**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 12th OF SEPTEMBER, 2022

CRIMINAL APPEAL No. 6664 of 2021

Between:-

KU. SHIVA BHADORIYA, DAUGHTER OF SHRI AVDHESH SINGH BHADORIYA, AGED: ABOUT 35 YEARS, OCCUPATION: PATWARI HALKA NO.42, KULETH TEHSIL, GWALIOR, RESIDENT OF: 11/960, NEAR KHWAJA KANOON DARGAH, SEWA NAGAR, DISTRICT GWALIOR (MADHYA PRADESH).

…....APPELLANT

(BY SHRI ANIL MISHRA WITH SMT. HARSHITA MISHRA - ADVOCATE)

AND

STATE OF MADHYA PRADESH THOROUGH SPECIAL POLICE ESTABLISHMENT LOKAYUKT BHOPAL, DIVISIONAL UNIT GWALIOR (MADHYA PRADESH).

.....RESPONDENT

(BY SHRI AJAY CHATURVEDI – ADVOCATE)

CRIMINAL APPEAL NO. 6678 OF 2021

Between:-

ANAND KUMAR SHUKLA, SON OF SHRI OM PRAKASH SHUKLA, AGED – 45 YEARS, REVENUE INSPECTOR, VRITT-KULETH, TAHSIL - GWALIOR, DISTRICT GWALIOR (MADHYA PRADESH), RESIDENT OF - 22 NEAR LUHAI MOHALLA POST OFFICE BHIND, (MADHYA PRADESH) AT PRESENT HOUSE OF SHIVSWAROOP MISHRA 24 PANCHSEEL NAGAR, BEHIND MELA GROUND, GWALIOR (MADHYA PRADESH).

…....APPELLANT

(BY SHRI SANJAY GUPTA - ADVOCATE)

AND

STATE OF MADHYA PRADESH THROUGH POLICE STATION SPECIAL POLICE ESTABLISHMENT, LOKAYUKT - BHOPAL, UNIT GWALIOR (MADHYA PRADESH).

.....RESPONDENT

(BY SHRI AJAY CHATURVEDI– ADVOCATE)

Heard On : 29-8-2022
Delivered On : 12-09-2022

This appeal coming on for final hearing this day, the Court passed the following:

JUDGEMENT

1. Both Criminal Appeals arise out of Judgment and Sentence dated 29-10-2021 passed by Special Judge (Prevention of Corruption Act), Gwalior in Special Case No.300013 of 2016 by which the Appellants have been convicted for the following offences :

S.No.	Appellant	Convicted under	Sentence
1	Shiva Bhadoriya	S. 120-B of IPC	2 years R.I. and fine of Rs.2,000/- in default 3 months R.I.
		S. 7 P.C. Act	3 years R.I. and fine of Rs.4,000/- in default 6 months R.I.
		S. 13(1)(d)/13(2) P. C. Act R/w 120 B IPC	4 years R.I. and fine of Rs.4,000/- in default 6 months R.I.
2	Anand Kumar Shukla	S. 120-B of IPC	2 years R.I. and fine of Rs.2,000/- in default 3 months R.I.
		S. 7 P.C. Act	3 years R.I. and fine of Rs.4,000/- in default 6 months R.I.
		S. 13(1)(d)/13(2) P. C. Act R/w 120 B IPC	4 years R.I. and fine of Rs.4,000/- in default 6 months R.I.

All the sentences shall run concurrently.

2. The prosecution story in short is that on 24-6-2014, the complainant Aslam Khan made a written complaint to Superintendent of Police, S.P.E. (Lokayukut) Gwalior unit that he and his brother Ashiq Khan are having total 5 bigha of land in village Kulaith. He and his brother Ashiq Khan have a doubt that area of survey no. 980 and 944 is less, therefore, they wanted to get the said land demarcated. Since there

is no dispute regarding ownership, therefore, he made an application for demarcation in *Jan Mitra Suvidha Kendra,* village Kulaith on 23-5-2014 along with Khasra, Aks as well as requisite fee. The last date for completion of demarcation was 13-6-2014. 7 days after making application, he met with Appellant Anand Kumar Shukla and requested for demarcation, then Appellant Anand Kumar Shukla directed him to meet the Appellant Shiva Bhadoriya and also instructed him that he should pay the amount which will be demanded by her. Accordingly, he met with Appellant Shiva Bhadoriya, who demanded Rs. 15,000/- @ Rs. 5,000/- per Bigha. After negotiations, She agreed for Rs. 7,000/- and clarified that without illegal gratification of Rs.7,000/- She will not carry out the demarcation. Since, he is not interested to pay Rs. 7,000/- to the Appellant Anand Kumar Shukla and Shiva Bhadoriya, therefore, complaint was made.

3. Accordingly, the Superintendent of Police, directed Atul Singh to investigate the matter. On 24-6-2014 itself, Atul Singh, in order to verify the contents of the complaint, gave a digital voice recorder to the complainant and instructed him to record the conversation. The complainant was also informed about the manner of operating the voice recorder. Constable Bhag Singh was also sent along with the complainant. While the complainant was going towards the house of Appellant Shiva Bhadoriya, She met him on his way. Thereafter, at the request of the Appellant Shiva Bhadoriya, he went to Phool Bag Square with Shiva Bhadoriya on his motor cycle and also got the conversation recorded. He handed over the voice recorder to Bhag Singh in a sealed condition after keeping the same in an envelop. As the investigating

officer Atul Singh was busy in other matters, therefore, Bhag Singh, kept the sealed envelop containing voice recorder in an Almirah. On 26-6-2014, the sealed envelop was opened and panchnama was prepared. Thereafter, the complainant identified the voice and a separate panchnama was prepared. A transcript was prepared and a certificate under Section 65-B of Evidence Act was also given. Another complaint was presented by the complainant and accordingly, the Superintendent of Police, S.P.E. (Lokayukt), directed the investigating officer to proceed with the investigation. Thereafter, the case was registered at serial no. 0/14 and complaint was sent to Police Station, S.P.E.(Lokayukt) Bhopal for registration of offence. Accordingly, crime no. 284/2014 was registered at Bhopal. On 26-6-2014, letters were sent to Collector, Gwalior for sending two gazetted officers on 27-6-2014 at 6 A.M. Accordingly, Panch Witness Ram Bihari Dohare, Lecturer, Govt. Higher Secondary School Taksal, Gwalior and M.L. Jha (P.W. 2), Lecturer, Govt. Higher Secondary School No. 2, Murar, Distt. Gwalior were deputed. The Superintendent of Police, Gwalior was also requested for providing two lady constables, accordingly, Constable Sapna Jatav and Teenu Rawat were deputed. On 27-6-2014, both the panch witnesses appeared in the S.P.E. (Lokayukt) office at 6 A.M. The complainant and Panch witnesses were introduced to each other. Both the complaints were read out loudly, which were accepted by the complainant. An endorsement was also made in this regard. Thereafter, the complainant handed over Rs.7,000/- which were treated with Phenolphthalein powder by constable Kamlesh Tiwari. Constable Bahadur Singh, searched the pocket of shirt of the complainant and thereafter, the Constable Kamlesh

Tiwari, kept the treated currency notes in his pocket, and instructed him not to touch them, and also instructed him that he should not shake hands with the Appellant either before or after giving illegal gratification. He was also instructed to give a signal to the trap party by touching his head. Thereafter, two samples of Phenolphthalein powder were prepared. The fingers of Constable Kamlesh Tiwari were dipped in the solution and the color of the solution turned pink.

4. The Trap party was constituted. Dy.S.P. Surendra Rai Sharma, investigating officer Atul Singh, Inspector Shailja Gupta, and other constables of S.P.E. (Lokayukt) office were the members of Trap party. Constable Kamlesh Tiwari, who had treated the currency notes was not included in the trap party. Thereafter, the fingers of all members of the trap party were dipped in the solution, but the colour did not change. Two samples of Sodium Carbonate were prepared. Once again voice recorder was given to the complainant and preliminary panchnama was prepared.

5. On 27-6-2014, the trap party left by official vehicle and reached Sewa Nagar, but the Appellant Shiva Bhadoriya was not there. The complainant informed that the Appellant Shiva Bhadoriya has gone to attend tuition classes. The complainant had talk with her on her mobile, who instructed him to come to *Jan Mitra Sewa Kendra* Kulaith. Accordingly, the trap party went to *Jan Mitra Sewa Kendra* Kulaith, but the Appellant Shiva Bhadoriya did not come there and subsequently, informed the complainant that She is busy. Accordingly, the trap proceedings were suspended, and the treated currency notes were re-sealed. All the members of the trap party were directed to maintain secrecy. The complainant was instructed to inform immediately after

receiving response from the Appellant Shiva Bhadoriya.

6. On 30-6-2014, the complainant informed the investigating officer on mobile, that he had a talk with Appellant Anand Kumar Shukla,who has instructed him to come to *Jan Mitra Sewa Kendra*, Kulaith with illegal gratification and accordingly, the witnesses were directed to remain present in the office of S.P.E. (Lokayukt) at 11:30 A.M. Again the treated currency notes were kept in the pocket of the complainant. The complainant and trap team went to *Jan Mitra Sewa Kendra* Kulaith. The streets were overcrowded due to Jagannath Mela. However, the members of trap team by hiding their identity, kept on waiting for the signal. After 15-20 minutes, the complainant came out of *Jan Mitra Sewa Kendra* and gave a signal to the trap team. Accordingly, all the four shadow witnesses and members of the trap team went there. The investigating officer, gave the introduction of himself and that of the trap team to 2 men and 1 women who were present inside the J*an Mitra Sewa Kendra*. The Lady disclosed her name as Appellant Shiva Bhadoriya whereas another person disclosed his name as Appellant Anand Kumar Shukla and third person disclosed his name as Basarat Khan, Kotwar village Milawali. The complainant informed that on the demand made by Appellant Anand Kumar Shukla and Shiva Bhadoriya, he has given the treated currency notes to Basarat Khan on the instructions of Appellant Shiva Bhadoriya.

7. Thereafter, the Constable Pritam Singh prepared the solution of Sodium Carbonate and dipped the fingers of all the members of the trap team except the complainant, and the colour of the solution did not change. Thereafter, the fingers of Basarat Khan were dipped in the

solution and the color of the solution changed to pink. Thereafter, the fingers of Appellant Anand Kumar Shukla and Shiva Bhadoriya were dipped in the solution, and the colour of the solution did not change. On query, Basarat Khan informed that he has kept the currency notes in the pocket of his Kurta and accordingly, the panch witness R.B. Dohare, took out the treated currency notes from the pocket of the kurta of Basarat Khan. The serial number of the currency notes were matched with the preliminary panchnama. The currency notes were seized. Thereafter, the fingers of panch witness R.B. Dohare, were once again dipped in the solution and its colour changed to pink. Thereafter, the pocket of kurta of Basarat Khan was also dipped in the solution and its colour also changed to pink. The kurta of Basarat Khan was also seized. The fingers of the complainant were also dipped in the solution and the colour also changed to pink. Thereafter, offence under Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act was also added against the Appellant Anand Kumar Shukla and Shiva Bhadoriya, whereas offence under Section 8 of Prevention of Corruption Act was also added against Basarat Khan. The file pertaining to the demarcation was also seized from Anand Kumar Shukla. The original file was returned back to Anand Kumar Shukla after obtaining attested copy from him. Spot map was prepared on the basis of information given by complainant. Panchnama of trap proceedings was prepared.

8. Thereafter, Inspector Kavindra Singh Chauhan was authorized to further investigate the matter. The statements of witnesses were recorded. The service record of Appellants Anand Kumar Shukla and Appellant Shiva Bhadoriya were collected. A notice was given to

Appellant Shiva Bhadoriya to give her voice sample, however, She refused to do so. An information from the Tahsildar was also collected regarding the Demarcation proceedings. The CDR of mobiles were also collected. After obtaining sanction for prosecution, the investigating officer, filed charge sheet for offence under Section 7,8,13(1)(d) read with Section 13(2) of Prevention of Corruption Act read with Section 120-B of IPC.

9. The Trial Court by order dated 12-5-2017 framed charges under Section 7,13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 against the Appellant Shiva Bhadoriya and also under Section 120-B of IPC against Appellant Anand Kumar Shukla. Charge under Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, and under Section 120-B of IPC was framed against Basarat Khan.

10. However, by exercising power under Section 216 of Criminal Procedure Code, the Trial Court altered the above mentioned charges and by order dated 6-7-2019, re-framed charges. Accordingly, charge under Section 120-B of IPC, under Section 7, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act read with Section 120-B of IPC were framed against Appellant Shiva Bhadoriya and Appellant Anand Kumar Shukla. Charge under Section 8 of Prevention of Corruption Act read with Section 120-B of IPC were framed against Basarat Khan.

11. The prosecution examined Kamlesh Tiwari (P.W.1), M.L. Jha (P.W.2), Rajkumar Malviya (P.W.3), Aslam Khan (P.W.4), Bhag Singh Tomar (P.W.5), Vijay Sharma (P.W.6), Rajendra Singh (P.W.7), Kavindra Singh Chauhan (P.W.8), Kashi Prasad Kanoriya (P.W.9), Smt. Pushpa Pusham (P.W.10), D.D. Sharma (P.W.11), Atul Singh (P.W. 12), and

Prashant Kumar Tripathi (P.W.13).

12. The Appellants examined Pradeep Narayan Singh Sikarwar (D.W.1), Shivvandan Singh Kushwaha (D.W.2), Devi Ram Batham (D.W.3) and Anita Mishra (D.W.4).

13. The Trial Court by the impugned judgment, acquitted the co-accused Basarat Khan but convicted the Appellants for the offences mentioned above.

14. Challenging the judgment and sentence passed by the Court below, it is submitted by the Counsel for Appellant Anand Kumar Shukla, that the sanction for prosecution was not granted after due application of mind. The sanction has been granted by mentioning that the trap took place on 27-6-2014, whereas on 27-6-2014, trap had failed and according to prosecution case, money was paid by complainant on 30-6-2014. It is further submitted that once the charges were cancelled, then the Trial Court should have conducted the *denovo* trial. The Trial Court failed to see that the application for demarcation was already rejected on 16-6-2014 and the order of rejection was also uploaded on the web site, therefore, nothing was pending before the Appellants. Thus, there was no reason for the Appellants to demand illegal gratification. The complainant has turned hostile and has not supported the prosecution case. It is further submitted that later on, charge under Section 120-B of IPC was framed but no sanction under Section 197 of Cr.P.C. was obtained. There is nothing on record to suggest as to why the trap on 30-6-2014 was laid, because after the trap had failed on 27-6-2014, no date was fixed for next trap.

15. In addition to the submissions made by the Counsel for the

Appellant Anand Kumar Shukla, it is submitted by the Counsel for Shiva Bhadoriya, that there is nothing on record to suggest that the recorded conversation contains the voice of Shiva Bhadoriya. She had no authority whatsoever in the matter and there was no conspiracy with Appellant Anand Kumar Shukla.

