IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered on : 05.03.2015

CRL.A.124/2013

REKHA SHARMA ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Arvind Chaudhary, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.152/2013

RAKSHA JINDAL ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Vikas Pahwa, Sr. Advocate with Mr. Atul Bhuchar, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.159/2013

NIRMAL DEVI ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Ms. Geeta Luthra, Sr. Advocate with Mr. Jatin Sehgal and Ms. Naina Dubey, Advocates
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.165/2013

PUSHKAR MAL VERMA ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Manohar Lal, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.170/2013

AJIT SINGH SANGWAN …… Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ramesh Gupta, Sr. Advocate with Mr. Bharat Sharma, Mr. Ashok Kumar and Mr. Vijay S. Bisnoi, Advocates
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.171/2013

SHER SINGH ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ramesh Gupta, Sr. Advocate with Mr. Bharat Sharma, Mr. Ashok Kumar and Mr. Vijay S. Bisnoi, Advocates
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.172/2013

MAHAVIR SINGH LATHAR ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ramesh Gupta, Sr. Advocate with Mr. Bharat Sharma and Mr. Ashok Kumar, Advocates
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.173/2013

SASHI MALHOTRA ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ramesh Gupta, Sr. Advocate with Mr. Bharat Sharma, Mr. Ashok Kumar and Mr. Vijay S. Bisnoi, Advocates
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.174/2013

ANAR SINGH ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ramesh Gupta, Sr. Advocate with Mr. Bharat Sharma, Mr. Ashok Kumar and Mr. Vijay S. Bisnoi, Advocates
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.175/2013

RAM KAUR ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ramesh Gupta, Sr. Advocate with Mr. Bharat Sharma, Mr. Ashok Kumar and Mr. Vijay S. Bisnoi, Advocates
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.186/2013

KRISHNA GUPTA ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ramesh Gupta, Sr. Advocate with Mr. Bharat Sharma, Mr. Ashok Kumar and Mr. Vijay S. Bisnoi, Advocates
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.187/2013

BRAHMA NAND ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ramesh Gupta, Sr. Advocate with Mr. Bharat Sharma, Mr. Ashok Kumar and Mr. Vijay S. Bisnoi, Advocates
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.188/2013

PREM BAHL ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ramesh Gupta, Sr. Advocate with Mr. Bharat Sharma, Mr. Ashok Kumar and Mr. Vijay S. Bisnoi, Advocates
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.189/2013

RAJENDER PAL SINGH ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ramesh Gupta, Sr. Advocate with Mr. Bharat Sharma, Mr. Ashok Kumar and Mr. Vijay S. Bisnoi, Advocates
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.194/2013

DILBAG SINGH ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Devender Kumar and Mr. Rajesh Jangra, Advocates
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.198/2013

SARWAN KUMAR CHAWLA ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Ms. Geeta Luthra, Sr. Advocate with Mr. Jatin Sehgal and Ms. Naina Dubey, Advocates
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.204/2013

JEET RAM KHOKHAR ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ramesh Gupta, Sr. Advocate with Mr. Bharat Sharma, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.205/2013

KAILASH KAUSHIK ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ramesh Gupta, Sr. Advocate with Mr. Bharat Sharma, Mr. Ashok Kumar and Mr. Vijay S. Bisnoi, Advocates
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.206/2013

KANTA SHARMA ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ramesh Gupta, Sr. Advocate with Mr. Bharat Sharma, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.213/2013

OM PRAKASH CHAUTALA ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ram Jethmalani, Sr. Advocate and Mr. R.S. Cheema, Sr. Advocate with Mr. N.S. Shekhawat, Ms. Tarannum Cheema, Mr. Zorawar Singh, Mr. Amit Sahni, Mr. Sunny Modgil, Mr. Pranav Diesh, Mr. Karan Kalia, Ms. P.R. Mala, Mr. Rajinder Banku and Mr. Rajiv Sidhu, Advocates
For the Respondent : Mr. Rakesh Kumar Khanna, ASG with Mr. Harsh Prabhakar, Mr. Anirudh Tanwar, Mr. Mohit Nagar and Ms. Priyanka Sinha, Advocates

CRL.A.231/2013

ABHILASH KAUR ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Vikas Pahwa, Sr. Advocate with Mr. B. Badrinath and Mr. Sumit Arora, Advocates
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.237/2013

SUDHA SACHDEVA ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. S.C. Chawla, Advocate

For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.238/2013

VINOD KUMARI ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Pramod Kumar Dubey, Advocate with Mr. Shiv Pande, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.245/2013

RAM SINGH ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Vikas Pahwa, Sr. Advocate with Mr. Sumit Chaudhary, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.246/2013

MADAN LAL KALRA ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Vikas Pahwa, Sr. Advocate with Mr. Sumit Chaudhary, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi

Sharma, Advocates

CRL.A.247/2013

YOGESH KUMAR SHARMA ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. N.K. Sharma, Advocate with Mr. Sanjay Sharma, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.248/2013

RAM KUMAR ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Amit Kumar, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.249/2013

TULSI RAM BIHAGRA ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Amit Kumar, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.250/2013

USHA RANI ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Pradeep Dahiya, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.251/2013

DALIP SINGH ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ramesh Gupta, Sr. Advocate with Mr. Bharat Sharma, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.252/2013

MAMAN CHAND ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Amit Kumar, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.253/2013

PHOOL KHURANA ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ramesh Gupta, Sr. Advocate with Mr. Bharat Sharma, Mr. Ashok Kumar and Mr. Vijay S. Bisnoi, Advocates
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.255/2013

AMAR SINGH ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ramesh Gupta, Sr. Advocate with Mr. Bharat Sharma, Mr. Ashok Kumar and Mr. Vijay S. Bisnoi, Advocates
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.256/2013

NARAIN SINGH RUHIL ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Amit Kumar, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.257/2013

SAWAN LAL ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Amit Kumar, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.258/2013

RAJENDER SINGH DAHIYA ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ramesh Gupta, Sr. Advocate with Mr. Bharat Sharma, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.260/2013

SAROJ SHARMA ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ramesh Gupta, Sr. Advocate with Mr. Bharat Sharma, Mr. Ashok Kumar and Mr. Vijay S. Bisnoi, Advocates
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.268/2013

DARSHAN DAYAL VERMA ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Amit Kumar, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.269/2013

RAM SARAN KUKREJA ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Amit Kumar, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.270/2013

BIHARI LAL ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Amit Kumar, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.271/2013

HARBANS LAL ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Amit Kumar, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.277/2013

SANJIV KUMAR ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant :Mr. Arvind Nigam, Sr. Advocate with Mr. Aditya Singh and Ms. Kamini Jaiswal, Advocate1
For the Respondent : Mr. Rakesh Kumar Khanna, ASG with Mr. Harsh Prabhakar, Mr. Anirudh Tanwar, Mr. Mohit Nagar and Ms. Priyanka Sinha, Advocates

CRL.A.293/2013

KRISHAN LAL NARANG THR. ITS
PAROKAR DEEPALI NARANG ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Rajiv Garg, Advocate with Mr. Rajeev Kapoor and Mr. Ashish Garg, Advocates
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.295/2013

DURGA DUTT PRADHAN ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. R.K. Kapoor, Advocate with Mr. Vikram Saini along with the Appellant in person
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.301/2013

CHAND SINGH VERMA ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ram Naresh Yadav and Mr. Amit Kumar, Advocates
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.303/2013

JOGINDER LAL ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Amit Kumar, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.313/2013

DAYA SAINI ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Ms. Rebecca M. John, Sr. Advocate with Mr. Vishal Gosain and Mr. Harsh Bora, Advocates
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.334/2013

AJAY SINGH CHAUTALA ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. R.S. Cheema, Sr. Advocate with Mr. Naresh Sekhawat, Ms. Tarannum Cheema, Mr. Amit Sahni, Mr. Sunny Modgil, Mr. Zorawar Singh, Mr. Vaibhav Mishra, Mr. Ashwani Bansal and Mr. Jalaj Aggarwal, Advocates
For the Respondent : Mr. Rakesh Kumar Khanna, ASG with Mr. Harsh Prabhakar, Mr. Anirudh Tanwar, Mr. Mohit Nagar and Ms. Priyanka Sinha, Advocates

CRL.A.340/2013

SHER SINGH BADSHAMI ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Mukul Rohtagi, Sr. Advocate with Mr. Mohit Mathur, Mr. Giriraj Subramaniam, Mr. Amit Sahni, Mr. Zorawar Singh, Mr. Vaibhav Mishra, Mr. Ashwani Bansal and Mr. Jalaj Aggarwal, Advocates
For the Respondent : Mr. Rakesh Kumar Khanna, ASG with Mr. Harsh Prabhakar, Mr. Anirudh Tanwar, Mr. Mohit Nagar and Ms. Priyanka Sinha, Advocates

CRL.A.346/2013

VIDYADHAR ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. D.C. Mathur, Sr. Advocate with Mr. D.P. Singh, Mr. D.S. Kohli, Mr. Rajkiran Vats, Ms. Sonam Gupta, Mr. Ravi Prakash Vyas and Mr. Salil Bhattacharya, Advocates

For the Respondent : Mr. Rakesh Kumar Khanna, ASG with Mr. Harsh Prabhakar, Mr. Anirudh Tanwar, Mr. Mohit Nagar and Ms. Priyanka Sinha, Advocates

CRL.A.369/2013

URMIL SHARMA ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Hari Om Yaduvanshi, Advocate with Mr. Abhinav Jain, Advocate

For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.374/2013

BANI SINGH ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ramesh Gupta, Sr. Advocate with Mr. Bharat Sharma and Mr. Ashok Kumar, Advocates

For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.379/2013

SHEESH PAL SINGH ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Vikas Pahwa, Sr. Advocate with Mr. Sumit Chaudhary, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.381/2013

VEER BHAN MEHTA ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Sumit Arora, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CRL.A.416/2013

OM PRAKASH TIWARI ….. Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION ….. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Sumit Chaudhary, Advocate with Mr. Pushpinder Singh, Advocate
For the Respondent : Ms. Rajdipa Behura, SPP with Ms. Monica Gupta and Ms. Nidhi Sharma, Advocates

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present batch of appeals arise from the judgment and order of the Special Judge (Prevention of Corruption Act), (CBI), Rohini dated

16.01.2013 convicting the appellants in the following terms by way of order on sentence dated 22.01.2013.

Accused No.	Name of Accused	Criminal Appeal No.	Conviction	Maximum Sentence (In Years)
1.	Vidya Dhar, IAS	346/2013	• Section 120-B IPC r/w Section 418/467/471 IPC rw Section 13(2) PCAct	10
2.	Sher Singh Badshami	340/2013	• Section 120-B IPC r/w Section 418/467/471 IPC rw Section 13(2) PCAct	10
3.	Sanjiv Kumar, IAS	277/2013	• Section 13(2) rw 13(1)(d) PC Act • Section 120-B IPC r/w Section 418/467/471 IPC rw Section 13(2) PCAct	10
4.	Om Prakash Chautala	213/2013	• Section 13(2) PC Act rw 13(1)(d) PC Act • Section 120-B IPC r/w Section 418/467/471 IPC rw Section 13(2) PCAct	10
5.	Ajay Singh Chautala	334/2013	• Section 120-B IPC r/w Section 418/467/471 IPC rw Section 13(2) PCAct	10
32.	Madan Lal Kalra (Kurukshetra)	246/2013	• Section 13(2) PC Act • Section 418 IPC, Section 467 IPC and Section 471 IPC • Section 120-B IPC r/w Section 418/467/471 IPC rw Section 13(2) PCAct	10
38.	Durga Dutt Pradhan(m)	295/2013	Same as A-32	10
39.	Bani Singh (m)	374/2013	Same as A-32	10
40.	Daya Saini (Panipat)	313/2013	Same as A-32	10
41.	Ram Singh (Panipat)	245/2013	Same as A-32	10
37.	Pushkar Mal Verma (m)	165/2013	Same as A-32	5
6.	Prem Bahl	188/2013	Same as A-32	4
7.	Shashi Malhotra	173/2013	Same as A-32	4
8.	Krishna Gupta	186/2013	Same as A-32	4
9.	Brahma Nand	187/2013	Same as A-32	4

10.	Vinod Kumari	238/2013	Same as A-32	4
11.	Maman Chand	252/2013	Same as A-32	4
12.	Sawan Lal	257/2013	Same as A-32	4
13.	Kanta Sharma	206/2013	Same as A-32	4
14.	Prabhu Dayal			Expired before filing of the charge-sheet
15.	Phool Khurana	253/2013	Same as A-32	4
16.	Harbans Lal	271/2013	Same as A-32	4
17.	Ram Saran Kukreja	269/2013	Same as A-32	4
18.	Udal Prasad Sharma			Expired during trial on 05.12.2012
19.	Brij Mohan			Discharged on 23.07.2011
20.	Chand Singh Verma	301/2013	Same as A-32	4
21.	Yogesh Kumar Sharma	247/2013	Same as A-32	4
22.	Abhilash Kaur	231/2013	Same as A-32	4
23.	Sher Singh	171/2013	Same as A-32	4
24.	Anar Singh	174/2013	Same as A-32	4
25.	Kailash Kaushik	205/2013	Same as A-32	4
26.	Ajit Singh Sangwan	170/2013	Same as A-32	4
27.	Ram Kaur	175/2013	Same as A-32	4
28.	Mahavir Singh Lathar	172/2013	Same as A-32	4
29.	Narain Singh Ruhil	256/2013	Same as A-32	4
30.	Krishan Lal Narang	293/2013	Same as A-32	4
31.	Usha Rani	250/2013	Same as A-32	4
33.	Veer Bhan Mehta	381/2013	Same as A-32	4
34.	Shashi Bhushan			Expired during trial on

				12.11.2008
35.	Dilbag Singh	194/2013	Same as A-32	4
36.	Ram Kumar	248/2013	Same as A-32	4
42.	Puran Chand			Expired during trial on 03.12.2012
43.	Sheesh Pal Singh	379/2013	Same as A-32	4
44.	Rekha Sharma	124/2013	Same as A-32	4
45.	Raksha Jindal	152/2013	Same as A-32	4
46.	Jeet Ram Khokhar	204/2013	Same as A-32	4
47.	Nirmal Devi	159/2013	Same as A-32	4
48.	Amar Singh	255/2013	Same as A-32	4
49.	Sudha Sachdeva	237/2013	Same as A-3	4
50.	Darshan Dayal Verma	268/2013	Same as A-32	4
51.	Saroj Sharma	260/2013	Same as A-32	4
52.	Tulsi Ram Ram Bihagra	249/2013	Same as A-32	4
53.	Nathu Ram			Expired during trial on 17.01.2012
54.	Om Prakash Tiwari	416/2013	Same as A-32	4
55.	Bihari Lal	270/2013	Same as A-32	4
56.	Rajender Singh Dahiya	258/2013	Same as A-32	4
57.	Dalip Singh	251/2013	Same as A-32	4
58.	Kamla Devi			Expired before filing of the charge-sheet
59.	Rajender Pal Singh	189/2013	Same as A-32	4
60.	Sarwan Kumar Chawla	198/2013	Same as A-32	4
61.	Urmil Sharma	369/2013	Same as A-32	4

62.	Joginder Lal	303/2013	Same as A-32	4

2. In as much as all the aforementioned appellants figured as accused in the Court of the Special Judge and since common questions of fact and law arise, the appeals are disposed of through common judgment.

BACKGROUND OF THE PROSECUTION

3. The background of the prosecution as described by the trial judge is that Sanjiv Kumar (A-3), an IAS Officer of Haryana Cadre, filed a Writ Petition (Cri.) No. 93/2003 in the Supreme Court alleging that while he was posted as Director Primary Education, Haryana, he was pressurized by Om Prakash Chautala (A-4), the then Chief Minister of Haryana to replace the original award lists prepared for the selection of JBT teachers with fake award lists. The genuine lists were prepared by the Selection Committees of various districts in Haryana after conducting interviews of the candidates. Sanjiv Kumar produced before the Supreme Court a set of 15 award lists duly signed by the members of the selection committees and submitted that these fake lists were to be substituted in place of the original lists. He refused to be a part of it and consequent to his refusal, one FIR and various departmental enquiries were initiated against him. Sanjiv Kumar claimed that despite such pressure, he implemented the original award lists and

declared the results, which antagonized Om Prakash Chautala and his political and bureaucratic colleagues. Accordingly, he prayed CBI investigation in this scam.

4. The Supreme Court vide its order dated 25.11.2003 directed the CBI to investigate the matter.

5. During investigation, Sanjiv Kumar handed over one set of interview list of District Kaithal and part list of District Kurukshetra to CBI. For sake of convenience, the 15 award lists filed by Sanjiv Kumar in the Supreme Court and the one interview list of District Kaithal and part list of District Kurukshetra given by him to CBI during investigation would be hereinafter referred to as **Supreme Court Lists**.

