in the address.....”

79. The demeanour of the witness in being evasive in his answers is also relevant and cannot be ignored by the court. Also, the main purport of his testimony is

that phone no. 9910043160 was used by his father during the relevant time. PW-15 Kusum is the mother of accused no.2 and wife of accused no. 3 and therefore, she has also not supported the case of the prosecution and has stated that she was the registered owner of the mobile no. 9210986901 and was using the said mobile number. She has denied that her son Mukul Kumar was using the said mobile number and has further stated that she used to talk to one Ms. Geeta on mobile no. 9871159076. As per the testimony of PW-17 Pankaj Sharma, Nodal Officer, Reliance Jio the mobile no. 9871159076 is registered in the name of accused no.1 Tara Dutt and hence the mobile no. 9871159076 was used by accused Tara Dutt. When the testimony of PW-17 was put to the accused Tara Dutt under section 313 Cr.P.C., he has not stated that the mobile no. 9871159076 does not belong to him or was used by any person in the name of Geeta and the only plea of accused no. 1 is that the CDRs and location chart are not correct and certificate under section 65B Indian Evidence Act was issued in mechanical manner. From the record it is not clear as to who is Geeta and except for a suggestion by the Ld. Defence counsel during the cross-examination of PW-13 ACP Ram Mehar Singh that Smt. Geeta wife of Tara Dutt was using the mobile number 9871159076. DW-3 had brought the record related to the petition under section 125 Cr.P.C. filed by the wife of accused Tara Dutt and as per this record Ex.DW3/1, the name of wife of accused Tara Dutt is Smt. Saroj Mangai and not Smt. Geeta. The CAF of the mobile no. 9871159076 is Ex.PW17/E as per which, the said mobile number was issued in the name of accused Tara Dutt. **In fact, as per the list of standby staff of Delhi Police Bhawan/SB which is part of Ex.DW1/1 and thus, is relied upon by the accused himself, the phone number of the accused Tara Dutt is 9871159076.** Thus, this mobile no. 9871159076 was being used by the accused Tara Dutt. The statement of PW-15 that she used to talk to Geeta on the mobile no. 9871159076 is thus, a blatant lie. Even if this statement of Smt.

Kusum, that phone no. 9210986901 was being used by her and not by her son Mukul Kumar, is accepted for the sake of arguments, **still PW-17 has proved that phone number 8076205534 existed in the name of Mukul kumar** and PW-2 has proved that phone no. 8447462346 existed in the name of Ramesh Kumar. Accused no. 1, 2 and 3 are resident of the same locality. Ld. Defence counsel has further argued that none of the witnesses have deposed that accused Tara Dutt, Mukul Kumar and Ramesh Kumar were known to each other and CDR's of the mobile phones proved by prosecution cannot be treated to be conclusive proof of the fact that the accused persons are known to each other.

80. The CDRs and CAFs proved by PW-2, PW-7, PW-17 and PW-18 establish that accused no. 2 and 3 were in contact with accused no. 1 and accused no. 1 was further in contact with accused no. 4. The analysis of the CDRs of Tara Dutt, Mukul Kumar and Ramesh Kumar are as under :

(i) Calls made by **Tara Dutt** (Mob. no. 9871159076) to **Mukul Kumar** (Mob. No.8076205534) as per CDR Ex.PW17/F are as under :

S. No.	Date	Time	Call Type
1.	19.08.2017	15:10:28 hrs	Outgoing
2.	20.08.2017	19:51:20 hrs	Outgoing
3.	21.08.2017	21:53:27 hrs	Outgoing
4.	26.08.2017	23:27:25 hrs	Outgoing
5.	26.08.2017	23:28:56 hrs	Outgoing
6.	26.08.2017	23:54:09 hrs	Outgoing

(ii) Calls received by **Mukul Kumar** (Mob. No.8076205534) from **Tara Dutt** (Mob. no. 9871159076) as per CDR Ex.PW17/B are as under :

S. No.	Date	Time	Call Type
1.	19.08.2017	15:10:28 hrs	Incoming

2.	20.08.2017	19:51:20 hrs	Incoming
3.	21.08.2017	21:53:27 hrs	Incoming
4.	26.08.2017	23:27:25 hrs	Incoming
5.	26.08.2017	23:28:55 hrs	Incoming
6.	26.08.2017	23:54:08 hrs	Incoming

