



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

**1.D.B. Criminal Appeal No. 51/2018**

Asgar Ali alias Vijay Sagar S/o Shri Mohd. Shafiq, R/o Chak 170,  
Post Shadikabad, P.S. Shadikabad, District Shadikabad, Punjab,  
Pakistan.

(Presently Lodged in Central Jail, Jaipur)

----Appellant

Versus

State of Rajasthan through Public Prosecutor.

----Respondent

Connected With

**2.D.B. Criminal Appeal (DB) No. 38/2018**

Arun Kumar Jain S/o Om Prakash Jain, R/o Mahi Darwaja, Police  
Station Kotwali, District Nagaur, Rajasthan.

(At Present Confined In Central Jail, Jaipur.)

----Accused Petitioner

Versus

State of Rajasthan through P.P.

----Non-Petitioner

**3.D.B. Criminal Appeal (DB) No. 44/2018**

Pawan Puri @ Raja S/o Pooran Puri, R/o Kumharon Ka Bhatta,  
Police Station Bhopalpura, District Udaipur, at Present 96, Sector  
no. -11, Hiran Magri, Police Thana Sector No. 6 Hiran Magri,  
District-Udaipur, Rajasthan.

(At Present Confined In Central Jail, Jaipur)

----Accused Petitioner

Versus

State of Rajasthan through P.P.

----Non-Petitioner

**4.D.B. Criminal Appeal (DB) No. 52/2018**

Kabil Khan @ Sayeed Khan S/o Inam Khan r/o Puniya Kheri,  
Police Station, Jawar, District-Jhalawad, Rajasthan

(Presently lodged in Central Jail, Jaipur, Rajasthan)

---- Accused Appellant

Versus





State of Rajasthan through P.P.

----Respondent

**5.D.B. Criminal Appeal (DB) No. 53/2018**

Hafiz Abdul Majeed S/o Kallu Khan, R/o Punniya Khari, Police Station - Jhawar, Distt. Jalawarh

(Presently Lodged In Central Jail, Jaipur, Raj.)

----Appellant

Versus

State Of Rajasthan Through P.P.

----Respondent

**6.D.B. Criminal Appeal (DB) No. 72/2018**

Babu @ Nishachand Ali S/o Hasan Ali, Caste-Muslim, R/o Gali No. 2B, Rampuri Basti, Lalgarh, Police Station-Lalgarh, District-

Bikaner.

(Presently lodged in Central Jail, Jaipur, Rajasthan).

----Accused Appellant

Versus

State Of Rajasthan

----Respondent

**7.D.B. Criminal Appeal (DB) No. 94/2018**

1.Shakarulla alias Mohd. Hanif alias Amar Singh Gill s/o Shri Sube Khan R/o Jesarwala, PS-Daska, District-Siyalkot, Pakistan [Presently lodged in Central Jail, Jaipur]

2.Mohd. Iqbal alias Disa s/o Bashir Ahmad, R/o Village-Jarpal, PS-Lesarkalan, District-Narowal, Pakistan [Presently lodged in Central Jail, Jaipur]

-----Appellants/Accused

V/s

State of Rajasthan through Public Prosecutor

-----Respondent

For Appellant(s) : Mr. Sudhir Jain with Mr. Monu Kumar for accused Asgar Ali @ Vijay Sagar

Mr. Sunil Kumar Jain, Mr Anil Kumar Jain Mr. Gaurav Kaushik, Mr. Surya Prakash & Mr. Prabhati Lal for accused appellant Arun Kumar Jain and Pawan Puri @ Raja



Mr. Nishant Vyas, Mr. Mujahid Ahmad & Mr. Aarif Ali for accused appellant Kabil Khan, Hafiz Abdul Majeed and Babu @ Nishachand Ali

Mr. A.K. Jain with Mr. B.S. Sandhu, for accused appellant Shakarulla @ Mohd. Hanif @ Amarsingh Gil and Mohd. Iqbal

For Respondent(s) : Mr. B.N. Sandu, Additional Advocate General with Mr. Pankaj Sisodia, Assistant Government Advocate



**HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI**  
**HON'BLE MR. JUSTICE DINESH CHANDRA SOMANI**

**Judgment**

**30/10/2018**

The cases have come up on applications for suspension of sentence, however, with consent of the parties, criminal appeals have been heard finally and are decided by this common judgment.

This batch of criminal appeals has been filed against the order dated 30.11.2017, passed by the Additional Sessions Judge No.17, Jaipur Metropolitan, Jaipur, in Sessions Case No.1/2012, thereby, accused appellants have been convicted and sentenced as under-

Accused appellants- Babu @ Nishachandra Ali, Arun Kumar Jain, Hafiz Abdul Majeed, Kabil Khan @ Saeed Khan, Asgar Ali @ Vijay Sagar, Pawan Puri @ Raja, Mohd. Iqbal @ Deesa and Shakarulla @ Mohd Haneef @ Amar Singh Gill – have been convicted for offence under section 13 of the Unlawful Activities (Prevention) Act,



1967 (for short the Act of 1967) and sentenced to seven years rigorous imprisonment with fine of Rs.2 lakh each, in default to pay fine, to further undergo two years rigorous imprisonment.

Accused appellants Babu @ Nishachand Ali and Pawan Puri have been convicted for offence under section 17 of the Act of 1967 and sentenced to life imprisonment with a fine of Rs.3 lakh each, in default to pay fine, to further undergo three years rigorous imprisonment.



Accused appellants Babu @ Nishachandra Ali, Arun Kumar Jain, Hafiz Abdul Majeed, Kabil Khan @ Saeed Khan, Asgar Ali @ Vijay Sagar, Pawan Puri @ Raja, Mohd Iqbal @ Deesa and Shakarulla @ Mohd Haneef @ Amar Singh Gill have been convicted for offence under section 18 of the Act of 1967 and sentenced to life imprisonment with a fine of Rs.3 lakh each, in default to pay fine, to further undergo three years rigorous imprisonment.

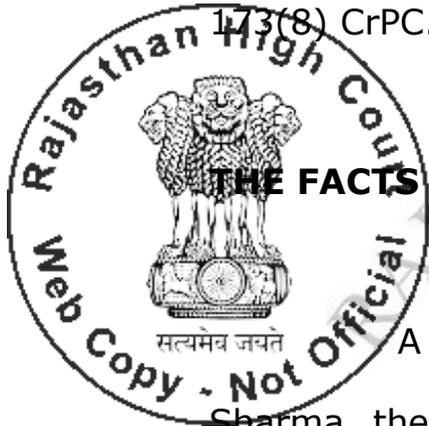
Accused appellants Babu @ Nishachandra Ali, Arun Kumar Jain, Hafiz Abdul Majeed, Kabil Khan @ Saeed Khan, Asgar Ali @ Vijay Sagar, Pawan Puri @ Raja, Mohd Iqbal @ Deesa and Shakarulla @ Mohd Haneef @ Amar Singh Gill have been convicted for offence under section 18B of the Act of 1967 and sentenced to life imprisonment with a fine of Rs.3 lakh each, in default to pay fine, to further undergo three years rigorous imprisonment.

Accused appellants Babu @ Nishachandra Ali, Arun Kumar Jain, Hafiz Abdul Majeed, Kabil Khan @ Saeed Khan, Asgar Ali @ Vijay Sagar, Pawan Puri @ Raja, Mohd Iqbal @ Deesa and Shakarulla @ Mohd Haneef @ Amar Singh Gill have been convicted for offence under section 20- of the Act of 1967 and sentenced to life imprisonment with a fine of Rs.3 lakh each, in default to pay fine, to further undergo three years rigorous imprisonment.



The accused appellants have been acquitted of the offence under sections 10, 18A and 21 of the Act of 1967 and and, alternatively, section 511 IPC.

Since accused Waleed @ Vicky Bhai is absconding, investigation against him has been kept pending under section 173(8) CrPC.



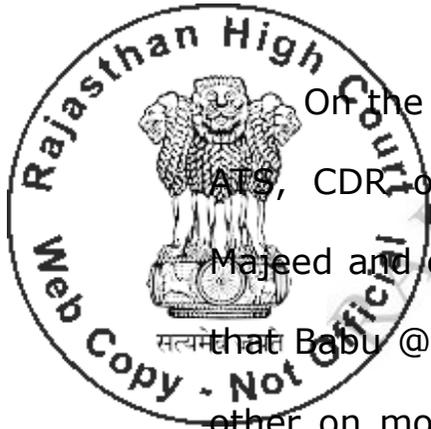
### THE FACTS OF THE CASE

A written report was made by complainant Sunil Sharma, the then Inspector of Police, Anti Terrorist Squad (ATS), Rajasthan to the Special Operation Group (SOG) on 21.10.2010. It was given that as per his sources, Waleed @ Vicky Bhai of Pakistan is a Commander of Lashker-e-Taiba (LeT), a terrorist Organisation. The name of organisation appears in the Schedule appended to the Unlawful Activities (Prevention) Act 1967, as amended from time to time. The Pakistani spy-Asgar Ali, confined in Central Jail, Jodhpur, the terrorist Shakarrula @ Prince @ Kureshi @ Mohd. Haneef, confined in Nabha Jail (Punjab) and Shahid Iqbal, a terrorist, confined in Amritsar Jail, Punjab, are regularly in contact with each other and with Waleed Bhai on mobile to do unlawful activities.

The allegation was made that Waleed @ Vicky Bhai apart from three accused persons named above are instigating others to get involved in unlawful activities. It is even for bomb blast after a terrorist training in Pakistan. On the instructions of Waleed @ Vicky Bhai, Asgar Ali, Shahid Iqbal and Shakarulla @



Price @ Qureshi @ Mohd. Haneef have contacted certain persons. Babu @ Nishichandra Ali, Hafiz Abdul Majeed, Maqsood Ahmed, Arun Jain, Riaz Ali, Pawan Puri @ Raja, Kabil Khan and Sharafal Ulla are among them and regularly in contact with each other. Thereby, they are directly or indirectly in contact with the Commander Waleed @ Vicky Bhai of Lashkar-e-Taiba.