6. During investigations, CBI collected the award lists of 18 districts from the office of Director Primary Education-Haryana. These lists would be hereinafter referred to as **Directorate Lists**. It is not in dispute that the result of JBT teachers was declared on the basis of these Directorate Lists.

7. Sanjiv Kumar claimed that these Directorate Lists are genuine whereas Supreme Court lists are fake. The case of the prosecution is vice versa.

CASE OF THE PROSECUTION

8. Till ‘1999 recruitment of JBT teachers was being conducted by Haryana Staff Selection Commission-Chandigarh. Om Prakash Chautala, the then Chief Minister of Haryana was also holding the portfolio of Education Minister-Haryana in September, 1999. It is the case of the prosecution that a malafide decision was taken in the Cabinet of Ministers on 08.09.1999, at the instance of Om Prakash Chautala, vide which the JBT Teachers' recruitment was taken out from the purview of Haryana Staff Selection Commission and was entrusted to the Directorate of Primary Education-Haryana with the ulterior motive to bring the recruitment under his control on the pretext of acute shortage of teachers. In compliance of this Cabinet decision, the Directorate of Primary Education advertised 3,206 district wise vacancies of JBT teachers in Indian Express and Dainik Tribune on 15.11.1999. These selections were to be made through District Level Selection Committees in 18 Districts of Haryana. As per the charge sheet, the 18 District Level Selection Committees conducted the interviews for these posts during December, 1999. The award lists were sent to Directorate, Primary Education. At that time, one Mr. R.P. Chander- IAS was the Director of Primary Education.

9. Mr. R.P. Chander was transferred on 27.04.2000 and Ms. Rajni Shekri Sibal took over as Director Primary Education on that day. It is alleged that

Ms. Rajni Shekri Sibal was called along with Prem Prashant-IAS & P.K. Mahapatra-IAS at Haryana Niwas-Chandigarh where Ajay Singh Chautala (A¬5), Sher Singh Badshami (A¬2) were also present. It is alleged that she was asked to change the award lists. Rajni Shekri Sibal along with Prem Prashant and P.K. Mahapatra were called to another meeting which was held at H.No. 78, Sector-7, Chandigarh which is the residence of Vidya Dhar (A-1). This meeting was also attended by Ajay Singh Chautala and Sher Singh Badshami apart from Vidya Dhar. Here also, Sher Singh Badshami asked Rajni Shekri Sibal to change the award lists so that their favoured candidates may be accommodated. It is alleged that Rajni Shekri Sibal, Prem Prashant and P.K. Mahapatra refused to agree to this proposal.

10. Prosecution has alleged that Om Prakash Chautala was Chief Minister of Haryana from 1999 to 2005. Ajay Singh Chautala (A-5) is the son of Om Prakash Chautala (A-4) and was Member of Parliament from Bhiwani Constituency of Haryana at the relevant time. Vidya Dhar an HCS Officer (later promoted to IAS) and was Officer on Special Duty (OSD) to the Chief Minister and Sher Singh Badshami was the political advisor to the Chief Minister during the period of conspiracy. Prem Prashant was Financial Commissioner Education and Languages (FCEL) and P.K. Mahapatras was Director, Secondary Education, Haryana.

11. As per prosecution, Rajni Shekri Sibal received an anonymous phone call at her residence and she was offered 5% share of the collected money to agree to the aforesaid proposal. Subsequently, her house was also burgled. It is alleged that with a view to ensure the safety of the award lists received from 18 District Primary Education Officers, she wrapped the almirah containing the said award lists with four metres of cloth and sealed it using one rupee coin. Vide a note dated 20.06.2000, she proposed to form a committee for compilation and preparation of the results of JBT teachers by Haryana State Electronics Development Corporation Ltd. (HARTRON), Chandigarh.

12. It is alleged that when Rajni Shekri Sibal refused to modify or replace the interview award lists, she was transferred and was replaced by Sanjiv Kumar (A-3) on 11.07.2000 with the approval of Om Prakash Chautala. At that time, Sanjiv Kumar was already holding the substantive charge of Special Project Director, Haryana Prathmik Shiksha Pariyojna Parishad (HPSPP) and he was given additional charge of Directorate of Primary Education with an understanding that he would prepare a second set of award lists and replace it with the original award lists.

13. Prosecution claims that Sanjiv Kumar took out the original award lists from the said almirah in the middle of August, 2000 and asked his P.A.

Mohan Lal Gupta and Office Superintendent Sardar Singh to check as to how many scheduled caste and backward class candidates are exceeding their vacancies and are being selected in the General category. For this purpose, Prerna Guest House-Panchkula was arranged by Sanjiv Kumar.

14. It is alleged that Mohan Lal, Sardar Singh and Balram Yadav-Assistant in Directorate Primary Education made use of Prerna Guest House for two or three days and checked the original award lists, but, could not reach any conclusion and accordingly those lists were returned to Sanjiv Kumar. Prosecution claims that this shows that actually the original award lists had been taken out of the almirah prior to 16.09.2000, when a drama of de-sealing the said almirah and taking out the award lists in presence of six members of result compilation committee was enacted. As per investigation, the new set of award lists had already been placed in the almirah before 16.09.2000 and these new lists were sent to HARTRON which compiled the result of JBT teachers candidates. The result was ready on 03.10.2000 and thereafter it was published in the newspapers and the appointments were given to the selected candidates on the basis of new and fake award lists.

15. As per prosecution, at the behest of Om Prakash Chautala with the active support of Vidya Dhar and Sher Singh Badshami, some Chairpersons and the members of District Level Selection Committees were called by

Sanjiv Kumar at the Rest House of Water Supply & Sanitation Department of Punjab located at 1257, Sector-18B, Chandigarh in last week of August-2000, some were called in Haryana Bhawan, New Delhi on 01.09.2000 and some were called in the office of Director Primary Education-Chandigarh. These Chairpersons and members (who have been impleaded as A-6 to A-62) were instructed to prepare the second set of award lists of their respective districts. On their request, even photocopies of original award lists were given to them for this purpose. Prosecution alleges that after collecting the second set of award lists, Sanjiv Kumar placed the fake award lists in the almirah in his office. Thereafter, on 16.09.2000, he conducted bogus proceedings of de-sealing the almirah and taking out the award lists from it and sent the same to HARTRON for compilation of results.

16. In order to prove its case, prosecution examined in all 68 witnesses.

FACTUAL ASPECTS

17. The names and particulars of Chairpersons and members of the District Level Selection Committees are as under:

S. No.	Name	Designation	Chairpersons/Members	Accused
I. AMBALA				
1.	Smt. Prem Bahl	District Primary Education Officer,	Chairperson	A-6

		Ambala		
2.	Smt. Sashi Malhotra	Principal, Govt. Sr. Secondary School, Ambala	Member	A-7
3.	Krishna	Ex-Block Education Officer, Ambala-II	Member	A-8
II. BHIWANI				
4.	Brahma Nand	District Primary Education Officer, Bhiwani	Chairman	A-9
5.	Ms. Vinod Kumari	Principal, Govt. Sr. Secondary School, Bhiwani	Member	A-10
6.	Sawan Lal	Block Education Officer	Member	A-12
7.	Maman	Block Education Officer, Bhiwani-II	Member	A-11
III. FARIDABAD				
8.	Ram Saran Kukreja	District Primary Education Officer, Faridabad	Chairman Sh. R.S. Kukreja was DPEO till 02.12.1999 after which Sh. Harbans Lal took over the charge	A-17
9.	Harbans Lal	DPEO (02.12.1999 till 31.01.2002)	Chairman	A-16
10.	Udal Prasad Sharma	Dy. District Education Officer, Faridabad	Member	A-18
11.	Brij Mohan	Block Education Officer, Palwal-II	Member	A-19
IV. FATEHABAD				
12.	Kanta Sharma	District Primary Education Officer, Fatehabad	Chairperson	A-13
13.	Prabhu Dayal	Principal, Khabra Kala	Member	A-14 (since expired)
14.	Phool Khurana	Block Education Officer, Bhuna	Member	A-15
V. GURGAON				
15.	Chand Singh Verma	District Primary Education Officer, Gurgaon	Chairman	A-20
16.	Abhilash Kaur	Block Education Officer, Gurgaon	Member	A-22
17.	Yogesh Kumar Sharma	The then Dy. District Education Officer, Gurgaon	Member	

VI. JHAJJAR				
18.	Sher Singh	District Primary Education Officer, Jhajjar	Chairman	A-23
19.	Anar Singh	Dy. District Education Officer, Jhajjar	Member	A-24
20.	Kailash Kaushik	Sr. Block Education Officer, Jhajjar	Member	A-25
21.	Ajit Singh Sangwan	District Primary Education Officer, Jind	Chairman	A-23
22.	Ram Kaur	Dy. District Education Officer, Jind	Member	A-27
23.	Mahavir Singh	Block Education Officer, Jind	Member	A-28
VIII. KARNAL				
24.	Narain Singh Ruhil	District Primary Education Officer, Karnal	Chairman	A-29
25.	Krishan Narang	Dy. District Education Officer, Karnal	Member	A-30
26.	Usha Rani	Block Education Officer, Karnal	Member	A-31
IX. KURUKSHETRA				
27.	Madan Lal Kalra	District Primary Education Officer, Kurukshetra	Chairman	A-32
28.	Veerbhan Mehta	Dy. District Education Officer, Kurukshetra	Member	A-33
29.	Sashi Bhushan	Block Education Officer, Kurukshetra	Member	A-34
X. KAITHAL				
30.	Dilbag Singh	District Primary Education Officer, District Kaithal	Chairman	A-35
31.	Ram Kumar	Block Education Officer, Kalayat, District Kaithal	Member	A-36
32.	Megh Nath Sharma	Dy. District Education Officer, Kaithal	Member	Not Accused
XI. MAHENDERGARH				
33.	Pushkar Mal Verma	District Primary Education Officer, Mahendergarh	Chairman	A-37
34.	Durga Dutt Pradhan	Principal, Govt. Girls Sr. Secondary School	Member	A-38
35.	Bani Singh	Block Education Officer, Mahendergarh	Member	A-39

XII. PANCHKULA				
36.	Sheesh Pal Singh	District Primary Education Officer, Panchkula	Chairman	A-43
37.	Rekha Sharma	Block Education Officer, Ramgarh, Panchkula	Member	A-44
38.	Raksha Jindal	Ex-Principal, Govt. Sr. Secondary School, Panchkula	Member	A-45
XIII. PANIPAT				
39.	Daya Saini	Assistant Director, Primary Education, Haryana, Chandigarh	Chairperson	A-40
40.	Ram Singh.	Dy. District Education Officer, Panipat	Member	A-41
41.	Puran Chand (expired during trial)	Block Education Officer, Panipat	Member	A-42
XIV. ROHTAK				
42.	Jeet Ram Khokhar	District Primary Education Officer, Rohtak	Chairman	A-46
43.	Amar Singh	Block Education Officer, Narnaul	Member	A-48
44.	Nirmal Devi	Dy. District Education Officer, Rohtak	Member	A-47
XV. REWARI				
45.	Sudha Sachdeva	District Primary Education Officer, Rewari	Chairman	A-49
46.	Darshan Dayal Verma	District Primary Education Officer, Rewari	Chairman	A-50
47.	Saroj Sharma	Dy. District Education Officer, Rewari	Member	A-51
48.	Tulsi Ram Bihagra	Block Education Officer, Bawal-II, District Rewari	Member	A-52
XVI. SIRSA				
49.	Nathu Ram	District Primary Education Officer, Sirsa	Chairman (expired during trial)	A-53
50.	Ram Saran Kukreja (same as S.No.8)	The then District Primary Education Officer, Faridabad (Only till 02.12.1999) and DEPO, Sirsa thereafter	Chairman	A-17
51.	Om Prakash Tiwari	District Education Officer, Sirsa	Member	A-54
52.	Bihari Lal	Block Education Officer, Kalanwali, Sirsa	Member	A-55

XVII. SONEPAT				
53.	Rajinder Singh Dahiya	District Primary Education Officer, Sonepat	Chairman	A-56
54.	Dalip Singh	Dy. District Education Officer, Sonepat	Member	A-57
55.	Kamla Devi	Block Education Officer, Sonepat-II	Member	A-58
XVIII. YAMUNA NAGAR				
56.	Rajinder Pal Singh	District Primary Education Officer, Yamuna Nagar	Chairman	A-59
57.	Sarwan Kumar Chawla	Dy. District Education Officer, Yamuna Nagar	Member	A-60
58.	Joginder Lal	Block Education Officer, Yamuna Nagar	Member	A-62
59.	Urmil Sharma	Block Education Officer, Yamuna Nagar	Member	A-61

18. It has to be mentioned that except Bani Singh (A-39) and Raksha Jindal (A-45), all the above mentioned accused persons have admitted the aforesaid particulars to be correct during trial and in their statements u/s 313 Cr.P.C.

19. It is not in dispute that Om Prakash Chautala was the Chief Minister of Haryana from 1999 to 2005. Vidya Dhar (A-1) was his OSD and Sher Singh Badshami (A-2) was his political advisor during that time. Vidya Dhar was an officer of Haryana Civil Services and later on promoted as IAS Officer and, therefore, a public servant. Sher Singh Badshami was not a public servant, though, holding a post of Political Advisor to Chief Minister during the relevant time. Ajay Singh Chautala (A-5) is son of Om Prakash

Chautala (A-4) and was Member of Parliament from Bhiwani constituency during the said period.

20. It is also not in dispute that more than 8000 candidates applied and the result was prepared by HARTRON based on the Directorate Lists and appointments were given to 3206 candidates pursuant to the said result.

21. The contents of the Writ Petition No. 93/2000 Ex.PW-63/B-1 filed by Sanjiv Kumar and his reply (Ex.PW-63/B3) to the counter affidavit of the respondent therein and the order of Supreme Court (Ex.PW-63/PX, D-113) are also not in dispute.

RESPECTIVE STANDS OF THE ACCUSED

22. Om Prakash Chautala (A-4), Ajay Singh Chautala (A-5) and Sher Singh Badshami (A-2) have denied not only their participation in the crime, but also, having any knowledge of the same at the relevant time. They have claimed that Sanjiv Kumar and Rajni Shekri Sibal are playing in the hands of their political opponents namely Bhupinder Singh Hooda, the Chief Minister of Haryana (at the time of trial) and earlier the main opposition leader belonging to Indian National Congress Party, in connivance with other politicians like Karan Dalal and Kapil Sibal.

23. Sanjiv Kumar (A-3) claims that his stand in Supreme Court as well as before this court is a correct stand and the Supreme Court Lists are false lists, whereas Directorate Lists are genuine lists.

24. Daya Saini (A-40), the Chairperson of Panipat District Level Selection Committee and its members Ram Singh (A-41) and Puran Chand (A-42 since expired) had taken the stand in their statements u/s 313 CrPC as well as during the entire trial that they had prepared only one list which is the Directorate List and, therefore, Directorate List of District Panipat (D-18 Ext.PW15/C) is a genuine award list.

25. Madan Lal Kalra (A-27), the Chairman of District Level Selection Committee-Kurukshetra also stated that he had prepared only one list i.e. the Directorate List (D-16(I), Ex.PW-15/D) and the same is genuine.

26. Pushkar Mal Verma (A-37), the Chairman of District Level Selection Committee-Mahendergarh (Narnaul) and its members Durga Dutt Pradhan (A-38) and Bani Singh (A-39) denied having signed both the lists. Bani Singh (A-39) in fact denied being a member of the District Level Selection Committee and having conducted any interviews.

27. Raksha Jindal (A-45) took the defence that she was never appointed as member of the District Level Selection Committee-Panchkula. However, she was misled by Rekha Sharma (A-44) another member of the committee and

she signed the two award lists only as the token of having calculated the marks given in the said award lists.

28. To sum up, whereas A-3, A-27, A-40, A-41 and A-42 have taken the stand that the Directorate Lists are the genuine lists, most of the Chairpersons and the members of the District Level Selection Committees support the prosecution version and assert that the Supreme Court Lists are the genuine lists and Directorate Lists are the fake lists and that these fake lists were prepared by them, not voluntarily, but, under immense pressure from Sanjiv Kumar, Sher Singh Badshami and Vidya Dhar. These accused persons have consistently claimed during the whole trial that they were not only apprehensive of harm to their service but also to their physical safety and their family's lives.