(iii) Calls made by **Mukul Kumar** (Mob. No.8076205534) to **Tara Dutt** (Mob. no. 9871159076) as per CDR Ex.PW17/B are as under :

S. No.	Date	Time	Call Type
1.	19.08.2017	14:31:27 hrs	Outgoing
2.	19.08.2017	15:12:52 hrs	Outgoing
3.	19.08.2017	20:20:19 hrs	Outgoing
4.	20.08.2017	19:53:24 hrs	Outgoing
5.	21.08.2017	14:28:23 hrs	Outgoing
6.	22.08.2017	01:35:12 hrs	Outgoing
7.	22.08.2017	22:23:06 hrs	Outgoing
8.	23.08.2017	22:29:31 hrs	Outgoing
9.	26.08.2017	23:21:52 hrs	Outgoing
10.	26.08.2017	23:40:48 hrs	Outgoing
11.	27.08.2017	00:08:15 hrs	Outgoing

(iv) Calls received by **Tara Dutt** (Mob. no. 9871159076) from **Mukul Kumar** (Mob. No.8076205534) as per CDR Ex.PW17/F are as under :

S. No.	Date	Time	Call Type
1.	19.08.2017	14:31:27 hrs	Incoming
2.	19.08.2017	15:12:51 hrs	Incoming
3.	19.08.2017	20:20:18 hrs	Incoming
4.	20.08.2017	19:53:24 hrs	Incoming
5.	21.08.2017	14:28:23 hrs	Incoming

6.	22.08.2017	01:35:12 hrs	Incoming
7.	22.08.2017	22:23:06 hrs	Incoming
8.	23.08.2017	22:29:31 hrs	Incoming
9.	26.08.2017	23:21:52 hrs	Incoming
10.	26.08.2017	23:40:47 hrs	Incoming
11.	27.08.2017	00:08:14 hrs	Incoming

81. The analysis of the CDRs of Tara Dutt proving that he was in contact with Ramesh Kumar are as under :

(v) Calls made by **Tara Dutt** (Mob. no. 9871159076) to **Ramesh Kumar** (Mob. No.8447462346) as per CDR Ex.PW17/F are as under :

S. No.	Date	Time	Call Type
1.	27.08.2017	06:32:24 hrs	Outgoing
2.	27.08.2017	08:54:35 hrs	Outgoing

(vi) Calls received by **Ramesh Kumar** (Mob. No.8447462346) from **Tara Dutt** (**Mob. no. 9871159076**) as per CDR Ex.PW17/B are as under :

S. No.	Date	Time	Call Type
1.	27.08.2017	06:32:24 hrs	Incoming
2.	27.08.2017	08:54:35 hrs	Incoming

82. The above CDRs prove that the accused persons were in constant contact with each other during the relevant period. In fact some of the calls were of late night which leads to a clear inference that the accused persons were known to each other.

83. Ld. Defence counsel has further argued that there is no evidence on record to prove any criminal conspiracy between the accused persons, neither any charge was framed against the accused persons referring as to what for the

complainant was approached or **asked to do or not doing** the official act. Ld. Defence counsel has further argued that prosecution has failed to prove the vital legal ingredient i.e. **“for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person”** for making the accused persons liable for commission of Section 12 of Prevention of Corruption Act, 1988. Ld. Defence counsel has further argued that prosecution has failed to bring any sustainable evidence on record to prove passing of Rs.50,000/- to accused Tara Dutt by accused Ramesh Kumar or Mukul Kumar and the factum of possession of Rs.50,000/- cash by the accused Ramesh Kumar or Mukul Kumar.

84. The facts are to be judged and appreciated from the perspective of a reasonable prudent person. If any gratification is sent alongwith a copy of the roll number, a reasonable prudent person can easily infer the purpose for which it has been sent. The arguments of the Ld. Defence counsel that it has not been established as to whether the amount was sent for showing **favour or disfavour** is rather fanciful. The testimony of PW-3 HC Surender clearly established that accused Tara Dutt while delivering the said envelope to him has stated that the Judge Sahib would understand on seeing the contents of the envelope. Relevant portion of testimony of PW-3 is reproduced hereinbelow :

“.....He further told that he had an envelope to deliver to Judge Sahib, on the instructions of Dayanand Sharma and further stated that the envelope contains documents aur Usme Judge Sahab Ke Kagaj Hai aur Judge Sahab Dekh Kar Usey Samajh Jayenge.....”