On the basis of the report given by Sunil Sharma, Inspector ATS, CDR of mobile numbers used by Babu and Hafiz Abdul Majeed and other accused were examined. After analysis, it came that Babu @ Nishachandra Ali and Arun Jain were talking to each other on mobile. It could be traced out from Cell ID of Central Jail, Jodhpur.

In the same manner, it was found that Kabil Khan and Hafiz Abdul Majeed were also making calls on Cell ID of Nabha Jail and Amritsar Jail and were also in contact with terrorists in Pakistan. Similar report in regard to other accused was also taken. After the report and taking CDR of accused, the police made enquiry from them and, in that process, Sharafat and Kabil Khan did not present themselves. Accused Pawan Puri was in Bikaner Jail. He was produced from the jail itself. After the enquiry from the accused, it was found that they would involve in unlawful activities and, for that purpose, they would store the ammunition and Indian fake currency. It was also found that the accused wants to make a team for terrorist training in Pakistan thus all accused are involved in unlawful activities, thus committed offence under Section 10, 13, 17, 18, 18A, 18B, 20 and 21 of the



Act of 1967 apart from Section 511 IPC. The report was accordingly registered for the offences referred to above.

After the investigation, the charge-sheet was filed against the accused. After the cognizance of the offence, the learned trial court framed charges for the offence under Section 10, 13, 17, 18, 18A, 18B, 20 and 21 of the Act of 1967 and Section 511 IPC. The accused did not confess their guilt, rather, claimed trial thus it commenced.



The prosecution produced 69 witnesses to support their case apart from production of 286 documents and 20 articles. The accused recorded their statements under Section 313 Cr.P.C but did not produce any evidence in defence.

The trial court, thereafter, recorded its finding after marshaling the evidence and convicted all the appellants for different offence and sentenced accordingly, as described in the initial para of the judgment.

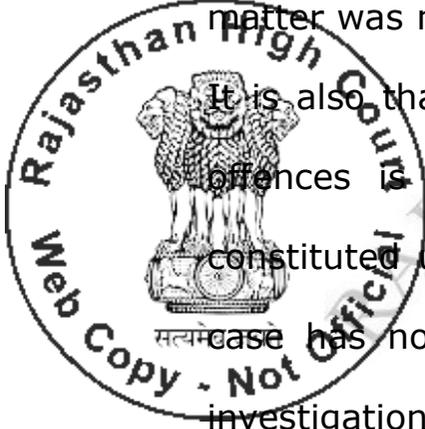
The appellants have filed separate Appeals to challenge the order passed by the trial court. It is not only to challenge the conviction but the sentence awarded by the trial court. In view of the above, after considering the evidence of the prosecution, this Court would take up individual case of the appellants to find out as to whether case is made out to maintain conviction and sentence given by the trial Court. The Court would further consider arguments of the learned counsel for the appellants in reference



to certain provisions of the Act of 1967 as well as National Investigation Agency Act, 2008 (for short "the NIA Act").

It is for the reason that the appellants have challenged the competence of the IO apart from the Additional Sessions Judge for trial of the case. According to them, investigation of the matter was not conducted as per section 43(b) of the Act of 1967.

It is also that the court competent to try the cases of scheduled offences is not the Court of Sessions but the Special Court constituted under section 11 and 21 of NIA Act. The trial in the case has not been conducted by the Special Court despite the investigation made under the NIA Act.



The other argument is in reference to section 65B of the Indian Evidence Act. It is alleged that while the CDR data was produced by the prosecution, certificate under section 65B of the Indian Evidence Act was not produced. It is specifically regarding telephonic conversation intercepted on two occasions in the month of October, 2010 thus an issue in reference to section 65B of the Evidence Act has also been raised.

सत्यमेव जयते

It is apart from the reference of section 46 of the Act of 1967. It is submitted that copy of the order for interception of conversation was not given, as required. The trial court should not have considered the conversation, as the prosecution failed to produce any document to show information of the order to the accused for interception of conversation. In view of the above, learned counsel for appellants have not only challenged the



investigation but trial of the case apart from the evidence led by the prosecution.

It is also in reference to sanction for prosecution. It is stated that cognizance of the offence was taken prior to grant of sanction for prosecution. In view of the above, even the cognizance of offence becomes illegal though, to bring it within the time frame, the date of sanction for prosecution was interpolated. It was made 13.4.2011 by over-writing on 17.4.2011. The sanction for prosecution has been shown to be on 13.4.2011 whereas it was given on 17.4.2011. It was Sunday thus sanction for prosecution could not have been issued on the aforesaid date. The order for sanction of prosecution has also been challenged having been interpolated to ante date.

The learned counsel for appellants have even challenged the sanction for prosecution by the State authorities for offence under section 13 of the Act of 1967. Any offence under section 13 remains under the purview of the Central Government falling under Chapter III of the Act of 1967. It is in view of section 45 of the Act of 1967. The sanction for prosecution for the offence under section 13 of the Act of 1967 could not have been given by the State authorities. Any offence under Chapter III needs a previous sanction of the Central Government or an officer authorised by it.

In the present case, no previous sanction of the Central Government or authorised officer was produced by the prosecution



so as to justify cognizance of the offence under section 13 of the Act of 1967 by the trial court. Learned counsel for appellants have thus challenged conviction and sentence of the accused appellants for the offence under section 13 of the Act of 1967 with a prayer that on the aforesaid legal issues, it is not only the sanction for prosecution but also conviction and sentence deserve to be set



aside. Learned counsel have even made reference of the evidence produced by the prosecution to prove their case beyond doubt. According to them, prosecution could not lead evidence to prove their case beyond doubt. The trial court has convicted and sentenced the appellants based on surmises and conjectures. The prosecution could not bring evidence to prove commission of offence by the appellants under section 13, 17, 18, 18B and 20 of the Act of 1967. No evidence was brought to show any unlawful activity by the appellants so as to make out a case for offence under the Act of 1967. It is not that prosecution has led the evidence to prove purchase of ammunition or bringing fake Indian currency apart from unlawful activities.

सत्यमेव जयते

The arguments in reference to the evidence led by the prosecution and other legal issues have been contested by Shri B.N. Sandu, AAG. He has supported the order passed by the trial court. It is submitted that no ground is made out to cause interference in the order of the trial court. Reference of the statements of witnesses examined by the prosecution apart from the documents produced and exhibited in evidence has been



given. It is to show that prosecution could lead evidence to prove its case beyond doubt and, accordingly, trial court has rightly convicted and sentenced the accused appellants for the offence under Sections 13, 17, 18, 18B and 20 of the Act of 1967.

Both the parties have elaborately argued the case and made reference of the evidence, which would be considered by the Court in reference to the argument raised by both the parties. Before examining the evidence, we would like to deal with legal issues raised by the appellants not only in regard to the investigation but also sanction for prosecution and, finally, the trial by the Additional Sessions Judge instead of Special Court. We are, accordingly, first taking up the legal issues raised by the appellants.

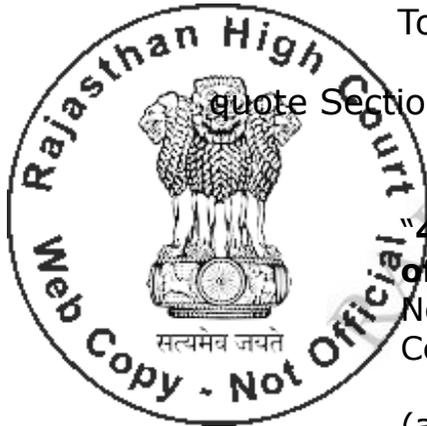
First issue raised by learned counsel for the appellants is about the competence of the Investigating Officer. A reference of Section 43 of the Act of 1967 has been given to show that an officer below the rank of Assistant Commissioner of Police was not competent to make investigation of the case. It is stated that the investigation in the case has been conducted by an officer below the rank of Assistant Commissioner of Police. It is more so when Jaipur has been declared to be a Metropolitan area thus Section 43(b) of the Act of 1967 would apply.

The aforesaid argument has been contested by learned Additional Advocate General. He has submitted that no notification was produced by the accused to show that Jaipur has been declared as Metropolitan area under Section 8(1) CrPC. It is also



stated that investigation was not conducted by PW-1-Sunil Sharma but by PW-69 Mr. Hemant Sharma, who was an RPS cadre officer holding the post higher than the post of Assistant Commissioner of Police thus was competent to make investigation of the case.

To appreciate the arguments, it would be gainful to quote Section 43 of the Act of 1967, which is quoted hereunder-



**"43.Officers competent to investigate offences under Chapters IV and VI.—**

Notwithstanding anything contained in the Code, no police officer,—

(a) in the case of the Delhi Special Police Establishment, constituted under sub-section (1) of section 2 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), below the rank of a Deputy Superintendent of Police or a police officer of equivalent rank;

(b) in the metropolitan areas of Mumbai, Kolkata, Chennai and Ahmedabad and any other metropolitan area notified as such under sub-section (1) of section 8 of the Code, below the rank of an Assistant Commissioner of Police;

(c) in any case not relatable to clause (a) or clause (b), below the rank of a Deputy Superintendent of Police or a police officer of an equivalent rank,

shall investigate any offence punishable under Chapter IV or VI."

Section 43 (b) provides for investigation by an officer not below the rank of Assistant Commissioner of Police in Metropolitan areas of Mumbai, Kolkata, Chennai and Ahmedabad and any other area notified under Section 8 (1) Cr.P.C. It is not disputed by the parties that notification under section 8(1) Cr.P.C.



has not been produced in evidence to show declaration of Jaipur City as Metropolitan area.