16. Per contra, the Counsel for the State has supported the findings recorded by the Trial Court.

17. Heard the learned Counsel for the Parties.

18. The submissions made by the Counsel for the Appellants can be summarized as under :

Sanction for prosecution is bad on account of non-application of mind. Application for demarcation was already rejected on 16-6-2014 and thus, nothing was pending before the Appellants. The Complainant has turned hostile. The prosecution has failed to prove its case. The Appellant Shiva Bhadoriya had no authority in the matter. Prosecution has failed to prove conspiracy between the Appellant Anand Kumar Shukla and Shiva Bhadoriya. Prosecution has failed to prove that recorded conversation contains voice of Shiva Bhadoriya. After the old charges were cancelled, *denovo* trial should have been conducted. After charge under Section 120-B of IPC was framed, sanction under Section 197 of Cr.P.C. was required.

Whether Sanction for prosecution is bad on account of non-application of mind or not?

19. It is submitted by the Counsel for the Appellants that the order of sanction for prosecution has been issued under an impression that the trap took place on 27-6-2014, whereas on 27-6-2014, the Trap had failed

and ultimately, the trap was conducted on 30-6-2014. Thus, it is a clear case of non-application of mind. It is further submitted that the prosecution did not examine the witness who had granted sanction. Rajkumar Malviya (P.W.3) has merely proved the sanction by submitting that every page of sanction order contains the signature of sanctioning authority namely N.P. Ahirwar. He was not aware of the fact that what documents were taken into consideration.

20. Considered the submissions made by the Counsel for the Appellants.

21. It is well established principle of law that an order of sanction can also be proved by examining a witness who can identify the signatures of the sanctioning authority.

22. The Supreme Court in the case of **State of Maharashtra v. Mahesh G. Jain,** reported in **(2013) 8 SCC 119** has held as under :

> **14.** From the aforesaid authorities the following principles can be culled out:
>
> **14.1.** It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.
>
> **14.2.** The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.
>
> **14.3.** The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.
>
> **14.4.** Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.
>
> **14.5.** The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in

appeal over the sanction order.

14.6. If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction.

14.7. The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity.

* * * *

20. At this stage, we think it apposite to state that while sanctity attached to an order of sanction should never be forgotten but simultaneously the rampant corruption in society has to be kept in view. It has come to the notice of this Court how adjournments are sought in a maladroit manner to linger the trial and how at every stage ingenious efforts are made to assail every interim order. It is the duty of the court that the matters are appropriately dealt with on proper understanding of law of the land. Minor irregularities or technicalities are not to be given Everestine status. It should be borne in mind that historically corruption is a disquiet disease for healthy governance. It has the potentiality to stifle the progress of a civilised society. It ushers in an atmosphere of distrust. Corruption fundamentally is perversion and infectious and an individual perversity can become a social evil. We have said so as we are of the convinced view that in these kind of matters there has to be reflection of promptitude, abhorrence for procrastination, real understanding of the law and to further remain alive to differentiate between hypertechnical contentions and the acceptable legal proponements.

23. The Supreme Court in the case of **Nanjappa Vs. State of Karnataka** reported in **(2015) 14 SCC 186** has held as under :

23. Having said that there are two aspects which we must immediately advert to. The first relates to the effect of sub-section (3) to Section 19, which starts with a non obstante clause. Also relevant to the same aspect would be Section 465 CrPC which we have extracted earlier.

23.1. It was argued on behalf of the State with considerable tenacity worthy of a better cause, that in terms of Section 19(3), any error, omission or irregularity in the order sanctioning prosecution of an accused was of no consequence so long as there was no failure of justice resulting from such error, omission or irregularity. It was contended that in terms of Explanation to Section 4, "error includes competence of the authority to grant sanction". The argument is on the face of it attractive but does not, in our opinion, stand closer scrutiny.

23.2. A careful reading of sub-section (3) to Section 19 would show that the same interdicts reversal or alteration of any finding, sentence or order passed by a Special Judge, on the ground that the sanction order suffers from an error, omission or irregularity, unless of course the court before whom such finding, sentence or order is challenged in appeal or revision is of the opinion that a failure of justice has occurred by reason of such error, omission or irregularity. Sub-section (3), in other words, simply forbids interference with an order passed by the Special Judge in appeal, confirmation or revisional proceedings on the ground that the sanction is bad save and except, in cases where the appellate or revisional court finds that failure of justice has occurred by such invalidity. What is noteworthy is that sub-section (3) has no application to proceedings before the Special Judge, who is free to pass an order discharging the accused, if he is of the opinion that a valid order sanctioning prosecution of the accused had not been produced as required under Section 19(1).

23.3. Sub-section (3), in our opinion, postulates a prohibition against a higher court reversing an order passed by the Special Judge on the ground of any defect, omission or irregularity in the order of sanction. It does not forbid a Special Judge from passing an order at whatever stage of the proceedings holding that the prosecution is not maintainable for want of a valid order sanctioning the same.

23.4. The language employed in sub-section (3) is, in our opinion, clear and unambiguous. This is, in our opinion, sufficiently evident even from the language employed in sub-section (4) according to which the appellate or the revisional court shall, while examining whether the error, omission or

> irregularity in the sanction had occasioned in any failure of justice, have regard to the fact whether the objection could and should have been raised at an early stage. Suffice it to say, that a conjoint reading of sub-sections 19(3) and (4) leaves no manner of doubt that the said provisions envisage a challenge to the validity of the order of sanction or the validity of the proceedings including finding, sentence or order passed by the Special Judge in appeal or revision before a higher court and not before the Special Judge trying the accused.
>
> **23.5.** The rationale underlying the provision obviously is that if the trial has proceeded to conclusion and resulted in a finding or sentence, the same should not be lightly interfered with by the appellate or the revisional court simply because there was some omission, error or irregularity in the order sanctioning the prosecution under Section 19(1). Failure of justice is, what the appellate or revisional court would in such cases look for. And while examining whether any such failure had indeed taken place, the Court concerned would also keep in mind whether the objection touching the error, omission or irregularity in the sanction could or should have been raised at an earlier stage of the proceedings meaning thereby whether the same could and should have been raised at the trial stage instead of being urged in appeal or revision.

24. The Supreme Court in the case of **Mohd. Iqbal Ahmed Vs. State of A.P.** reported in **AIR 1979 SC 677** has held as under :

> 3....It is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show that the facts placed before the Sanctioning Authority and the satisfaction arrived at by it.

25. The Supreme Court in the case of **State of Rajasthan Vs. Tarachand** reported in **AIR 1973 SC 2131** has held as under :

17. The fact that the Chief Minister was competent to accord sanction for the prosecution of the respondent in accordance with the Rules of Business has not been disputed before us but it has been urged that the prosecution has failed to prove that the Chief Minister accorded his sanction after applying his mind to the facts of this case. So far as this aspect of the matter is concerned, we find that the position of law is that the burden of proof that the requisite sanction had been obtained rests upon the prosecution. Such burden includes proof that the sanctioning authority had given the sanction in reference to the facts on which the proposed prosecution was to be based. These facts might appear on the face of the sanction or it might be proved by independent evidence that sanction was accorded for prosecution after those facts had been placed before the sanctioning authority.

18. The question of sanction was dealt with by the Judicial Committee in the case of Gokulchand Dwarkadas Morarka v. The King, 75 Ind App 30 = (AIR 1948 PC 82). That case related to a sanction under cl. 23 of the Cotton Cloth and Yarn (Control) Order. 1943 which provided that no prosecution for the contravention of any of the provisions of the Order would be instituted without the previous sanction of the Provincial Government. The Judicial Committee in this context observed:

"In their Lordships' view, to comply with the provisions of cl. 23 it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is plainly desirable that the facts should be referred to on the face of the sanction, but this is not essential, since cl. 23 does not require the sanction to be in any particular form nor even to be in writing. But if the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority."

The principle laid down above holds good for the purpose of sanction under Section 6 of the Prevention of Corruption Act (see Madan Mohan Singh v. State of Uttar Pradesh, AIR 1954 SC 637). Let us now apply the principle laid down above to the facts of the present case. It is no doubt true that no independent evidence was led by the prosecution to prove that

> the relevant facts had been placed before the Chief Minister before he accorded sanction but that fact, in our opinion, introduces, no fatal infirmity in the case. Sanction P-34 has been reproduced earlier in this judgment and it is manifest from its perusal that the facts constituting the offence have been referred to on the face of the sanction. As such, it was not necessary to lead separate evidence to show that the relevant facts were placed before the Chief Minister. The evidence of Umraomal shows that the formal sanction P-34 filed in the Court bears the signature of Shri R. D. Thapar, Special Secretary to the Government. The fact that the Chief Minister signed the sanction for the prosecution on the file and not the formal sanction produced in the Court makes no material difference. It is, in our opinion, proved on the record that the sanction for the prosecution of the accused had been accorded by the competent authority after it had duly applied its mind to the facts of the case.

26. Thus, a sanction order can be proved by examining the witness who can identify the signatures of the sanctioning authority, and from the contents of the sanction order, it can be ascertained as to whether the sanctioning authority had applied its mind or not?

27. Rajkumar Malviya (P.W.3) was examined on 8-12-2018. It is clear from the order dated 8-12-2018, that the defence did not take any objection that since, they want to challenge the sanction on the ground of non-application for mind, therefore, Rajkumar Malviya (P.W.3) should not be examined. It is true that it is not for the defence to regulate the trial of the prosecution, but when a sanction order can be proved by examining a witness who can identify the signatures of the sanctioning authority, then the defence should have raised such an objection, so that the prosecution can examine the sanctioning authority. The prosecution can not be taken by surprise at a later stage by holding that since, the sanctioning authority was not examined therefore, the sanction was not

proved in accordance with law.

28. Now the next question for consideration is that whether a judgment can be reversed on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby.

29. The Supreme Court in the case of **State of Bihar v. Rajmangal Ram,** reported in **(2014) 11 SCC 388** has held as under :

> **4.** The object behind the requirement of grant of sanction to prosecute a public servant need not detain the court save and except to reiterate that the provisions in this regard either under the Code of Criminal Procedure or the Prevention of Corruption Act, 1988 are designed as a check on frivolous, mischievous and unscrupulous attempts to prosecute an honest public servant for acts arising out of due discharge of duty and also to enable him to efficiently perform the wide range of duties cast on him by virtue of his office. The test, therefore, always is—whether the act complained of has a reasonable connection with the discharge of official duties by the government or the public servant. If such connection exists and the discharge or exercise of the governmental function is, prima facie, founded on the bona fide judgment of the public servant, the requirement of sanction will be insisted upon so as to act as a filter to keep at bay any motivated, ill-founded and frivolous prosecution against the public servant. However, realising that the dividing line between an act in the discharge of official duty and an act that is not, may, at times, get blurred thereby enabling certain unjustified claims to be raised also on behalf of the public servant so as to derive undue advantage of the requirement of sanction, specific provisions have been incorporated in Section 19(3) of the Prevention of Corruption Act as well as in Section 465 of the Code of Criminal Procedure which, inter alia, make it clear that any error, omission or irregularity in the grant of sanction will not affect any finding, sentence or order passed by a competent court

unless in the opinion of the court a failure of justice has been occasioned. This is how the balance is sought to be struck.

30. The Supreme Court in the case of **Parkash Singh Badal v. State of Punjab,** reported in **(2007) 1 SCC 1** has held as under :

> 29. The effect of sub-sections (3) and (4) of Section 19 of the Act are of considerable significance. In sub-section (3) the stress is on "failure of justice" and that too "in the opinion of the court". In sub-section (4), the stress is on raising the plea at the appropriate time. Significantly, the "failure of justice" is relatable to error, omission or irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is (*sic* not) considered fatal unless it has resulted in failure of justice or has been occasioned thereby. Section 19(1) is a matter of procedure and does not go to the root of jurisdiction as observed in para 95 of *Narasimha Rao case*. Sub-section (3) (*c*) of Section 19 reduces the rigour of prohibition. In Section 6(2) of the old Act [Section 19(2) of the Act] question relates to doubt about authority to grant sanction and not whether sanction is necessary.

31. The Supreme Court in the case of **State of Mizoram v. C. Sangnghina,** reported in **(2019) 13 SCC 335** has held as under :

> **9.** The courts are not to quash or stay the proceedings under the Act merely on the ground of an error, omission or irregularity in the sanction granted by the authority unless it is satisfied that such error, omission or irregularity has resulted in failure of justice. A combined reading of sub-sections (3) and (4) of Section 19 of the Prevention of Corruption Act makes the position clear that notwithstanding anything contained in the Code no finding, sentence and order passed by a Special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby. In the instant case, of course, the initial sanction was granted by the Secretary, DP & AR to the Government of Mizoram. Having taken

> cognizance of the matter, before passing the order dated 12-9-2013, the Special Judge ought to have examined the matter to ascertain whether such error or irregularity in the sanction has resulted in failure of justice. No such reasonings are recorded by the Special Judge or by the High Court that the initial sanction for prosecution granted by the Secretary has resulted in failure of justice.

32. Thus, unless and until, the Appellant points out the circumstances which have resulted in failure of justice, no judgment can be reversed on the ground of absence of, or any error, omission or irregularity in, the sanction required under sub-section (1) of Section 19 of Prevention of Corruption Act.

33. The order of sanction should not be appreciated in a pedantic manner and minor mistakes should not be given undue importance. The only requirement is to find out as to whether all necessary facts were taken into consideration after going through all the relevant materials which were placed before the sanctioning authority or not?

34. The Supreme Court in the case of **State of Karnataka v. Ameerjan,** reported in **(2007) 11 SCC 273** has held as under :

> **9.** We agree that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not.

35. If the sanction order is considered then except submitting that instead of 30-6-2014, it has been mentioned that on 27-6-2014, the trap was laid, no other argument has been advanced to challenge the sanction order. The Counsel for the Appellants could not point out that how this

mistake in the sanction order has resulted in failure of justice. Thus, at the most, it can be said that incorrect date of trap, is at the most is a typing mistake, which did not result in failure of justice. Further more, the basic idea behind the doctrine of sanction for prosecution is that an innocent person may be protected from malicious or fictitious prosecution, but it cannot be used as a shield to protect those employees, against whom there is ample material.

36. Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion, that sanction, Ex. P.15 was accorded after due application of mind and even otherwise in absence of any failure of justice, the judgment of conviction cannot be reversed on the ground of absence of, any error or omission or irregularity in the sanction.

Whether sanction under Section 197 of Cr.P.C. was required under the facts and circumstances of the case ?

37. Section 197 of Cr.P.C. reads as under :

> **197. Prosecution of Judges and public servants**.— (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013]—
>
> (*a*) in the case of person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;
>
> (*b*) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged

offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (*b*) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (*b*) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

Explanation.—For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under Section 166-A, Section 166-B, Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 370, Section 375, Section 376, Section 376-A, Section 376-AB, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB] or Section 509 of the Indian Penal Code (45 of 1860).]

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3-A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3-B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any

sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

38. From the plain reading of this Section, it is clear that golden words are "is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". Thus, it is clear that sanction for prosecution under Section 197 of Cr.P.C. would not be required unless and until, the Appellant proves that the offence was allegedly committed by him while acting or purporting to act in the discharge of his official duty. Therefore, the act of the accused must have reasonable nexus with discharge of his official duty.