FINDINGS OF THE TRIAL JUDGE

29. The trial Judge has held as proved the following circumstances:

i) Members who had retired before making of fake lists are not public servants and, therefore, acquitted of charge under The Prevention of Corruption Act, however they were charged and ultimately convicted of conspiracy read with Section 13 Prevention of Corruption Act because they conspired with other public servants including A-3.

ii) The Directorate lists compiled by the prosecution during investigation and on the basis of which the results were declared were the fake lists.

iii) Specimen signatures of the appellants taken by the police during investigation without seeking permission of the Magistrate are admissible in evidence.

iv) The evidence of the handwriting expert proving the signatures of the Chairpersons and members on the fake award list is substantive evidence and can been relied upon.

v) With regard to appellants who have denied their signatures on the Directorate list, signatures of such appellants in their statement under Section 313 Cr.P.C. have been used for comparison to arrive at a finding of identification of such signatures.

vi) With regard to the changing of award lists, it has been concluded that the almirah was duly sealed by PW-23 Rajni Shekri Sibal, the then Director Primary Education. Then almirah was placed behind a wooden screen in the chamber of successor Director A-3, Sanjiv Kumar and was concealed from the view of officials and visitors entering his room.

vii) Sanjiv Kumar (A-3) was able to take out the original award lists from the almirah in the month of August 2000.

viii) In the last week of August and on 01.09.2000, these original award lists were available with A-3 when he met concerned DPEOs of different districts in Water Supply & Sanitation Department's Guest House, Chandigarh and Haryana Bhawan, New Delhi.

ix) For the offence of forgery as contained under Section 467 IPC, the Supreme Court Lists are valuable security, and the Directorate Lists (even if the same are illegal being forged) are also forged 'valuable securities'. The concerned appellants having signed the Directorate Lists have caused the making of false documents and are thereby guilty of offences under Section 467 and 468 IPC.

x) For the offence of cheating as contained under Section 418 IPC, the State of Haryana has been dishonestly induced by the act of forgery of the award lists and by their implementation due to which jobs were given to undeserving candidates and deserving candidates failed to get the same. The concerned appellants are

therefore, guilty of the offence of cheating under Section 418 IPC.

xi) For the offence of criminal misconduct as contained under Section 13 PC Act, it was observed that by implementing the forged lists, undeserving candidates have availed the benefit of salary, stability and security which is one of the finest pecuniary advantages and such public servants are, therefore, guilty of the offence of criminal misconduct.

xii) A-3, Sanjeev Kumar is an accomplice to the conspiracy of changing the original lists and ultimately implementing them, however, his testimony as a witness in his defence can be used to corroborate the prosecution version regarding the roles of other co accused.

xiii) PW-23, Rajni Sekhri Sibal is a reliable witness and has truthfully testified regarding the pressure exerted upon her to change the original lists and the events leading up to the declaration of the results. PW-16 Prem Prashant and PW-26 P K Mohapatra are also reliable witnesses and have truthfully testified.

xiv) A-1 Vidya Dhar was present at the meeting held at his residence and at the Water Supply Guest House wherein efforts were being made to replace the lists and that he has conspired towards the same.

xv) A-2 Sher Singh Badshami was present at the meetings (all of them), his presence at the meeting in Haryana Bhawan was symbolic of the approval of the conspiracy at the highest level and he took an active interest in pressurizing and threatening other chairpersons and the members of the District Level Selection Committees.

xvi) A-5 Ajay Chautala was present at the meetings wherein PW-16, PW-23 and PW-26 were pressurised to change the award lists. Thereafter, he was constantly in touch with A-3 through telephonic conversations on 30.08.2000 and 01.09.2000 which is the period during which the fake award lists were being prepared. A-5 had a stake in the parliamentary constituency of district Bhiwani and the final result shows that the candidates selected from District Bhiwani far exceeded the vacancies of that district. Thus, A-5 stands fully proved to be conspiring in this scam.

xvii) The note sheet exhibited as Ex.PW-38/E proves that the meeting wherein the decision to enhance the interview marks was taken was attended by A-1, A-2 and A-4 and, therefore, their involvement in the conspiracy from its very inception stands fully corroborated.

xviii) A-4 Om Prakash Chautala was instrumental in taking out JBT vacancies out of the purview of the Haryana Staff Selection Commission and enhancing the marks allotted towards interview. His son, his OSD and his political advisor being persons close to him actively executing the conspiracy coupled with the testimony of A-3 regarding the breakfast meeting wherein express instructions were given to change the award lists leads to the irresistible conclusion that the entire conspiracy was hatched at the behest of A-4.

30. On behalf of the prosecution, learned ASG Mr. Rakesh Kumar Khanna assisted by Mr. Harsh Prabhakar have addressed arguments regarding appellants A-1 to A-5 and Ms. Rajdipa Behura, learned SPP has addressed arguments for appellants A-6 to A-62.

ARGUMENTS ADVANCED ON BEHALF OF A-3

31. Since the edifice of this case is based on a factual finding regarding the genuineness or the falsity of a particular set of lists, whether the Directorate lists or the Supreme Court lists, at the outset it would be most appropriate to highlight the rival submissions made on behalf of the parties regarding the two sets of lists. A-3 had submitted before Supreme Court a set of 15 award lists, thereafter one list of District Kaithal and a part list of District Kurukshetra was handed over to the investigating officer during investigation.

32. It is the case of the CBI that the lists which were implemented i.e. the Directorate lists are the fake lists whereas A-3 has argued that the Supreme Court lists are in fact the fake lists which were handed over to him to be implemented and, therefore, he is the leading appellant to prove the falsity of the Supreme Court lists.

33. Rival submissions regarding the two sets of lists are enlisted district wise as under:

I. FARIDABAD

i) The Directorate list of this district is D-4 exhibited as Ex.PW-15/L and the Supreme Court list is D-22 exhibited as Ex.PW-17/A. A-17, R. S. Kukreja was the Chairman of this committee

and conducted interviews only till 02.12.1999 after which he was transferred to Sirsa. He was replaced by A-16, Harbans Lal who conducted interviews from 02.12.1999 onwards.

ii) D-61 is a file recovered from the office of DPEO, Faridabad and contains 2 lists. One list is a complete list containing all interview marks and grand total marks along with signatures of all committee members and the other is a photocopy in which interview marks and grand total marks are concealed, seemingly by putting some paper on it. It is the case of the prosecution that this file contains a copy of the fake list and one copy of the original list.

iii) It is submitted on behalf of the prosecution that PW-17 Brij Mohan, who was a member of the District Selection Committee, Faridabad has deposed that on 02.09.2000 he was pressurized to append his signatures on an award list at the instance of Chairperson of District Selection Committee – Harbans Lal and other persons. He scribed the letters "UP" under his signatures on the first nine pages as an imprint of protest and the said letters signified "under pressure". The witness explained that he could not scribe the letter "UP" on

subsequent pages of the said list as one Suresh Girdhar, Deputy Superintendent stood up from his chair and witness apprehended that he may notice the same, therefore, he did not scribe "UP" any further. This witness has not been cross-examined at all on behalf of A-3 and his testimony has gone unchallenged on all counts.

iv) Learned ASG Mr. Khanna has drawn my attention to the Directorate List of District Faridabad and points out that at the top of page 39 the date "09.12.2000" has been scribed in hand. This fact is a tell-tale mark of the creation of award list in the year 2000 and thus, lends further credence to the assertion of the prosecution that the said list was in fact created in the year 2000 as deposed by Brij Mohan and not in the year 1999.

v) It is submitted that the pattern of marks awarded to various candidates in the Supreme Court List of District Faridabad (D-22) is evenly spread whereas; the marks awarded to candidates in the Directorate List of Faridabad lie in stark extremes.

vi) It has been argued on behalf of A-3 that the signatures of R.S Kukreja are not present on the Supreme Court List which reflect the interview marks for the first two days when he was

the Chairperson of the District Selection Committee-Faridabad before his transfer whereas they are present on the Directorate list for the first two days of the interviews. It is also argued that the prosecution is silent over the fact that A-16, Harbans Lal who succeeded R. S. Kukreja has signed on all the pages of the Supreme Court list as the Chairman, including the 2 days when R. S. Kukreja was the Chairman.

vii) Learned Senior Counsel Mr. Arvind Nigam has sought to destroy the credibility of PW-17, Brij Mohan by pointing out the following fallacies:

- It is argued that PW-17 has deposed that Harbans Lal had reached his house seeking his signatures on the second list, on 31.08.2000, (which is the date on which Brij Mohan had retired), claiming to have been coming straight from Haryana Bhawan. It is not the case of the prosecution that A-3 was involved in the making of the fake lists on 31.08.2000, since it is alleged that M. L. Gupta (PW-56) and Sardar Singh (PW-31) were on their way to New Delhi on 31.08.2000 from Chandigarh and

had allegedly stayed the night in SCERT Gurgaon. They have also deposed that till the morning of 01.09.2000 they were unaware of where the said meeting was to be held, nor, had any idea about why they had been called to Delhi. It is submitted that it is highly unlikely that PW-17 would have gone wrong in remembering the date of his retirement. Therefore, it is argued that the testimony of PW-17 on one hand and that of PW-56 and PW-31 on the other hand regarding the dates on which PW-17 could have been approached to sign on the fake lists is not in harmony with each other.

- It was submitted that the factum of scribing 'UP' has also not been stated in the affidavit dated 26.07.2003 [Part 8/D-37-D-66/D-58/Page 217] filed by Brij Mohan.
- It has been urged on behalf of A-3 that PW-17 has as a matter of fact appended his signatures on three lists, however he deposes about appending his signatures only on two lists.
- It has been vehemently contended that the discharge of Brij Mohan on the ground of appending his signatures on

the second award list under pressure impelled the other accused to coin a similar defence and falsely implicate Sanjiv Kumar for securing parity with Brij Mohan.

- It is also submitted that non-examination of Suresh Giridhar by the prosecution casts suspicion since in his presence Brij Mohan claims to have scribed "UP" under his signatures.
- It has been urged that the forensic report does not evidence the existence of words "UP" and on its strength it is sought to be submitted that no such words have been scribed by Brij Mohan.
- Much emphasis has been laid on the fact that the prosecution has suppressed one Brij Mohan s/o Late Ram Singh; who was proposed to be examined as a prosecution witness as evidenced from the List of Witnesses appended along with the Final-Report [Part 1/Vol 1C/Page 207-Seriatum No. 13] and rather the prosecution surreptitiously examined at Trial accused-Brij Mohan s/o Sh. Ram as PW- 17.

II. JIND

i) The Directorate list of this district is D-5 exhibited as Ex.PW-2/2 and the Supreme Court list is D-23, exhibited as Ex.PW-2/1. Three witnesses, PW-5 Milap Singh, PW-14 Dhup Singh and PW-2 Ravi Dutt have deposed regarding the genuineness of the D-23, the Supreme Court list.

ii) PW-14 has deposed that he was posted as the Deputy Superintendent in the office of DPEO, Jind from 01.05.1998 to 14.10.2004 and he had signed the original award list as a token of having checked the academic qualifications of the candidates. He has also deposed that sometime in the month of September, 2000 Ajit Singh Sangwan (A-26), Chairperson of District Selection Committee, Jind pressurized him to sign an award list, which he refused to sign unless the original list would be shown to him. He further deposed that two clerks, namely Ravi Dutt and Milap Singh had visited Delhi on 01.09.2000 and perhaps after two or three days they were typing the list, which they stated was being prepared on the basis of photocopies supplied to them at Delhi by A-3. The

Directorate list does not bear his signatures whereas the Supreme Court list does.

iii) PW-2 Ravi Dutt and PW-5 Milap Singh have deposed about the meeting at Haryana Bhawan on 01.09.2000 and how the Directorate List of District Jind was prepared by them in the month of September, 2000 at the instance of the members of the District Selection Committee. Learned ASG submits that they also corroborate the testimony of PW-14 Dhup Singh to the extent that the Directorate list prepared by them in the month of September, 2000 does not bear his signatures, whereas, the Supreme Court List bears the same.

iv) Learned ASG submits that a careful perusal of the two lists vis-a vis each other would significantly reveal that the Supreme Court List has several corrections and there are many instances where white fluid has been applied to effect such corrections. The Directorate List on the other hand evidences no such corrections and the corrected entries are typed. It is, therefore, evident that the Supreme Court List bears the stamp of genuineness as these corrections evidence the contemporaneity of the said document, whereas, the Directorate List which was

prepared later and utilized the Supreme Court List as its base, naturally had no correction as the corrected content was straightaway typed by its authors who would obviously not make the same mistake which had occurred during the preparation of the document make contemporaneously.

v) It is pointed out by the CBI that the pattern of marks awarded to various candidates in the Supreme Court List of District Jind is also spread evenly whereas the marks awarded to candidates in the Directorate List of Jind lie in stark extremes.

vi) It is argued on behalf of A-3 that PW-2 and PW-5 were the steno-typist and clerk in the DPEO office of Jind. They were not the DLSC members and had no role to play in the interviews. As such they wouldn't know the difference between the lists, not being familiar with the marking pattern as they had not conducted the interviews. This is clearly exhibited by PW-2 when he identifies the SC list as the fake one in the first instance and then subsequently, clarifies that it is the Directorate list which is fake.

vii) It has been explained by A-3 that PW-14 Dhup Singh was not a member of the District Selection Committee and, therefore, was

not required to append his signatures on the award list. It is submitted that PW-5 has deposed that the second list was not signed by PW-14 because he was on leave on that particular day. It is argued that the prosecution has not been able to establish whether the absence of signatures of PW-14 on the Directorate lists is owing to the fact that he was not authorized in the first place to sign or on moral grounds or due to the fact that he was on leave.

viii) It has been contended by A-3 that PW-14 Dhup Singh in his statement recorded under Section 164 Cr.P.C. [Part 7(II)/Pages 48-54] had stated that he received a message on 30.08.2000 from Shadi Lal Kapoor that the committee members should come along with the records on 01.09.2000 and it was thus sought to be urged that the copies of the original award lists were already available with the District Selection Committee-Jind. Therefore, the case of the prosecution was alleged to be baseless that the original award list of District Jind was supplied to Ajit Singh Sangwan (A-26) at instance of Sanjiv Kumar (A-3) for getting the same photocopied.

ix) A-3 has examined Subhash Chander (A-3/DW-11) in his defense to purport a claim that the fake award list for District Jind were dispatched in a sealed envelope [Part 8/S.No. 12 Misc Exhibits/Page 138] by Ajit Singh Sangwan (A-26) through the said Subhash Chander on the first Saturday of September 2000 and he delivered the said envelope to Vidya Dhar (A-1) at his residence in Sector-7, Chandigarh. According to Sanjiv Kumar (A-3), the said envelope was handed over as it is by Vidya Dhar (A-1) to Sanjiv Kumar (A-3) and Sanjiv Kumar (A-3) without opening the said envelope submitted the same before the Supreme Court. The Investigating Officer had taken into custody the said sealed envelope from the registry of the Supreme Court. A-3 argues that although he had opened all the fake lists thrusted upon him for implementation before presenting the same in the Supreme Court, but, he had deliberately kept the envelope received from Jind, duly sealed and it was opened in presence of Pushpa Ramdeo, Dy. Registrar (PW-43) in Supreme Court. A-3 submits that she testified that at serial no. 15 of the memo, it is written that "one envelope containing award list of JBT teachers-Jind these list

were in sealed cover". It is argued by A-3 that this proves that sealed envelope containing the fake Jind list opened in the Supreme Court, is the same list which Subhash Chander delivered to Vidya Dhar. Subhash Chander has also identified his handwriting on the Jind envelope Ex.PW-43/DA-1. It is contended that the Trial Court being empowered in this regard, did not make an attempt to compare the handwriting of this witness with the one on the sealed envelope.

x) It is also submitted on behalf of Sanjiv Kumar (A-3) that he had asked the Investigating Officer to get the said envelope subjected to forensic analysis, however it was not done.

xi) The prosecution addresses this contention by submitting that testimony of this witness is not worth the paper on which it is scribed. The version belatedly deposed to by this witness is inherently incredible and a yarn of falsehood for the following reasons:

- The said witness had no reason to oblige Ajit Singh Sangwan (A-26)-DPEO by carrying his confidential documents to Chandigarh as he was of his own admission not subordinate to the DPEO. The witness

does not remember the messenger through whom he was summoned by the DPEO-Ajit Singh Sangwan (A-26).

- It has emerged in evidence led by prosecution (PW-14, PW-5, PW-2) that the Directorate List of District Jind was prepared 2-3 days after 01.09.2000. Subhash Chander has claimed before the court that he carried the envelope containing the fresh JBT lists to Chandigarh on the first Saturday of September, 2000. It is highlighted that the first Saturday of September, 2000 was in fact 02.09.2000 and by then the said award lists had not been prepared by the clerks – PW-2 and PW-5. Therefore, the testimony of this witness is vitiated at its core.
- It is palpably unconscionable that Ajit Singh Sangwan would divulge the sensitive contents of the envelope to a mere carrier like Subhash Chander; who was not even his subordinate and has no discernable reason to repose trust in him. As a matter of fact, Ajit Singh Sangwan (A-26) has denied the version of this witness by putting such suggestions in the cross-examination of this witness and

the statement made by him in terms of Section 313 Cr.P.C.