Learned counsel for the appellants, however, made reference of a notification issued by the State Government at the instance of Jaipur Development Authority to declare Jaipur City as a Metropolitan city. The document for it was not before the trial court and otherwise declaration of Jaipur city as Metropolitan city by the J.D.A. is of no consequence for application of section 43 (b) of the Act of 1967. It has to be under Section 8(1) Cr.P.C. In view of the above, we do not find any material to apply section 43(b) of the Act of 1967.



PW-69-Hemant Sharma was cross examined. He had shown his ignorance about Jaipur city to be a Metropolitan area. The accused did not produce any document in defence to challenge the investigation by an incompetent officer.

Mr. B.N. Sandu, AAG, has stated that investigation was not conducted by PW-1 Sunil Sharma but by PW-69 Hemant Sharma. He was holding the post higher than Assistant Commissioner of Police. In view of the aforesaid, we do not find any substance in the arguments of the learned counsel for the appellants. It is not only that they failed to produce any evidence to show declaration of Jaipur City to be a Metropolitan area under Section 8(1) CrPC but also rank of the officer, who conducted the investigation. The first argument is thus not accepted.



Another issue is in reference to Section 45 of the Act of 1967. It is submitted that conviction and sentence for the offence under Section 13 of the Act of 1967 is not maintainable as no sanction for prosecution has been given by the Central Government or by an authorised officer on their behalf as per Section 45(1) of the Act of 1967. The offence under Section 13 falls under Chapter-III of the Act of 1967. The prayer is accordingly to cause interference in the order of conviction and sentence for the offence under Section 13 of the Act of 1967.



Learned Additional Advocate General Mr. BN Sandu has contested the arguments but is fair enough to state that even as per the statement of PW-69-Hemant Sharma, the matter was not sent to the Central Government despite that it falls under the NIA Act because as per Section 10 of the Act of 2008, the State Government was also competent to cause investigation. In view of the above, the sanction for prosecution was taken by the competent officer of the State Government.

We find that cognizance for the offence under Section 13 of the Act of 1967 could not have been taken by the trial Court in absence of the prosecution sanction by the Central Government or by an officer authorised for it. There is nothing on record to show sanction for prosecution for the offence under Section 13 of the Act of 1967 by the competent officer. Section 45 of the Act of 1967 is quoted hereunder -

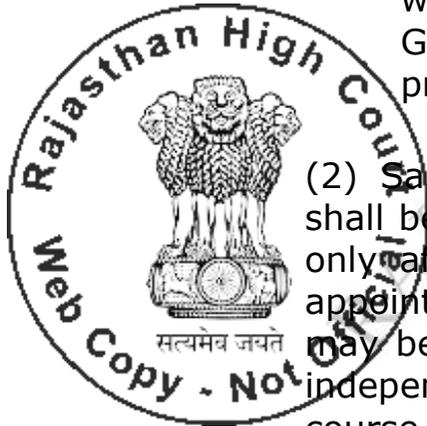


**“45. Cognizance of offences.** — (1) No court shall take cognizance of any offence—

(i) under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf;

(ii) under Chapters IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and where such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.

(2) Sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as may be prescribed to the Central Government or, as the case may be, the State Government.”



In view of the facts given above, we find substance in the arguments of learned counsel for the appellants for challenge to conviction and sentence for the offence under Section 13 of the Act of 1967. The trial Court proceeded in the matter without sanction for prosecution of the Central Government or an authorised officer for the offence under Section 13 of the Act of 1967. The cognizance of the offence could not have been taken without sanction for prosecution. The sanction for prosecution given by the State Government for the offence under Section 13 cannot be taken to be in consonance to the Act of 1967.

Accordingly, we find reasons to cause interference in the order of the trial Court for conviction and sentence for the



offence under Section 13 of the Act of 1967. We, accordingly, set aside the conviction and sentence for the offence under section 13 of the Act of 1967.

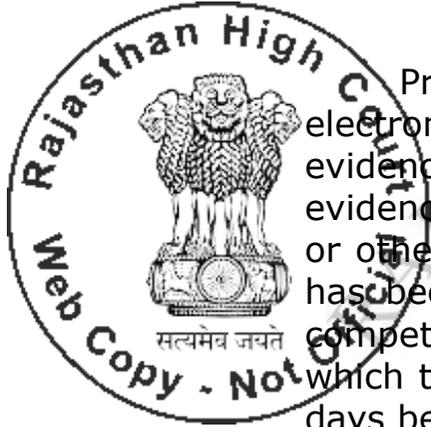
The other argument is in reference to Section 46 of the Act of 1967. It is submitted that mobile calls of accused – Hafiz Abdul Majeed were intercepted vide Exhibit P-74 to 80 apart from other accused Babu @ Nishachandra Ali Ex.P-60 to 63 and accused Arun Jain Ex.P-64 to 73. The intercepted communication could not have been considered in evidence because an order to intercept and record the conversation was not served on the accused during the course of trial, hearing or proceeding. The trial Court has not even passed any order to condone the period of ten days for the aforesaid after recording the reasons, showing no prejudice to the accused on that count.

We find that as per Section 46 of the Act of 1967, the evidence collected through interception of wire, electronic or oral communication under the provisions of the Indian Telegraph Act, 1885 (for short "the Act of 1885") or the Information Technology Act, 2000 (for short "the Act of 2000") or any other law for the time being in force, would be admissible in evidence provided a copy of the order of the competent authority under the aforesaid law is given to each accused not less than ten days before trial, hearing or proceeding. Section 46 of the Act of 1967 is quoted hereunder-



**"46. Admissibility of evidence collected through the interception of communications-**

Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under the provisions of the Indian Telegraph Act, 1885 (13 of 1885) or the Information Technology Act, 2000 (21 of 2000) or any other law for the time being in force, shall be admissible as evidence against the accused in the court during the trial of a case:



Provided that the contents of any wire, electronic or oral communication intercepted or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court unless each accused has been furnished with a copy of the order of the competent authority under the aforesaid law, under which the interception was directed, not less than ten days before trial, hearing or proceeding:

Provided further that the period of ten days may be waived by the judge trying the matter, if he comes to the conclusion that it was not possible to furnish the accused with such order ten days before the trial, hearing or proceeding and that the accused shall not be prejudiced by the delay in receiving such order."

We find that order for interception of communication was made on an order (Ex.P-57). The aforesaid document was exhibited by the prosecution thus was furnished to the accused and it is before hearing of the case. The proviso to Section 46 of the Act of 1967 does not mandate that such an order should be supplied to the accused even before trial, rather, it can be before trial, hearing or proceeding. Thus, compliance of Section 46 of the Act of 1967 has been made and, accordingly, Ex.P-60 to 80 cannot be ignored in evidence. In view of the above, we do not find any substance in the argument of learned counsel in reference to section 46 of the Act of 1967.



Learned counsel for the accused-appellants have even challenged trial of the case by the Additional Sessions Judge instead of the Special Court.

Reference of Section 6 of the Act of NIA Act has been given. It is also submitted that investigation in the case should have been conducted by the agency, as defined under the NIA Act and not by the State Government.



The aforesaid issue has been contested by learned Additional Advocate General Mr. BN Sandu in reference to Section 10 of the NIA Act. In consideration of the aforesaid issue, Sections 6 and 10 of the NIA Act are quoted hereunder for ready reference:

“6. Investigation of Scheduled Offences. -

(1) On receipt of information and recording thereof under section 154 of the Code relating to any Scheduled Offence the officer-in-charge of the police station shall forward the report to the State Government forthwith.

(2) On receipt of the report under subsection (1), the State Government shall forward the report to the Central Government as expeditiously as possible.

(3) On receipt of report from the State Government, the Central Government shall determine on the basis of information made available by the State Government or received from other sources, within fifteen days from the date of receipt of the report, whether the offence is a Scheduled Offence or not and also whether, having regard to the gravity of the offence and other relevant



factors, it is a fit case to be investigated by the Agency.

(4) Where the Central Government is of the opinion that the offence is a Scheduled Offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence.

(5) Notwithstanding anything contained in this section, if the Central Government is of the opinion that a Scheduled Offence has been committed which is required to be investigated under this Act, it may, suo motu, direct the Agency to investigate the said offence.

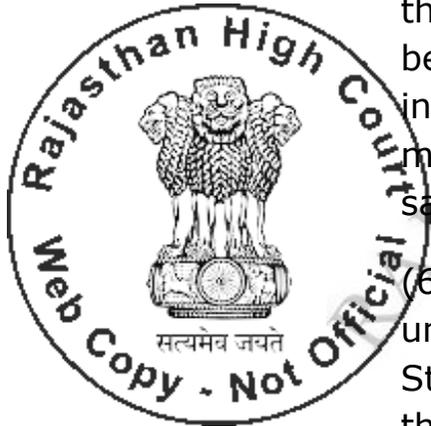
(6) Where any direction has been given under sub-section (4) or sub-section (5), the State Government and any police officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency.

(7) For the removal of doubts, it is hereby declared that till the Agency takes up the investigation of the case, it shall be the duty of the officer-in-charge of the police station to continue the investigation.

### **Section 10**

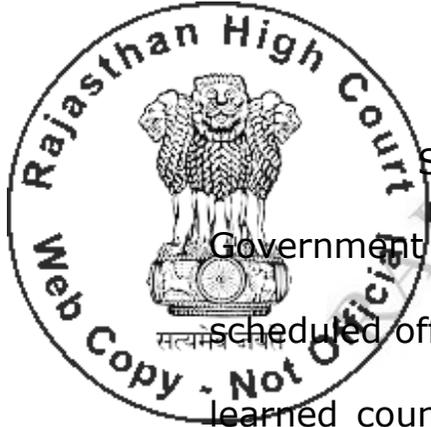
10. Power of State Government to investigate Scheduled Offences. - Save as otherwise provided in this Act, nothing contained in this Act shall affect the powers of the State Government to investigate and prosecute any Scheduled Offence or other offences under any law for the time being in force."