39. It is true that it was the official duty of the Appellants Anand Kumar Shukla and Shiva Bhadoriya to carry out the demarcation work, but demanding money for performing their duty cannot be said to be an act having reasonable nexus with discharge of their duty. The Supreme Court in the case of **S.K. Zutshi v. Bimal Debnath,** reported in **(2004) 8 SCC 31** has held as under :

5. The protection given under Section 197 is to protect

responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is

> in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.

40. It is true that official act can be performed in discharge of official duty as well as in dereliction of official duty. Thus, if act complained of, makes an official answerable for a charge of dereliction of duty, then it can be said that the act of the official was in discharge of official duty. However, demanding illegal gratification can be said to be in dereliction of official duty? The answer would be in negative. Asking for an illegal gratification is an offence and no official duty permits any official to commit any offence. A person may exceed his jurisdiction while discharging his duty, but demanding illegal gratification cannot be held to be exceeding the official duty.

41. The Supreme Court in the case of **Choudhury Parveen Sultana v. State of W.B.,** reported in **(2009) 3 SCC 398** has held as under :

> **18.** The direction which had been given by this Court, as far back as in 1971 in *Bhagwan Prasad Srivastava case* holds good even today. All acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of Section 197 CrPC. On the other hand, there can be cases of misuse and/or abuse of powers vested in a public servant which can never be said to be a part of the official duties required to be performed by him. As mentioned in *Bhagwan Prasad Srivastava case* the underlying object of Section 197 CrPC is to enable the authorities to scrutinise the allegations made against a public servant to shield him/her against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the said official. However, as indicated hereinabove, if the authority vested in a public

> servant is misused for doing things which are not otherwise permitted under the law, such acts cannot claim the protection of Section 197 CrPC and have to be considered dehors the duties which a public servant is required to discharge or perform. Hence, in respect of prosecution for such excesses or misuse of authority, no protection can be demanded by the public servant concerned.

42. Thus, if an authority vested in an official is misused by him, then such act would not invite the protection of sanction under Sanction 197 of Cr.P.C. Sanction for prosecution is merely a protection to honest officers, and not a shield to those against whom the allegations of demand of illegal gratification is made.

43. The Supreme Court in the case of **CBI v. B.A. Srinivasan,** reported in **(2020) 2 SCC 153** has held as under :

> **14.** Again, it has consistently been laid down that the protection under Section 197 of the Code is available to the public servants when an offence is said to have been committed "while acting or purporting to act in discharge of their official duty", but where the acts are performed using the office as a mere cloak for unlawful gains, such acts are not protected.....

44. The Supreme Court in the case of **Prakash Singh Badal Vs. State of Punjab** reported in **(2007) 1 SCC 1** has held as under :

> **50.** The offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official 38 duty. In such cases, official status only provides an opportunity for commission of the offence.

45. The Supreme Court in the case of **Rajib Ranjan v. R. Vijaykumar,** reported in **(2015) 1 SCC 513** has held as under :

> **18.** The ratio of the aforesaid cases, which is clearly discernible, is that even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanour on his part is not to be treated as an act in discharge of his official duties and, therefore, provisions of Section 197 of the Code will not be attracted. In fact, the High Court has dismissed the petitions filed by the appellant precisely with these observations, namely, the allegations pertain to fabricating the false records which cannot be treated as part of the appellants' normal official duties. The High Court has, thus, correctly spelt out the proposition of law. The only question is as to whether on the facts of the present case, the same has been correctly applied.

46. Thus, demand of illegal gratification cannot be said to be an act having reasonable connection with discharge of official duty. Such an act would be misuse of authority vested in the official and cannot be treated as an act in discharge of official duty.

47. Under these circumstances, sanction under Section 197 of Cr.P.C. was not required. Hence, this submission made by the Counsel for the Appellant deserves to be and is accordingly rejected.

Whether *denovo* trial was required after alteration of charges

48. It is submitted by the Counsel for the Appellants that initially, Trial Court had framed charges by order dated 12-5-2007. The evidence of prosecution was recorded. Thereafter, Statements under Section 313 of Cr.P.C. were also recorded and the case was fixed for final arguments. On 22-6-2019, the Counsel for the prosecution, filed an application under Section 216 of Cr.P.C. On 1-7-2019, the Counsel for Appellants filed their reply and arguments were heard on the said application. By order dated 6-7-2019, application under Section 216 of Cr.P.C. was allowed and it was held that there is sufficient material to frame charge under

Section 120-B of IPC and Section 7,13(1)(d), 13(2) of Prevention of Corruption Act read with Section 120-B of IPC against the Appellants Anand Kumar Shukla and Shiva Bhadoriya and framed charge under Section 8 Prevention of Corruption Act read with Section 120-B of IPC. against Basarat Khan. Accordingly, charges for the above mentioned offences were framed and were read over to the Appellants and co-accused Basarat Khan. The charges were abjured by the accused and prayed for Trial. Accordingly, it was directed that the Public Prosecutor may take necessary steps, if he wants to re-examine any prosecution witness and the Accused persons may also take steps if they want to cross-examine any prosecution witness. On the next date, the Public Prosecutor expressed that he doesnot wish to re-examine any witness. Opportunity was given to the accused persons that if they want to further cross-examine any witness, then they can file the list of those witnesses. On 16-7-2019, the Appellants prayed for further cross-examination of M.L. Jha (P.W.2), Rajkumar Malviya (P.W.3), Bhag Singh Tomar (P.W.5), Kavindra Singh Chauhan (P.W.8), Kashi Prasad Kaneriya (P.W.9), Pushpa Pushpam (P.W.10) and Atul Singh (P.W.12). The said application was allowed and on subsequent dates M.L. Jha (P.W. 2), Rajkumar Malviya (P.W.3), Pushpa Pushpam (P.W.10), Kashi Prasad Kaneriya (P.W. 11), Bhag Singh (P.W.5), Kavindra Singh Chauhan (P.W.8) and Atul Singh (P.W.12) were further cross-examined.

49. The Appellants prayed for examining Deviram Batham and Inspector Anita Bisht in their defence. On 20-10-2021, Deviram Batham (D.W.3) and Anita Bisht (D.W.4) were examined and on 20-10-2021, final arguments were heard.

50. However, on the separate sheet on which charges were framed, it was mentioned by the Trial Court, that the charges framed on 12-5-2017 are cancelled (निरस्त) in the light of order dated 6-7-2019.

51. Now the question for consideration is that whether the alteration of charge under Section 216 of Cr.P.C. required *denovo* trial or not?

52. Section 216 of Cr.P.C. reads as under :

> **216. Court may alter charge**.— (1) Any Court may alter or add to any charge at any time before judgment is pronounced.
> (2) Every such alteration or addition shall be read and explained to the accused.
> (3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.
> (4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.
> (5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

53. Thus, it is clear that before exercising power under Section 216 of Cr.P.C., the Trial Court has to consider as to whether the material available on record is having direct nexus with ingredients of offence or not and after the charges are altered, the Trial Court must form an opinion as to whether alteration in charge is going to cause prejudice to

the accused requiring new trial or not?

54. The Supreme Court in the case of **Nallapareddy Sridhar Reddy v. State of A.P.,** reported in **(2020) 12 SCC 467** has held as under :

> **16.** Section 216 appears in Chapter XVII CrPC. Under the provisions of Section 216, the court is authorised to alter or add to the charge at any time before the judgment is pronounced. Whenever such an alteration or addition is made, it is to be read out and explained to the accused. The phrase "add to any charge" in sub-section (1) includes addition of a new charge. The provision enables the alteration or addition of a charge based on materials brought on record during the course of trial. Section 216 provides that the addition or alteration has to be done "at any time before judgment is pronounced". Sub-section (3) provides that if the alteration or addition to a charge does not cause prejudice to the accused in his defence, or the prosecutor in the conduct of the case, the court may proceed with the trial as if the additional or alternative charge is the original charge. Sub-section (4) contemplates a situation where the addition or alteration of charge will prejudice the accused and empowers the court to either direct a new trial or adjourn the trial for such period as may be necessary to mitigate the prejudice likely to be caused to the accused. Section 217 CrPC deals with recalling of witnesses when the charge is altered or added by the court after commencement of the trial.
>
> **17.** The decision of a two-Judge Bench of this Court in *P. Kartikalakshmi* v. *Sri Ganesh*, dealt with a case where during the course of a trial for an offence under Section 376 IPC, an application under Section 216 was filed to frame an additional charge for an offence under Section 417 IPC. F.M. Ibrahim Kalifulla, J. while dealing with the power of the court to alter or add any charge, held: (SCC p. 350, para 6)
>
> > "*6*. … Section 216 CrPC empowers the court to alter or add any charge at any time before the judgment is pronounced. It is now well settled that the power vested in the court is exclusive to the court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right. *It may be that if there was an omission in the framing of the charge and*

if it comes to the knowledge of the court trying the offence, the power is always vested in the court, as provided under Section 216 CrPC to either alter or add the charge and that such power is available with the court at any time before the judgment is pronounced. It is an enabling provision for the court to exercise its power under certain contingencies which comes to its notice or brought to its notice. In such a situation, if it comes to the knowledge of the court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order need to be passed for that purpose. After such alteration or addition when the final decision is rendered, it will be open for the parties to work out their remedies in accordance with law."

(emphasis supplied)

18. In *Anant Prakash Sinha* v. *State of Haryana*, a two-Judge Bench of this Court dealt with a situation where for commission of offences under Sections 498-A and 323 IPC, an application was filed for framing an additional charge under Section 406 IPC against the husband and the mother-in-law. After referring to various decisions of this Court that dealt with the power of the court to alter a charge, Dipak Misra, J. (as the learned Chief Justice then was), held: (SCC p. 116, paras 18-19)

"*18*. … the court can change or alter the charge if there is defect or something is left out. *The test is, it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. It is not necessary to advert to each and every circumstance. Suffice it to say, if the court has not framed a charge despite the material on record, it has the jurisdiction to add a charge. Similarly, it has the authority to alter the charge. The principle that has to be kept in mind is that the charge so framed by the Magistrate is in accord with the materials produced before him or if subsequent evidence comes on record*. It is not to be understood that unless evidence has been let

in, charges already framed cannot be altered, for that is not the purport of Section 216 CrPC.

19. In addition to what we have stated hereinabove, another aspect also has to be kept in mind. It is obligatory on the part of the court to see that no prejudice is caused to the accused and he is allowed to have a fair trial. There are in-built safeguards in Section 216 CrPC. It is the duty of the trial court to bear in mind that no prejudice is caused to the accused as that has the potentiality to affect a fair trial."

(emphasis supplied)

20. In *Jasvinder Saini* v. *State (NCT of Delhi)*, this Court dealt with the question whether the trial court was justified in adding a charge under Section 302 IPC against the accused persons who were charged under Section 304-B IPC. T.S. Thakur, J. (as he then was) speaking for the Court, held thus: (SCC pp. 260-61, para 11)

"*11. A plain reading of the above would show that the court's power to alter or add any charge is unrestrained provided such addition and/or alteration is made before the judgment is pronounced*. Sub-sections (2) to (5) of Section 216 deal with the procedure to be followed once the court decides to alter or add any charge. Section 217 of the Code deals with the recall of witnesses when the charge is altered or added by the court after commencement of the trial. There can, in the light of the above, be no doubt about the competence of the court to add or alter a charge at any time before the judgment. *The circumstances in which such addition or alteration may be made are not, however, stipulated in Section 216. It is all the same trite that the question of any such addition or alternation would generally arise either because the court finds the charge already framed to be defective for any reason or because such addition is considered necessary after the commencement of the trial having regard to the evidence that may come before the court*."

(emphasis supplied)

21. From the above line of precedents, it is clear that Section

> 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words "at any time before judgment is pronounced" in sub-section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court's power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused.

55. If the orders dated 12-5-2017 and 6-7-2019 are read, then it is clear that the charges were not altered on the basis of any new material, but were altered on the basis of same allegations and material. It is clear that the Trial Court was of the view that the charges should have been framed in another manner and not in the manner in which they were framed on 12-5-2017. The Appellants were given full opportunity to further cross-examine the witnesses of their choice and accordingly, the witnesses were further cross-examined also. Except by saying that since the Appellants have suffered conviction, therefore, prejudice was caused to

them, the Counsel for the Appellants could not point out any prejudice which was caused to them. Prejudice means that the Appellants were not given an opportunity to rebut any particular charge. Suffering a conviction, cannot be said to be a prejudice. The Counsel for the Appellants could not point that which opportunity was not extended to them after the alteration of charge. The submission that charges framed on 12-5-2017 were cancelled, therefore, alteration of charges on 6-7-2019, should be treated as framing of fresh charges for the first time cannot be accepted.

56. Since, no prejudice was caused to the Appellants because of alteration of charges by order dated 6-7-2019, this Court is of the considered opinion, that there was no need for *denovo* trial.

The Complainant has turned hostile

57. It is submitted by the Counsel for the Appellants that the complainant Aslam Khan (P.W.4) has turned hostile and has not supported the prosecution story.

58. Considered the submissions made by the Counsel for the Appellants.

59. Before considering the evidence of Aslam Khan (P.W.4), this Court thinks it appropriate to consider the order-sheets of the trial. From order-sheets of the Trial Court, it is clear that on number of occasions, summons were issued to the complainant Aslam Khan and ultimately he appeared on 4-1-2018, but he could not be examined as the Public Prosecutor was on leave. He was bound over for 16-1-2018, but he did not appear and accordingly, bailable warrant was issued. Thereafter on 8-2-2018, the complainant appeared but his evidence could not be

recorded for want of laptop, although another witness namely Rajkumar Malviya (P.W.3) was examined and cross-examined. Thereafter, the complainant Aslam Khan (P.W.4) appeared on 19-3-2018, but he expressed that he is not physically well and prayed for deferment of recording of his evidence. Accordingly, the case was fixed for 24-4-2018. On 24-4-2018, since the presiding officer was on leave therefore, his evidence was not recorded. Ultimately he was examined and cross-examined on 9-5-2018.