85. The above statement clearly establishes that the amount alongwith roll no. was sent for showing favour to the candidate. PW-10 has proved the statement of account of the bank account Ex.PW10/B of Ramesh Kumar as per which

Rs.20,000/- cash was withdrawn at the relevant time. The above statement by Tara Dutt to PW-3 at the time of delivering the envelope coupled with the fact that the envelope contained Rs.50,000/- alongwith roll number of accused no. 2 clearly lead to only one inference that the same were offered for showing favour to accused no. 2 and even accused no. 1 Tara Dutt was aware of the contents of the envelope.

86. Section 120A of the Indian Penal Code which defines 'Criminal Conspiracy' as follows :

“When two or more persons agree to do, or cause to be done,

(1) an illegal act,

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy :

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation - It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.”

Section 120B provides punishment for criminal conspiracy and provides as under :

“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 the code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.”

Criminal conspiracy is an independent offence. It is punishable separately. The ingredients of the offences of criminal conspiracy are:

- i). agreement between two or more persons.*
- ii). an agreement to doing or causing to be done either an illegal act or an act which is not illegal in itself but is done by illegal means. The prosecution thus had to establish meeting of the minds of the accused persons for doing an illegal act or an act by illegal means. **It has to be***

borne in mind that a criminal conspiracy is hatched in secrecy, hence it is difficult to establish the same by direct evidence. Thus, the manner and circumstances in which the offences have been committed are relevant and to prove the charge of conspiracy, it is not necessary that all the conspirators know each other and every detail of the conspiracy so long as they are co-conspirators in the main object of conspiracy anything said, done or written by any of them would be evidence against the other. It is also not necessary that all the conspirators participate from the inception of conspiracy to its end. If there is unity of object all those participating at different stages of crime will be guilty of conspiracy.

87. "Criminal conspiracy" is not easy to prove. The conspirators invariably deliberate, plan and act in secret over a period of time. **It is not necessary that each one of them must have actively participated in the commission of the offence or was involved in it from the start to finish.** What is important is that they were involved in the conspiracy. Conspiracy requires *actus reus* and accompanying *mens rea*. To convict a person for conspiracy, the prosecution must show that all accused agreed with each others to accomplish the unlawful object of conspiracy. **The Court has to be satisfied that there is a reasonable ground to believe the existence of the conspiracy and that is a matter for judicial inference from proved facts and circumstances.**

88. In order to bring home the charge of conspiracy and for the purpose of drawing inferences U/s 10 of the Evidence Act, **the prosecution had to establish beyond reasonable doubt that accused acted in concert, either through overt or covert acts in furtherance of the common objective.** Section 10 of the Indian Evidence Act introduces the doctrine of agency and if the conditions laid down there are satisfied, the act done by one is admissible against the co-conspirators. Section 10 of the Indian Evidence Act is as under :

"Things said or done by conspirator in reference to common design. - Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable

wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.”

89. Thus, there should be prima facie evidence disclosing reasonable grounds for court to believe that two or more persons were members of a conspiracy., (2) Anything said, done or written by anyone of them in reference to the common intention would be evidence against the other., (3) Anything said, done or written by anyone of them should have been said, done written by them after the intention was formed by anyone of them. The prosecution thus had to prove by chain of events which could lead to strong inference of conspiracy. **Conspiracy can be inferred either on the basis of direct or circumstantial evidence. Though direct evidence of conspiracy is difficult in most cases, the circumstances proved should reasonably point to existence of prior concert of mind.**
90. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is, did all the accused have the intention and did they agree that the crime be committed. **Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.** There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the

offence of conspiracy. It is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, acts and conduct of the conspirators.