Section 6 of the NIA Act provides for the procedure for investigation of scheduled offences. It is not in dispute that the offences committed by the accused-appellants are scheduled





offences under the NIA Act. The State Government did not send case to the Central Government as per Section 6 of the NIA Act because Section 10 of the NIA Act authorises State Government to hold investigation and to prosecute the accused for the scheduled offences or other offences under any law for the time being in force.



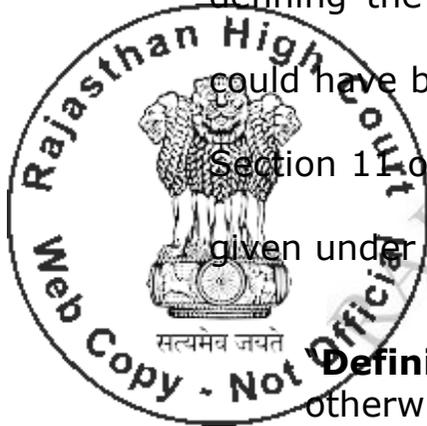
Section 10 of the NIA Act gives power to the State Government to investigate and prosecute the accused for the scheduled offences or other offences. Accordingly, the argument of learned counsel for the accused-appellants that Section 6 of the NIA Act is mandatory due to use of the word "shall", cannot be accepted. Section 10 of the NIA Act saves power of the State and is not affected by section 6 of the NIA Act.

The State Government can proceed in a case of scheduled offence either by sending it to the Central Government as per Section 6 or to proceed as per Section 10 of the NIA Act. Accordingly, we do not find that either investigation by the State agency or the trial by a Court other than Special Court can be said to be illegal when investigation is by the State Government. The Investigating Officer PW-69-Hemant Sharma has specifically stated that investigation of the case was kept by the State Government with it and, accordingly, they proceeded. In view of the above, we do not find any merit in the argument of learned counsel for the accused-appellants in reference to Section 6 of the



NIA Act. The investigation was not by an agency under NIA Act thus trial was not required to be by the Special Court.

Learned counsel for the accused-appellants have further made a reference of Section 2(d) of the Act of 1967 defining the word "court". It is to show that trial of the offence could have been conducted by the Special Court constituted under Section 11 or 22 of the NIA Act. The definition of the word "court" given under section 2(d) of the Act of 1967 is quoted hereunder-



**Definitions.-** In this Act, unless the context otherwise requires,-

(a) to (c).....

(d) "court" means a criminal court having jurisdiction, under the Code, to try offences under this Act [and includes a special court constituted under section 11 or under section 21 of the National Investigation Agency Act, 2008 (34 of 2008);].

The word "Code" defined under the NIA Act reads as under :

**"Definitions.**

2. (1).....

(a).....

(b) "Code" means the Code of Criminal Procedure 1973 (2 of 1974.)"

Perusal of the definition shows that it is not only Special Court but criminal court having jurisdiction under the Code is also considered to be a Court, as defined.



The Code means the Code of Criminal Procedure and, in the instant case, the Court has tried the case under CrPC, thus even as per the definition of the code, challenge to the jurisdiction of the trial Court cannot be accepted. The court may include a Special Court as well but does not exclude the criminal court under the Code.

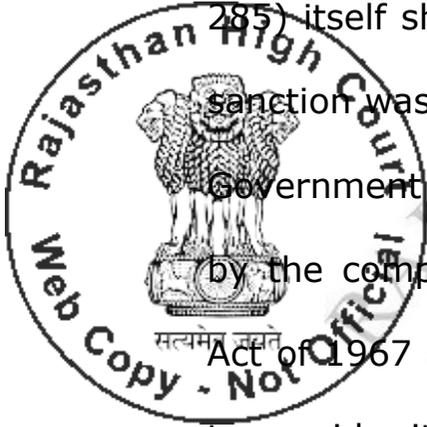


Section 13 of the Act of 1967 gives jurisdiction to the Special Courts. It is to the cases investigated by the agency referred under Section 6 of the NIA Act. The word "Agency" has been defined under Section 2(1)(a) of the NIA Act and means National Investigation Agency. In the instant case, the investigation has not been conducted by the agency but by the State Police thus Section 13 of the Act of 1967 would have no application to the instant case so as to question jurisdiction of the Court of Session.

The other issue is in reference to sanction for prosecution Exhibit P-285. It is submitted that sanction was not given by the competent officer of the State Government. It is by the Additional Chief Secretary (Home), whereas, it should have been the Secretary (Home).



We are not impressed by the argument raised by learned counsel for the accused-appellants. Section 45 of the Act of 1967 requires sanction by the State Government. The word "State Government" has not been defined under the Act of 1967. The Additional Chief Secretary (Home) is managing the affairs of the Home Department and sanction for prosecution (Exhibit P-285) itself shows it to be on behalf of the State Government. The sanction was granted after bringing case in the notice of the State Government thus it cannot be said that sanction was not granted by the competent authority. The provisions of Section 45 of the Act of 1967 does not specify an officer for grant of sanction so as to consider it to be a case of designated authority.



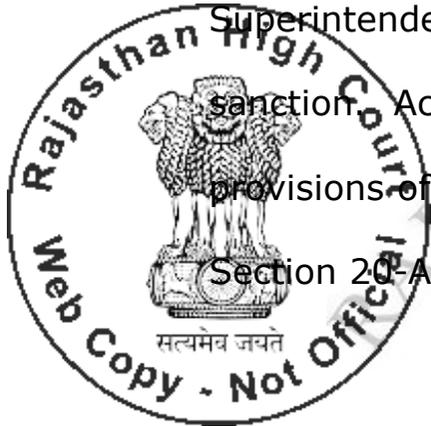
Learned counsel for the accused-appellants, however, made a reference of Section 2(e) of the Act of 1967 defining the word "designated authority". The aforesaid provision is also quoted hereunder for ready reference :

"(e) "Designated Authority" means such officer of the Central Government not below the rank of Joint Secretary to that Government, or such officer of the State Government not below the rank of Secretary to that Government, as the case may be, as may be specified by the Central Government or the State Government, by notification published in the Official Gazette."

In the instant case, the Additional Chief Secretary (Home) has given sanction for prosecution. He is an officer higher in rank to the Secretary to the Home Department thus competent



to pass the order. The judgment cited by learned counsel for the accused-appellants in the case of State of Rajasthan Vs. Mohinuddin Jamal Alvi & Anr., (2016) 12 SCC 608 does not apply to the facts of this case. Therein, Section 20-A of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short "the TADA Act") makes reference of designated authority, i.e. the District Superintendent of Police, thus no other authority could have given sanction. Accordingly, the Apex Court decided the case. The provisions of Section 45 of the Act of 1967 is not similar to that of Section 20-A of the TADA Act.



Accordingly, we do not find any defect in the sanction for prosecution given by the State Government.

The last argument is in reference to Section 65B of the Indian Evidence Act, 1872. It is submitted that certificates for CDR were not produced thus could not have been considered in evidence.

We find that certificate under Section 65B of the Evidence Act has been issued by different agencies, which includes Airtel, Vodafone, Reliance Communications, Idea Cellular and are exhibited thus compliance of Section 65B of the Evidence Act has been made in this case. The issue aforesaid would further be



considered while marshalling the evidence produced by both the parties. It is while considering the case of each accused.

The argument in reference to section 45(i) of the Act of 1967 has also been raised alleging that sanction for prosecution was not given within the time prescribed as per the Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008 (for short 'the Rules of 2008'). Rule 3 of the Rules of 2008 provides seven days time to make recommendation. The perusal of rule 3 does not require sanction for prosecution to be given within seven days, rather, it provides that a report containing recommendation of the State Government would be made within seven working days of the receipt of the evidence gathered by the IO under the Code. The appellants have failed to refer evidence to prove violation of rule 3 of the Rules of 2008, rather, the issue aforesaid was not even raised before the trial court. In any case, being a legal issue, we have considered it but find no substance.

### **CONSIDERATION OF FACTS IN REFERENCE TO THE EVIDENCE LED BY THE PARTIES**

The investigation in the matter was made after a report by PW-1-Sunil Sharma, who was examined by the prosecution. It was stated that one Waleed @ Vicky Bhai, Commander of Lashkar-e-Taiba, a banned organisation, is making contact with Pakistani spy Asgar Ali, confined in Central Jail, Jodhpur, terrorist Shakarulla @ Prince @ Kureshi @ Mohd Haneef, confined in Nabha Jail



(Punjab) and Shahid Iqbal, terrorist, confined in Amritsar Jail to instigate young generation to involve them in terrorist activities. It was also alleged that Babu @ Nishachandra Ali, Hafiz Abdul Majeed, Maqsood Ahmed, Arun Jain, Riaz Ali, Pawan Puri @ Raja, Kabil Khan and Sharafal Ulla are in contact with Pakistani national Asgar Ali, Iqbal and Shakarulla. The contact of the accused with Commander Waleed @ Vicky Bhai in Pakistan was established by the CDR of different mobile numbers of the accused.