60. Aslam Khan (P.W.4) has turned hostile and did not support the prosecution case. He stated that he and his brother Ashiq Khan had 5 bigha of land and since there was property dispute between his family and his uncle Rasool Khan, therefore, he was interested in getting his land demarcated. Accordingly, he made an application for demarcation in *Jan Mitra Kendra* Kulaith. The challan is Ex. P.2A. The copy of Khasra is Article 2B to 2D. The copy of Bhu-Abhilekh Pustika is Article 2E. The said application was given in the month of May, 2014 and the last date for completing the proceedings was 13-6-2014. On 13-6-2014, he received a phone call from the Appellant Anand Kumar Shukla that his application for demarcation has been rejected, because his land is disputed. He tried to meet with Anand Kumar Shukla but could not succeed. Accordingly, he met with Janpad Member Aziz and made a complaint that his demarcation is not being done and accordingly, he took him to a building which is situated near Phoolbagh and went inside after leaving him outside the building. About 1-1:30 hours thereafter, Aziz Khan came out and took his signatures on 10-20 papers. He admitted that typed complaint Ex. P.2 contains his signatures and date

24-6-2014 is mentioned below his signatures, although this witness claimed that is not aware of the fact that for what purpose the application was got typed. He also admitted that Ex. P. 16 contains his signatures. He also admitted that Ex. P.17 also contains his signatures. He further admitted that another application, Ex. P.3 also contains his signatures and date 26-6-2014 is mentioned below his signatures. Ex. P.18 also contains his signatures. He also admitted that Ex. P.19 is in four pages and every page contains his signatures. FIR, Ex. P.20 also contains his signatures at A to A. He further stated that about 6-7 days thereafter, Aziz Khan again took him to the same building and got his signatures on 5-7 papers. Lot of persons were inside the building. The details of currency notes, Ex. P.4 contains his signatures. The preliminary Panchnama, Ex. P.5 is in five pages and every page contains his signatures. Thereafter, 8-10 persons went to the house of Appellant Shiva Bhadoriya. He went to the house of Shiva Bhaodriya, but She was not in the house. This fact was disclosed to other persons. Thereafter they came back and suspension of trap panchnama, Ex. P.6 contains his signatures. About 2-3 days thereafter, this witness again went to the same building where some documents were got signed by Aziz Bhai. Supplementary Panchnama, Ex. P.7 is in three pages and every page contains his signatures. He was watching Jagannath Mela along with Aziz Khan where he gave Rs. 7,000 to this witness, with an instruction to give the same to Shiva Bhadoriya and the work will be done. Thereafter, he met with Shiva Bhadoriya in *Jan Mitra Kendra* and offered money to her, but She said that since the matter is pending before Tahsildar, therefore, She cannot do anything. Thereafter he came out of the *Jan Mitra Kendra* and met with Basarat

Khan. Basarat Khan had played drum in the marriage of the brother of this witness and since, he was pressurizing this witness to pay his dues, therefore, he paid Rs. 7,000/- to Basarat Khan.

61. Thereafter, his signatures were obtained on certain documents and Shiva Bhadoriya, Anand Kumar Shukla and Basarat Khan were arrested. This witness also admitted his signatures on Article A, Article X, Article B, Article C, Article D, Article E, Article F, Article G, Article I, Article J, Article K and Article K, but expressed his ignorance about the said articles. He further admitted his signatures on Article K-3 and also admitted that Kurta Article K-1 is the same kurta, which Basarat Khan was wearing at the time of incident.

62. The tape recorded conversation was also played in the Court room and this witness admitted that the recorded conversation contains voice of one male and one female and are also talking about demand of illegal gratification. This witness was declared hostile.

63. In cross-examination by the Public Prosecutor, this witness stated that he has studied upto 1-2 classes and cannot read Hindi and but can understand the same. He admitted that on 23-5-2014, he had made an application for demarcation in *Jan Mitra Kendra* Kulaith. He denied that he had met with Anand Kumar Shukla and had prayed for demarcation and accordingly, he had instructed him to contact Shiva Bhadoriya and to pay the money which will be demanded by her. He denied that Shiva Bhadoriya had initially demanded Rs. 15,000/-but thereafter agreed for Rs. 7,000/-. He admitted that as per his information, the Appellant Anand Kumar Shukla and Shiva Bhadoriya, never came to the spot for demarcation purposes. He admitted his signatures on all documents

including complaints, Panchnamas and Articles. He also admitted his signatures on every page of transcript of recorded conversation. He admitted that bottles contains pink coloured and colour less solution and they bear his signatures. He also admitted that when he had given money to Basarat Khan, the Appellants were also present in the *Jan Mitra Kendra*. Atul Singh (P.W.12) had given his introduction to the accused persons. He also admitted that one person prepared the solution and all the members of the trap team had dipped their fingers but the colour of the solution did not change. He denied that colour of solution changed after the fingers of Basarat Khan were dipped.

64. He denied that an amount of Rs. 7,000/- was paid to Basarat Khan on the instructions of Shiva Bhadoriya. He admitted that Basarat Khan had kept the money in the pocket of his kurta. He was cross-examined by the defence and he admitted that he is aware of the fact that on various occasions summons were issued, but since he was residing in Gwalior, therefore, they were not served on him. He further admitted that he had received an information that his application has been rejected. He further admitted that on 13-6-2014, he had received an information that since, the land is in dispute therefore, his application has been rejected. He also stated that he met with Anand Kumar Shukla and Shiva Bhadoriya for the first time on 30-6-2014 in *Jan Mitra Kendra*, Kulaith.

65. Since, Aslam Khan (P.W.4) is a hostile witness, therefore, his entire evidence would not stand effaced off from the record, and any part of his evidence which corroborates the other evidence can be read either in favor of Prosecution or defence.

66. The Supreme Court in the case of **Rameshbhai Mohanbhai Koli**

v. State of Gujarat, reported in **(2011) 11 SCC 111** has held as under :

Hostile witness

16. It is settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. (Vide *Bhagwan Singh* v. *State of Haryana*, *Rabindra Kumar Dey* v. *State of Orissa*, *Syad Akbar* v. *State of Karnataka* and *Khujji* v. *State of M.P.*)

17. In *State of U.P.* v. *Ramesh Prasad Misra* this Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde* v. *State of Maharashtra*, *Gagan Kanojia* v. *State of Punjab*, *Radha Mohan Singh* v. *State of U.P.*, *Sarvesh Narain Shukla* v. *Daroga Singh* and *Subbu Singh* v. *State*.

18. In *C. Muniappan* v. *State of T.N.* this Court, after considering all the earlier decisions on this point, summarised the law applicable to the case of hostile witnesses as under: (SCC pp. 596-97, paras 83-85)

"*83*. … the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

84. In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW 51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law. Some omissions, improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.

85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire

evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. (Vide *Sohrab* v. *State of M.P.*, *State of U.P.* v. *M.K. Anthony*, *Bharwada Bhoginbhai Hirjibhai* v. *State of Gujarat*, *State of Rajasthan* v. *Om Prakash*, *Prithu* v. *State of H.P.*, *State of U.P.* v. *Santosh Kumar* and *State* v. *Saravanan*.)"

67. The Supreme Court in the case of **Radha Mohan Singh v. State of U.P.,** reported in **(2006) 2 SCC 450** has held as under :

7.....It is well settled that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof. (See *Bhagwan Singh* v. *State of Haryana*, *Rabindra Kumar Dey* v. *State of Orissa*, *Syad Akbar* v. *State of Karnataka* and *Khujji* v. *State of M.P.*)

68. The Supreme Court in the case of **Arjun Vs. State of Chhatisgarh** reported in **(2017) 3 SCC 247** has held as under :

15. Though the eyewitnesses PWs 1, 2, 7 and 8 were treated as hostile by the prosecution, their testimony insofar as the place of occurrence and presence of accused in the place of the incident and their questioning as to the cutting of the trees and two accused surrounding the deceased with weapons is not disputed. The trial court as well as the High Court rightly relied upon the evidence of PWs 1, 2, 7 and 8 to the abovesaid extent of corroborating the evidence of PW 6 Shivprasad. Merely

because the witnesses have turned hostile in part their evidence cannot be rejected in toto. The evidence of such witnesses cannot be treated as effaced altogether but the same can be accepted to the extent that their version is found to be dependable and the Court shall examine more cautiously to find out as to what extent he has supported the case of the prosecution.

16. In *Paramjeet Singh* v. *State of Uttarakhand*, it was held as under: (SCC pp. 448-49, paras 16-20)

"*16*. The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness; normally, it should look for corroboration to his testimony. (Vide *State of Rajasthan* v. *Bhawani*.)

17. This Court while deciding the issue in *Radha Mohan Singh* v. *State of U.P.* observed as under: (SCC p. 457, para 7)

'*7*. … It is well settled that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof.'

18. In *Mahesh* v. *State of Maharashtra* this Court considered the value of the deposition of a hostile witness and held as under: (SCC p. 289, para 49)

'*49*. … If PW 1 the maker of the complaint has chosen not to corroborate his earlier statement made in the complaint and recorded during investigation, the conduct of such a witness for no plausible and tenable reasons pointed out on record, will give rise to doubt the testimony of the investigating officer who had sincerely and honestly conducted the entire investigation of the case. In these circumstances, we are of the

> view that PW 1 has tried to conceal the material truth from the Court with the sole purpose of shielding and protecting the appellant for reasons best known to the witness and therefore, no benefit could be given to the appellant for unfavourable conduct of this witness to the prosecution.'
>
> *19*. In *Rajendra* v. *State of U.P.* this Court observed that merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. This Court reiterated a similar view in *Govindappa* v. *State of Karnataka* observing that the deposition of a hostile witness can be relied upon at least up to the extent he supported the case of the prosecution.
>
> 31. *20*. In view of the above, it is evident that the evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution."
>
> 32. The same view is reiterated in *Mrinal Das* v. *State of Tripura* in para 67 and also in *Khachar Dipu* v. *State of Gujarat* in para 17.

69. If the evidence of Aslam Khan (P.W.4) is considered, then it is clear that he has admitted his signatures on all the papers including complaints, Ex. P.2 and P.3, Transcript, Ex. P. 19, Preliminary and Final Panchnama, Ex. P. 5,7 and 15-A and on Articles etc. He has also admitted that he went to *Jan Mitra Kendra*, Kulaith and had offered money to Appellant Shiva Bhadoriya. He also admitted that treated currency notes were given by him to co-accused Basarat Khan. He also admitted that he had made an application for demarcation of land. He has claimed that on 13-6-2014, the Appellant Anand Kumar Shukla had informed him on mobile that his application for demarcation has been rejected, but in the order sheet dated 13-6-2014, Ex. D.2, it is mentioned that on 13-6-2014, the Appellants could not contact the complainant as

his mobile phone was switched off. Further more, from the Panchnama, Ex. D.3, it is clear that the demarcation proceedings were dismissed on 13-6-2014, but in the order-sheet dated 13-6-2014, Ex.D.2, it is mentioned that demarcation proceedings were kept in abeyance with a direction to Maqsood to lodge written objection. Whereas in the endorsement made on the reverse side of application, Ex. D.6, it was mentioned that on 13-6-2014, demarcation could not take place as the map was in dilapidated condition. Thus, it is clear that all the three documents, i.e., Ex. D.2, D.3 and D.6 relied upon by the Appellants are inconsistent and there are material discrepancies in the same. Further more, it is clear from the order-sheets, Ex. D.2, the application was not dismissed on 13-6-2014 and it was pending. Thus, there was no occasion for the Appellant Anand Kumar Shukla to inform this witness on 13-6-2014 regarding rejection of his application. Further, when the mobile of this witness was ON, then the observation made in order dated 13-6-2014, Ex. D.2 that no information regarding demarcation could be given as the mobile of the complainant was switched OFF would also fall on ground being false. This witness has also admitted that prior to 30-6-2014 also, he had tried to contact the Appellant Shiva Bhadoriya for payment of illegal gratification, but could not meet her. He has also admitted that immediately after money was given to Basarat Khan, both the Appellants were also arrested. Thus, it is clear that at the time of money transaction, the Appellant Anand Kumar Shukla and Shiva Bhadoriya were present in *Jan Mitra Kendra,* Kulaith. Further, this witness has also admitted that both the Appellants had never visited the site for demarcation purposes. Therefore, it is clear that till 30-6-2014,

there was nothing on record to suggest that the land of the complainant was a disputed land.

70. Although, the complainant Aslam Khan (P.W.4) has turned hostile, but he has admitted his signatures on all the documents, although he tried to give an explanation by saying that he had signed the documents on the dictations of one Aziz Bhai. But this explanation cannot be accepted. If the complainant was of the view that he can get the work done by voluntarily offering money to the Appellants, then he should not have gone to the *Jan Mitra Kendra*, Kulaith along with trap team. The fact that he offered money to Appellant Shiva Bhadoriya in *Jan Mitra Kendra* in the presence of Appellant Anand Kumar Shukla, also corroborates the prosecution case, that demand of illegal gratification of Rs. 7,000 was made for carrying out demarcation proceedings and accordingly, not only the complaint was made by the complainant, but he went to pay the illegal gratification twice i.e., on 27-6-2014 and ultimately on 30-6-2014.

71. The Supreme Court in the case of **Hazari Lal Vs. State (Delhi Admn.)** reported in **(1980) 2 SCC 390** has held as under :

> **10.** From the evidence of PW 8 and that of PW 4 we may take the following facts as established: PW 3 made a report to PW 8. He produced six currency notes of the denomination of ten rupees whose numbers were noted and which were treated with phenol phthalein powder. Thereafter the notes were handed over to PW 3. PW 3, PW 6 and Kewal Krishan went inside the police station. After sometime PW 6 and Kewal Krishan came out and gave a signal. PW 8 then went inside the police station. On seeing him the accused who was inside the police station with PW 3 took out some currency notes from the right side pocket of his trousers and threw them across the partition wall into the adjoining room. The notes which were so thrown out by the accused, were found to be the same notes which had been treated with phenol phthalein and handed over to PW 3

before the raid. The handkerchief which was taken out of the right side pocket of the trousers of the accused as well as the right side pocket itself were subjected to a test which showed that they too had come into contact with phenol phthalein powder. It may be noted that the circumstance that the handkerchief (Ex. P-4) recovered from the right side pocket of the pant on the person of the accused was subjected to the colour test which indicated the presence of phenol phthalein powder on that handkerchief was put to the appellant in his examination under Section 313 of the Criminal Procedure Code. Instead of giving any explanation as to how this phenol phthalein powder came on the handkerchief lying in his pocket, the appellant replied: "I know nothing about it". From these facts the irresistible inference must follow, in the absence of any explanation from the accused, that currency notes were obtained by the accused from PW 3. It is not necessary that the passing of money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events which followed in quick succession in the present case lead to the only inference that the money was obtained by the accused from PW 3. Under Section 114 of the Evidence Act the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case. One of the illustrations to Section 114 of the Evidence Act is that the court may presume that a person who is in possession of the stolen goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. So too, in the facts and circumstances of the present case the court may presume that the accused who took out the currency notes from his pocket and flung them across the wall had obtained them from PW 3, who a few minutes earlier was shown to have been in possession of the notes. Once we arrive at the finding that the accused had obtained the money from PW 3, the presumption under Section 4(1) of the Prevention of Corruption Act is immediately attracted. The presumption is of course rebuttable but in the present case there is no material to rebut the presumption. The accused was,

therefore, rightly convicted by the courts below.

We will now refer to the two decisions of this Court on which Shri Frank Anthony relied. In *Sita Ram* v. *State of Rajasthan* the evidence of the complainant was rejected and it was held that there was no evidence to establish that the accused had received any gratification from any person On that finding the presumption under Section 4(1) of the Prevention of Corruption Act was not drawn. The question whether the rest of the evidence was sufficient to establish that the accused had obtained the money from the complainant was not considered. All that was taken as established was the recovery of certain money from the person of the accused and it was held that mere recovery of money was not enough to entitle the drawing of the presumption under Section 4(1) of the Prevention of Corruption Act. The Court did not consider the further question whether recovery of the money along with other circumstances could establish that the accused had obtained gratification from any person. In the present case we have found that the circumstances established by the prosecution entitled the court to hold that the accused received the gratification from PW 3. In *Suraj Mal* v. *State* (*Delhi Admn*.), also it was said mere recovery of money divorced from the circumstances under which it was paid was not sufficient when the substantive evidence in the case was not reliable to prove payment of bribe or to show that the accused voluntarily accepted the money. There can be no quarrel with that proposition but where the recovery of the money coupled with other circumstances leads to the conclusion that the accused received gratification from some person the court would certainly be entitled to draw the presumption under Section 4(1) of the Prevention of Corruption Act. In our view both the decisions are of no avail to the appellant and as already observed by us conclusions of fact must be drawn on the facts of each case and not on the facts of other cases. In other words there can be no precedents on questions of facts. The appeal is, therefore, dismissed.