91. In the light of the above broad principles, let us examine the facts of the case to find out whether the accused persons had conspired with each other in furtherance to their common object of offering bribe to the complainant PW-12, for showing favour to the accused no. 2 Mukul Kumar, being member of Recruitment Committee for recruitment of orderlies. It has been proved on record that accused no. 1 handed over an envelope with the words "SECRET" written on the same and containing Rs.50,000/- cash and a photocopy of the roll number of accused no. 2 who was to appear for interview for the post of orderlies. PW-12 complainant was the member of the Recruitment Committee. Accused no. 1 tried to meet him but when PW-12 refused to meet him, accused no. 1 left the envelope with PW-3 for delivering the same to PW-12 stating that PW-12 would understand on seeing the contents. The CDRs proved on record have conclusively established that all the three accused persons were in contact with each other at the relevant time and were known to each other. The Bank Account Statement of accused no. 3 established withdrawal of cash amount from the bank by accused no. 3 two days prior to the incident. The testimony of PW-3 that accused no. 1 contacted Daya Nand Sharma telephonically in his presence to confirm that accused no. 1 was to meet complainant only and none else is corroborated with the CDRs of accused no. 1 Ex.PW17/F wherein a call to Daya Nand Sharma at 13:14:00 hrs of 87 seconds is reflected and the location of mobile phone of accused no. 1 is

of Tis Hazari Courts. All this leads to a clear inference of existence of conspiracy between the three accused persons with a common object of influencing the complainant to show favour to accused no. 2 during the recruitment process by offering him bribe/illegal gratification of Rs.50,000/-. Even if the CCTV footage is discarded in evidence for technical reasons (being not examined by an FSL expert), still there is enough evidence to prove the presence of accused no. 1 at the time of incident at Tis Hazari Courts. The conduct of Tara Dutt at the time of delivering the envelope and the fact that there was no direct contact between accused no. and 3 on one hand and accused no. 4 Daya Nand Sharma (deceased) on the other hand and accused no. 1 was in contact with accused no. 2 and 3 and had also contacted accused no. 4 clearly establishes that he was the mastermind of the plot/conspiracy.

92. It is also argued that the testimony of complainant Ld. Judge Sh. Chandra Shekhar, PW-12 is only hearsay and that the testimony of PW-3, the only eye witness is full of contradictions and not corroborated by any other evidence and hence, not reliable.

93. It is further argued by Ld. Defence counsel that almost every witness has stated differently, inconsistently and contradictory with each other and have also done so in their own evidences and this fact alone is sufficient to discard the prosecution case thereby acquitting the accused. In this regard reliance is placed upon judgment of Hon'ble Delhi High Court in **Kishan Chand Verma Vs State through CBI in Crl. A. 788/2000 dated 04.07.2019.**

94. In the case of **C.M. Sharma Vs State of Andhra Pradesh, Crl. App. 232/2006 decided on 25.11.2010 by Division Bench of Hon'ble Supreme Court**, it was held that on appreciation of evidence, witness can be broadly categorized in three categories viz. unreliable, partly reliable and wholly reliable and in a case in which witness is wholly reliable, no corroboration is necessary. In **Amar Singh Vs State of NCT of Delhi, Crl. App. No.**

335/2015, decided on 12.10.2020 by Hon'ble Supreme Court it was held that as a general rule, the court can and may act on the testimony of a single eye witness provided he is wholly reliable.

95. As far as minor discrepancies in the testimony of PW-3 are concerned, in case **Bharwada Bhoginbhai Hirjibhai Vs State of Gujarat, AIR 1983 SC 753**, Hon'ble Supreme Court has observed :

“We do not consider it appropriate or permissible to enter upon a reappraisal or re-appreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by learned Counsel for the appellant. Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious :

(i) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(ii) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprises. The (pic) mental faculties therefore cannot be expected to be attuned to absorb the details.

(iii) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one persons mind, whereas it might go unnoticed on the part of another.

(iv) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder.

(v) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess-work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

(vi) Ordinarily a witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in a short time span. A witness is

liable to get confused, or mixed up when interrogated later on.

(vii) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.”

In **Appabhai Vs State of Gujarat, AIR 1988 SC 696**, it has been held that the court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded.

In **Rammi Vs State of M.P. with Bhura Vs State of M.P. (1999) 8 SCC 649**, Hon'ble Supreme Court observed :

“When an eye witness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.”

96. A reasonable human being can only recall the main purport of a conversation and it is not expected of him to reproduce the exact words stated during any conversation. Also, it is a settled law that the court should not attach undue importance to the discrepancies which do not shake the basic version of the prosecution case.