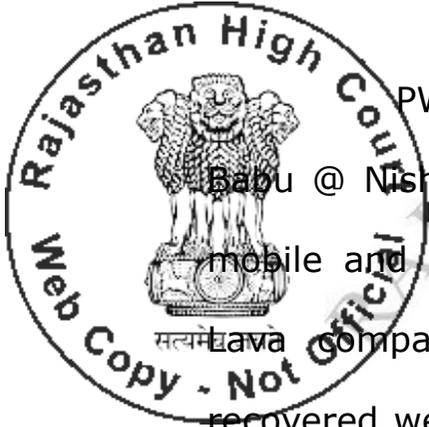
PW-1-Sunil Sharma submitted that prior to the report Ex-P-1 Babu @ Nishachandra Ali, Hafiz Abdul Majeed, Maqsood Ahmed, Arun Jain and Riaz Ali were called for enquiry. He has testified that in the preliminary enquiry, accused - Babu @ Nishachand Ali admitted that he was lodged in Jodhpur Jail from 2007 to 2009. During this time, he met another prisoner Asgar Ali. Asgar Ali told Babu that he is an active member of Lashkar-e-Taiba and works for commander Waleed @ Vicky Bhai. Asgar Ali asked him to join Lashkar-e- Taiba for earning money and Jihad. The other prisoners in the jail were Pawan Puri and Arun Jain. The witness also stated that he had interrogated Babu@ Nishachand Ali, Pawan Puri, Arun Jain, Asgar Ali, Abdul Hafiz, Kabil Khan, Shakarulla and Mohd. Iqbal. They were in constant touch with Waleed @ Vicky Bhai. They were planning for terrorist activities in India. It is also to store arms and ammunition and other explosive substances and to bring fake currency.

On the basis of the report of PW-1-Sunil Sharma, investigation in the case was made by PW-69-Hemant Sharma, who was also examined by the prosecution. The statement of PW-



69-Hemant Sharma apart from other witnesses are relevant to consider case of each accused and, for that, we have first taken the case of appellant Babu @ Nishachandra Ali.

**THE CASE OF ACCUSED APPELLANT-BABU @ NISHACHANDRA ALI**



PW-69-Hemant Sharma arrested accused appellant Babu @ Nishachandra Ali on 22.10.2010. The recovery memo of mobile and four SIM were prepared. The mobile phone was of Lava company Model No.KKT 22 with dual SIM. Four SIMs recovered were of Vodafone, Airtel, Idea and Reliance companies. The witness of recovery PW-29-Niaz Mohd. and PW-31-Dayaram Choudhary have corroborated the statement of PW-69-Hemant Sharma for recovery of mobile as well as four SIM from the said accused and exhibited P-32.

The prosecution produced PW-18-Vinay Kumar Malik to prove transfer of money to accused Nishachandra Ali @ Babu. It was through Western Union Money Transfer. P.18 was exhibited to show payment of Rs.10,000/- to the accused through a receipt. P-20 was to show voucher of Rs.10,000/- of Oriental Bank of Commerce, Gangashahar Road, Bikaner. The documents are containing signature of the accused Babu @ Nishachandra Ali and recovery memo of those vouchers is Ex.P-21.

The recovery of the documents has been supported by PW-19-Dheeraj Kumar, Head Cashier of the Oriental Bank of



Commerce. It was to prove that the accused Babu @ Nishachandra Ali has received money to use for unlawful activities.

PW-34-Jagdish Prasad Sharma was examined by the prosecution to prove recovery of a diary on the disclosure of accused under section 27 of the Evidence Act. It was recovered during the course of investigation. The diary was related to Lashkar-e-Taiba, a terrorist organisation. The information under section 27 of the Evidence Act is Ex.P-39 and memo of recovery of diary is Ex.P-40. The prosecution thus produced evidence for transfer of money and a diary to connect accused appellant Babu @ Nishachandra Ali with terrorist group Lashkar-e-Taiba.



A further recovery was of the documents pertaining to Mohd.Sharif, a Pakistani spy. It is through memo Ex.P-43 prepared in the presence of the witness PW-33-Jiya Ram. The prosecution produced Ex.P-47A and 48, which are the register showing entry of Babu @ Nishchandra Ali and Arun Jain for stay in a hotel. For identification, Babu @ Nishachandra Ali gave his voter ID to the hotel and put his signature in the register.

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PW-54-Hardwari Lal has proved the record pertaining to interception of phone. It was on the directions of the Ministry of Home by the order dated 30.8.2010 Ex.P-57. He had also proved Ex.P-59. On the instructions of PW-69-Hemant Sharma, calls of mobile No.9571452313, 9587984288 and 8107525226 were intercepted. The conversation on those mobile numbers was produced and exhibited Ex.P-60 to 63, Ex.P-64 to 73 and Ex.P-74 to 80.



The prosecution even examined PW-57-Girdhar Dutt Upadhyaya to prove record of the accused Nishachandra Ali @ Babu, who was placed in Bikaner Jail. PW-24-Ram Chandra Swami turned hostile thus did not support the prosecution case. PW-22-Pemaram was also declared hostile apart from PW-21-Lalit Singh. PW-20-Imran, however, supported the prosecution case.

The witness was cross examined by the appellants but his statement could not be demolished.

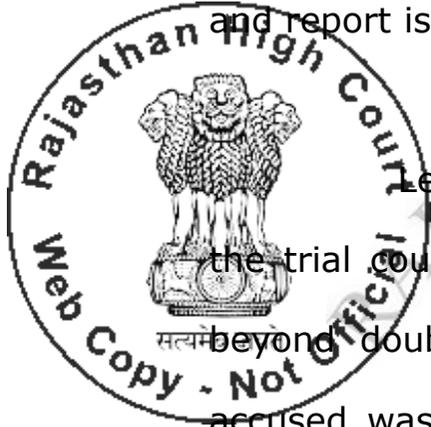


The evidence led by the prosecution could show not only recovery of four SIM of different mobile companies but conversation of Nishachandra Ali @ Babu with others apart from CDR. It was to prove that he was in contact with Asgar Ali. The conversation with whom was made on 28 occasions. The statements of CDR are Ex.P-88 and Ex.P-223. Therein, it was found that mobile No.00923213433694 is of Waleed @ Vicky Bhai, who is a Pakistani national and a Commander of Lashkar-e-Taiba. The conversation with him was made on 8 occasions. It was also proved that he had made conversation with other accused Pawan Puri thus prosecution could prove not only money transaction by the said accused but his contact with Commander Waleed @ Vicky Bhai of Lashkar-e-Taiba. The accused made conversation with Arun Jain on 340 occasions. The conversation with Pawan Puri is on 60 occasions. The conversation with Pakistani national Asgar Ali is on 550 occasions and on three different mobile phones.

The assessment of CDR was produced as Ex.P-89 and CDR is Ex.P-228. The certificate under section 65B of the Evidence



Act was produced and marked Ex.P-202 and 222. It was proved by PW-60-Saurabh Kumar, PW-61-Ramesh Singh Bisht and PW-56-Hemraj. The prosecution could produce Article 10 to 15 i.e. recovered from accused Nishachandra Ali. It is mobile, SIM and memory card. Article No.4 to 6 were register of the Jail and Article 20 was SIM of Reliance company apart from Article-8- a mobile and report is Ex.P-169.



Learned counsel for appellant has challenged finding of the trial court but we find that prosecution could prove its case beyond doubt. The prosecution could not only prove that the accused was in contact with the Commander of Lashkar-e-Taiba but money transaction and even possession of the material pertaining to the terrorist organisation. The voice recording of two accused was Ex.P-196. Accordingly, order of the trial court for conviction and sentence for offence under sections 17, 18, 18B and 20 of the Act of 1967 is maintained as the prosecution could prove their case against Nishachandra Ali @ Babu, involved in the offence and became part of conspiracy along with others.

The further consideration regard to conspiracy would be made after considering the case of other accused appellants.

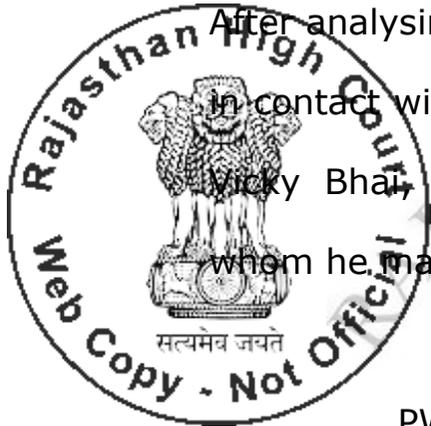
### **CASE OF ACCUSED APPELLANT - PAWAN PURI @ RAJA**

To prove the case of accused appellant Pawan Puri @ Raja, prosecution produced PW-69-Hemant Sharma, who arrested the said accused on 25.12.2010 in the presence of PW-42-Avesh Mohd and PW-43-Babulal. The prosecution called for the CDR of



different mobile numbers used by the accused. Ex.P-232 is the CDR of mobile No.7665210911. Ex.P-119 is the CDR assessment of mobile No.9571724559. The analysis of CDR Ex.P-210 was also made and produced. The CDR of mobile No.9660899270 is Ex.P-212 and 213, whereas, Ex.P-224 is the CDR of mobile No. 9889068572. The CDR (Ex.P-225) is of mobile No.9754941594.

After analysing the CDR, it was found that accused Pawan Puri was in contact with other accused Babu @ Nishachandra Ali, Waleed @ Vicky Bhai, Commander of Lashkar-e-Taiba and Asgar Ali with whom he made conversation from time to time.

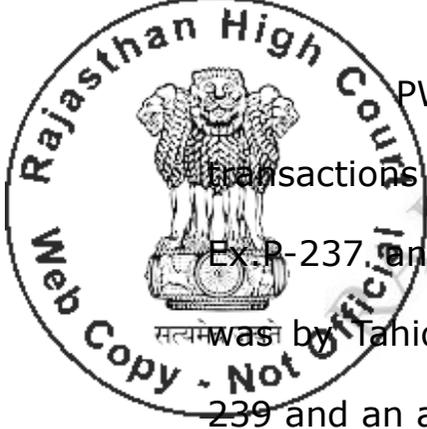


PW-42 - Avesh Mohd. has supported the case and proved Ex.P.24 and 25 regarding transfer of money through Western Union Money Transfer. PW-23-Suresh Puri has proved the document. He is none else but real brother of accused Pawan Puri. The said witness has admitted his signature on Ex.P-24 and 25 but was declared hostile though stated that money was transferred from Kuwait and he is not aware who was the sender. He then stated that many relatives reside in Kuwait. It was also stated that his brother-in-law resides in Pratapgarh from where also, money was transferred. The witness, however, admitted that a sum of Rs.5000/- was received by Pawan Puri and it was sent through Western Union Money Transfer by his friend. The said witness thus admitted receipt of money from different sources but could not name any one who said to have transferred it.