72. Further, the complainant Aslam Khan (P.W.4) has admitted that all the documents contain his signatures. The Supreme Court in the case of

Ramesh Harijan v. State of U.P., reported in **(2012) 5 SCC 777** has held as under :

> **22.4.** The recovery of part of the sheet and white clothes having blood and semen as per the FSL report has been disbelieved by the trial court in view of the fact that Ram Prasad alias Parsadi (PW 5) and Bhikari (PW 10) did not support the prosecution case like other witnesses who did not support the last seen theory. The trial court failed to appreciate that both the said witnesses, Ram Prasad alias Parsadi (PW 5) and Bhikari (PW 10) had admitted their signature/thumb impression on the recovery memo. The factum of taking the material exhibits and preparing of the recovery memo with regard to the same and sending the cut out portions to the serologist who found the blood and semen on them vide report dated 21-3-1996 (Ext. Ka-21) is not disputed. The serological report also revealed that the vaginal swab which was taken by the doctor was also human blood and semen stained.
>
> **23.** It is a settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examine him.
>
> "*6.* … The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof."
>
> [Vide *Bhagwan Singh* v. *State of Haryana*; *Rabindra Kumar Dey* v. *State of Orissa*; *Syad Akbar* v. *State of Karnataka* and *Khujji* v. *State of M.P.* (SCC p. 635, para 6).]
>
> **24.** In *State of U.P.* v. *Ramesh Prasad Misra* (SCC p. 363, para 7) this Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde* v. *State of Maharashtra*, *Gagan Kanojia* v. *State of Punjab*; *Radha Mohan Singh* v. *State of U.P.*, *Sarvesh Narain Shukla* v. *Daroga Singh* and *Subbu Singh* v. *State*.

"*83*. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence."

[See also *C. Muniappan* v. *State of T.N.* (SCC p. 596, para 83) and *Himanshu* v. *State (NCT of Delhi)*.]

25. Undoubtedly, there may be some exaggeration in the evidence of the prosecution witnesses, particularly that of Kunwar Dhruv Narain Singh (PW 1), Jata Shankar Singh (PW 7) and Shitla Prasad Verma (PW 8). However, it is the duty of the court to unravel the truth under all circumstances.

26. In *Balaka Singh* v. *State of Punjab*, this Court considered a similar issue, placing reliance upon its earlier judgment in *Zwinglee Ariel* v. *State of M.P.* and held as under: (*Balaka Singh case*, SCC p. 517, para 8)

"*8*. … the court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible when the truth is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up that in the process of separation, the court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply."

27. In *Sukhdev Yadav* v. *State of Bihar* this Court held as under: (SCC p. 90, para 3)

"*3*. It is indeed necessary, however, to note that there would hardly be a witness whose evidence does not contain some amount of exaggeration or embellishment—sometimes there would be a deliberate attempt to offer the same and sometimes the witnesses in their over anxiety to do better from the witness box detail out an exaggerated account."

28. A similar view has been reiterated in *Appabhai* v. *State of Gujarat* (SCC pp. 246-47, para 13) wherein this Court has cautioned the courts below not to give undue importance to minor discrepancies which do not shake the basic version of the prosecution case. The court by calling into aid its vast

> experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness for the reason that witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. However, the courts should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy.
>
> (Underline supplied)

73. The fact that the complainant Aslam Khan (P.W.4) was all the time co-operating with the trap team and his application for demarcation was also pending and was not decided, this Court is of the considered opinion, that the evidence of the complainant Aslam Khan (P.W.4) so far as it supports the prosecution case, can be considered in the light of the surrounding circumstances.

Whether Application for demarcation was already rejected on 16-6-2014 and thus, nothing was pending before the Appellants and whether the Appellants have proved their defence

74. It is contended by the Counsel for the Appellants that since, the application filed by the complainant was already rejected by order dated 16-6-2014, therefore, nothing was pending before the Appellants, and this fact was within the knowledge of the complainant, and therefore, in order to put undue pressure on the Appellants, a false complaint was filed by the complainant.

75. Heard the learned Counsel for the Appellants.

76. The Complainant Aslam Khan (P.W.4) had made a complaint on 24-6-2014, Ex. P.2 pointing out the fact of making of an application for demarcation, as well as direction given by Appellant Anand Kumar Shukla to contact the Appellant Shiva Bhadoriya, demand of Rs. 15,000/- @ Rs. 5,000 per bigha made by the Appellant Shiva Bhadoriya and after

negotiations, She consented for Rs. 7,000/-. It was also specifically pleaded that he doesnot want to pay the said amount.

77. It is the contention of the Appellants that since, the application filed by the complainant Aslam Khan (P.W.4) was already rejected on 16-6-2014, and the order was also uploaded on the web site, and the complainant was aware of the rejection of his application, therefore, out of vengeance false complaint was filed.

78. Although the submissions made by the Counsel for the Appellants appeared to be very attractive but on deeper scrutiny of record, it is clear that in fact the Appellants have filed forged and concocted documents before the Trial Court.

79. By referring to Para 12 of evidence of Bhagchand (P.W.5) it is submitted that this witness has admitted that the entire file was seized from the Appellant Anand Kumar Shukla.

80. It is further submitted that Kavindra Singh (P.W.8) has admitted that the fact of rejection of application had come to his knowledge and on the date of trap itself, the factum of rejection of demarcation proceedings were also brought to the knowledge of the members of the trap party. Kashiram (P.W.9) in para 11 of his evidence has admitted that he had informed Kavindra Singh Chauhan (P.W.8) that the intention behind the complaint made by the complainant was that his application for demarcation has been rejected and the order has been uploaded on the web site.

81. Similarly Smt. Pushpa Pushpam (P.W.10) in para 22 and 23 of her cross-examination, has admitted that after the revenue proceedings are concluded, the record is deposited with incharge *Jan Mitra Kendra*.

Although there is a provision that Incharge *Jan Mitra Kendra*, in his turn, should send the record to the concerning Revenue Court, but generally it is not being done. She further admitted that Ex. D-1 is the list of rejected cases of *Jan Mitra Kendra* Kulaith, and at A to A of the list, it is mentioned that the application filed by complainant was rejected on 16-6-2014 and the concerning documents must have been handed over to the Incharge *Jan Mitra Kendra*. Atul Singh (P.W. 12) has admitted that it is true that after looking at File N-1, it was not clear as to whether the proceedings were pending or not. In para 133, it was stated by him, that the application filed by complainant should have been decided by 13-6-2014 and also admitted that the application for demarcation was rejected by order dated 16-6-2014. He also admitted that the complainant, in his complaints Ex. P.2 and P.3 had not mentioned that he is not aware of the outcome of the application for demarcation.

82. Considered the submissions made by the Counsel for the Appellants.

83. In para 107, Atul Singh (P.W.12) has denied the suggestion that he had collected the documents from Anand Kumar Shukla from the **decided file**. No specific suggestion was given to Atul Singh (P.W.12) that he did not deliberately seize the order-sheets. Although the Counsel for the Appellants tried to argue that by giving suggestion that the documents were seized from disposed off file, a clear suggestion was given to this witness that the proceedings were already concluded, but this submission made by the Counsel for the Appellants cannot be accepted. What is not in evidence, cannot be presumed. The purpose of recording evidence is to give an opportunity to the witness to explain a

circumstance. This Court while appreciating the evidence, cannot read in between the lines. If order dated 16-6-2014 was already in existence and it was not deliberately seized by Atul Singh (P.W.12) then nobody had prevented the Appellants from putting a specific question to this witness regarding non-seizure of order-sheets.

84. Furthermore, it is clear from the order dated 23-10-2017, an application under Section 91 of Cr.P.C. was filed for requisitioning the original record of demarcation proceedings. The said application was rejected by order dated 23-10-2017 and in that order also, the Trial Court had observed that the Appellants have not clarified that what documents were not seized by the investigating officer during the pendency of the investigation. Thus, an attempt made by Counsel for the Appellants that the order-sheet of rejection of application for demarcation was not deliberately seized by Atul Singh (P.W.12) is misconceived.

85. Further, the Appellants have relied upon list of rejected cases, Ex. D.1 to submit that the factum of rejection of application filed by the complainant was already uploaded on the web site.

86. This list contains details of 5 cases. There is nothing on record to show that on what date, this list was prepared. Further, from different entries, it is clear that this list was not being prepared properly. First three entries are with regard to rejection of cases on 16-6-2014. As per the Fourth entry, the said case was rejected on 18-2-2014 and the fifth entry is of the applicant Ashiq Khan, brother of the complainant, which was rejected on 16-6-2014. The entry of case rejected on 18-2-2014, clearly shows that the entries were being made on random basis and there was no consistency in it. Further, the Appellants have not examined the

person, who had prepared the list. The list also doesnot contain the signatures of the person who had prepared the list. As already mentioned, the date on which this list was prepared is also not known. Thus, it is clear that the list of rejected cases relied upon by the Appellants is nothing but a waste piece of paper which shows that not only the list was not being maintained properly, but it has also not been proved by the Appellants by examining the person who had prepared the list. Thus, list of rejected cases, Ex. D.1 is of no assistance to the Appellants.

87. The Appellants have also relied upon the order-sheets, Ex. D.2 purportedly written by Appellant Anand Kumar Shukla. Before considering the order-sheets, this Court would like to consider the law governing the demarcation proceedings.

88. As per Section 129 of M.P.L.R. Code, the Tahsildar has power to direct for demarcation. The Revenue Department, has issued a circular dated 28-1-2014 which deals with demarcation proceedings. As per clause 2 of this circular, the Tahsildar/ Upper Tahsildar/Naib-Tahsildar shall be the designated officer. The Application for demarcation has to be made along with copy of Khasra, copy of map and demarcation fee. As per Clause 8.3.1, the Revenue Inspector shall fix the date for demarcation and shall give information to the designated officer. Notices to the interested parties shall also be given. After carrying out the demarcation, the report shall be filed before the designated officer within 3 days. The designated officer shall pass an order of approval and the copy of order as well as field book shall be sent to *Jan Mitra Kendra* and the outer limit for carrying out demarcation is 30 days.

89. Thus, the duty of Revenue Inspector is to carry out the demarcation proceedings, but the final order has to be passed by the Designated officer.

90. Smt. Pushpa Pushpam (P.W. 10) has stated that application for demarcation is to be submitted in *Jan Mitra Kendra*. After an application is received, an entry is to be made in the computer. The Revenue Inspector and Patwari of the area are under obligation to regularlarly attend the *Jan Mitra Kendra* in order to collect the information with regard to the applications. The applications are forwarded by the Incharge *Jan Mitra Kendra*. On 23-5-2014, an application was made by Ashiq Khan [application, made by complainant on behalf of his brother], which was received and the last date for disposal of application was 13-6-2014 The acknowledgment of receipt of application is at serial no. 166/14296/11647. Thereafter, notices to the adjoining/neighboring agriculturist are issued. On the fixed date, the Revenue Inspector and Patwari have to complete the demarcation proceedings and prepare the report. If any person is aggrieved by the order of Revenue Inspector, then he can file an appeal before the Collector. In case if any objection is made by the neighboring agriculturist, then the Revenue Inspector, has to prepare a report and submit the same before the Tahsildar. The Tahsildar in his turn shall forward the same to the S.D.O. Thereafter, the S.D.O. shall decide the same after hearing all the interested parties. She further admitted that the Appellant Anand Kumar Shukla by his letter dated 5-7-2014(i.e., subsequent to the trap proceedings) had informed her that the application filed by Ashiq Khan for demarcation is still pending and the same report was marked by this witness to her Reader for further action.

She was told that since the map is in a dilapidated condition, therefore, demarcation could not take place. The said report was marked by her to her Reader on 11-7-2014. In cross-examination, She admitted that ordersheet written by Appellant Anand Kumar Shukla is Ex. D.2, Panchnama is Ex. D.3, Objection on the application is Ex. D.4 and notice for demarcation is Ex. D.5. She admitted that circular dated 28-1-2014 has been issued by the Revenue Department which governs the proceedings for demarcation. She denied that on 5-7-2014, She did not receive any report from the office of Revenue Inspector. She also admitted that report dated 5-7-2014 is not available in her office. She further stated that it is not possible for her to disclose the date on which the entry regarding rejected case, Ex. D.1 was made. In her further cross-examination after the alteration of charge, she stated in para 24 that in case the demarcation is disputed, then the power is with Tahsildar. The Tahsildar has to decide the objection after hearing both the parties. She further stated that report dated 5-7-2014 must be in her office. She admitted that on 25-6-2014, She was posted as Tahsildar, Kulaith.

91. Thus, one thing is clear that circular dated 28-1-2014 was in force which regulates the demarcation proceedings. The circular dated 28-1-2014 is in the “B file” of the Trial Court, but since, it is an official document, therefore, it can be read. From the plain reading of this circular, it is clear that the final order is to be passed by the Tahsildar. Even the Appellants themselves had given suggestion to this witness that, in case of disputed demarcation, it is for the Tahsildar to pass the final order, who shall do it after giving due opportunity of hearing to the interested parties. Thus, according to circular dated 28-1-2014 as well as

according to Pushpa Pushpam (P.W.10), the application for demarcation can be rejected by Tahsildar only and not by Revenue Inspector.

92. Further it is clear from the notice of demarcation, Ex. D.5 which was allegedly issued on 8-6-2014, there is no endorsement with regard to service of notice on the complainant Aslam Khan or his brother Ashiq Khan. The notice, Ex. D.5 contains the signatures of Maqsood Khan, Karamat Khan, Rasool Khan and Nabi Khan. There is nothing in the notice to show, as to why it was not served upon the complainant or his brother Ashiq Khan. There is no signature of the process server. From the order-sheet dated 13-6-2014 written by Revenue Inspector, it is clear that the Appellant Anand Kumar Shukla has mentioned that he reached on the spot at 12:00 P.M. and the complainant or applicant were not present. An attempt was made to inform them on mobile, but their mobile was switched off. The objector was directed to make a written objection and in absence of applicant, the demarcation proceedings were stayed. However, no further date was fixed. Thereafter, according to order-sheet, Ex. D.2, a written objection was made on 14-6-2014 and accordingly on 15-6-2014, the application for demarcation was rejected being a disputed one. From the panchnama, Ex. D.3, it is clear that the demarcation proceedings were rejected in the light of the objection made by Maqsood. Whereas from the endorsement made on the reverse side of application, Ex. D.6, it is clear that on 13-6-2014, the demarcation proceedings could not take place as the map was in a dilapidated condition. Thus, it is clear that all the three documents relied upon by the Appellants, i.e., Ex. D.2,D.3 and D.6 are self contradictory in nature and are beyond reconciliation.