- The witness is unable to describe the topography of the house of Vidya Dhar (A-1) which was allegedly visited by him for the said purpose.
- The witness claims that he wanted to make a statement to CBI about the said facts which he perceived as relevant to the investigation of the case and he even visited the CBI office at Chandigarh and Delhi but his statement was not recorded. Curiously, he never gave any representation in writing through registered AD/e-mail to the superior officers or the Court about the fact that his statement was not being recorded. The witness is unable to describe the office of the CBI.
- This witness has concocted an amusing and an improbable version of how he could discover the whereabouts of Sanjiv Kumar (A-3) in a bustling city like Delhi. The witness would have the Court believe that by visiting the Supreme Court and inquiring from random lawyers about the JBT case in the court corridor

he received information from some advocate that one Shri Malik was handling this case, whereas, of his own admission he did not even have a gate-pass. The witness does not explain how he traced Shri Malik and according to him he obtained the address of Sanjiv Kumar (A-3) from the said lawyer. Interestingly, the said lawyer (Shri Malik) is not produced as a witness for the defence by Sanjiv Kumar (A-3) to vouch for the testimony of this facile witness.

- He claims that Sanjiv Kumar (A-3) asked him to supply a copy of his typed statement to him, which would be given to CBI and in furtherance thereof, he got his statement typed and handed over the same to Sanjiv Kumar (A-3). It would be relevant to note that had this been true, Sanjiv Kumar (A-3) would have definitely forwarded the said statement to CBI. No suggestion has been given to the Investigating Officer that he withheld such evidence and neither has Sanjiv Kumar deposed about such a chance/fortuitous meeting with Subhash Chander in his deposition as a witness before the Court

in terms of Section 315 Cr.P.C or in his examination under Section 313 Cr.P.C. No foundation for the evidence of this witness for the defence has been laid by Sanjiv Kumar (A-3) before the Court which casts serious suspicion on the veracity of such evidence. It is the submission of the prosecution, the evidence of this witness is, therefore, a product of afterthought and confabulations.

- The witness claims that he had kept a copy of the said typed statement with himself and had handed over the original to Sanjiv Kumar (A-3). The witness could not produce the copy of the said statement in the court at any stage even though he stated that he had handed over the same to his son-Sandeep Kumar; who had accompanied him to the Court during his deposition. The witness in fact produced a statement (Ex.A-3/DW-11/1) (Part 8/S.No 12 Misc Exhibits/ Page 113-114) before the Trial Court which was claimed by him to be faxed by his son; who was in possession of the copy of the said statement. Evidence revealed that the statement produced by this

witness before the Court had in fact been faxed from 01126895640 (Fax installed in the name of Virender Chopra, H.No.8001 GF Pocket-8, Sector-C, Vasant Kunj, New Delhi).

- The witness was evasive in tendering his specimen writings before the Trial Court as he claimed that owing to his illness there may be some difference in his handwriting.
- The witness admitted that in the year 2005 he had contested elections for the Zila Parishad in Haryana and record reveals that the said elections took place in the month of April. It is highly improbable that he would trace Sanjiv Kumar (A-3) in an alien city without leads in the month of March, 2005; when he must be subsumed in the preparation for the said elections.

III. PANCHKULA

i) The Supreme Court List of this District is D-21 exhibited as Ex.PW-18/A and the Directorate List is D-3 exhibited as Ex.PW-18/B. Both these lists are computerized. According to the FSL report, D-21 was prepared on 17.12.1999 by one

Hitesh Bansal at his residence. D-3 was prepared by a private firm M/s. V.C.C Computer Education, Sector 12A, Panchkula. It is the case of the prosecution that D-3 was prepared at the instance of A-44, Rekha Sharma, who was a member of the Selection Committee, Panchkula.

ii) PW-20 Hitesh Bansal has testified that in 2004 the IO, R.N. Azad inquired from him about the computer job which he had done for Rekha Sharma during December, 1999. R.N. Azad had taken the relevant data from his computer in a floppy and the floppy & the hard disc of the computer were seized by him. From the floppy, a print of the said work i.e. award list of JBT candidates was taken. It showed that this list was got prepared on 17.12.1999. This print out (D-42) is Ex.PW-20/C and tallies with the Supreme Court List.

iii) A-3 relies on testimony of the expert witness U.Ramamohan (PW-65) wherein he testifies that the computer was updated in MS-Word-2000. It is argued that the fact that the computer of Hitesh Bansal was having 2000 version of Microsoft Office, it is clear that the list contained in the print out Ex.PW-20/C could not have been prepared in the year 1999. Rather this fact

proves the contention of A-3 that this list was prepared in the year 2000. It is argued that in the year 2000 the fake list was prepared whereas genuine list was prepared in the year 1999. As per submissions of Sanjiv Kumar, the print out Ex.PW-20/C is, therefore, of the year 2000 and the same tallies with the Supreme Court List and thus the Supreme Court List is a fake list, whereas the Directorate List of Panchkula District is the genuine list.

iv) It is also argued that the forensic expert PW-65 was not mandated by the CBI to authenticate the date/time/month/year which appeared on the hard disc seized from the computer of Hitesh Bansal, PW-20. Seizure of the CPU of the computer of Hitesh Bansal would have given evidence of the Bios clock which in turn controls the chronological stamping of the hard disc.

v) Factually, the Directorate list at Page No. 9 has 5 incorrect Roll Nos. that have been corrected by hand and attested by A-44. These corrections do not exist at all in the Supreme Court list. It is argued by Learned Counsel on behalf of A-3 that if the Supreme Court list was indeed the original list then how could

the original list have 5 incorrect Roll Nos. and led to the preparation of the final results. In the same breath it is argued that if Supreme Court list were the original list and a fake list had to be prepared from it, then what was the need to correct mistakes that were present in the original list. Similarly, calculation errors are pointed out in the Supreme Court list for Roll Nos. 85036/85008/85030/85038/85054/ 85032/85035 and 85063 to show that an original list cannot have such mistakes thereby leading to the conclusion that the Supreme Court list cannot be the genuine list.

vi) It is argued on behalf of A-3 that the Supreme Court list is complete in all respects, carrying details of all categories including SC(A), SC(B), BC(A), BC(B), ESM, PH etc whereas the Directorate list only contains data relating to General Category candidates and, therefore, cannot be the original list.

vii) The trustworthiness of PW-20 is attacked on the ground that it is highly improbable that a person who neither ran a commercial computer shop nor ever knew Rekha Sharma nor gave any receipt for the work that he had undertaken was chosen by Rekha Sharma for such a sensitive job and also

allegedly kept the said confidential data of December, 1999 stored in his computer till the year 2004, allegedly at the behest of Rekha Sharma, when the C.B.I. I.O. seized the same, even though he had allegedly stopped doing such computer work 6 months after Rekha Sharma had come to him for getting the award lists of Panchkula computerized in December, 1999.

IV. REWARI

i) The Directorate list is D-14 and exhibited as Ex.PW-39/A and the Supreme Court list is D-32 and has been exhibited as Ex.PW.15/B. A-49, Sudha Sachdeva and A-50, Darshan Dayal Verma were the Chairpersons of the District Level Selection Committee- Rewari and Saroj Sharma (A-51) and Tulsi Ram Bihagra (A-52) were its members. D.D. Verma (A-50) was initially the Chairperson for the first three days of the interviews thereafter, he was transferred and Sudha Sachdeva was posted in his place.

ii) The Directorate list is signed by all the members except A-49 whereas the Supreme Court list contains signatures of all members. Another factual aspect of the Supreme Court list is that Darshan Dayal Verma (A-50) has signed as "Ex DPEO" on

first 12 pages of the award lists and thereafter, Sudha Sachdeva has signed as the chairperson.

iii) It is argued on behalf of A-3 that the list which contains the signatures of all members should be the fake list as it was not possible for a member to refuse even an illegal direction that came from the government headed by Om Prakash Chautala. The fearful environment in which the remaining members were made to sign the fake lists is evident from their statements under Section 313 Cr.P.C. Learned Counsel submits that a Chairman or a member may not sign in case he or she is not available on the date of interview for any reason. Attention is drawn to the affidavit (D -58) of Sudha Sachdeva which has been proved as Ex.PW-46/10 in which she swears on oath that she had signed the second list. It is argued that this also fortifies the argument that Sudha Sachdeva had signed the second list and consequently, the list which bears the signatures of Sudha Sachdeva should be fake list.

iv) It is also argued that on the original list, Darshan Dayal Verma (A-50) would have signed for first three days as DPEO and not as Ex DPEO. The Directorate list bears the signatures of D. D.

Verma with the designation DPEO. His designation on the Directorate list shows that he signed this list when he was District Primary Education Officer, Rewari. The Supreme Court list bears his signatures with designation as Ex DPEO, which demonstrates that he signed this list when he had already relinquished the charge as DPEO. Therefore, Supreme Court list must be termed as the fake list and the Directorate list should be treated as the original list

v) Learned Counsel points out that the SC list till page 14 follows the predictable pattern of grand total marks being in decimals. However, from pages 15-59 the grand total marks in decimals have been rounded off to whole numbers. On contrast, in the Directorate list pages 1-37 reflect the actual and exact marking in the Grand total column thereby evidencing that the Directorate list is the original one.

vi) Learned ASG submits that the evidence tendered by PW-39 Om Prakash and PW-40 Subhash Chand establish that the Directorate List of District Rewari was prepared in August/ September, 2000. It is pointed out that PW-39 was not subjected to any cross-examination by A-3 and his evidence

has gone unchallenged. Furthermore, even PW-40 Subhash Chand has not been suggested by A-3 that he has deposed falsely, although he was cross-examined by him.

vii) A-50/ DW-1 Darshan Dayal Verma has stepped into the witness-box in terms of Section 21 of the Prevention of Corruption Act, 1988/Section 315 of Cr.P.C., 1973 and has explained how he was pressurized by Sanjiv Kumar (A-3) and Sher Singh Badshami (A-2) at Haryana Bhawan to cooperate in creation of a second award list. He further deposed that Sudha Sachdeva (A-49) had dictated the interview and grand total marks to him while getting prepared the second award list in September, 2000. It is argued that during his cross-examination by Sanjiv Kumar (A-3) he has not been questioned with regard to the aspect that why he signed on the Supreme Court List as Ex DPEO. Even otherwise, it is submitted that D.D. Verma was the Chairperson of the District Selection Committee, Rewari for the first three days only as he was transferred to Sirsa, therefore, it is highly probable that he signed the Supreme Court List after having received the transfer orders and,

therefore, chose to write Ex DPEO. Therefore, the Supreme Court List cannot be termed as the fake list on this count.

V. BHIWANI

i) The Supreme Court list of this district is D-25 exhibited as Ex.PW-30/A and the Directorate list is D-7 and has been exhibited as Ex.PW-15/M.

ii) The prosecution is relying upon the testimony of PW-30 Tara Chand; Deputy Superintendent in the office of District Primary Education Officer, Bhiwani who has deposed that the Supreme Court List contains his signatures on all 47 pages as a token of checking the particulars etc and that the same was prepared during December, 1999. The Directorate List does not contain his signatures anywhere.

iii) This is vehemently refuted by Learned Counsel for A-3 by citing the advertisement issued in the newspapers as well as the Corrigendum (D-40/II, Page No.137, Corrigendum to Adv No.1/99) which clearly states that the applications must be submitted personally only on 28.11.1999. The following portion of the deposition of PW-30 is pointed out:

> "the advertisement 01/99 appeared on 15.11.1999 in the newspapers and thereafter the applications started coming which continued up to 28.11.1999. I had got started category wise typing of the lists from 26.11.1999….."

iv) It is argued that the original certificates were to be checked and returned to the candidates on the same day after 4:00 p.m. and, therefore, his testimony is totally false, misleading and mischievous. It is also pointed out that Tara Chand was not a member of the Selection Committee and as such absence of his signatures on the Directorate list is justified by this explanation.

VI. ROHTAK

i) D-12 is the Directorate list and D-30 is the Supreme Court list. It would be relevant to highlight that D-30 is a carbon copy and does not contain the interview and grand total marks.

ii) It is pointed out on behalf of A-3 that Pages 9, 10, 11, 13 and 14 of the Supreme Court list do not contain any signatures of the Committee Members. It is, therefore, contended that in view of these irregularities remaining unexplained by the prosecution, it cannot be said that the SC list is the original list.

iii) Learned ASG submits that the fact that the Directorate List of District-Rohtak (D-12) carries marks in the said columns

cannot be dispositive of an inquiry into the veracity of the lists of the said district. A-3 has alleged that the bunch of Supreme Court Lists were handed over to him by Vidya Dhar (A-1) for substituting them in place of the original award lists. It is respectfully submitted that Om Prakash Chautala (A-4) and others would not be in a position to fulfill their sinister motives by handing over a list to A-3 for implementation which does not carry the interview and grand total marks. Therefore, the Supreme Court List cannot be the fake award list as sought to be canvassed by A-3.

iv) It is submitted that the answer to this vexing question and the reason for the existence of such a list which does not carry the interview and grand total marks, surfaces from the explanation tendered by accused- Jeet Ram Khokhar (A-46), Nirmal Devi (A-47) and Amar Singh (A-48) under Section 313 Cr.P.C that they had separately sent such an award list (carbon copy) without marks in the interview column, in addition to the award list which duly carried marks in the interview and grand total column.

VII. KURUKSHETRA

i) The Directorate list of this district is in two parts, the first being the general list and the second being the award list of B. Ed candidates exhibited as Ex.PW-15/D. The Supreme Court list of this district is a part list and an equivalent of the list carrying interview marks of the B. Ed candidates.

ii) It is pointed out on behalf of A-3 that the application forms of the B.Ed. candidates were received in Kurukshetra and the academic profiling of these candidates based on their Application forms was done in Kurukshera itself. It is then argued that based on the contention of the prosecution that the Supreme Court list (D-36) is the original list, how is it on the same stationery/sheet as that of D-29 & D-11 i.e. the Supreme Court list and Directorate lists of the JBT lists of Yamunanagar. The written statement of A-59, who was DPEO Kurukshetra, under Section 313 is pointed out wherein he states that in the second week of September, 2000 he signed an award list of B.Ed. candidates in the office of DPEO Kurukshetra.

iii) Learned Senior Counsel Mr. Nigam submits that the award lists for B. Ed candidates were received after the almirah containing

the original lists was sealed by PW-23. A-59, in his statement under Section 313 has said that he had deposited the sealed award lists by hand on 01.08.2000 to Om Prakash Kundu. PW-31 has deposed that Mr. Kundu was a clerk in his branch and was deputed to collect the award lists of B. Ed candidates from Kurukshetra and deliver them to M.L.Gupta. It is argued that the original lists were in the possession of M.L. Gupta .

iv) Learned ASG submits that the interviews of the B.Ed candidates were conducted at Kurukshetra by the DPEO Yamunanagar [Part 8/D-40 (I)/ Page 66-67]. Therefore, the fact that the said list appears in the same format or handwriting does not cast any suspicion and is in fact natural.

v) Addressing the argument on behalf of Sanjiv Kumar (A-3) that if he was hand in glove with the scamsters, he would have never called for the real B.Ed candidates award lists from Kurukshetra through Kundu on 01.08.2000. It is argued that the said contention is liable to be rejected as Sanjiv Kumar (A-3) is not so juvenile to foist the fake lists without even calling for the original award lists from Kurukshetra as this would have surely exposed their conspiracy since question-mark would be raised

as to how result was declared without the award lists of B.Ed candidates being even called for.

vi) It is submitted that it has been established by testimony of PW-56 M.L. Gupta that the members of the Result Compilation Committee were handed over the list of B.Ed candidates interviewed at Kurukshetra along with award lists of other districts on 16.09.2000. Significantly, it was deposed that the said list of B.Ed candidates was lying in the drawer of Sanjiv Kumar (A-3) and it was collected from there whilst being handed over to the members of the Result Compilation Committee on 16.09.2000. [Part 2(II)/PW-56/Page 151] It is yet again pointed out that the said portion of his evidence has not been challenged by Sanjiv Kumar (A-3) in cross-examination.

VIII. KARNAL

i) The Directorate list of this district is D-9 exhibited as Ex.PW-15/F and the Supreme Court list is D-27 exhibited as Ex.PW-28/A.

ii) It is submitted on behalf of A-3 that PW-28, Dheeraj Kumar, clerk at DPEO-Karnal has categorically stated that the members

of the selection committee used to sign the last page of the interview list on each date of the interview and used to sign at the relevant place at the end of the list which was filled till that moment on that date. This description best fits the Directorate list as opposed to the Supreme Court list of Karnal wherein there are no signatures at the bottom of the page rather there is a certificate containing signatures of all members after every few pages.

iii) It is submitted that the order passed in case of WP(C) 16220/99 pertaining to Julie Chhabra is dated 19.07.2000 i.e. her interview was conducted later in time and the Directorate list Karnal contains her particulars along with signatures of the Chariman- N.S. Ruhil (A-29) and Dy.DEO- K.L. Narang as Ex DPEO and Ex.Dy.DEO. This can be explained by the fact that when her interview was conducted after passing of the order, the DPEO and Dy.DEO were not the chairman and deputy DEO and signed accordingly, therefore, the Directorate list is the original list of Karnal. The Supreme Court list on the other hand does not even contain her result. This is further fortified by the deposition of PW-55.