PW-25-Anand Puri was also examined in the court. He is also relative of accused Pawan Puri. It was admitted that Pawan Puri got Rs.10,000/- in his name. He has given his voter ID for it



to Pawan Puri. The money transferred was through Western Union Money Transfer. He has shown his unawareness as to from where money come. The money transaction through Western Union Money Transfer has been proved by the prosecution apart from contact of accused Pawan Puri with Nishachandra Ali @ Babu, Waleed Bhai @ Vicky and Asgar Ali.



PW-64- Laxmi Lal Meena was produced to prove money transactions by Suresh Puri, relative of Pawan Puri. He has proved Ex.P-237 and 238 and stated that money transfer from Kuwait was by Tahid Basheer Mohd. The payment was made vide Ex.P-239 and an amount of Rs.10,000/- was received from Spain.

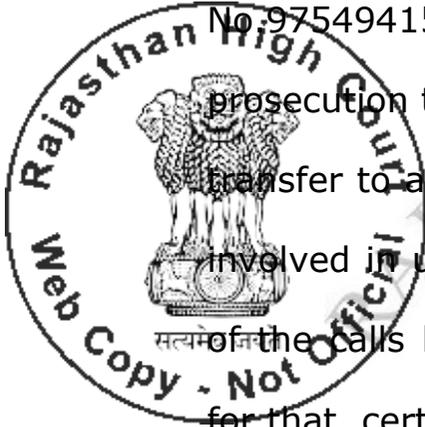
PW-62-Rajesh Tripathi has proved receipt of the call details of different mobile numbers and even proved the certificate under section 65B of the Evidence Act, which was exhibited as Ex.P-232 to 233.

PW-60-Saurabh Kumar has proved Ex.P-210 and 211, call details of other mobiles. The accused Pawan Puri was using various mobile SIMs, so recovered from him. PW-61-Ramesh Singh Bisht has proved Ex.P-224 and 225 – call details of other two mobiles.

The assessment of the CDR proved that appellant Pawan Puri was in contact with other accused Nishachandra Ali @ Babu, Vicky @ Waleed Bhai, the Commander of Laskhar-e-Taiba and Asgar Ali. The prosecution has supported its case to prove conspiracy of the accused involved in this case.



PW-61-Ramesh Singh Bisht has proved Ex.P-224. It is call details of mobile No.8889068572 between 1.10.2010 till 22.10.2010. The signature on the documents has also been verified. He has even proved Ex.P-225, call details of mobile No.9754941594 and even proved his signature on it. The prosecution thus led evidence not only to prove route of money for transfer to appellant but his regular contact with other co-accused involved in unlawful activities. The prosecution has produced CDR of the calls between accused Pawan Puri and other accused and, for that, certificate under section 65B of the Evidence Act.



Learned counsel for appellant, however, submitted that the transaction of money was not by the accused or in his name thus he could not have been co-related to the transaction and even for any of the offence under the Act of 1967. We do not find substance in it in view of the statement of PW-25-Anand Puri and PW-23-Suresh Puri.

The issue of conspiracy with other accused has also been challenged apart from the sentence. The issue of conspiracy would be considered along with other accused but the facts on record show that the prosecution could lead evidence to prove its case for different offences.

## **THE CASE OF ACCUSED APPELLANT – ARUN JAIN**



The other accused is Arun Jain, who was arrested on 22.10.2010 through memo Ex.P-33. The mobile and SIM No.9587984288 was recovered from him through memo Ex.P-34. The CDR of the said mobile was taken and produced as Ex.P-229 and analysis of CDR is Ex.P-82. The said accused was in regular conversation with other accused Babu @ Nishachandra Ali. They made conversation on 340 different occasions. It is apart from the conversation with Pakistani national Asgar Ali, who was behind bars at the relevant time and even with Vicky @ Waleed Bhai, Commander of Lashkar-e-Taiba. To prove the aforesaid, Ex.P-229 was produced.



The prosecution produced PW-2- Krishna Gopal to prove that Nishachandra Ali @ Babu and Arun Jain stayed in room No.106 of the hotel. The ID of Nishchandra Ali was taken. The register for it was produced and marked as Ex.P-47. The entry for stay of both the accused was made in the register produced as Ex.P-47A.

The prosecution has proved conversation of Arun Jain with others. It was through Ex.P-64 to 73. The regular conversation of the said accused with other accused involved in this case has been proved. The prosecution produced Article 16 and 17 apart from Article 9 to prove the case. The analysis of the conversation and FSL report to identify voice of the accused Arun Jain were also produced.

Learned counsel for the appellant submits that in the conversation recorded by the prosecution in Ex.P-64 to 73 was not



with other accused. It is also submitted that even Ex.P-196 (FSL report), pertains to two other accused and not of Arun Jain thus he has wrongly been convicted and sentenced by the trial court. He is not otherwise involved in the conspiracy for commission of any of the offences under the Act of 1967.

The issue of conspiracy would be considered along with consideration of the case of other accused.

The prosecution could prove that appellant Arun Jain was in regular contact with other accused and, for that, Nishachandra Ali, who was also involved in the matter and was in contact with Pakistani national Asgar Ali, the accused herein and Waleed Bhai @ Vicky, Commander of Lashkar-e-Taiba. The finding regarding conspiracy would be recorded after marshalling the evidence of all the accused.

### **THE CASE OF ACCUSED APPELLANT – ASGAR ALI**

The accused Asgar Ali has old criminal track record. He was earlier convicted in case No.212/2002 by the District & Sessions Judge, Jaipur City vide order dated 29.11.2005 and sentenced to ten years rigorous imprisonment. The prosecution further proved that the said accused was behind bars in Case No.133/2002 thus was lodged in Jodhpur Jail. A case was pending at Bikaner thus accused was produced before the court at Bikaner on many occasions. The statement for it was prepared vide Ex.P-44 and produced before the court. The description of the visit of



accused Asgar Ali to attend the court case at Bikaner has also been given.

The witness produced by the prosecution proved Ex.P-44 and 45. It is by PW-57-Girdhar Dutt Upadhyaya. The particulars of to and fro visit to Bikaner court from Jodhpur has been given. The said accused made conversation with other accused during the course of his visit to Bikaner and back to Jodhpur. It was proved by producing call details with route chart. It is of all the dates on which he had gone to Bikaner to attend the case and on returning to Jodhpur.



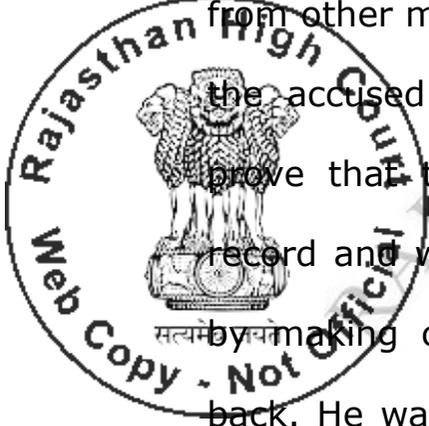
The prosecution produced PW-69-Hemant Sharma to prove their case. The said witness proved document giving details of criminal case pending against the accused Asgar Ali. He was using three mobile numbers. The call details of which were taken by the prosecution. The call details of mobile No.8058128267 is Ex.P-226, whereas, for mobile No.8058736247 it is Ex.P-227 and for mobile No.9462560389, the call details are Ex.P-242. No mobile or SIM was recovered from the accused Asgar Ali, which, according to the prosecution, was destroyed prior to his arrest.

The prosecution produced Ex.P-98. It is route chart of the mobile phone with call details. It was analysed in reference to Ex.P-44 and 45 i.e. travel time of Asgar Ali from Jodhpur to Bikaner and back. Route chart of three mobiles proved conversation during travel time. They were not used prior or subsequent to travel time. Based on the aforesaid, the prosecution proved that Asgar Ali also conspired with others. He is otherwise a



Pakistani national against whom other criminal cases were also pending. The criminal record of Asgar Ali @ Vijay Sagar was produced vide Ex.P-249 to 252.

The perusal of the CDR (Ex.P-226) shows majority calls to Pakistan. It was made from mobile No.8058128267. Similarly, from other mobile numbers also, internet calls have been made by the accused. The evidence produced by the prosecution could prove that the accused - Asgar Ali was having criminal track record and was in contact with his counterparts in Pakistan. It is by making calls during travelling from Jodhpur to Bikaner and back. He was in conversation with other accused involved herein thus conspired with them to commit offence under Sections 18B and 20 of the Act of 1967.



### **THE CASE OF ACCUSED APPELLANT – HAFIZ ABDUL MAJEED**

The evidence led by the prosecution against the accused Hafiz Abdul Majeed is not only recovery of a Nokia mobile through memo Ex.P-28 with SIM bearing No.95714 52313 of Airtel company. The document has been proved by PW-56-Himmat Singh. The recovery and seal Ex.P-28 was proved by witnesses Prabhu Dayal and Shyam Singh.

PW-56-Himmat Singh proved 8 documents recovered from an almirah in possession of the accused Hafiz Abdul Majeed. The recovery memo was marked as Ex.P-29. The documents aforesaid were pertaining to Jamat-Ud-Dava, a terrorist group and



photographs of AK-47 rifle, sword in the hand, ammunition tank, rocket launcher, hand grenade and other ammunition.