93. From the circular dated 28-1-2014 as well as from the evidence of Pushpa Pushpam (P.W.10) it is clear that the Revenue Inspector had no authority whatsoever, to reject the application. According to Pushpa Pushpam (P.W.10) even on 5-7-2014, she was informed by the Appellant Anand Kumar Shukla, that the demarcation proceedings are pending. It is clear from the notice, Ex. D.5, no attempt was made to serve the applicant.

94. Further, when the documents were seized from the Appellant Anand Kumar Shukla, he was in possession of application for demarcation addressed to Tahsildar, Challan, print out of map, and Khasra Panchsala only. The so-called order-sheets, and proceedings , Ex. D.2 to D.5 were not made available to the investigating officer. According to circular dated 28-1-2014, the application is to be accompanied by map, khasra and demarcation fee. Thus, all the documents which are essential for demarcation were in possession of the Appellant Anand Kumar Shukla, but the order-sheets which have been relied upon by the Appellant Anand Kumar Shukla were not seized. As already pointed out, no specific suggestion was given to Atul Singh (P.W.12), that he deliberately did not seize the order-sheets and other documents pertaining to the demarcation i.e., Ex. D.3 to D.6. Thus, it is clear that the order-sheets, Ex. D.2, the Panchnama, Ex. D.3, written objection by Maqsood Khan, Ex. D.4, Notice for demarcation, Ex. D.5 were not in existence on 30-6-2014.

95. Further, the Appellants have filed a copy of the application for demarcation filed by complainant, Ex. D. 6. On the back of this application, it is mentioned as under :

13.6.2014

नक्शा जीर्ण होने से सीमांकन स्थगित हस्ताक्षर

14.6.2014

अनावेदक मकसूद से आपत्ति प्राप्त. आपत्ति की जांच की गई आपत्ति सही पाई गई हस्ताक्षर

15.6.2014

जनमित्र पर अविवादित सीमांकन का प्रावधान है अतः आवेदन नियम विरूद्व होने से निरस्त किया गया. जनमित्र आनलाईन पर अंकित करने हेतु लिखा गया प्रकरण समाप्त हस्ताक्षर

96. If these observations which have been made on the reverse side of application, Ex. D.6 were already there on 30-6-2014, then the same should have been found on the reverse side of the application, at the time of seizure. Atul Singh (P.W. 12) had seized the original documents from the Appellant Anand Kumar Shukla and the original file was returned back after obtaining the attested copy from the Appellant Anand Kumar Shukla, file N-1. The fact that the Appellant Anand Kumar Shukla had attested the copy of application for demarcation, it is clear that any note made on the reverse side of the application for demarcation, Ex. D.6 was not in existence and they have been made falsely at a later stage.

97. Furthermore, there is material difference in the notes made on the reverse side of the application and the order-sheet, Ex. D.2 recorded by the Appellant Anand Kumar Shukla.

98. In order-sheet dated 13-6-2014, Ex. D.2, it has been mentioned by Anand Kumar Shukla that Maqsood has made an oral objection, therefore, the demarcation proceedings were stayed with a direction to make a written objection, whereas on the reverse side of the application, Ex. D.6, it is mentioned that the demarcation proceedings were stayed as the Map is in a dilapidated condition. There is no mention that any objection was made by Maqsood., Therefore, the evidence of Pushpa

Pushpam (P.W.10) to the effect that on 5-7-2014, the Revenue Inspector had submitted a report that demarcation proceedings could not take place because the map is in a dilapidated condition are correct.

99. Further the Appellants have not examined Maqsood in their defence to prove that any written objection was made by him, specifically when it is clear from the written objection, Ex. D.4, that the contents of the same are in different handwriting ,because the signatures of Maqsood clearly indicates that the contents of so-called objection, Ex. D.4 are not in the handwriting of Maqsood.

100. It is submitted by the Counsel for the Appellants that since, the order-sheet dated 15-6-2014 was already uploaded on the web site, therefore, it cannot be said that it was an antedated document.

101. Considered the submissions made by the Counsel for the Appellants.

102. The Appellants have not examined Saurabh Kushwaha. According to Kashi Prasad Kanoriya (P.W.9), Saurabh Kushwaha was making all the entries. No document has been filed by the Appellants to show that the order dated 15-6-2014 was ever uploaded on the website. The Appellants could have proved the date on which the order dated 15-6-2014 was uploaded. It is not out of place to mention here that the computer automatically registers the date and timing of any activity, therefore, by producing the record of the Computer, the Appellants could have proved the date and time at which the order dated 15-6-2014 was uploaded but that was not done. Even the copy of the order which was allegedly uploaded on the web site was also not produced by the Appellants. Even the certified copy of the order-sheets and other

documents, Ex. D.2 to D.6 were obtained on 18-10-2018. If the aforementioned documents were already in existence on 30-6-2014, then the nobody had prevented the Appellants from obtaining their certified copies, immediately after the trap i.e., 30-6-2014.

103. Furthermore, according to order-sheet, Ex. D.2, the application for demarcation was rejected on 15-6-2014, whereas in the list of rejected cases, Ex. D.1, the date of rejection is mentioned as 16-6-2014. Thus, it is clear that there are in-consistencies in the various documents relied upon by the Appellants.

104. Thus, it is clear that since, Atul Singh (P.W. 12) had returned the original documents to the Appellant Anand Kumar Shukla, therefore, taking advantage of the same, Order-sheet, Ex. D.2, Panchnama, Ex. D.3, Written Objection, Ex. D.4, Notice for demarcation, Ex. D.5 and endorsements on the reverse side of Application, Ex. D.6 have been made/prepared at a later stage. Thus, it is held that Order-sheet, Ex. D.2, Panchnama Ex. D.3, written objection Ex. D.4, Notice for demarcation, Ex. D.5 and endorsement made on reverse side of application, Ex. D.6 are forged and concocted documents which were prepared with solitary intention to file the same before the Trial Court.

105. The effect of preparing forged documents and filing of the same before the Trial Court shall be considered at a later stage.

Whether Appellant Shiva Bhadoriya had no authority in the matter

106. It is submitted by the Counsel for the Appellant Shiva Bhadoriya that She was not competent to carry out the demarcation, therefore, She has been falsely implicated.

107. Considered the submissions made by the Counsel for Shiva

Bhadoriya.

108. According to the record of *Jan Mitra Kendra*, Kulaith, the application for demarcation was filed on 23-5-2014. At the relevant time, the Appellant Anand Kumar Shukla was not in the *Jan Mitra Kendra* and accordingly, the said application was handed over to the Appellant Shiva Bhadoriya. Shiva Bhadoriya was the Patwari of Kulaith. She had a talk with the complainant with regard to demand of illegal gratification. The conversation between the complainant and the appellant Shiva Bhadoriya was also recorded. Transcript, Ex. P.19 was prepared, which clearly shows the demand of illegal gratification. The Appellant Shiva Bhadoriya also refused to give sample of her voice. On 30-6-2014 also, the Appellant Shiva Bhadoriya was present in the *Jan Mitra Kendra*, Kulaith and instructed the complainant to hand over the money to Basarat Khan. Thus, the active role played by the Appellant Shiva Bhadoriya is writ large. She was posted as Patwari therefore, it cannot be said that She had no concern with the application for demarcation made by the complainant. Furthermore, the competence of an accused is not very material. The important aspect is the impression in the mind of bribe giver. The Appellant Shiva Bhadoriya was Patwari and She was to play a prominent role in demarcating the land and was also making demand of illegal gratification. In such a situation, if an impression was given to the complainant that only in case illegal gratification is given, the demarcation would be done, then such an impression cannot be said to be a wholly irrelevant impression.

109. The Supreme Court in the case of **Chaturdas Bhagwandas Patel v. State of Gujarat,** reported in **(1976) 3 SCC 46** has held as under :

20. Secondly, this demand for payment and acceptance of the money by the appellant on July 12 had to be appreciated in the context of the representation made by the appellant on the preceding day, to the effect, that if Ghanshamsinh would not pay the gratification, he would be arrested, handcuffed and paraded for the offence of abducting Bai Sati.

21. The proof of the foregoing facts was sufficient to establish the charge under Section 161 of the Penal Code. The mere fact that no case of abduction or of any other offence had been registered against Ghanshamsinh in the police station or that no complaint had been made against him to the police by any person in respect of the commission of an offence, could not take the act of the appellant in demanding and accepting the gratification from Ghanshamsinh out of the mischief of Section 161 of the Penal Code. The section does not require that the public servant must, in fact, be in a position to do the official act, favour or service at the time of the demand or receipt of the gratification. To constitute an offence under this section, it is enough if the public servant who accepts the gratification, takes it by inducing a belief or by holding out that he would render assistance to the giver "with any other public 53 servant" and the giver gives the gratification under that belief. It is further immaterial if the public servant receiving the gratification does not intend to do the official act, favour or forbearance which he holds himself out as capable of doing. This is clear from the last explanation appended to Section 161, according to which, a person who receives a gratification as a motive for doing what he does not intend to do, was a reward for doing what he has not done, comes within the purview of the words "a motive or reward for doing". The point is further clarified by Illustration (*c*) under this section. Thus, even if it is assumed that the representation made by the appellant regarding the charge of abduction of Bai Sati against Ghanshamsinh was, in fact, false, this will not enable him to get out of the tentacles of Section 161, although the same act of the appellant may amount to the offence of cheating, also (see *Mahesh Prasad* v. *State of U.P.*; *Dhaneshwar Narain Saxena* v. *Delhi Admn*.).

22. Indeed, when a public servant being a police officer, is

> charged under Section 161 of the Penal Code and it is alleged that the illegal gratification was taken by him for doing or procuring an official act, the question whether there was any offence against the giver of the gratification which the accused could have investigated or not, is not material for that purpose. If he has used his official position to extract illegal gratification, the requirement of the law is satisfied. It is not necessary in such a case for the Court to consider whether or not the public servant was capable of doing or intended to do any official act of favour or disfavour (see *Bhanuprasad Hariprasad Dave* v. *State of Gujarat* and *Shiv Raj Singh* v. *Delhi Administration*).
>
> (Underline supplied)

110. Thus, it is cannot be said that the Appellant Shiva Bhadoriya had no say in the matter. Even otherwise, demand of illegal gratification by Appellant Shiva Bhadoriya has been proved beyond reasonable doubt.

Whether Prosecution has failed to prove conspiracy between Appellant Anand Kumar Shukla and Shiva Bhadoriya

111. According to the prosecution case, the Revenue Inspector was given power to carry out demarcation in case of undisputed cases. It has also come on record, that on 23-5-2014, the Appellant Anand Kumar Shukla was not present in the *Jan Mitra Kendra*, therefore, the Incharge *Jan Mitra Kendra* handed over the application for demarcation to the Appellant Shiva Bhadoriya. Further the Appellant Anand Kumar Shukla instructed the complainant Aslam Khan (P.W.4) to contact Appellant Shiva Bhadoriya and pay the money to her. In fact Shiva Bhadoriya also had conversation with complainant Aslam Khan (P.W.4) which was duly recorded in which She was clearly heard of demanding money. Even on 30-6-2014, She was present in the *Jan Mitra Kendra* along with Appellant Anand Kumar Shukla and Basarat Khan and only on her

instructions, money was handed over to Basarat Khan. Thus, it is clear that there was a conspiracy between the Appellant Shiva Bhadoriya and Anand Kumar Shukla and in furtherance of said conspiracy, the Appellant Shiva Bhadoriya was having talks with the complainant. Thus, the conspiracy between Shiva Bhadoriya and Appellant Anand Kumar Shukla is proved beyond reasonable doubt.

Whether Prosecution has failed to prove that recorded conversation contains voice of Shiva Bhadoriya.

112. It is submitted by the Counsel for the Appellant that the prosecution has failed to prove that the recorded conversation is in the voice of the Appellant Shiva Bhadoriya.

113. It is clear from letter dated 8-8-2014, Ex. P. 28 written by Appellant Shiva Bhadoriya, that She had refused to give sample of her voice. It is submitted by the Counsel for the Appellants that no accused can be compelled to be a witness against himself, therefore, no adverse inference can be drawn against the Appellant.

114. Heard the learned Counsel for the Appellant.

115. In order to verify as to whether the conversation is in the voice of the Accused or not, sample of his voice is necessary. The Appellant Shiva Bhadoriya had refused to give sample of her voice. Thus, She cannot take advantage of her own wrong by claiming that there is no scientific evidence to show that the recorded conversation is in her voice .

Whether the prosecution has proved its case

116. Kamlesh Tiwari (P.W.1) is a Police Constable, who had treated the currency notes with phenolphthalein powder.

117. M.L. Jha (P.W.2) is a panch witness. He has stated that he is working as Lecturer in Govt. Higher Secondary School No.2, Murar. On 26-6-2014, he received an information from Collector office that he is required to appear in Lokayukt Office on 27-6-2014 at 6:00 A.M. Accordingly he went to Lokayukt Office at 6:00 A.M. He met with Atul Singh and one more person. After some time, Rambihari Dohare also came there. The person who was sitting was introduced as complainant Aslam Khan. A copy of letter written to Collector was given to him and his acknowledgment, Ex. P.1 was taken. Atul Singh (P.W.1) instructed him to read out the complaint made by the complainant loudly and was directed to verify from the complainant. Accordingly, the complaints Ex. P.2 and P.3 were read out loudly and the complainant also verified the same. Thereafter, he and Rambihari Dohari put their signatures on Ex. P.2 and P.3 and also attested the photo of complainant. In order to verify the signatures of the complainant, the signatures of complainant were once again obtained on Ex. P.2 and P.3 at H to H and after matching with the original signatures, the same were also verified. The complainant had come along with 2 currency notes of denomination of Rs. 1000/- and 10 currency notes of denomination of Rs. 500/-, in all Rs. 7,000/-. It was disclosed by the complainant that demarcation of his land is not being done and for that purposes, the Appellants Anand Kumar Shukla and Shiva Bhadoriya are demanding money. Accordingly, he read out the serial number of the currency notes, which were noted down by another panch witness Rambihari Dohare, Ex. P.4. The said currency notes were given to a constable, who treated the same with phenolphthalein powder. Thereafter, the fingers of the person who had treated the currency notes

with phenolphthalein powder were dipped in solution of Sodium Carbonate and the colour of the solution turned into pink. The solution was sealed in bottle, Article A. Trap team was constituted by Atul Singh. The fingers of all the members of trap team were dipped in the solution and the colour did not change. The solution was sealed in a bottle, Article B. Two samples of Phenolphthalein powder, Article X and X-1 were prepared and were sealed in two different packets, Article Y and Y-1. The person who had treated the currency notes, kept the treated currency notes in the pocket of T-shirt of the complainant and instructions were given that after handing over the money to the accused, he should give signal by touching his head. He was also instructed not to touch the currency notes prior to that and he should not shake hands with the accused. The preliminary panchnama, Ex. P. 5 was prepared. On 27-6-2014 at about 7:30 A.M., they left the Lokayukt Office and reached Sewa Nagar within 15-20 minutes. They went to the house of Shiva Bhadoriya, who was not there. The complainant had a talk with Shiva Bhadoriya on mobile, who informed that she is in tuition classes and instructed the complainant to meet her in Kulaith. Thereafter, they waited for Shiva Bhadoriya, but She did not come and accordingly they came back to Lokayukt Office at 5 P.M. The suspension Panchnama, Ex. P.6 was prepared. On the instructions of Atul Singh, one person took out the treated currency notes from the pocket of the complainant and the fingers of that persons were dipped in solution and the colour of the solution turned into pink and the solution was sealed in a clean bottle, Article C. Witnesses were instructed to maintain secrecy and complainant was instructed to inform as soon as he receives any further instructions

from the Appellants. On 30-6-2014, at about 11:00 A.M., he received an information from Lokayukt office, that he has to come at 1:00 P.M. and accordingly he went to Lokayukt Office and the complainant was already there. The treated currency notes were taken out from the envelop and again they were kept in the pocket of the shirt of the complainant. Again instructions were given to complainant. The fingers of the person who had kept the treated currency notes in the pocket of the shirt of complainant were dipped in the solution and its colour also turned into pink and the same was sealed in bottle, Article D. Supplementary Preliminary Panchnama was prepared. The fingers of members of trap team were dipped in the solution but the colour did not change. The solution was sealed in a bottle, Article E.