IX. FATEHABAD

i) The Directorate List of Fatehabad is D-13 exhibited as Ex.PW-15/A and the Supreme Court List is D-31 and has been exhibited as Ex.PW-43/E.

ii) Learned Counsel for A-3 points out inconsistencies between the Section 313 statement of A-13 on the one hand and that of PW-56 and PW-31 regarding the meeting at Haryana Bhawan. According to A-13, the message had come on 31.08.2000 at 4pm from M. L. Gupta, PW-56, PA to DPE, for coming to Haryana Bhawan on 01.09.2000 at 10:00 a.m. with all members of DLSC for meeting about JBT Teachers. This is totally contrary to the deposition of PW-56, M.L. Gupta and PW-31, Sardar Singh that they themselves were unaware till the morning of 01.09.2000 as to where they had to reach in Delhi and for what purpose.

iii) It is also pointed out on behalf of A-3 that even though both the lists have been signed by the same members and Chairperson, the signature of A-13, is missing on 2 pages, i.e. Page Nos. 9 & 57 of the Supreme Court list, D-31. Directorate list, D-13 is duly signed by all DLSC members including A-13 on all pages.

X. MAHENDERGARH

i) The Directorate list of this district is D-6 exhibited as Ex.PW-15/O and the Supreme Court list of this district is D-24 exhibited as Ex.PW-43/B.

ii) It is pointed by learned counsel on behalf of A-3 that the Supreme Court list is signed by 5 persons, 3 of whom are authorized and 2 of whom are unauthorized to sign the same. The Directorate list on the other hand has only been signed by the 3 authorised members. It is argued that the prosecution has failed to explain the identity of these 2 unauthorized persons whose signatures appear on the Supreme Court list, which accordingly to him could have lent material evidence in establishing the falsity of the Supreme Court list.

iii) Learned counsel submits that at the time when the interviews for JBT candidates were being conducted, simultaneously the interviews of the candidates for the posts of C & V Teachers (Classic & Vernacular Teachers), Masters and Lecturers were also being conducted. It is argued that during the investigation, CBI had seized the award lists of interviews of C & V teachers of District Mahendergargh (Narnaul, Ex.PW-24/L, D-60

Volume I to IV). It is argued that perusal of this list would show that its pattern of interview marks tallies with the Directorate list. It is submitted that the CBI had not found this list to be a fake. Had it been so, CBI would have also prosecuted the officials, who prepared this award list of C & V teachers.

iv) It is argued by Sanjiv Kumar (A3) that if in the eyes of CBT, the interview pattern of the C & V teachers is not illegal and if this award list is not fake, how the Directorate lists, which contain the same pattern of interview marks as that of Ex.PW-24/L, could be termed as the fake lists. Accordingly, it is submitted that not only the Directorate list of Mahendergarh but also all the Directorate lists having the same pattern of interview marks as contained in Ex.PW-24/L are genuine lists. Consequently the Supreme Court list of District Mahendergarh and the other Supreme Court lists should be treated to be fake lists.

XI. GURGAON

i) The Directorate list of this district is D-15 and the Supreme Court list is D-33.

ii) Learned counsel appearing on behalf of A-3 has pointed out 2 Roll Nos. to show skewed pattern of marking in Supreme Court list. On Page No. 2, Roll No. 20001, the total academic marks is 49.42 whereas interview marks are 15.58 making a grand total in whole numbers of 65. For Roll No. 20002, the total academic marks are 48.92, and interview marks is 18.08, making a grand total of 67. The Supreme Court list shows that the interview marks have been given in decimals so that when added with the academic marks (which are bound to be in decimals), results in Grand Total marks which are in whole numbers. Unlike the Directorate list where the interview marks are in whole numbers (19 and 18 respectively) for the said Roll Nos. and so the Grand Total marks are in decimals. It is argued that this artificial marking in interviews leading to the Grand Totals being in whole numbers cannot be the basis of any fair interviews and, therefore, the Supreme Court list is not the original list.

XII. AMBALA

i) It is argued that the tables in Supreme Court list are drawn in hand in a slant and shoddy fashion which shows they are fake

lists because it is the fake lists which are made in a hurry and are not very systematic.

XIII. SIRSA

i) The Directorate list of this district is D-19 and has been exhibited as Ex.PW-15/N and the Supreme Court list is D-34 and has been exhibited as Ex.PW-43/G.

ii) Learned Counsel appearing on behalf of A-3 argues that the Prosecution has failed to address the issue that R.S. Kukreja, A-17, DPEO, Sirsa, claims to have gone to Chandigarh sometime in the first week of September whereas the Prosecution's case is that only one meeting was held in Chandigarh and that too on 30.08.2000. It is also argued that contrary to what R.S. Kukreja says, the other 2 DLSC members of Sirsa deny having gone to Chandigarh for any such meeting.

XIV. YAMUNA NAGAR

i) The Directorate list of this district is D-11 and has been exhibited as Ex.PW-15/J and the Supreme Court list is D-29 exhibited as Ex.PW-27/A.

ii) It is contended on behalf of A-3 that A-62, Joginder Lal was a substituted member after 3 days of conducting of interviews to fill in for A-61, Urmil Sharma and the signatures of both A-61 and A-62 appear together on Pages 1-17 of the Supreme Court list which demonstrates that the Supreme Court list of this district cannot be the genuine list. A-61 has deposed in her statement under Section 315 that her signatures were taken forcibly on the second set of award lists where she has signed on more number of pages than she had done on the original list. In the Directorate list her signatures are present only from pages 1-23 thereby lending support to the contention that the Directorate list is the original list of this district.

iii) It is also submitted that the prosecution has failed to explain how the signatures of the other two DLSC members is missing on some of the pages whereas the signatures of the chairman is present on all the pages. It is also pointed out that on pages 52-55 of D-29, only the signatures of DPEO R. P. Singh are appearing and the signatures of the other two members are absent.

XV. SONEPAT

i) The Directorate list of this district is D-8 exhibited as Ex.PW-15/G and the Supreme Court list is D-26 and exhibited as Ex.PW-43/C

ii) It is submitted on behalf of A-3 that A-56, R.S. Dahiya has stated in his statement under Section 313 that he has deposited the fake lists of Sonepat on 17th or 18th September, 2000 at HARTRON with PW-31. It is, therefore, argued that the list that came out from the almirah on 16.09.2000 should be the original list of this district. It is also argued that the prosecution has not explained the fact that the Directorate list is the typed First List and the Supreme Court list is the carbon copy .

iii) It was also pointed out that on page 17 of the Supreme Court list, the signature of the Chairman, R.S. Dahiya is missing. The Directorate list on the other hand is duly signed by all 3 members on all the pages.

XVI. KAITHAL

i) Similar to the argument put forth for the district Sonepat, it is argued on behalf of A-3 that A-35, the Chairman of the Selection Committee has stated in his statement under Section

313 Cr.P.C. that he has deposited the fake lists in HARTRON on 17th or 18th September, 2000, therefore, the list that came out from the almirah and was signed by the Result Compilation Committee ought to be the original list.

ii) It is also argued that the said "FORMULA"/marking pattern is reflected in the Directorate list which came out of the almirah on 16.09.2000, and, so, it cannot be the Fake List. It couldn't have been substituted later by another set as it was signed by 6 members on each page and so one can only deduce that this marking pattern would be of the Original List which came out of the almirah on 16.09.2000, and, not of the Fake List which was given by Dilbaag Singh at HARTRON on 17/18.09.2000.

XVII. PANIPAT

i) The Directorate list of this district is D-18 exhibited as Ex.PW-15C. A-3 has not submitted any list pertaining to this district.

ARGUMENTS OF A-3 REGARDING HIS ROLE IN CONSPIRACY

34. At the very outset, Learned Counsel appearing on behalf of A-3 alleges that the prosecution has evolved two different theories against A-3, one being that he got prepared a second set of award lists and replaced the same. For this the prosecution has relied on the testimony of PW-31 Sardar

Singh and PW-56 Mohan Lal Gupta. At the same time the prosecution is also trying to prove that at the time when Mrs Rajni Shekhri Sibal (PW-23) was holding the post of Director Primary Education a second set of award lists were already prepared however upon refusal of Mrs Rajni for replacing the second set of award lists with the original ones, A-3 was brought in her place.

I. Haryana Bhawan/Punjab Guest House and Hartron Exercise

35. It is argued that somewhere in the middle prosecution mixed both the aforesaid stories and developed a new story that it was A-3 who had got a fake set of award lists prepared by calling meetings of the district level selection committee members at Punjab guest house and Haryana Bhawan Delhi and for achieving the ends of having a second set of award lists prepared, in the last week of August, 2000, brought the original lists with him to Delhi at Haryana Bhawan for making available photo copy of the original award lists which were submitted by the District Level Selection Committee in the office of Director Primary Education, by hiding the interview marks and grand total so that a fresh set of list may be prepared.

36. It is pointed out that although the mandate of the meeting was to give/make available only the names, roll numbers and marks for academic

qualifications of the candidates (done at the DLSC level prior to holding the interview), yet what is unclear from the case of the prosecution is as to why was there a need for the appellant to carry the above original award lists for holding such meetings when it is culled out conclusively from the documents available on the records that the data which was to be allegedly supplied to the candidates was already available in the form of data entered by HARTRON from the original application forms which had already been submitted to HARTRON soon after letter dated 31.07.2000 (D-56 page 33-Ex.PW-55/D) was received from HARTRON for handing over the data to Mukesh Bajaj AGM (PW 55).

37. It is sought to be explained that the application forms were not sent out on 03.08.2000 through the following list of dates:

03.01.2000 D59 @ 38 Ex.PW-55/A	Letter by FCEL to MD HARTRON refereeing to a meeting dated 17.12.1999 in which it was decided that the recruitment of the teachers will be processed using computers and HARTRON would prepare a cost estimate with respect to the same. A cost estimate sought from HARTRON so that decision may be taken in this regard.
26.05.2000 D-59 @ 37 Ex.PW-55/B	Cost estimate submitted by HARTRON to Sec. Secondary Education with a copy to Director Primary Education for compilation of result.
17.07.2000 D-40(III) @ 40	Letter By Shri Prem Prashant FCEL to Sanjiv Kumar, Director Primary Education for taking help of HARTRON for finalisation of

	result.
26.07.2000 D-59 @ 36 Ex.PW-55/C	Letter by Dy. Director Primary Education to HD HARTRON stating that the Government has approved the rates conveyed by it vide memo dated 26.05.2000, with a further request to start the computerisation process at the earliest while stating therein that the material for the said process of computerisation would be supplied to it (HARTRON) as and when required.
31.07.2000 D-59 @33 Ex.PW-55/D	Letter by General Manager (F&A) HARTRON to Director Primary Education stating that Shri Mukesh Bajaj Asst. GM would look after the computerisation of JBT Teachers Selection with request to handover the data to Shri Mukesh Bajaj AGM at the earliest. Letter received in the office of DPE on 31.07.2000 itself.
31.07.2000 D-40(I) @ 77-78	Corresponding Noting in the file of DPE stating that for computerisation with respect to the appointment of JBT Teachers HARTRON has designated Shri Mukesh Bajaj AGM and further HARTRON has written that the data may be made available to him immediately. Therefore permission was sought for sending the Data to HARTRON for further actions. Noting by Sardar Singh @ 77 bottom:- That HARTRON has nominated Shri Mukesh Bajaj AGM as a member of JBT Selection Committee, therefore, permission was sought to send the Application forms of candidates which were already available in the Directorate Dasti to him. Noting Approved on 31.07.2000
09.08.2000 D 40(III) @ 57 Ex.PW-31/D3-1	Letter by Mukesh Bajaj AGM HARTRON to Director Primary Education stating therein that data entry of all forms was completed by 04.08.2000 and the check list of the same has been generated.

	The proof reading of the Forms was to be completed within 2 days i.e. 5th and 6th August, 2000 by the staff of Education Department. But till date the same has not be done which had already been informed to the Dy Director Telephonically, because of which the finalisation of the results was delayed.
14.08.2000 Part 8 / D-40(I) @ 78-79 Also available in Paperbook of CR.L.A. No.277 of 2013 in vol IV , Annexure A-5 @ page no.755 and pg. 756	It is mentioned in the said noting dated 14.8.2000 by Phool Chand that all the staff of the Education Department was made to read the proof on working days as well as on Gazetted Holidays and as such the proof reading has been completed, however it was mentioned that the proof prepared by HARTRON had a lot of mistakes and the same was not found satisfactory. Phool Chand's note is endorsed by PW55 in Part 2/II page 81-82 who adds to it that " However the mistakes were rectified and the same was again sent to the department on 25.8.2000" The above Noting of Phool Chand dt. 14/8/2000 is (wrt to the letter dt. 09.08.2000 written by Mukesh Bajaj) whereby HARTRON has communicated that they have completed the proof by 05.08.2000 but no one from the Education department has come to check it.
16.08.00 Part 8 / D-40 (I) @ 81-83 Also available in Paperbook of CR.L.A. No. 277 of 2013 in vol IV, Annexure A-5 @ page no.757	Additional Noting by S.S.Tanwar:- Upon proof reading of Data Fed by HARTRON 70% mistakes are found. Roll numbers and Data of candidates do not match and in case of many candidates the category is not written. Even in SC(A) SC (B) BC(A) BC(B) E.S. MTDE S.M. their category is not written. DPE asked to speak to MD HARTRON and have the work done through experienced employees of HARTRON.

PW-55 @pg. 50 part 2(II) & quoted by the Trial Judge in Part1/B pg.181	Two persons from the DPE office had come to HARTRON for the purpose of proof reading as well as taking away all the application forms of JBT candidates that had come from the districts.
25.08.2000	Gate passes Ex PW-55/DA and PW 55/DB issued by Veena Sabharwal which mentions District wise ascending lists and descending lists of JBT candidates as endorsed by PW55 in Part 2/II page 81.
16.09.2000 D-42 @ 23 Ex.PW-31/A	Original Interview Mark-sheets taken out from the Sealed Almirah in the presence of the 6 member committee and a memo was drawn to that effect and the original award lists handed over to the committee.
03.10.2000 D-59 @ 8 Ex.PW-55/V D-59 @ pg.4	Complied Results along with the documents were sent to O/o DPE vide gate pass PW31/DP. Part 8/D 59 at page 4 shows the Gate Pass dated 3.10.2000 in the name of S.S. Tanwar showing Original interview JBT records and Result of sheets after preparation of final result. (NO application Forms mentioned in the gate pass)
07.10.2000	Results published in the Indian Express News Paper.

II. Prerna Guest House

38. It is argued that the prosecution has tried to suggest that since the nature of work was confidential, therefore, an inference is drawn from the statement of A3/DW-1 to show that a room was provided to the persons from DPE office for doing the official work which was supposed to be done

by them. It is submitted that A-3/DW-1 although was in-charge of the Prerna Guest House, yet he used to sit in the office building at Sector 17/C, at Chandigarh which is flowing from a statement under section 161 Cr.P.C. which had been attached by the prosecution along with the charge sheet. Meaning thereby that it was always in the knowledge of the prosecution that the said witness was never stationed in the Prerna Guest House. It would, therefore, be misleading to rely upon a statement for the purpose of showing that PW-31 and PW-56 had taken a room in Prerna Guest House for the purpose of performing the alleged mandate given to them by A-3 Sanjiv Kumar.

39. So far as A-3/DW-2 i.e. Ramji Tiwari who was in charge of the workshop which were conducted in Prerna Guest House for the purpose of creating the text books is concerned, it is submitted that there is positive evidence which had come out that in the month of August, 2000 while the workshop was going on, 2 officials from the Directorate of Primary Education, namely, M.L.Gupta and one Sardar Singh had come with one bag and one person was holding one handle of the bag and the other was holding the other handle of the bag. Further it has come in the evidence of Ramji Tiwari that Sharwan Kumar – Caretaker of the guest house who was permanently stationed in Prerna Guest House informed him in advance that

the 2 officials from the office of director Primary Education would come and he requested that some space may be given to them for doing that work. It has further come in his evidence that since the room demanded by them had already been occupied by teachers attending the workshop which was continuing at the relevant point in time, therefore, they had given the aforesaid 2 officials from space in one corner of the hall.

40. During the cross examination of his A3/DW-2, upon being specifically asked about his presence in the Prerna guest house, he had given a specific answer that Prerna Guest House was maintaining a register in which the names of the participants in the workshops were mentioned and further he specifically stated that his name must also be mentioned in the said register. He has also specifically stated that when he had asked M.L. Gupta and Sardar Singh about the lists, they had informed them that the same were HARTRON lists brought for the purpose of proof reading.