The prosecution has produced call details of mobile and SIM recovered from the accused. It was Ex.P-203 to 205 along with CDR analysis Ex.P-93. The analysis shows frequent conversation of Hafiz Abdul Majeed with Kabil Khan, Iqbal and Shakarrula. An order was also passed by the Chief Metropolitan Magistrate (Ex.P-193) directing the Forensic Science Laboratory (FSL) to send report by taking voice sample of Hafiz Abdul Majeed. The letter Ex.P-194 was proved for the aforesaid apart from report Ex.P-196 to 199.



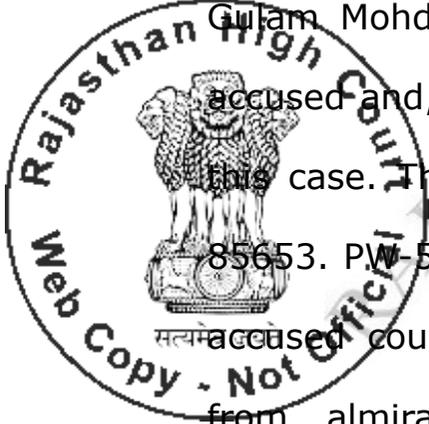
The prosecution even produced PW-5-Mohd Taiyab. He has stated that accused appellant Hafiz Abdul Majeed was a Teacher in Madarsa at Chhan where he was teaching since 2001. The said witness has disclosed his mobile number.

The other witness produced was PW-6-Gulam Mohd. He was also a Teacher in Madarsa in 2009-10. He was knowing Hafiz Abdul Majeed and Kabil Khan. The said witness was declared hostile.

PW-7-Nanne Khan and PW-8-Mohd Yakin apart from PW-9-Ashish Khan were also declared hostile. The evidence produced by the prosecution could prove regular conversation of the accused with other accused involved in the case namely Shakarrula, Iqbal and Kabil Khan.



The mobile and SIM were produced as Article 18 and 19. The evidence produced by the prosecution was to prove involvement of the accused in unlawful activities and thus commission of offence under section 18, 18B and 20 of the Act of 1967. Ex.P-125 to 138 were documents containing pictures recovered vide memo Ex.P-29. PW-5-Mohd.Taiyab and PW-6-Gulam Mohd. have admitted conversation on the mobile of the accused and, in fact, conversation with other accused involved in this case. The mobile number of PW-6-Gulam Mohd. was 99508 85653. PW-5-Mohd. Taiyab has also given his mobile number. The accused could not explain as to how the documents recovered from almirah came in his possession and otherwise the prosecution could co-relate all the accused with each other.



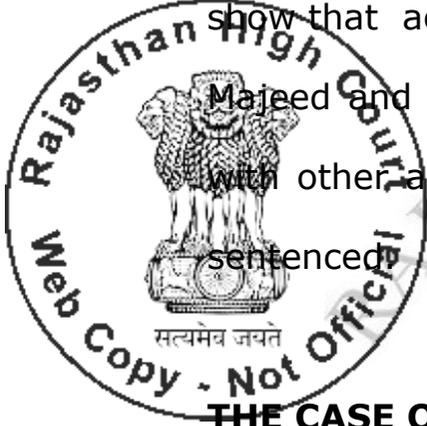
### **THE CASE OF ACCUSED APPELLANT – SHAKARULLA**

The accused appellant Shakarulla is again a Pakistani national and remained in Amritsar and Nabha (Punjab) jails. He was using different names which include Mohd. Hanif and Amar Singh Gill. The jail record of the said accused was exhibited as Ex.P-255 and 256. The said accused was using various mobile numbers which were 97793 88377, CDR of which is Ex.P-218, whereas, Ex.P-219 is for mobile number 98724 44519. The CDR of mobile number 99510 33608 is Ex.P-221 and Ex.P-220 was for mobile number 98764 05601. Ex.P-115 is the analysis report of the calls made to Pakistan and other parts of Rajasthan.

The voice sample of the said accused was sought by the letter Ex.P-275. The accused was earlier arrested for the offence



under the Narcotic Drugs & Psychotropic Substances Act (NDPS Act). He was convicted and sentenced to ten years rigorous imprisonment in that case and, accordingly, remained in Nabha (Punjab) jail. It was also proved that he was using mobile while in jail. The witness proved that the accused was regularly in contact with Pakistani national Mohd. Iqbal. The evidence has been led to show that accused Shakarulla was also in contact with Hafiz Abdul Majeed and Kabil Khan. The said accused was part of conspiracy with other accused for commission of offence thus convicted and sentenced.



### **THE CASE OF ACCUSED APPELLANT – KABIL KHAN**

The accused Kabil Khan has also been implicated along with others for commission of offence and to be part of the conspiracy with others. A Nokia mobile – Model 1200 along with SIM of Airtel company bearing No.97849 24758 was recovered through memo Ex.P-55. The CDR of which are Ex.P-215 to 217 along with its analysis Ex.P-94 and Ex.P-95. The jail record of the accused Kabil Khan from Patiala jail is Ex.P-258.

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PW-5-Mohd.Taiyab has stated that Kabil Khan was working in Madarsa in Jhalawar, whereas, PW-6-Gulam Mohd. has proved that he was teaching in Madarsa along with Hafiz Abdul Majeed and Kabil Khan. The accused Kabil Khan came in contact with other accused Shakarulla and Mohd. Iqbal while he was in Patiala jail. Hafiz Abdul Majeed became instrument to bring him in contact with accused belonging to Pakistan so as to involve him in terrorist activities. Conversations with Vicky @ Waleed Bhai, the



Commander of Lashkar-e-Taiba, were also made. He got involved with Hafiz Abdul Majeed for unlawful activities.

PW-55-Rajesh Dureja recovered type five B of mobile No.9784924758 and exhibited P-118. The prosecution had shown involvement of the accused for conspiracy along with others.



### THE CASE OF ACCUSED APPELLANT MOHD.IQBAL

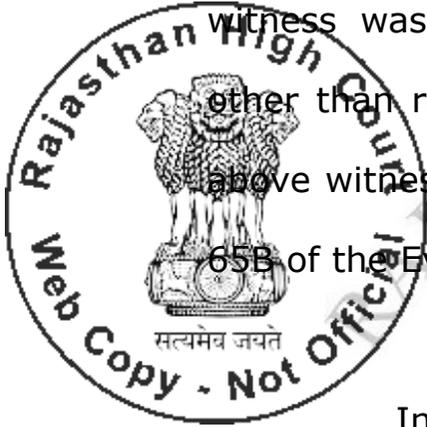
The accused Mohd.Iqbal was in Patiala jail while accused Shakarulla, Pakistani national, was behind bars. The said accused became member of the group along with Shakarulla. He came in contact with accused Hafiz Abdul Majeed through accused Kabil Khan. The CDR analysis of Hafiz Abdul Majeed and Shakarulla apart from recording Ex.P-74 to 77 was produced by the prosecution. The conversation was even to the effect that on the festival of Dussera, Tajia to be brought in the area. The conversation with his mobile No.96461 84331 was made even with Abdul Abdul Majeed. Ex.P-230, 231 and 102 were produced to show involvement of the accused in unlawful activities.

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The prosecution thus produced evidence against each accused to prove offence under sections 13, 17, 18, 18B and 20 of the Act of 1967 and for conspiracy. The accused got involved in unlawful activities through LeT Commander Vicky @ Waleed Bhai. He was Commander to promote terrorist activities in India. The Lashkar-e-Taiba is a banned organisation. The transfer of money from unknown sources was also proved.



The prosecution has produced PW-60-Saurabh Kumar, who has stated that from June, 2008 till November, 2015, he was working as Nodal Officer in Bharti Hexacom Limited. He had given CDR Ex.P-203 to 221 of accused Babu @ Nishachandra Ali, Kabil Khan, Pawan Puri, Hafiz Abdul Majeed and Shakarulla. The certificate under section 65B of the Evidence Act is Ex.P-202. The witness was not asked material question in cross examination other than reference of FIR has not been given in the CDR. The above witness stated about issuance of a certificate under section 65B of the Evidence Act.



In the same manner, PW-61-Ramesh Singh Bisht was produced. He had exhibited Ex.P-223 to 227, the call details and certificate under section 65B of the Evidence Act Ex.P-222. He was working as Nodal Officer in Idea Cellular Limited from the year 2008.

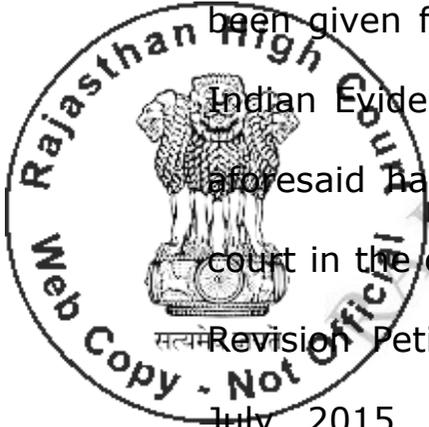
PW-62-Rajesh Tripathi has proved certificate under section 65B of the Evidence Act for CDR (Ex.P-232). PW-55-Rajesh Dureja has proved certificate under section 65B of the Evidence Act for the CDR Ex.P-123. PW-63-Sanjeewanand has proved certificate under section 65B of the Evidence Act Ex.P-235. He was working as Nodal Officer in Reliance Communication Limited from the year 2007.

Learned counsel for appellants submitted that a certificate under Section 65B of the Indian Evidence Act was not produced for the entire period of CDR. We find no substance in the



argument. The certificate under section 65B of the Evidence Act is for relevant period taken into consideration by the trial court.

It was also stated that there was delay in submission of certificate under Section 65B of the Indian Evidence Act. We have considered the aforesaid aspect and find that no time limit has been given for production of certificate under Section 65B of the Indian Evidence Act. It can be produced at any stage. The issue aforesaid has, otherwise, been considered and decided by this court in the case of Paras Jain Vs. State of Rajasthan, SB Criminal Revision Petition No.1329/2015, decided by the order dated 4<sup>th</sup> July, 2015. It was held that no period has been provided for production of certificate. The prosecution thus produced evidence to show conspiracy between the accused to commit crime.