97. In judgment titled **State of Haryana Vs. Bhagirath, Crl. Appeal No.**

000234/1992, passed on 12.05.1999, the Hon'ble Supreme Court has observed that :

*“It is nearly impossible in any criminal trial to prove all the elements with a scientific precision. A criminal court could be convinced of the guilt only beyond the range of a reasonable doubt. Of course, the expression reasonable doubt is incapable of definition. **Modern thinking is in favour of the view that proof beyond a reasonable doubt is the same as proof which affords moral certainty to the Judge.***

*In the treatise The Law of Criminal Evidence authored by H.C. Underhill at p.34, Vol.1 of the 5th Edn., it is stated : The doubt to be reasonable must be such a one as an honest, sensible and fair-minded man might, with reason, entertain consistent with a conscientious desire to ascertain the truth. **An honestly entertained doubt of guilt is a reasonable doubt. A vague conjecture or an inference of the possibility of the innocence of the accused is not a reasonable doubt. A reasonable doubt is one which arises from a consideration of all the evidence in a fair and reasonable way. There must be a candid consideration of all the evidence and if, after this candid consideration is had by the jurors, there remains in the minds a conviction of the guilt of the accused, then there is no room for a reasonable doubt.***

In Shivaji Sahabrao Bobade V. State of Maharashtra (1973) 2 SCC 793), the Hon'ble Supreme Court adopted the same approach to the principle of benefit of doubt and struck a note of caution that the dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence demand special emphasis in the contemporary context of escalating crime and escape. The Hon'ble Supreme Court further observed that the judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt.”

98. Thus, a reasonable doubt arises from a consideration of all the evidence in a

reasonable way. The golden thread to prove the guilt of accused beyond reasonable doubt is not to be stretched morbidly to include every little doubt.

99. In **Subhash Chand Chauhan & Ors. Vs CBI, Crl. A. No.462/467/2002** decided on 04.01.2005 by **Hon'ble High Court of Delhi**, it has been observed :

“Needless to state that in a criminal trial, evidence of eye witness requires a careful assessment and evaluation for credibility. The evidence must be tested for its inherent consistency or inherent inconsistency in reference to the account as stated by one witness on being cross checked with the account as stated by the other witness. Finally, probative value of the evidence has to be put into scales for a cumulative evaluation.

Degree of proof cannot be stated in mathematical units, but the guiding principle that the evidence must point only towards the guilt and should exclude innocence, must never be lost sight of.”

100. PW-3 is a wholly reliable witness and his testimony inspires confidence. Minor discrepancies, if any, in his testimony are to be ignored in view of the above case laws. Testimony of PW-3 is corroborated through the CDRs of the accused persons. CCTV footage is another corroborating evidence. On evaluation of the entire evidence, oral as well as documentary in a fair and reasonable way, the court has no reasonable doubt about the guilt of the accused persons.

MISCELLANEOUS ARGUMENTS :

101. It is further argued that the investigation with regard to handwritten word “SECRET” on the white envelope enclosed with the complaint Ex.PW12/A, seems unfair since the specimen handwriting of accused Tara Dutt and Mukul Kumar taken for comparison with the word “SECRET” were not found matched by the expert whereas the specimen of the person who had handed over the said envelope to Sh. Chandra Shekhar were not taken. PW-11

Rajinder Prasad Gautam was cross-examined on this issue on behalf of accused and he stated that he has not deemed it appropriate to take specimen handwriting of HC Surender Kumar in order to ascertain the writer of word "SECRET" written on the envelope. It is submitted that adverse inference must be taken against the prosecution on this point. However, PW-3 Surender Kumar was not on trial in the present case. He was not even suspect. Legally, no adverse inference can be taken against the prosecution on this aspect. Otherwise also, the overall facts and circumstances proved on record are to be evaluated to see whether any adverse inference is to be drawn. On evaluating the entire facts of the case as proved through various testimonies and documentary evidence, non-comparison of sample handwriting of PW-3 Surender Kumar is immaterial.