41. It is contended that from all the statements of the aforesaid different witnesses it becomes absolutely clear that the exercise done by Sardar Singh and M.L. Gupta at Prerna Guest House was in fact done in the 3rd or the 4th week of August, 2000 i.e. when the 2nd proof (taken out on 25.08.2000 as ascending and descending lists) prepared by HARTRON after correcting the mistakes which are pointed out to them as mentioned in note dated

14.08.2000 and 16.08.2000 at Pages 81 and 84 of D-40-(I) wherein at Page 84 it is stated that while reading the proof prepared by HARTRON it was found that roll numbers and Data of candidates do not match & in case of many candidates the category is not written. Even in SC (A), SC (B), BC(A), BC (B), ESM or DESM their category is not written.

> [That it becomes clear (that the said Prerna Guest House exercise took place in the 3rd – 4th week of Aug. 2000), from the statements of :-
>
> Sardar Singh PW-31 in :
> Part 7(1) Page 172 (Statement under Section 161 Cr.P.C)
> Part 7(2) Page 41 (Statement under Section 164 Cr.P.C)
> M. L. Gupta PW-56 in :
> Part 7(1) Pg.176 & 180 (Statement under Section 161 Cr.P.C)Part 2(II)
> Page 92, 107, 108 (Statement recorded during the course of Trial)
> Daryao Singh A-3/DW-1 in :
> Part IV, Page 11 says that the Prerna Guest House happened in last week of August, 2000]

42. It is contended that from all the statements of the aforesaid different witnesses it becomes With reference to the evolving of formula and checking overlapping of castes/categories, it is argued that even the IO in his testimony admits Joint Merit List was essential to determine the final placement of candidates. It is an admitted case of prosecution that at the time when the said exercise of Prerna Guest House was being conducted

there was no joint merit list available either with PW-31 or with PW-56. Therefore, it was absolutely impossible for anyone to find out of 8000 JBT candidates as to firstly how many of them would be figuring in the final merit list of 3206 candidates and secondly to find out as to how many SC/BC candidates would have overlapped the seats of General Category Candidates out of the 3206 candidates who would have come up in merit. The statement of the Investigating Officer himself that without there being any joint merit list of the candidates no purpose whatsoever would be served by either evolving a formula or by trying to find out as to how many SC/BC candidates had overlapped the seats of general candidates assumes significance.

43. With a view to discredit the testimony of PW-56, my attention was directed towards his testimony where he deposes regarding the lists being perused by A-3. He states that it was his general impression and that he had not specifically seen those lists. On being asked whether the two dak bags meant for the alleged Prerna Guest House exercise contained the said original award lists, he says he is not certain. He further deposed that he cannot say whether they were those very award lists which had come from the districts and that he was not asked to check the said district level award lists in Prerna Guest House. It is highlighted that while M.L. Gupta talks

about A-3 perusing award lists, Sardar Singh who was present at the same time with ML Gupta in the Director's room, in his examination in chief (Part 2/I, Pg. 304,) has deposed that the Director had two bags before him which he directed them to take to Prerna Guest House. In his statements u/s 161 Cr.P.C. and 164 Cr.P.C. also, Sardar Singh does not say that he saw A-3 perusing the award lists.

III. Circumstantial Evidence Against A-3

44. It is pointed out that the almirah in which the lists were contained was put behind a wooden screen in the office of Director Primary Education (DPE), however it is sumitted that for this fact neither any question been put to the appellant while examining under section 313 Cr.P.C nor the Site Plan Ex.PW-31/DK (D-88 page 3) shows any wooden screen.

45. Learned Senior Counsel contends that during the stage of framing of charges, the trial judge had prejudged the issue of the Directorate Lists being fake and Supreme Courts being genuine while discharging A-19 Brij Mohan by giving a positive finding that a 'UP' appears under the signatures of Brij Mohan without there being any comments with regard to the same by the Forensic expert in Part8/D-150 page 94-95.

46. With reference to district Faridabad, it is submitted that the document D-61(I) which is a copy of D-4, the Directorate list contains the same

interview marks and grand total for all candidates as Directorate Lists, D-4, and the original signatures of all the 3 District Level Selection Committee Members, namely, Harbans Lal, Brij Mohan and Udal Prasad. This clearly shows that although a copy of D-4 was prepared, the original list was sent to HARTRON for the purposes of preparation of the final merit list, and the copy of D-4, which is D-61(I), was retained in the DPEO office as an office copy. This copy was seized by the CBI during raids in the year 2004 from the office of the DPEO Faridabad and labeled as D-61(I) by the CBI.

47. It is pointed out that PW-17 Brij Mohan in his deposition [Part 2(1) at page 144] has clearly stated that he signed 40 pages of the fake lists. However a perusal of Directorate list and D-61(I) would reveal that in fact he had signed 40 pages of Directorate list + 28 pages of D-61(I) which is a copy of the Directorate List. However, as far as the Supreme Court list of district Faridabad is concerned, he has signed only 40 pages of the Supreme Court lists of Faridabad.

48. It is submitted that the factum of the lists being taken out from the almirah before 16.09.2000 emerges from the evidence of PW-56 and PW-31. Therefore, their testimonies have to be gone through with a fine toothed comb. It is pointed out that the minutes of the meeting dated 16.09.2000 Ex.PW-31/A (Part 8, D-42, Page 23) shows that the almirah was completely

sealed from all sides by cloth and had three seals over it which also shows that there was no tampering of seals when the almirah was opened before the de-sealing committee on 16.09.2000. The office note of PW-31, dated 15.09.2000 (Part 8/D-40/I, Page 87-88) also endorses the abovementioned fact. Further, (in Part2/I, Page 331) PW-31 states that he cannot tell whether the said almirah was opened prior to 16.09.2000. It is argued that nowhere in their depositions either the Supreme Court or the Directorate Lists were put to them to identify as to which one was seen by them prior to 16.09.2000 at Prerna Guest House. There is no identification of any list being made by them during the course of trial with respect to the one seen by them at Prerna guest house. It is argued that there is no positive evidence forthcoming to show that either of the star witnesses of prosecution i.e. PW-31 or PW-56 have deposed as to which one of the lists was seen by them prior to 16.09.2000, therefore, when the prosecution has itself not lead such evidence to prove a positive fact which could lead to the hypothesis of conviction of the accused then it cannot be concluded that the lists were taken out prior to 16.09.2000.

49. Learned Senior Counsel has highlighted the following circumstances as proof of his innocence in the conspiracy of preparation of fake lists:

i) Vishnu Bhagwan, A-5/DW-1 (Part IV page 161 and 164) deposes that he had recommended to the then CM, the name of A-3, for additional charge of DPE.

ii) A-3, deposes u/s 315 Cr.P.C. that he came to know of the design of the CM after he had taken charge and met the CM over breakfast.

iii) The effort by A-3, to appoint all the remaining JBT candidates under the World Bank aided project, DPEP, of which he was the State Project Director, supports his stand that he did not accept the directions of the CM and his officials about implementing any fake lists so that their candidates could be favoured.

iv) That the fact that documentary evidence brought by A-3 shows beyond doubt that the Supreme Court lists cannot be the genuine lists, proves that A-3, frustrated the ends of the said conspiracy contemplated by the CM.

v) That the fact that A-3, safeguarded the fake lists and brought the scam in the open through his Writ Petition No.93/2003, also proves his intention of not being part of the said scam.

vi) The factum of a dozen criminal and departmental inquiries instituted against A-3 after 16.09.2000, also establishes that he

was being hounded and punished by the State Government rather than rewarded.

vii) That A-3 has always held that he never accepted the directions of the then CM about the said scam. These facts as stated above show that it is not the normal conduct of a person who is allegedly part of any conspiracy. Rather, his actions indicate that he never agreed to be part of any conspiracy right from the beginning.

viii) That the B.Ed. candidates interview results reached his office on 01.08.2000 and remained with his PA, M. L. Gupta, and A-3 did not bother to take it in his possession from him, if there was any intention on his part to prepare a second set of lists or to switch the lists.

ix) That even though Prem Prashant, Rajni Shekhri Sibal, P. K. Mahapatra, and, Vishnu Bhagwan as well as R. P. Chander were at some stage or the other, aware of the said scam taking shape, and, had also attended meetings where some of these officers discussed the difficulty regarding various aspects of what was being asked of them by officials of CM office, yet they have not been charged with being of co-conspirators;

implying thereby that merely attending the meetings in ones official capacity and discussing the viability of what was being asked of them, does not make them conspirators; in fact, when called for a meeting by the CM office, a senior officer like Prem Prashant went to a junior officers house, taking with him 2 other officers. It is argued that this is precisely what happened with A-3 who is asking for parity with these officers.

50. Heavy reliance has been placed on behalf of Sanjiv Kumar (A-3) upon the decision of the Bombay High Court reported as ***Om Prakash Berlia and Another v. Unit Trust of India and Others***, **AIR 1983 Bom 1** to contend that in the absence of examination of the authors of the lists as witnesses, the prosecution has failed to prove the truthfulness of the contents of the lists. It has been urged that all the authors of the lists are arrayed as accused and, therefore, the prosecution has failed to prove the offences, as it could not establish the truthfulness of its contents.

IV. Whether A-3 was in a position to exert pressure

51. Learned counsel submits that much reliance is placed on the stand taken by the accused A-6 to A-62 to show that A-3 exerted pressure on them

to sign the fake lists. With a view to discredit this impression, the following evidence is pointed out:

i) Rajni Shekri Sibal PW -23 (Part 2/1, page 188 last Para) clearly states that DSE (Director Secondary Education) was the co-ordinator for effecting appointments to both the Primary and Secondary Directorates.

ii) P. K. Mahapatra, DSE, frames complete policy regarding these appointments, end to end, as revealed through these 9 pages of the file. (Part 8/ D -40 /II Pg 101-109)

iii) The DSE also suggests that the third member of the DLSC, i.e, the BEO to be nominated by the DSE himself. Pertinent to mention here that second member Deputy DEO, reports directly to DSE. (On Page 102)

iv) The DSE is being requested by the DPE to nominate the DPEO's. (On pages 127 and 135). Similarly, the supremacy of DSE over DSE is clearly revealed and established. (On Pages 28, 29, 127 & 135 as well as 182 & 184 etc.) Most of the DLSC members have themselves deposed that their services were regulated by the Directorate of Secondary Education.

v) Deposition of 5 defence witnesses u/s 315 Cr.P.C. in this regard

- Cross of D. D. Verma, A-50/DW-1 by A-3 dated 25.07.2012

  Q. Who was the next reporting authority for you when you were posted as Dy. DEO Yamuna Nagar?
  A. The next reporting authority was the DEO Yamuna Nagar. The DEO Yamuna Nagar would be reporting to the Director Secondary Education in Chandigarh.

  Q. When you were posted as Principal DIET in Ding, District Sirsa, is it correct that Director Secondary Education was your controlling authority?
  A. Yes, it is correct.

  Q. When you were transferred four times, under whose orders these transfer orders issued?
  A. The Financial Commissioner Education & Languages and Secretary to Education Department. To the best of my knowledge, Sh. Prem Prashant was at this post.

- Cross of Sher Singh A-23/DW-1 by A-3 dated 07/07/2012 :

  It is pertinent to mention that Sher Singh had retired on 31.01.00 and so would not have been under any kind of pressure from A-3.

  "He (DC Jhajjhar) also threatened me that till the time I do not make the second set of lists, I would not be allowed to leave Jhajjar. It is correct that the first threat that I received was from DC Jhajjar". About the telephonic threat from A-3, Sher Singh says that, "This conversation did not take place face to face but over the telephone. On telephone, I answered Sh. Sanjeev Kumar that I will prepare the lists as directed. The then DPE Sanjeev Kumar did not tell me as to how this second set

of list had to be made. Other than this particular episode, there was no instance whereby Sanjeev Kumar ever threatened or pressurized me. There was also no previous instance of any threat or pressure from Sanjeev Kumar"….. "I had never remained a subordinate of Sh. Sanjeev Kumar."

- Cross of Jogindar Lal, A-62/DW-1.

He retired on 31/3/2000 and in Part IV page 223 says "*I do not know if Sanjiv Kumar was the Director at that time. I never met Sh. Sanjiv Kumar, the DPE"*. So clearly the pressure could not have come from Sanjiv kumar, A-3.

- Urmil Sharma,A-61/DW-1 & (5) Sarwan Kumar Chawla A-60/DW-1

They do not claim to have met Sanjiv Kumar or spoken to him on phone and their services came under the Directorate of Secondary education. They were not under the administrative control of DPE.

52. With regard to the role of PW-2 and PW-5 in Haryana Bhawan, it is submitted as per their own admission, Ravi Dutt & Milap Singh did not go inside Haryana Bhawan where these alleged proceedings were taking place. M.L. Gupta states (Part 2/II, page 139) that he gave the original list of district Jind to A.S. Sangwan, A-26, which he has also stated in his statement u/s 164 Cr.P.C. (Part 7(1), page 176) he nowhere mentions Ravi Dutt or Milap Singh. Similarly, Sardar Singh also does not mention these two

witnesses in response to questions put to him therein. In his statement recorded u/s 161 Cr.P.C. (Part 7(1), page 172), and, u/s 164 Cr.P.C. (Part 7(2), page 42), Sardar Singh talks of the original list given to A.S. Sangwan, A-26 and not to Ravi Dutt or/and Milap Singh. Both Ravi Dutt and Milap Singh have deposed that original list was given to them.

53. Coming to the argument regarding Supreme Court list of Jind being retrieved from a sealed envelope in November-December, 2003 it is argued that the IO, R.N. Azad, deposes that no investigation was carried out on this point whether the envelope of Jind carrying the Supreme Court list was in sealed condition and whether the handwriting on this envelope is that of one Subhash Chander, A3/DW-11. To the next question, he feigns amnesia as to from where the Supreme Court list of Jind was retrieved in November-December, 2003. The testimony of Pushpa Ramdeo, PW-43 has to be considered in this light.

54. It is also argued that it is significant that A.S. Sangwan, A-26 and Ravi Dutt have given different versions as to how the fake lists were delivered at Chandigarh.

i) Statement of A. S. Sangwan u/s 164 Cr.P.C., Part 8/D-135 Page No.16, 2nd para, wherein he states that "*on 5/9/2000 we sent the said list to SPD office, DPEO,*

Haryana Chandigarh through Ravi Dutt and he handed over the same to one Mr. Arora (most probably PA to Mr. Sanjiv Kumar) at Chandigarh."

ii) Statement of Ravi Dutt u/s 164 Cr.P.C., Part 8/D-137, Page No. 27, : "*The selection committee handed over the lists after giving marks of the interview in a sealed cover & it was deposited in Chandigarh with Mr. Sanjiv Kumar….I had accompanied Mr. Sangwan to deliver the said list to the PS of Mr. Sanjiv Kumar …..And the said list was handed over to Mr. Sanjiv Kumar*".

ARGUMENTS BY CBI REGARDING ROLE OF A-3 IN CONSPIRACY

55. A-4 inducted A-3 as Director Primary Education by giving him additional charge on 11.07.2000 after having met him over a breakfast meeting on 10.07.2000, wherein the issue of changing award lists was discussed. It is argued that if Sanjiv Kumar (A-3) had not been in agreement with the sinister designs of O.P.Chautala (A-4) on 10.07.2000 wherein according to his own admission in his deposition U/s 315 Cr.P.C. the issue of changing the award lists was discussed, he would never have been endowed with the said additional charge on 11.07.2000 on the basis of oral/informal orders from the Chief Minister which were confirmed/approved by him on

17.07.2000 [Part 8/S.No. 7-Miscellaneous Documents exhibited from the side of Prosecution/Pages 30 and 34-37].

56. PW-26 has deposed that A-3 used to often boast about his proximity with the Chautala Government and this part of his deposition has gone unchallenged in cross-examination. Furthermore, it would be relevant to highlight that PW-26 is a senior IAS officer and had no animus or ill will to falsely implicate any of the accused.

57. Evidence led by the prosecution in form of testimonies of PW-31, PW-56 and PW-58, clearly establish beyond the shadow of doubt that the original award lists which were supposed to be lying sealed in the almirah were in fact taken out by Sanjiv Kumar (A-3) and were handed over to PW-31 and PW-56 for the purpose of being taken to Prerna Guest House, Panchkula, in the second-third week of August of 2000.

58. It was mandated by A-3 that the said lists be checked for ascertaining the number of candidates from the reserved category who would encroach upon the seats of the General Category.

59. It is highlighted that Sanjiv Kumar (A-3) has suggested to PW-31 and PW-56 in their cross-examination that they were sent to Prerna Guest House to compare the HARTRON lists that were collected from HARTRON on 28.08.2000 as evidenced by the gate-pass to the said effect (Part 8/D-37-D-

66/D-59/Page 2-3). However, interestingly, no such suggestion was given to PW-58; who had also visited Prerna Guest House.