We further find that certificate under Section 65B of the Indian Evidence Act has been given for the relevant period, for which, CDR was taken into consideration by the court. If some parts of the CDR is not believed in absence of certificate under Section 65B of the Indian Evidence Act, the remaining part proves regular conversation of the accused with each other apart from conversation with Vickey @ Waleed Bhai in Pakistan, said to be Commander of Lashkar-e-Taiba. The regular conversation with other members in Pakistan has also been proved. The prosecution has even proved money transaction by two accused. The sources could not be explained by the accused.

The prosecution produced PW18-Vinay Malik to prove payment of amount to Babu @ Nishachandra Ali. Exhibit-P18 to 20



were produced for the aforesaid. The money was sent by one Mohd. Akram from Kuwait. The said accused could not show his relation with sender to explain that it was not to be used for unlawful activities. The trial court has recorded finding in reference to Section 114 of the Indian Evidence Act. Babu @ Nishachandra Ali and Pawan Puri could have disclosed relation with the sender but they failed.



The accused Pawan Puri @ Raja received money through exhibit P-236 to 239. It was again through Western Union Money transfer. The name of sender is Vaseem Mohd. of Kuwait. It was sent in the name of Suresh Puri. He was produced in evidence as PW-23. He was declared hostile but documents were produced to prove money transaction. He admitted signature on receipt of the amount. The said witness received money on behalf of accused-appellant Pawan Puri.

In fact, transactions were made to get the amount in the name of Suresh Puri. The money has been transferred from Pratapgarh also. The accused-Pawan Puri @ Raja has failed to disclose his relation with the sender. The documents for it were proved by PW65-Lalaram Yadav and PW-66-Vinod Khandelwal. The money has been received even from Spain. Thus we do not find any illegality in the finding of trial court and otherwise, a reference of Section 114 of the Indian Evidence Act has been given for the aforesaid.

The prosecution further produced evidence to show that Pakistani National in Jail conspired with others to promote



unlawful activities and for that, regular conversation between members of one or other groups has been proved.

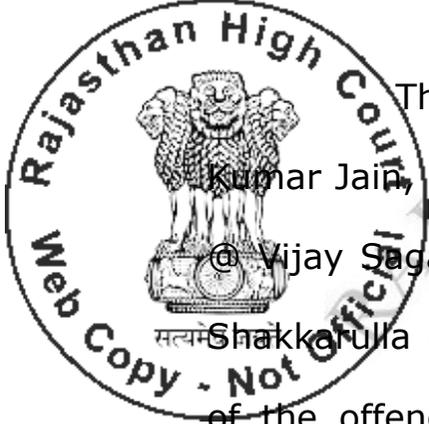
The conversation was even intercepted, recorded and produced before the court though learned counsel for appellants made an objection on interception of the communication without giving a copy of the order. It is in reference to Section 46 of the Act of 1967. The issue has already been dealt with. The order to intercept communication was produced by the prosecution and was received by the accused. The conversation between the accused shows not only reference of Waleed Bhai Commander of Lashkar-e-Taiba but for Tajiya on the festival of Dussera. It is to affect law and order apart from peace. No major contradiction or variance in the evidence has been shown and otherwise, in view of the judgment of the Apex Court in the case of State of U.P. Vs. Hari Mohan, reported in AIR 2001 (SC) 142, the prosecution case cannot be demolished on minor contradiction.

The trial court considered statements of the accused under Section 313 Cr.P.C. They failed to produce any evidence or to explain their act and even telephone conversation. It is moreso when conversation has come on record to show that accused had mobile calls to LeT Commander-Vickey @ Waleed Bhai on his Mobile No.00923213433694.

The prosecution produced messages through SMS and mobile of Arun Jain Exhibit-P-229 to prove it. It is, however, true that no investigation could be made with Vicky @ Waleed Bhai due to his non-availability in India. The prosecution could even



produce use of code languages in the conversation. Thus, in our opinion, the prosecution has proved their case beyond doubt against the accused. In view of the above, we do not find any reason to cause interference in the order for conviction of accused for the offences other than for offence under Section 13 of the Act of 1967.



The accused appellants-Babu @ Nishachandra Ali, Arun Kumar Jain, Hafiz Abdul Mazid, Kabil Khan @ Said Khan, Asgar Ali @ Vijay Sagar, Pawan Puri @ Raja, Mohammad Iqbal @ Deesa & Shakkarulla @ Mohammad Hanif @ Amar Singh Gill are acquitted of the offence under Section 13 of the Act of 1967 thus their conviction and sentence for the offence under section 13 of the Act of 1967 is set aside.

The issue now remains regarding sentence to the accused appellants for the offence under sections 17, 18, 18B and 20 of the Act of 1967. Learned counsel for appellants submits that sentence of life imprisonment may be interfered as minimum punishment for different offences is only of five years. It is looking to the fact that accused-appellants are behind bars for almost eight years by now.

Learned Public Prosecutor has opposed the prayer. It is submitted that any offence under the Act of 1967 is nothing but crime against the nation. The appellants were involved in unlawful activities and, for that, they were in contact with Vicky @ Waleed Bhai of Pakistan, said to be Commander of Lashkar-e-Taiba. The appeal has been preferred even by Pakistani national. They were



languishing in jail even prior to conviction in the present matter. A prayer is to maintain the sentence given by learned trial court.

We have considered the submissions made by learned counsel for parties.

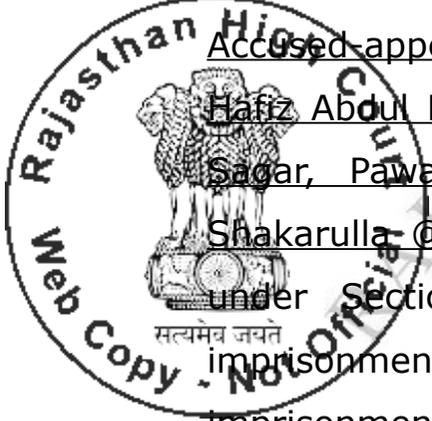


The appellants have been convicted and sentenced for the offence under sections 13, 17, 18, 18B and 20 of the Act of 1967. The conviction of the accused appellants for the offence under section 13 of the Act of 1967 has been set aside so as the sentence thus, now, issue of sentence remains for offence under sections 17, 18, 18B and 20 of the Act of 1967. The accused appellants have been sentenced to life imprisonment with fine upto Rs.3 lakh each.

We find that the sentence should commensurate with the offence as well as the evidence led for it. The submission of learned counsel for the accused appellants is worth acceptance in reference to the facts of the case. It is not only for interference in the order of sentence but also the amount of fine. In view of the above, while maintaining the conviction of the accused appellants for offence under sections 17, 18, 18B and 20 of the Act of 1967, we substitute the sentence from life imprisonment with that of 14 years rigorous imprisonment. The amount of fine is also reduced from Rs.3 lakh for each offence with that of Rs.10,000/- for each offence. In case of default to pay fine, accused appellants to further undergo six months rigorous imprisonment for each offence. In view of the aforesaid, substituted punishment to the accused appellants would be as under-



Accused-appellants-Babu @ Nishachandra Ali and Pawan Puri @ Raja: For offence under Section 17 of the Act of 1967, punishment of life imprisonment is substituted to that of 14 years rigorous imprisonment with fine of Rs.10,000/- each in place of Rs.3 lac each, in case of default to pay fine, to further undergo six months rigorous imprisonment.



Accused-appellants-Babu @ Nishachandra Ali, Arun Kumar Jain, Hafiz Abdul Mazid, Kabil Khan @ Saeed Khan, Asgar Ali @ Vijay Sagar, Pawan Puri @ Raja, Mohammad Iqbal @ Deesa & Shakarulla @ Mohammad Hanif @ Amar Singh Gill: For offence under Section 18 of the Act of 1967, punishment of life imprisonment is substituted to that of 14 years rigorous imprisonment with fine of Rs.10,000/- each in place of Rs.3 lac each, in case of default to pay fine, to further undergo six months rigorous imprisonment.

Accused-appellants-Babu @ Nishachandra Ali, Arun Kumar Jain, Hafiz Abdul Mazid, Kabil Khan @ Saeed Khan, Asgar Ali @ Vijay Sagar, Pawan Puri @ Raja, Mohammad Iqbal @ Deesa & Shakarulla @ Mohammad Hanif @ Amar Singh Gill: For offence under Section 18B of the Act of 1967, punishment of life imprisonment is substituted to that of 14 years rigorous imprisonment with fine of Rs.10,000/- each in place of Rs.3 lac each, in case of default to pay fine, to further undergo six months rigorous imprisonment.

Accused-appellants-Babu @ Nishachandra Ali, Arun Kumar Jain, Hafiz Abdul Mazid, Kabil Khan @ Saeed Khan, Asgar Ali @ Vijay Sagar, Pawan Puri @ Raja, Mohammad Iqbal @ Deesa & Shakarulla @ Mohammad Hanif @ Amar Singh Gill: For offence under Section 20 of the Act of 1967, punishment of life imprisonment is substituted to that of 14 years rigorous imprisonment with fine of Rs.10,000/- each in place of Rs.3 lac



each, in case of default to pay fine, to further undergo six months rigorous imprisonment.

All the sentences would run concurrently as, otherwise, the order for it has not been given by the trial court, therefore, interference is made therein also.



With the aforesaid, all the appeals are partly allowed. In view of above, all the applications for suspension of sentence stand disposed of.

A copy of this judgment be placed in each connected file.

(DINESH CHANDRA SOMANI),J

(M.N. BHANDARI),J

bnsharma/Mohit/Preeti/frbohra



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