102. It is further argued by Ld. Defence counsel that testimony of PW-12 Sh. Chandra Shekhar is of hearsay nature besides the fact that envelope was brought in front of him by PW-3 HC Surender Kumar which was found containing the photocopy of a role number and Rs.50,000/- in cash and that he has been told that the said envelope was handed over by accused Tara Dutt to HC Surender Kumar and that he had lodged the complaint Ex.PW12/A alongwith its enclosures on the advice of Ld. District & Sessions Judge (HQs). It is further argued that PW-12 while making complaint Ex.PW12/A believed the story narrated by PW-3 HC Surender Kumar to be true without verifying the same from other court staff members.

103. As far as verification of facts by Ld. Judge PW-12 is concerned, he was not authorized to conduct any preliminary enquiry nor was his duty to find out the true facts and therefore, he had taken appropriate action by informing the facts to Ld. District & Sessions Judge and by getting lodged an FIR and it was for the IO to ascertain the true facts during investigation. Ld. Judge PW-12 has fairly stated during the cross-examination that he cannot say whether the facts stated by PW-3 HC Surender were correct or not and he had only deposed

about the facts which were in his personal knowledge. Ld. Judge PW-12 was not supposed to be conducting any roving enquiry before informing Ld. District & Sessions Judge or before lodging of FIR and therefore, this argument of Ld. Defence counsel that the complainant PW-12 should have verified the facts from other court staff is baseless.

DEFENCE OF THE ACCUSED :

104. It is further argued that the defence of the accused, as also suggested to PW-3 and PW-11, is that accused Tara Dutt was at his office on 26.08.2017 and never visited Tis Hazari Court premises. It is further submitted that PW-3 Surender Kumar had grudge against accused Tara Dutt due to a matrimonial dispute between Tara Dutt and his wife Smt. Saroj, and HC Surender Kumar participated on behalf of wife of accused Tara Dutt due to which the relation between HC Surender Kumar and Tara Dutt became strained. It is further submitted that accused Tara Dutt and Surender Kumar were known to each other much prior to 26.08.2017 as they both had worked together in Security Branch of Delhi Police. It is further argued that PW-3 denied the suggestion on the above defence however, he has admitted in cross-examination that he was posted in Delhi Police Security Branch from September 2003 to September 2006.

105. It is further argued that DW-5 HC Arun Kumar produced record which revealed that accused Tara Dutt was posted in Security Branch from 21.02.2005 to 01.01.2009 which proved the acquaintance between accused Tara Dutt and HC Surender Kumar. It is further argued that DW-4 Harish Chand Sharma also proved that HC Surender Kumar participated from the side of the wife of accused Tara Dutt in a matrimonial dispute and in 2008 Surender Kumar had referred Smt. Saroj to one advocate Sh. Sanjay Gahlot to file a case against accused Tara Dutt. It is further argued that existence of matrimonial dispute between accused Tara Dutt and his wife has also been proved through

DW-3 Sh. Veer Singh by exhibiting copy of original petition under section 125 Cr.P.C. Ex.DW3/1

106. It is further argued that the testimony of PW-3 HC Surender Kumar is falsified by the reply of RTI Ex.DW1/1 which shows that the accused Tara Dutt was on duty on 26.08.2017 and was not marked absent from duty. It is further submitted that in criminal trial accused is to lead a probable defence and in the present case, the accused persons have succeeded in leading a probable defence supported by documents.

107. The plea of alibi of the accused is that he was on duty on the alleged day of the incident and therefore, he had not visited the premises of Tis Hazari Court. The onus of plea of alibi is on the accused. He should have proved it through cogent evidence. As far as the RTI application's reply Ex.DW1/1 is concerned, the same states that as per Rojnamcha, ASI Tatadutt was not marked absent on that day. Simply because the accused was not marked absent on that day does not mean that he was present in his office throughout the day and has not left his office for any personal work. **Also, it is settled law that reply to RTI application is not substantive evidence** and the information given under RTI Act cannot be taken as truth on its face value. The accused should have proved his plea of alibi through a more reliable evidence.

108. The other defence of the accused Tara Dutt is that he has been implicated by PW-3 Surender Kumar who was also posted in Security Branch of Delhi Police in September 2003 to 2006 and as per DW-4 Harish Chander Sharma, one HC Surender had tried to counsel the accused no. 1 in the year 2006 and an altercation took place between the two. To prove the fact that the accused Tara Dutt was having a matrimonial dispute with his wife, he had summoned the record of proceedings between the parties from the court of Ld. MM wherein his wife Smt. Saroj Mangai had filed a petition under section 125 Cr.P.C. As per the document filed on record, the matter between the accused and his wife was compromised on 18.05.2009. When the matter

between the accused and his wife was already settled in the year 2009, the court fails to understand as to why PW-3 would implicate the accused in the present case after almost nine years.