60. In order to substantiate his claim, Sanjiv Kumar (A-3) has examined two witnesses in his defence, namely, A-3/DW-1 Daryao Singh and A-3/DW-2 Ramji Tewari. It is submitted by the prosecution, that bare perusal of their testimony reveals that the version deposed by the said witnesses is *ex-facie* destructive to one another and, therefore, no implicit reliance can be placed thereon.

61. Learned ASG submits that the documentary evidence (Part 8/D-37-D-66/D-59/Page 2-3) clearly laments that on 25.08.2000 only the ascending and descending lists of 8192 candidates were taken out from HARTRON and not the application forms of 8192 candidates as well, as is being claimed by Sanjiv Kumar (A-3) without any evidentiary basis. As a matter of fact, Sanjiv Kumar (A-3) has suggested to PW-55 Mukesh Bajaj, an official from HARTRON, that the material collected from HARTRON on 25.08.2000 was taken out in two bags. It is highlighted that even the proforma of the application form (Part 8/D-37-D-66/D-40(II)/Page 119-123) runs into four pages and the same is required to be necessarily filed by the candidate along with relevant documents in support. It is impossible for the ascending and descending lists of 8192 candidates and also the application forms of 8192

candidates running in at least four pages each to have been carried from HARTRON in merely two bags as suggested by Sanjiv Kumar (A-3) himself.

62. Furthermore, file notings (Part 8/D-37-D-66/D-40(I)/Pages 81-84) reveal that proof-reading was done by the officials of the Directorate of Primary Education at HARTRON premises itself and the same was complete by 14.08.2000. Therefore, there was no occasion for PW-31 and PW-56 to have conducted any such comparison at Prerna Guest House, as suggested by Prerna Guest House.

63. The applications forms were in fact received from HARTRON along with the result on 03.10.2000 as the Gate-Pass (Part 8/D-37-D-66/D-59/Page 4) indicates that the Original Interview JBT records and result was being taken out from the premises of HARTRON.

64. Therefore, it is contended that the very foundation of the evidence sought to be tendered by the two defence witnesses of Sanjiv Kumar (A-3) stands demolished in wake of the above-described documentary evidence.

65. Analysis of the testimony of the two witnesses examined by Sanjiv Kumar (A-3) in his defence would reveal fundamental contradictions between them in core areas which warrant their rejection. A-3/DW-1 Daryao Singh; who was the Care-Taker of Prerna Guest House deposed that PW-31

and PW-56 had informed him that they had come to compare the forms of JBT teachers with some confidential HARTRON lists. Significantly the said fact finds no mention in his statement under Section 161 Cr.P.C. made before the Investigating Officer during the investigation [Part 7/Vol. I/ Page 136-137]. In fact PW-31 and PW-56 had not even suggested in cross-examination by Sanjiv Kumar (A-3) that they had such a conversation with Daryao Singh, which casts serious suspicion on the veracity of the evidence of this witness. It is not the case that Sanjiv Kumar (A-3) was not aware of the existence of Daryao Singh at the time of cross-examination of these witnesses as his name has figured in questioning therein. Sanjiv Kumar (A-3) has thus not laid the foundation of his defence evidence at the earliest opportunity which materially detracts its credibility. A-3/DW-1 Daryao Singh deposed that Balram Yadav (PW-58) had also visited Prerna Guest House to assist PW-31 and PW-56. However, curiously, he later volunteered that he had inquired from PW-31 and PW-56, and they informed that Balram Yadav did not visit the Prerna Guest House as he was not required. A-3/DW-1 Daryao Singh further deposed that in pursuance of the request of PW-31 and PW-56, he provided them one room along with the keys of the room and its almirah. Per contra, A-3/DW-2 Ramji Tiwari has struck a discordant note and has deposed that he had permitted PW-31 and PW-56 to do their

assigned work by providing space in corner of the hall which was being used for their workshop. It is submitted that the said contradiction goes to the root and is, therefore, fatal to the version sought to be projected by Sanjiv Kumar (A-3). Again no suggestion was given to PW-31 and PW-56 during their cross-examination that they had informed Ramji Tiwari that they were proof reading HARTRON lists. It also assumes significance that A-3/DW-2 Ramji Tiwari was employed on contractual basis and his contract was renewed by Sanjiv Kumar (A-3). It is, therefore, submitted that Ramji Tiwari is a pliable witness for the defence but not a reliable witness for the Court.

66. It is thus evident that the explanation coined by Sanjiv Kumar (A-3) and sought to be corroborated by the defence-witnesses that HARTRON lists were being compared with the application forms at Prerna Guest House by PW-31 and PW-56, is fatuous and negatived by the positive documentary evidence led at trial.

67. It has been contended that the prosecution has failed to prove with exactitude when, how and by whom the seal of almirah was broken open and in absence of same. Apropos the contention raised on behalf of Sanjiv Kumar (A-3), it would be suffice to state that since Sanjiv Kumar (A-3) was the custodian of the said almirah which was lying in his room behind a wooden screen, it is virtually impossible and unrealistic for the prosecution

to adduce direct evidence on such terms as these facts lie within the exclusive knowledge of the accused. In view of the unequivocal mandate of Section 106 of the Indian Evidence Act, the facts evidently lie within his special knowledge and the onus shifts upon him to tender explanation as to how and under what circumstances the fake/fresh award lists have been implemented. However, the prosecution, as highlighted earlier in the preceding paragraphs, has successfully proved at Trial that the original award lists (Supreme Court Lists) which were supposed to be lying sealed in the almirah, were in fact handed over to PW-31 and PW-56 by Sanjiv Kumar (A-3) himself in the second or third week of August. In view thereof, no further evidence is required to be adduced by the prosecution to prove that the original award lists were removed from the almirah much before 16-09-2000.

68. Call records evidencing telephonic exchange between him and Ajay Chautala (A-5) on 27.07.2000 and 30.08.2000. The said evidence has not been denied by Sanjiv Kumar (A-3)[Part 8/D-80-161/D-93-Call records from Delhi and Part 8/D-80-161/D-94-Call records from Chandigarh].

69. Furthermore, Sanjiv Kumar (A-3) has himself deposed in his testimony when he entered the witness-box that he spoke to Ajay Chautala (A-5) on 01.09.2000.

70. That it is proved by own admission of Sanjiv Kumar (A-3) in his deposition u/s 315 Cr.P.C. that he attended the meetings at Punjab Guest House, Chandigarh and Haryana Bhawan, Delhi, where several members of the various District Level Selection Committees were also called for creation of new award lists.

71. Numerous accused persons (A-6, A-7, A-8 and A-59) in their statements recorded under Section 313 Cr.P.C. state that they attended the meeting at Punjab Guest House. The TA details of Prem Behl- DPEO Ambala (A-6) indicate that she travelled to Chandigarh on 30.08.2000 [Part 8/D-37-D-66/D-65/Page 3]. PW-49 and PW-56 also depose with regard to a meeting held at the Punjab Guest House wherein several committee members of various districts had been called for preparation of fresh award lists and the photocopies of the original list were offered to them for the said purpose.

72. Depositions of D.D.Verma (A-50) and Sher Singh (A-23) in terms of section 21 of P.C.Act/Section 315 of Cr.P.C. to the effect that they were being pressurized by Sanjiv Kumar (A-3) at Haryana Bhawan to create new award list.

73. Testimony of PW-31 and PW-56 affix the presence of Sanjiv Kumar (A-3) at Haryana Bhawan, Delhi on 01.09.2000 and also highlight the

prominent role played by him in the said meeting, wherein he addressed the members of the selection committees on the issue of award of marks in the interviews for appointment of JBT teachers. Sanjiv Kumar (A-3) is also stated to have announced that the original award lists were available and the members of the District Level Selection Committee could get the same photocopied, if they did not already have the copy of the same.

74. Overwhelming evidence available on record to the effect that many members of various District Level Selection Committees attended the meeting at Haryana Bhawan-Delhi on 01.09.2000. Testimony of PW-2 and PW-5 sheds light in this regard and is also corroborated by clinching documentary evidence in form of notings in the Telephone Register-Jind[Part 8/D-99/Page 4] about the communication received from the Office of the Chief Minister on 30.08.2000 that a meeting at Haryana Bhawan-Delhi must be attended by DPEO-Jind on 01.09.2000 and entry in the vehicle log-book in this regard[Part 8/D-101/Page 58]. Various District Selection Committee members admit to their presence at Haryana Bhawan in their statements under Section 313 Cr.P.C.

> [A-9,A-13,A-16, A-17, A-18,A-20,A-24, A-26, A-27, A-28, A-46, A-47, A-48, A-50, A-51, A-52 and A-56].

75. PW-56 has deposed that after the meeting at Haryana Bhawan, Delhi on 01.09.2000 some DPEO's were also called at the Office of the Director of

Primary Education for preparation of fresh award lists and the photocopies of the original list were offered to them for the said purpose.

76. The Chairperson of District Selection Committee-Bhiwani [A-9] and Karnal [A-29] during their statements under Section 313 Cr.P.C have indicated that they visited the office of Sanjiv Kumar (A-3) on 04.09.2000 with regard to the preparation of fresh award lists.

77. Member of District Selection Committee-Kaithal [A-35] has stated during his statement under Section 313 Cr.P.C. that he visited office of Sanjiv Kumar (A-3) on 06.09.2000 with regard to the preparation of fresh award lists.

78. Substitution of the original award lists (Supreme Court Lists) by newly created award lists (Directorate Lists) which were prepared in the year 2000 (end of August and early September).

79. Addressing the argument on proving of lists only by the authors i.e. the committee members, Mr. Khanna points out that the decision in ***Om Prakash Berlia*** *(Supra)* pertains to a civil suit pending adjudication before the Bombay High Court, wherein the question arose -"If the truth of the contents of an extract of annual returns certified to be true by the Registrar under Section 10 of the Companies Act, 1956 is prime facie established by it being exhibited as evidence."

80. After noticing various provisions of the Evidence Act, 1872 and judgments rendered by various Courts on the subject, it was observed as under:

> "6. Secondly, Ss. 61 and 62 read together show that the contents of a document must, primarily, be proved by the production of the document itself for the inspection of the Court. It is obvious that the truth of the contents of the documents, even prima facie, cannot be proved by merely producing the document for the inspection of the Court. What it states can be so established.
>
> 7. Thirdly, it is laid down that the writer of a document must depose to the truth of its contents. …
>
> 12. The Act requires, first the production of the original document. It the original document is not available, secondary evidence may be given. This is to prove what the document states. Upon this the document becomes admissible, except where it is signed or handwritten, wholly or in part. In such a case the second requirement is, under S. 67, that the signature and handwriting must be proved. Further, where the party tendering the document finds it necessary to prove the truth of its contents, that is the truth of what it states, he must do so in the manner he would prove a relevant fact.As the cases of BishwanathRai (AIR 1971 SC 1949); MadholalSindhu (AIR 1954 Bom 305); and Mr. D. (AIR 1968 Bom 112) indicate, this is generally done by calling the author of the document.
>
> 13. ... Secondary evidence of a public document so led only proves what the document states, no more. In other words, he who seeks to prove a public document is relieved of the obligation to produce the original. He can produce instead a certified copy. All other requirements he must still comply with.

> 14. … A consideration of the relevant provision of the Evidence Act clearly showed the Court that the only difference which the Act made between public and private documents was in regard to the form of secondary evidence which is admissible viz. a certified copy, and in regard to the presumption of the genuineness of the certified copy; in all other respects, no distinction was drawn by the Act between public and private documents."

81. In view of the law laid hereinabove, the Bombay High Court was pleased to repel the contention that a certified copy of a public document proved *prime facie* the truth of its contents. However, in view of the mandate of Sections 159 and 164 of the Companies Act, 1956, the Bombay High Court was pleased to hold that prime facie the truth of contents was established.

82. Mr. Khanna contends that the ***Om Prakash Berlia*** judgment *(Supra)* is of no avail and has no applicability to the present case wherein the gravamen of charge against the accused is commission of forgery of the lists. It is a settled proposition of law that the gist of the offence of forgery pertains to falsity of execution and not the falsity of the contents/ recitals of the said document. Reliance is placed upon the luminous observations comprised in the judgment of the Andhra Pradesh High Court ***The Public Prosecutor v. ThallGangadharudu*** reported as **(1956) ALT 678**.

83. The said position of law is similar in foreign jurisdictions as well and it has been eloquently observed by Court of Appeals for the Tenth Circuit, ***United States of Americain Wayne S. Marteney v. United States of America,*** [**216 F.2d 760]**:

> "…As used in criminal statutes, the words "falsely made" and "forged" are homogeneous, partaking of each other. They have always been synonymously construed to describe a spurious or fictitious making as distinguished from a false or fraudulent statement. The words relate to genuineness of execution and not falsity of content.*"*

84. The said observations have been cited with approval by the United States Supreme Court in ***R. Milo Gilbert v. United States*** **[370 U.S. 650 (1962)]**.

85. It would also be apposite to draw attention of this Hon'ble Court to the view of the eminent author- Dr. Hari Singh Gour expressed in his celebrated treatise - Penal Law of India, 11th Edition, 2013. The views expressed by the said author in the above mentioned treatise on various nuances of law have been cited with approval by the Supreme Court and other Courts.

86. At page nos. 4449-4450; Volume IV, the author has opined that the mere fact that a document contains false recitals or statements would not make it an offence of forgery within the meaning of Section 463 IPC.

87. At page no. 4471; Volume IV, the author has opined that the mere making of the document, some recitals whereof are at variance with the reality, does not constitute an offence of forgery.

88. Therefore, it is established beyond pale of controversy that in a prosecution for the offence of forgery, as in the present case, the truthfulness or the falsity of the contents/recitals of the forged document is irrelevant and the prosecution is not obliged to labour on the said aspect. The prosecution is required to prove that the 'Directorate Lists' were not contemporaneously prepared in December, 1999 when the interviews were conducted by the District Level Selection Committees, but much later, and the original lists were substituted.In the present case, the date/timing of preparation of the 'Directorate Lists' is the fact-in-issue. The observations of the Bombay High Court are applicable in cases where a litigant desires or is required under law to establish the truthfulness of the contents of the document and in such a situation, the said fact must be proved in the manner prescribed by law, which is generally done by summoning the author of the document.

89. Furthermore, even the judgment of the Bombay High Court in ***Om Prakash Berlia's*** case *(Supra)* clearly permits that the contents of a document-'What it says' can be read in evidence upon the production of its original for the inspection of the Court. However, it imposes an embargo that

if a litigant is required to establish the truth of such contents, then the mere production of the said document for inspection of the Court would not suffice.

90. Interestingly, even otherwise, the inherent fallacy of the said argument canvassed on behalf of Sanjiv Kumar (A-3) can also be evidenced by the fact that if the same is accepted to be correct, then in no case an author of a forged document could be convicted for the offence of forgery, as the prosecution would be mandatorily required to make him step in the witness-box as a witness to testify for his own misdeeds. Article 20(3) of the Constitution of India mandates that no person shall be compelled to be a witness against himself. Such a situation would be a 'theoretical absurdity and practical impossibility' and the same is rightly not countenanced by the makers of Section 464 IPC; who in their wisdom did not choose to telescope 'falsity of content' of a document as an ingredient of the offence of forgery. The said argument, therefore, is *ex-facie* misconceived, frivolous and is liable to be rejected.

91. With reference to the facade of de-sealing of almirah before the members of the result compilation committee, it is argued that the same was done on 16.09.2000. The memorandum (Part 8/D-42-D-53/D-42/Page 23) prepared to this effect was vague and did not even exhibit the minimal

degree of specificity, which was expected to be present in genuine proceedings. Mr. Khanna argues that curiously, the memorandum does not even describe the nature of sealing (use of One Rupee Coin and white cloth) and there is no reference of any sealing panchnama to have been shown to the members of the result compilation committee; who could have thereafter been in a position to ascertain the fact that the original seals were intact.

92. Furthermore, the opinion of the GEQD [Part 8/D-42-D-53/D-53/Page **104**] scientifically establishes beyond pale of controversy that factum of videography has been added to the memorandum dated 16.09.2000 later and interestingly, the documentary record in form of bills highlighted by A-3 to lend credence to his false claim of videography of de-sealing proceedings infact pertains to a three day event and the memo is dated 25.08.2000 (much before 16.09.2000). The said bill of S.K. Studio was cleared later and was wittingly depicted in the file noting [**D-80-D-161/D-105/Pages3-4**] to have pertained to videography of JBT proceedings.

93. PW-19, Santosh Kumari Sharma, owner of S.K.Studio has clearly deposed that their studio conducted no videography on 16.09.2000, however, some job for the department was done earlier. She also deposed that in March, 2004, one person namely – Sushant Swain contacted her telephonically and told her to make a statement that videography was done

by her firm on 16.09.2000, however, she refused to make such a statement. It would be worthwhile to highlight that the said Sushant Swain has also stepped as a defence witness [A-3/DW-3] for Sanjiv Kumar (A-3).