118. Thereafter at 1:30-1:45 P.M., they left the Lokayukt office and two lady constables from DRP line were also taken. They reached Kulaith at about 3 P.M. The complainant was sent who was followed by two ladies constable and the panch witnesses were standing there by hiding their presence. Thereafter, the complainant gave a signal. Thereafter, the members of the trap team went inside the official building where, the Appellant Anand Kumar Shukla, Shiva Bhadoriya were also present. One more person was also there from whom the currency notes were recovered and he disclosed his name as Basarat Khan. The introduction of members of trap team was given. The shadow witnesses had caught both the hands of Basarat Khan, whereas the lady constables were holding the hands of Shiva Bhadoriya.

119. Solution of Sodium Carbonate was prepared and the fingers of all the members of trap team, excluding this witness were dipped but the

colour did not change. The solution was sealed in a bottle, Article F. the fingers of Basarat Khan were dipped in the solution and the colour turned into pink. The solution was sealed in bottle, Article G. On query, Basarat Khan informed that he has taken money on the instructions of Shiva Bhadoriya and has kept them in the right pocket of his kurta. Accordingly, Basarat Khan took out the money from his pocket and the serial number of the currency notes were matched. The comparison panchnama Ex. P.4 was prepared. The currency notes were sealed in a yellow colour envelop. Seizure memo, Ex. P.8 was prepared by Atul Singh which also bears the signatures of this witness and Dohare. The fingers of Shiva Bhadoriya were dipped in the solution, but the colour did not change. The solution was sealed in a bottle, Article H. Similarly, the fingers of Anand Kumar Shukla were also dipped in solution, but the colour did not change. The solution was also sealed in a bottle, Article I. Thereafter, the pocket of Kurta of Basarat Khan was dipped in solution and the colour of the solution changed to pink. The solution was sealed in bottle, Article K. The kurta was also seized vide seizure memo Ex. P.9. The fingers of complainant were also dipped in the solution and the colour changed. The solution was also sealed in a bottle, Article L. Spot map, Ex. P.10 was prepared. The Appellants Anand Kumar Shukla, Shiva Bhadoriya and Basarat Khan were arrested vide arrest memo Ex. P.11 to P.13.

120. Atul Singh seized the file of Aslam Khan from Anand Shukla vide seizure memo Ex. P.14. The original file was returned after getting the self attested photo copy from Anand Kumar Shukla. The file, N-1 has 7 pages. The final panchnama,Ex.P.15 was prepared and the Appellants

and Basarat Khan were released on bail on the spot itself. This witness also identified Basarat Khan in the Court and stated that he was the person from whom, the currency notes of Rs. 7,000 were recovered. Since, this witness had forgotten certain things, therefore, he was declared hostile and was cross-examined by the Public Prosecutor.

121. In cross-examination by Public Prosecutor, he admitted that before putting the treated currency notes in the pocket of the complainant, the pocket was checked and it was found to be empty. He also admitted that on 30-6-2014 also, before putting the treated currency notes, the pocket of the shirt of the complainant was checked and it was found to be empty. He admitted that on 27-6-2014, after the trap had failed, the currency notes were taken out from the pocket of the complainant and were kept in envelop. He admitted that on 20-6-2014, the panch witness Dohare, had taken out the currency notes from the pocket of Basarat Khan.

122. This witness was cross-examined and in cross-examination by accused, he stated that no voice sample was taken in his presence. The specimen of the handwriting of complainant was also not taken. He was given written permission by Principal to attend the Lokayukt office. When he went to Lokayukt office, he met with Atul Singh and Surendra Rai. Other persons were also there but he doesnot know their names. He had not seen the ID proof of Atul Singh and the complainant. Complaint Ex. P.2 and P.3 were not typed in his presence. He admitted that when they had left the Lokayukt office, it was not known that at which place, the illegal gratification would be paid. On 27-6-2014, they went to the house of Shiva Bhadoriya situated in Sewa Nagar. Aslam Khan (P.W.4) did not talk to Shiva Bhadoriya in his presence. They did not verify that

whether Shiva Bhadoriya is residing in house in Sewa Nagar or not?He did not get any instructions from the office to Collector to attend the Lokayukt Office on 30-6-2014. He also did not take any permission from the Principal. They had left the Lokayukt office at 1:00 P.M. They reached Kulaith at about 2:30 P.M. They had parked their vehicles at a distance of about 200 meters. There is a boundary around the building and there is a distance of 100 meters between the main gate of boundary wall and the building. He admitted that he had not seen the actual handing over of money. They reached on the spot within 5 minutes after receiving the signal. He did not interrogate the accused and also did not record any statement. He denied that proceedings were done on 27-6-2014 or 30-6-2014.

123. Bhag Singh Tomar (P.W.5) has also supported the prosecution case and has stated that on 24-6-2014, he was called by Atul Singh and introduced the complainant. The complainant told that he has filed an application for demarcation of his land and the Appellant Shiva Bhadoriya is demanding money for demarcation of his land. Accordingly, one voice recorder was given to the complainant and was also informed about the manner of operating the same. This witness was deputed to accompany the complainant. On 25-6-2014 at about 11 A.M. he and complainant left for the house of the Appellant Shiva Bhadoriya on two different motor cycles. They met with Shiva Bhadoriya while they were on their way. The complainant had talk with Shiva Bhadoriya. Shiva Bhadoriya came to Phoolbag square along with complainant, whereas this witness followed them on his motor cycle. After dropping Shiva Bhadoriya at Phoolbag square, the complainant informed that he has

recorded the conversation. The voice recorder was sealed in envelop, Ex. P.18. The sealed voice recorder was deposited by him in the office of S.P.E. (Lokayukt). On 26-6-2014, at 11:30 A.M., the investigating officer, Atul Singh opened the voice recorder in front of the complainant and the witnesses including this witness, and opening/unwrapping panchnama, Ex. P.17 was prepared. Thereafter, this witness has also narrated the proceedings which were done by the investigating officer on 27-6-2014 and 30-6-2014. This witness was cross-examined. He admitted that the key of S.P.E. (Lokayukt) office remains with P.W.D. Office. The Appellants could not elicit anything from his evidence, which may make his evidence doubtful or unreliable.

124. Vijay Sharma (P.W. 6) has proved the CDR of Mobile Numbers 7697925928, 9165160517, 8109173386 and 9826276727 and 9713466888, Ex. P.21 which shows that on 24-6-2014 call was made to 9713466888 from 8109173386, on 27-6-2014, at about 8:24:47, there was a conversation for 25 seconds, at 9:39:16 there was conversation for 74 seconds and at 16:55:23, there was conversation for 29 seconds. Thus, he has proved that the complainant had talked to the Appellant Shiva Bhadoriya on 24-6-2014 and 27-6-2014.

125. Rajendra Singh (P.W.7) had registered the FIR, Ex. P. 22 on the basis of Dehati Nalishi. The memo for sending the seized articles, Ex. P.23 to FSL, was signed by Bhadoriya and he can identify his signatures as he had worked with him. The deposit slip is Ex. P. 23B. The FSL report is Ex. P.24 and duty certificate is Ex. P.25.

126. Kavindra Singh Chauhan (P.W. 8) had investigated the matter after the trap was laid. This witness has proved that he had asked the

Appellant Shiva Bhadoriya to give sample of her voice, but by letter dated 8-8-2014, Ex. P.28, She refused to give sample of her voice. He also collected the service record of Appellants Anand Kumar Shukla and Shiva Bhadoriya. Reply dated 9-9-2014, was received from Kashi Prasad Kanoriya (P.W. 9) according to which the application for demarcation was received on 23-5-2014 and since, the Appellant Anand Kumar Shukla was not present in the *Jan Mitra Kendra*, therefore, the application was given to the Appellant Shiva Bhadoriya. By order dated 18-12-2013, Ex. P.32-A, the Appellant Shiva Bhadoriya was posted as Patwari, 42-Kulaith. This witness further stated that mobile number of Anand Kumar Shukla is 9826276727. on 30-6-2014, the complainant had talk with the Appellant Anand Kumar Shukla at 9:13:20, Ex. P.21B. Similarly, the complainant had talked to the Appellant Shiva Bhadoriya on her mobile number 9713466888 on 24-6-2014 at 10:34:39, Ex. P. 21D and on 27-6-2014 at 8:24:47, 9:39:16 and 16:55:23, Ex. P.21E. This witness was cross-examined. He admitted that he had not recorded the statement of first investigating officer Atul Singh. He denied that he had wrongly recorded the statements of the witnesses. He admitted that the letter refusing to give voice sample, Ex. P.28 was not placed before him and Shri Santosh Singh Gaur had not received the said letter in his presence. He admitted that letter dated 1-8-2019, Ex. P.8 is not available in police case diary,but admitted that it is in the file of correspondences. He admitted that at present, Santosh Singh Gaur is posted as Superintendent of Police, Sagar. He also stated that the observation in the sanction order, Ex. P. 15 i.e., the Appellants were trapped on 27-6-2014 is incorrect and explained that it was a typing mistake.

127. D.D. Sharma (P.W.11) had provided the service records of the Appellants. He was cross-examined. In cross-examination, he stated that if any one raises an objection to the demarcation proceedings, then the Revenue Inspector will not have any jurisdiction to pass any order in relation to demarcation. He admitted that after an entry is made in the computer and is uploaded, then anyone can see the entry. **He also admitted the suggestion that if an objection is filed to the demarcation proceeding, then the Revenue Inspector will lose his authority to pass an order and in the such disputed demarcation proceedings, only the Tahsildar can pass an order.**

128. Atul Singh (P.W. 12) has stated that the complainant had made complaint, Ex. P.2, along with photocopy of challan of Rs.50/- which was deposited as demarcation fee, Ex. P.2A, photo copy of Khasra Panchsala, Ex. P.2B, Photo copy of rin pustika, Ex. P.2C. Similarly this witness has also proved that another complaint, Ex. P.3 was given by the complainant. The rest of the proceedings done by the witness which have already been narrated by M.L. Jha (P.W.2) were also stated. He further stated on 30-6-2014, at about 9:30 A.M., the complainant had informed him that Shiva Bhadoriya has called in at Jan Mitra Kendra on 30-6-2014 for payment of illegal gratification and accordingly, he had directed the complainant and both the panch witnesses to remain present in the S.P.E. (Lokayukt) Officer at 11:30 A.M. He further stated that after the trap was laid and money was recovered from the possession of Basarat Khan, he had recovered the original papers regarding demarcation proceedings i.e., application of complainant, challan of Rs. 100/-, receipt of Rs. 50/- (demarcation fee), print out of Khasra No. 944, copy of Khasra of 939,

940,944, Kishtband Khatoni from the Appellant Anand Kumar Shukla. The seizure memo is Ex. P.14. The original documents were returned back after obtaining self attested photo copy of the same from Anand Kumar Shukla. The file is Article N-1. Each paper of File N-1 were counter signed by the Appellant Anand Kumar Shukla, the Appellant Shiva Bhadoriya and this witness. The original documents were returned to Anand Kumar Shukla with a direction he should produce the same, as and when directed. This witness was cross-examined in detail. . In para 107 of his cross-examination, he specifically stated that from the documents seized from the possession of Anand Kumar Shukla, it was not clear that the proceedings were pending and were not concluded. The appellant Anand Kumar Shukla had taken out the documents pertaining to the complainant. He denied that those documents were seized from the disposed off files of *Jan Mitra Kendra*. He denied that these documents were not provided by Anand Kumar Shukla from his file. However, no specific question was put to this witness to the effect that the order-sheets of the demarcation proceedings were also there but were not seized by him He also denied the suggestion that at the time of trap, the complainant had informed him that since, the co-accused Basarat Khan had played drum in the marriage of his brother, therefore, his outstanding dues were paid to him.

Conclusion

129. Thus, from the above mentioned discussion, it is clear that the complainant Aslam Khan (P.W.4) had filed an application for demarcation of land. The Appellant Anand Kumar Shukla, directed the complainant to talk to the Appellant Shiva Bhadoriya. Shiva Bhadoriya

in her turn, demanded Rs. 5,000/- per bigha and after negotiations, she agreed for Rs. 7,000/- for carrying out demarcation. The complainant Aslam Khan (P.W.4) made a complaint, Ex. P.2 to the S.P.E. (Lokayukt). A voice recorder was given to Complainant to record the conversation and accordingly the conversation of the complainant with the Appellant Shiva Bhadoriya was recorded. Transcript, Ex. P.19 was prepared. Second complaint, Ex. P.3 was made by the complainant. The Panch witnesses were called and they were introduced to the complainant. The complaint was verified by the panch witnesses by reading out loudly to the complainant. Accordingly, trap was laid on 27-6-2014. The serial number of currency notes were recorded. The currency notes were treated with phenolphthalein powder. The trap party went to the house of the Appellant Shiva Bhadoriya, but she was not present in the house. On number of occasions, the complainant contacted her telephonically but she did not come back and accordingly, the trap was suspended with a direction to the complainant to inform after any instruction is received from the Appellants. Accordingly on 30-6-2014, the complainant informed the investigating officer that Anand Kumar Shukla has instructed him to pay illegal gratification. The panch witnesses were called. A supplementary preliminary panchnama was prepared. The trap party went to *Jan Mitra Kendra* Kulaith. The Appellants Anand Kumar Shukla, Shiva Bhadoriya and Basarat Khan were present in the *kendra*. On the instructions of Shiva Bhadoriya, the complainant handed over the amount of Rs. 7,000/- to Basarat Khan. The Appellants were arrested on the spot. Money was recovered from Basarat Khan. The record of demarcation proceedings was recovered from the possession of Anand

Kumar Shukla which was not having any order sheets to show that any proceedings were done in pursuance to the demarcation application. Even the complainant Aslam Khan (P.W.4)has admitted that the Appellants Anand Kumar Shukla and Shiva Bhadoriya never came to the spot for demarcation purposese. A letter was given to the Appellant Shiva Bhadoriya for giving sample of her voice, which was refused by her in writing.