109. Let us also examine the testimony of DW-4 Harish Chander Sharma who is a summoned witness. This witness was summoned from Village Karnia, Nainital, Uttarakhand. This witness though has deposed that Tara Dutt is his son in law but has stated that Smt. Saroj Mamgai is his adopted daughter. **As per the document Ex.DW3/1, Saroj Mamgai, wife of accused Tara Dutt is daughter of one Sh. Keshav Dutt Joshi.** She has given her address in the petition under section 125 Cr.P.C., of Karol Bagh and Uttam Nagar. As per the petition filed under section 125 Cr.P.C. by the wife of accused Tara Dutt, the marriage was also solemnized in Delhi. In her affidavit filed alongwith the petition under section 125 Cr.P.C. also, she has stated herself to be daughter of Sh. Keshav Dutt Joshi. **In such circumstances, the whole statement of DW-4 is doubtful since no document has been placed on record to substantiate this fact that Smt. Saroj Mamgai is an adopted daughter of DW-4.** Moreover, though Smt. Saroj Mamgai was stated to be residing with DW-4 on the date of the testimony i.e. 21.10.2021 thus, establishing that the relation of the accused with his wife were again strained but still DW-4 has deposed in favour of the accused. This fact itself creates doubt on the status of DW-4. The court has no hesitation in concluding that DW-4 is not the father in law of accused Tara Dutt nor Smt. Saroj Mamgai is the adopted daughter of DW-4 and in fact he seems to be a person related to the accused Tara Dutt who has entered the witness box to support the cause of the accused. Even though the testimony of DW-4 does not inspire confidence being not a reliable witness, but still even if the testimony of DW-4 is accepted for the sake of argument, DW-4 clearly stated to have not met the accused after 2008 when the matrimonial dispute of the accused with his wife was settled. If DW-4 had not

sought any help of Surender after 2008, why Surender would implicate falsely the accused after almost 9 years. The accused Tara Dutt has not been able to establish his defence even to the extent of preponderance of probability. Accused Mukul as well as Ramesh Kumar have not led any defence evidence. In their statements under section 313 Cr.P.C. also, no particular defence has been stated by accused Mukul and Ramesh Kumar and they merely denied the prosecution case and have pleaded ignorance to the case of the prosecution.

CONCLUSION :

110. Keeping in view the aforesaid discussion, the prosecution has succeeded in proving beyond reasonable doubt that the accused persons namely Tara Dutt, Mukul Kumar and Ramesh Kumar had hatched a criminal conspiracy to abet PW-12 Sh. Chander Shekhar, Ld. Judge, who is a public servant to accept an amount of Rs.50,000/- and pursuant to aforesaid criminal conspiracy, accused Tara Dutt has delivered an envelope containing the aforesaid amount through PW-3 HC Surender Kumar, Naib Court, attached to the court of Ld. Judge, for favouring accused no. 2 Mukul Kumar in the recruitment process for the post of Group-C post, on the basis of following evidence :

- (i) the testimony of PW-3 HC Surender Kumar being reliable, trustworthy and consistent.
- (ii) the CDRs of the accused persons showing that they were in regular touch with each other at the relevant time.
- (iii) photocopy of the roll number of accused Mukul Kumar placed in envelope with the amount of Rs.50,000/-.
- (iv) presence of accused no. 1 Tara Dutt clearly established at Tis Hazari Court at the relevant time, as per the testimony of PW-3, Cell ID Chart showing the mobile location of the accused and the CCTV footage

111. Therefore, accused **Tara Dutt, Mukul Kumar and Ramesh** are accordingly **held guilty** for the offence punishable under **section 120B IPC and section 12 of Prevention of Corruption Act, 1988 read with Section 120B IPC.**

**Announced in the open court
on this 27th September, 2021.**

**KIRAN
BANSAL**

Digitally signed
by KIRAN
BANSAL
Date:
2021.09.27
14:14:43
+0530

**(Kiran Bansal)
Special Judge
(PC Act) (ACB-01)
RADC, New Delhi.**