130. The Appellants have also relied upon the order-sheet, Ex.D.1 to D.6 to show that the case of the complainant was already rejected on 16-6-2014. But this Court has already found that these documents are concocted and forged documents.

131. However, Basarat Khan has been acquitted by the Trial Court, and it was submitted by the Counsel for the parties, that his acquittal was not challenged. This Court has gone through the reasons assigned by the Trial Court in para 69 of its judgment for acquitting Basarat Khan, but the same doesnot appear to be plausible. The reasoning that Basarat Khan had merely accepted the money on the instructions of Shiva Bhadoriya is not a sound reasoning as it cannot be a valid defence. Since, the acquittal of Basarat Khan is not in question, therefore, it is not necessary to dwell upon this question any further, but one thing is clear that acquittal of Basarat Khan will not have any adverse effect on the prosecution case.

132. No other argument is advanced by the Counsel for the Appellants.

133. Consequently, it is held that the prosecution has successfully established the guilt of the Appellants beyond reasonable doubt and accordingly their conviction under Sections 7, 13(1)(d) read with Section

13(2) of Prevention of Corruption Act, read with Section 120-B of IPC as well as under Section 120-B of IPC is hereby affirmed.

134. So far as the question of sentence is concerned, it is sufficient to hold that corruption is spreading like cancer in the society and therefore, it has to be dealt with iron hands. Therefore, the sentence awarded by the Trial Court doesnot call for any interference.

135. Now the next question for consideration is that whether this Court should ignore the fact that the Appellants had not only created the false and forged official documents but the same were also filed in the Trial Court or whether they should be prosecuted for the said mis-adventurous act also.

136. The Trial Court has also found that the order-sheets and other proceedings Ex. D.2 to D.5 and proceedings written on reverse side of application, Ex. D.6 are suspicious documents. This Court has also come to a conclusion, that the Appellants have created false and fabricated documents, Ex. D.1 to D.6 (entries made on reverse side of Application). These documents were also filed in the judicial proceedings. Now the question for consideration is that whether the bar under Section 195 of CrPC would apply or not?

137. Undisputedly, the documents were fabricated outside the Court. The Supreme Court in the case of **Iqbal Singh Marwah Vs. Meenakshi Marwah,** reported in **(2005) 4 SCC 370** has held as under :

> 23. In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(*b*), as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires

> and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(*b*). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (*b*)(*ii*), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded.
>
> * * * *
>
> 33. In view of the discussion made above, we are of the opinion that *Sachida Nand Singh* has been correctly decided and the view taken therein is the correct view. Section 195(1)(*b*)(*ii*) CrPC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in *custodia legis*.

138. Another question for consideration is that whether it is expedient in the interest of justice to proceed against the Appellants for filing false and forged documents or not?

139. The Supreme Court in the case of **Dhananjay Sharma v. State of Haryana,** reported in **(1995) 3 SCC 757** has held as under :

38. Section 2(*c*) of the Contempt of Courts Act, 1971 (for short the Act) defines criminal contempt as "the publication (whether by words, spoken or written or by signs or visible representation or otherwise) of any matter or *the doing of any other act whatsoever* to (1) scandalise or tend to scandalise or lower or tend to lower the authority of any court; (2) *prejudice or interfere or tend to interfere with the due course of judicial proceedings* or (3) *interfere or tend to interfere with, or obstruct or tend to obstruct the administration of justice in any other manner*. Thus, any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits or making false statement on oath in courts aims at striking a blow at the rule of law and no court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving of false statements and fabricating false evidence in a court of law. The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the court and interfere

> with the due course of judicial proceedings or the administration of justice. In *Chandra Shashi* v. *Anil Kumar Verma* the respondents produced a false and fabricated certificate to defeat the claim of the respondent for transfer of a case. This action was found to be an act amounting to interference with the administration of justice. Brother Hansaria, J. speaking for the Bench observed: (SCC pp. 423-24, paras 1 and 2)
>
> "The stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.
>
> Anyone who takes recourse to fraud deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice."

140. In the present case, the Appellants have forged the official documents by preparing forged order-sheet, Ex. D.2, forged Panchnama, Ex. D.3, Written Objection, Ex. D.4, Notice for demarcation proceedings, Ex. D.5 and endorsement on the reverse side of the application, Ex. D.5. Forging official documents is a serious offence which should not be ignored. **Under these circumstances, the Trial Court is directed to lodge an FIR against the Appellants Anand Kumar Shukla and Shiva Bhadoriya in this regard.**

141. The next question for consideration is that whether this Court should direct for prosecution of complainant Aslam Khan (P.W.4) or not?

142. The first question for consideration is that whether, a preliminary

enquiry as envisaged under Section 340 of Cr.P.C. is necessary or not and whether any opportunity of hearing is to be given to the witnesses, before directing for their prosecution for giving false evidence before the Court or not?

143. Section 340 of Cr.P.C. reads as under :

> **340. Procedure in cases mentioned in Section 195**.—(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (*b*) of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,—
>
> (*a*) record a finding to that effect;
>
> (*b*) make a complaint thereof in writing;
>
> (*c*) send it to a Magistrate of the first class having jurisdiction;
>
> (*d*) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and
>
> (*e*) bind over any person to appear and give evidence before such Magistrate.
>
> (2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195.
>
> (3) A complaint made under this section shall be signed,—
>
> (*a*) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;
>
> (*b*) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in

this behalf.]

(4) In this section, "Court" has the same meaning as in Section 195.

144. The Supreme Court in the case of **K.T.M.S. Mohd. v. Union of India** reported in**(1992) 3 SCC 178** has held as under :

> **35.** In this context, reference may be made to Section 340 of the Code of Criminal Procedure under Chapter XXVI under the heading "Provisions as to Offences Affecting the Administration of Justice". This section confers an inherent power on a court to make a complaint in respect of an offence committed in or in relation to a proceeding *in that court*, or as the case may be, in respect of a document produced or given in evidence in a proceeding *in that court*, if *that court* is of opinion that it is expedient in the interest of justice that an enquiry should be made into an offence referred to in clause (*b*) of sub-section (1) of Section 195 and authorises *such court* to hold preliminary enquiry as it thinks necessary and then make a complaint thereof in writing after recording a finding to that effect as contemplated under sub-section (1) of Section 340. The words "in or in relation to a proceeding *in that court*" show that the court which can take action under this section is only the court operating within the definition of Section 195(3) before which or in relation to whose proceeding the offence has been committed. There is a word of caution inbuilt in that provision itself that the action to be taken should be expedient in the interest of justice. Therefore, it is incumbent that the power given by Section 340 of the Code should be used with utmost care and after due consideration. The scope of Section 340(1) which corresponds to Section 476(1) of the old Code was examined by this Court in *K. Karunakaran* v. *T.V. Eachara Warrier* and in that decision, it has observed: (SCC pp. 25 and 26, paras 21 and 26)
>
> "At an enquiry held by the Court under Section 340(1), CrPC, irrespective of the result of the main case, the only question is whether a prima facie case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action.

… The two per-conditions are that the materials produced before the High Court make out a prima facie case for a complaint and secondly that it is expedient in the interest of justice to permit the prosecution under Section 193 IPC."

36. The above provisions of Section 340 of the Code of Criminal Procedure are alluded only for the purpose of showing that necessary care and caution are to be taken before initiating a criminal proceeding for perjury against the deponent of contradictory statements in a judicial proceeding.

145. The Supreme Court in the case of **State (NCT of Delhi) v. Pankaj Chaudhary,** reported in **(2019) 11 SCC 575** has held as under :

49. There are two preconditions for initiating proceedings under Section 340 CrPC:

(*i*) materials produced before the court must make out a prima facie case for a complaint for the purpose of inquiry into an offence referred to in clause (*b*)(*i*) of sub-section (1) of Section 195 CrPC, and

(*ii*) it is expedient in the interests of justice that an inquiry should be made into the alleged offence.

50. Observing that the court has to be satisfied as to the prima facie case for a complaint for the purpose of inquiry into an offence under Section 195(1)(*b*) CrPC, this Court in *Amarsang Nathaji* v. *Hardik Harshadbhai Patel* held as under: (SCC pp. 117-18, paras 6-8)

"*6*. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Penal Code, 1860 (45 of 1860) (hereinafter referred to as "IPC"); but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred to in Section 340(1) CrPC, having regard to the overall factual

matrix as well as the probable consequences of such a prosecution. (See *K.T.M.S. Mohd.* v. *Union of India*.) The court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case.

7. In the process of formation of opinion by the court that it is expedient in the interests of justice that an inquiry should be made into, the requirement should only be to have a prima facie satisfaction of the offence which appears to have been committed. It is open to the court to hold a preliminary inquiry though it is not mandatory. In case, the court is otherwise in a position to form such an opinion, that it appears to the court that an offence as referred to under Section 340 CrPC has been committed, the court may dispense with the preliminary inquiry. Even after forming an opinion as to the offence which appears to have been committed also, it is not mandatory that a complaint should be filed as a matter of course. (See *Pritish* v. *State of Maharashtra*.)

8. In *Iqbal Singh Marwah* v. *Meenakshi Marwah*, a Constitution Bench of this Court has gone into the scope of Section 340 CrPC. Para 23 deals with the relevant consideration: (SCC pp. 386-87)

'*23*. In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(*b*), as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(*b*). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may

be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint.' "

The same principle was reiterated in *Chintamani Malviya* v. *High Court of M.P.*

51. It has been consistently held by this Court that prosecution for perjury be sanctioned by the courts only in those cases where perjury appears to be deliberate and that prosecution ought to be ordered where it would be expedient in the interest of justice to punish the delinquent and not merely because there is some inaccuracy in the statement. In *Chajoo Ram* v. *Radhey Shyam*, this Court held as under: (SCC pp. 779-80, para 7)

"*7*. The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge. In the present case we do not think the material brought to our notice was sufficiently adequate to justify the conclusion that it is expedient in the interests of justice to file a complaint. The approach of the High Court seems somewhat mechanical and superficial: it does not reflect the requisite judicial deliberation…."

146. Thus, it is clear that before taking action under Section 340 of Cr.P.C., the Court is required to see as to whether :-

(i) materials produced before the court makes out a prima facie case for a complaint for the purpose of inquiry into an offence referred to in clause (b)(i) of sub-section (1) of Section 195 CrPC, and

(ii) it is expedient in the interests of justice that an inquiry should be made into the alleged offence.

147. When this Court has already formed a prima facie opinion, and both the above mentioned ingredients are present, then it is not necessary to conduct any other preliminary enquiry as envisaged under Section 340 of Cr.P.C. By proceeding under Section 340 of Cr.P.C., a Court does not record the guilt of an accused, but it is merely of a prima facie opinion that it is expedient in the interests of justice that an inquiry should be made into the alleged offence. Therefore, where a Court is otherwise in a position to form an opinion regarding making of complaint, then the Court may dispense with the preliminary inquiry.

148. The Supreme Court in the case of **Amarsang Nathaji v. Hardik Harshadbhai Patel,** reported in **(2017) 1 SCC 113** has held as under :

> **7.** In the process of formation of opinion by the court that it is expedient in the interests of justice that an inquiry should be made into, the requirement should only be to have a prima facie satisfaction of the offence which appears to have been committed. It is open to the court to hold a preliminary inquiry though it is not mandatory. In case, the court is otherwise in a position to form such an opinion, that it appears to the court that an offence as referred to under Section 340 CrPC has been committed, the court may dispense with the preliminary inquiry. Even after forming an opinion as to the offence which appears to have been committed also, it is not mandatory that a complaint should be filed as a matter of course. (See *Pritish* v. *State of Maharashtra*.)

149. The Supreme Court in the case of **State of Goa v. Jose Maria**

Albert Vales, reported in **(2018) 11 SCC 659** has held as under :

> **31.** It is no longer res integra that the preliminary enquiry, as comprehended in Section 340, is not obligatory to be undertaken by the court before taking the initiatives as contained in clauses (*a*) to (*e*) while invoking its powers thereunder. Section 341 provides for an appeal against an order either refusing to make a complaint or making a complaint under Section 340, whereupon the superior court may direct the making of the complaint or withdrawal thereof, as the case may be. Section 343 delineates the procedure to be adopted by the Magistrate taking cognizance. This provision being of determinative significance is quoted hereinbelow:
>
> "**343. Procedure of Magistrate taking cognizance**.—(1) A Magistrate to whom a complaint is made under Section 340 or Section 341 shall, notwithstanding anything contained in Chapter XV, proceed, as far as may be, to deal with the case as if it were instituted on a police report.
>
> (2) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage, adjourn the hearing of the case until such appeal is decided."
>
> (emphasis supplied)

150. The next question for consideration is as to whether it is necessary for this Court to give an opportunity of hearing to the Complainant Aslam Khan (P.W.4) or not?

151. The question is no more *res integra.*

152. The Supreme Court in the case of **Pritish v. State of Maharashtra,** reported in **(2002) 1 SCC 253** has held as under :

> **18.** We are unable to agree with the said view of the learned Single Judge as the same was taken under the impression that a decision to order inquiry into the offence itself would prima facie amount to holding him, if not guilty, very near to a finding of his guilt. We have pointed out earlier that the

> purpose of conducting preliminary inquiry is not for that purpose at all. The would-be accused is not necessary for the court to decide the question of expediency in the interest of justice that an inquiry should be held. We have come across decisions of some other High Courts which held the view that the persons against whom proceedings were instituted have no such right to participate in the preliminary inquiry (vide *M. Muthuswamy* v. *Special Police Establishment*).

153. The next question for consideration is that whether it is expedient in the interest of justice to direct for prosecution of the complainant?

154. In view of the fact, that the complainant Aslam Khan (P.W.4) after setting the criminal agency into motion, and having after actively participated in the trap proceedings, took a somersault. Thus, it is clear that some thing must have transpired between the complainant Aslam Khan (P.W.4) and the Appellants. Since, the corruption is spreading like a cancer in the society and is menace to the civil society, therefore, the matter in hand has to be dealt with very firmly, specifically when the Appellants had gone to the extent of preparing and filing forged official documents in the Court. Under these circumstances, this Court is of the considered opinion, that it would be in the interest of justice that the complainant Aslam Khan (P.W.4) should be prosecuted for giving false evidence before the Court. Therefore, the Trial Court is directed to make a complaint as required under Section 340 of Cr.P.C.

155. Consequently, the judgment and sentence dated 29-10-2021 passed by Special Judge (Prevention of Corruption Act), Gwalior in Special Case No.300013 of 2016 is hereby **affirmed with aforementioned directions.**

156. The Appellant Anand Kumar Shukla is in jail. He shall undergo the remaining jail sentence.

157. The Appellant Shiva Bhadoriya is on bail. Her bail bonds are hereby cancelled. She is directed to immediately surrender before the Trial Court within a period of 15 days from today, failing which the Trial Court shall be free to issue arrest warrant against her.

158. Let a copy of this judgment be immediately provided to the Appellants free of cost.

159. The record of the Trial Court be sent back along with copy of this judgment for necessary information and compliance.

160. Accordingly, the Criminal Appeal No.6664/2021 filed by Shiva Bhadoriya and Criminal Appeal No. 6678 of 2021 filed by Anand Kumar Shukla are **dismissed.**

(G.S. AHLUWALIA)
JUDGE