94. It also assumes significance that during cross-examination of the Investigating Officer- R.N Azad (PW-63), Sanjiv Kumar (A-3) put a leading question recorded at foot of Page 324, which continues at Page 325 [**Part 2(II)**] wherein the factum of videography being conducted in the proceedings dated 16.09.2000 was not even put by him to the witness. In response, the Investigating Officer- R.N Azad (PW-63) refuted the sanctity of the proceedings dated 16.09.2000 and also stated that no videography was done. Thereupon, Sanjiv Kumar (A-3) gave a quiet burial to the issue and did not put it to PW-63 that he is lying or has wrongfully withheld/destroyed the videography.

95. A-4 praising A-3 on 18.09.2000 at a function when the task assigned to Sanjiv Kumar (A-3) was successfully executed. The factum of such praises has been deposed to by Sanjiv Kumar (A-3) himself in his deposition in terms of section 21 of P.C. Act / Section 315 of Cr.P.C.

96. False and misleading stand taken by Sanjiv Kumar (A-3) before the Supreme Court and Trial Court which snowballs as an additional circumstance in the chain of evidence against him. Therefore, the falsity of

the defence plea adds as an additional link in chain of evidence against Sanjiv Kumar (A-3).

ARGUMENTS ADVANCED ON BEHALF OF A-4

LEGAL ARGUMENTS

97. Learned Senior Advocate Mr. R.S. Cheema appearing on behalf of A-4 and A-5 has cantered his legal arguments on two vital aspects:

i) Admissibility of statement of A-3, given under Section 315 Cr.P.C., to prove incriminating evidence against the appellants A-4 and A-5

ii) The effect of such incriminating evidence

- In terms of the extent of reliance that can be placed on evidence of such witness and,
- In default of the same not being put to the appellants for their explanation under Section 313 Cr.P.C.

98. Factually, in the present case, 6 appellants (A-3, A-23, A-50, A-60, A-61 and A-62) have stepped into the witness box, on their own application, and given evidence on oath under Section 315 Cr.P.C. The prosecution is relying on such evidence of the Committee members as incriminating evidence against A-3 and the evidence given by A-3 in his statement under

Section 315 Cr.P.C. is being relied upon to as incriminating evidence against A-4.

Admissibility

99. Learned Senior Counsel Mr. Cheema has vehemently argued that Section 315 Cr.P.C. permits an accused to appear as a witness with the object of giving evidence to either defend himself or his co-accused. This provision does not envisage a situation where an accused assumes the role of a complainant or whistle blower and starts giving evidence to prove the charge against a co-accused. The deposition of an accused on such lines is diametrically opposed to the spirit of the provision besides being in conflict with the purpose for which such permission is granted.

100. Learned Counsel relies on the case reported as ***Yusufbhai alias Isubbhai Umarbhai Mallek v. State of Gujarat and Anr.*, 2009 Cri L J 4015**, wherein the scope of Section 315 Cr.P.C. has been discussed elaborately. The relevant portions of the judgment are reproduced below:

> "18. It further appears that after recording of the statements of all the accused under Section 313 of the CrPC, A-1 wanted him to be examined as the witness for defence and the learned Sessions Judge has permitted so under Section 315 of Cr.P.C. In the deposition of A-1 he has deposited in confirmity with the confessional statements made before the learned Magistrate dated 18-11-1998. Section 315(1) of CrPC Reads as under:

315. Accused person to be competent witness.- (1) Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial;

Provided that-

(a) he shall not be called as a witness except on his own request in writing;

(b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial.

19. The aforesaid provisions show that what is required for availing the benefits as per the provisions as contained in the Section is; (1) that there must be a trial in the criminal Court; (2) person applying to be examined under the provisions of the said provisions would be necessarily an accused; (3) when the stage of invoking the provisions of the said Act has reached i.e. to say after conclusion of record of evidence of the prosecution followed by the explanations/submissions of the accused as required under Section 313 of CrPC., is over; (4) the evidence as such accused may adduce will be on oath as a witness and lastly; (5) such evidence must be in disproving of the charges made against him or any person charged together with him at the trial. Therefore, if the evidence is given by accused after the examination under Section 313 of Cr. P.C., and under Section 315 of CrPC., it is required to be considered in light of the aforesaid provisions of Section 315 of Cr.P.C. The pertinent aspect is that such evidence must be in disproving of the charges made against him or any person charged together with him at the same trial. Therefore, the nature of evidence cannot be for strengthening the case of the prosecution to prove guilt of any of the accused, but must be in disproving of the charges made

against him. The evidence of A-1 as recorded by the learned Sessions Judge shows that the same is not in disproving of the charges made against him or in disproving of the charges made against any person together with him at the trial, but is to prove the guilt of A-1 himself and/or other co-accused namely; A-2 and/or A-3. Therefore, such evidence so far as it relates to not in disproving of the charges, could be said as beyond the scope of Section 315(1) of CrPC for the purpose of deciding the case before the learned Sessions Judge. It is an admitted position that the learned Sessions Judge has not considered the said aspects and if this Court is to examine the said aspects, the deposition of A-1 under Section 315, so far as it relates to involvement of A-1 himself and other co-accused namely; A-2 and A-3, since is not in disproving of the charges, cannot be considered since the same would be outside the scope of Section 315(1) of CrPC.

20. If the confessional statements of A-1 is found as, as observed earlier, non-trustworthy and if the deposition of A-1 under Section 315 is excluded, since the same is not in disproving of the charges made against him or other co-accused, the whole premise or the basis of the case of the prosecution would fall to ground and the very substratum of the case of the prosecution would be lost. The reason being that the whole case of the prosecution is based on circumstantial evidence and the basis of the prosecution is the confessional statements of A-1, which itself is found as non-trustworthy by this Court as referred to herein-above. The second basis, if any, could be the deposition of A-1 under Section 315, but as observed hereinabove, since the same is not in disproving of the charges and, therefore, beyond scope of Section 315(1) of CrPC., and, therefore, excluded, the effect would be that the second basis of the case of the prosecution would also not available. The pertinent aspect is that A-1 was initially cited as the witness by the prosecution and thereafter has been dropped as the witness by the prosecution. Therefore, even otherwise also for proving the

> case, the prosecution could not legitimately rely upon the evidence of A-1, whatever may be the legal value to be attached to the same."

101. Learned Counsel strongly relies on the test of admissibility laid down in ***Yusufbhai*** *(supra)* to contend that the statement of a co-accused under Section 315 Cr.P.C. is limited in its application towards 'disproof' of charges against either the concerned accused himself or a co-accused. The test of admissibility being whether the witness is stepping into the witness box to fulfill the objective stipulated in the provision and not with a view to pass on the buck and implicate others.

102. Learned Counsel illustrates the distinct difference between establishing innocence of oneself through evidence and testifying on oath with the sole object of implicating others through evidence of their guilt. In a case of possession of narcotics, a person sitting beside the owner as well as the driver of the car may be permitted to take the stand that though they were present at the time of seizure yet the container did not belong to them. In the present case, the statement of the co-accused (A-3) is not in disproof of charges against him rather it is being used by the prosecution to ascribe and prove guilt of A-4 which is not contemplated by the provision of Section 315 Cr.P.C.

Reliability of accomplice evidence

103. An accomplice is one who knowingly, voluntarily and with common intent unites with others for commission of a crime. Accomplice evidence anyway suffers from a memorable taint and, therefore, needs to satisfy the requirement of self incrimination in order to lend credence to itself. Learned Counsel argues that A-3 being an accomplice in crime, his evidence has to be considered on those parameters.

104. It is argued that in the instant case, A-3 has been least worthy of credence. He claimed to be a whistle blower and misdirected the investigation as well as the Supreme Court from the very inception in order save his own skin. His statement under Section 315 is wholly exculpatory and he has not proved to be a truthful witness. Other co- accused have admitted their presence at the relevant meetings while truthfully deposing the involvement of A-3 and the pressure exerted by him on them. Therefore, the weight of his evidence has to be seen in this light to decide whether is worthy of reliance.

105. Learned Counsel next traces the guiding principles evolved by the Supreme Court in order to appreciate the evidence of such witness. Reliance is placed on ***Kashmira Singh v. State of Madhya Pradesh,*** **AIR 1952 SC 159** to urge that even in case of confession, where the statement is

required to be inculpatory, the approach of Court is to weigh the testimony independent of the confession. Relevant para is extracted below:

> "11. Translating these observations into concrete terms they come to this. The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."

106. Elaborating on the requirement of reliability of approver's evidence, the case reported as ***Sarwan Singh v. State of Punjab,*** **AIR 1957 SC 637** is cited. Relevant paras are extracted below:

> "7. On behalf of Harbans Singh, it has been urged before us by Mr. Kohli that the judgment of the High Court of Punjab suffers from a serious infirmity in that, in dealing with the evidence of the approver, the learned Judges do not appear to have addressed themselves to the preliminary question as to whether the approver is a reliable witness or not. The problem posed by the evidence given by an approver has been considered by the Privy Council and courts in India on several occasions.
>
> It is hardly necessary to deal at length with the true legal position in this matter. An accomplice is undoubtedly a competent witness under the Indian Evidence Act. There can be, however, no doubt that the very fact that he has

participated in the commission of the offence introduces a serious stain in his evidence and courts are naturally reluctant to act on such tainted evidence unless it is corroborated in material particulars by other independent evidence.

It would not be right to expect that such independent corroboration should cover the whole of the prosecution story or even all the material particulars. If such a view is adopted it would render the evidence of the accomplice wholly superfluous. On the other hand, it would not be safe to act upon such evidence merely because it is corroborated in minor particulars or incidental details because, in such a case, corroboration does not afford the necessary assurance that the main story disclosed by the approver can be reasonably and safely accepted as true.

But it must never be forgotten that before the court reaches the stage of considering the question of corroboration and its adequacy or otherwise, the first initial and essential question to consider is whether even as an accomplice the approver is a reliable witness. If the answer to this question is against the approver then there is an end of the matter, and no question as to whether his evidence is corroborated or not falls to be considered.

In other words, the appreciation of an approver's evidence has to satisfy a double test. His evidence must show that he is a reliable witness and that is a test which is common to all witnesses. If this test is satisfied the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration. This test is special to the cases of weak or tainted evidence like that of the approver."

107. Learned Counsel relies on ***Tribhuvan Nath v. State of Maharashtra,*** **(1972) 3 SCC 511** to urge that even in ***Tribhuvan*** *(supra)*

the Supreme Court has emphasized the importance of double test in case of approver's evidence. Relevant paras are extracted below:

> "30. As aforesaid, the evidence of Puransingh, Elavia and Mosin Burmawalla was held by the Trial Judge as accomplice evidence in that each of them had in one way or the other helped the accused in furthering their objectives. In such a case the duty of the court apprising the evidence clearly is to apply the double test as laid down in Sarwan Singh v. State (1902) 1 K.B. 882. The court, therefore, has first to see whether the evidence of an accomplice is reliable, and secondly, even if it is so, whether it is corroborated in material particulars by other independent evidence, direct or circumstantial. An Sarwan Singh's case 1957CriLJ1014 points out, the test of reliability is the same as the one applied to all witnesses. Therefore, it does not mean that an accomplice's evidence cannot be relied upon unless it is totally and absolutely blemishless. In majority of cases such is not the case and inspite of some discrepancies and other such infirmities, courts have often found it safe to act on the evidence of such witness. A case illustrating this proposition is to be found in Sarvanabohavan v. Madras 1966CriLJ949 where the evidence of the approver contained certain discrepancies and was also contradicted by the testimony of another witness and yet that evidence was held to pass the test of being credible and was accepted as it was also corroborated by other evidence. Regarding the second test, that is, of the necessity of corroboration, such corroboration need not, on the one hand, be of every particular given by an accomplice, and on the other hand, of only minor particulars. The corroboration must be adequate enough to afford the necessary assurance that the main story testified by the accomplice can be reasonable and safely accepted as true. ***Ramanlal v. The State***, **AIR 1960 SC 961**.

108. Learned Counsel has relied on ***K. Hashim v. State of Tamilnadu***, **AIR 2005 SC 128**, ***State of Maharashtra v. Abu Salem,*** **2010 (10) SCC**

179, ***Suresh v. State***, **1991 Cri L J 859**, ***Ranjeet Singh v. State of Rajasthan***, **AIR 1988 SC 672**, ***Abdul Sattar v. Union Territory, Chandigarh,*** **AIR 1986 SC 1438**, ***Chonampara Chellappan v. State of Kerala***, **AIR 1979 SC 1761**, ***Lal Chand v. State of Haryana,*** **AIR 1984 SC 226**, to urge the argument of corroboration.

109. The second limb of this legal argument is that assuming but not conceding admissibility of such evidence, what can be the value thereof in absence of the same not being put to the concerned accused for his examination under Section 313 Cr.P.C. The mandate of Section 313 Cr.P.C. is a derivative of the maxim audi alteram partem, an epitome of the principles of natural justice considered constitutionally sacred for the benefit of the accused. Perfunctory examination under the provision, resultantly depriving the accused of explaining his version on incriminating evidence against him defeats the very purpose of such examination reducing it to an empty formality.

110. It is submitted that while right to cross examine a witness is a valuable right, the right to lead defence evidence is a separate and independent right. When the accused was allowed to lead defence evidence, he merely had to meet the case of the prosecution and any other additional evidence led by a co-accused was not within the zone of

consideration at the time. After additional, highly incriminating evidence has come forth, the accused has a right to further meet such evidence through his own defence evidence and that right cannot be washed down merely because he was given the right to cross examine such co-accused. The Court is under a legal obligation to record a supplementary statement under Section 313 Cr.P.C. in order to consider the explanation given by the accused to such additional evidence.

111. It is further submitted that in the instant case, incriminating evidence that has come forth by way of statement of a co-accused under Section 315 Cr.P.C. has additionally been used as a material circumstance to prove guilt of the appellant A-4. Therefore, such omission on the part of the Trial Judge leads to the indubitable conclusion that such circumstances that were not put to the appellant could not be taken into account against him and had to be ruled out of consideration.

112. Learned Counsel supports this contention through various judgments reported as ***Akhtar Mohammad v. Emperor,*** **AIR1927LAh720**, ***Ibrahim v. Emperor,*** **AIR 1933 Sindh 49**, ***Hooghly Chinsura Municipality v. Keshab Chandra Pal***, **AIR 1933 Cal 347**, ***Channu Lal v. Rex***, **AIR 1949 All 692**, ***Bhiari Singh Madho v. State of Bihar***, **AIR1954SC692**, ***Hans Raj & Anr v. State***, **AIR 1966 HP 52**, ***Balwant Kaur v. Union Territory of***

Chandigarh, **1988 (1) SCC 1**, ***Jagannath Sah v. State of Assam*****,** **1993 Cri L J 3704**, ***Lallu Manjhi v. State of Jharkhand***, **2003 (2) SCC 401**, ***Kuldip Singh v. State of Delhi***, **2004 (12) SCC 528** and ***Ashraf Ali v. State of Assam*****,** **2008 (16) SCC 328**.

FACTUAL ARGUMENTS

113. At the very outset is it urged by Counsel for the appellant that none of the prosecution witnesses have implicated the appellant directly. The circumstances pressed into service by the prosecution to prove the element of conspiracy as emerging from the official record are as under:

i) Taking the selection of JBT Teachers out of the purview of Haryana Staff Selection Commission and entrusting it to the District Level Selection Committees under the Directorate of Primary Education.

ii) The transfers and appointment to the post of Director, Primary Education.

iii) Enhancement of marks for the interviews/viva voice from 12.5% to 20%.

iv) The passing of message to DPEO Jind on 30.08.2000 from the office of the Chief Minister instructing the Committee Members and others to reach Haryana Bhawan, New Delhi along with the record on 01.09.2000.

Cabinet Decision

114. It is urged that the note Ex.PW-38/DE enlisting the proceedings of the meeting of the Council of Ministers would show that that issue of shortage of JBT Teachers was taken up by the then Education Minister as opposed to the then Chief Minister A-4. The Education Minister suggested the need to fill the existing vacancies through special selection by authorized Departmental Committees by taking these posts out of the purview of the Haryana Staff Selection Committee. It is pointed out from the note that the Council of Ministers after deliberations approved the proposal and it was a collective decision of the Cabinet. It is further clarified that the permission of the Chief Minister was only required to take up the item in the said meeting as the same was not in the agenda. It is, therefore, argued that merely the fact of the Chief Minister's permission cannot be seen as a fortuitous circumstance to show malice or evidence of conspiracy. This argument is fortified with the fact that the CBI did not examine any other Cabinet Minister who was part of this Cabinet decision.

115. Learned Counsel draws support from the testimony of PW-16 to depict the factual state of affairs and the reasoning behind the Cabinet decision. PW-16 has deposed that there were thousands of vacancies of JBT teachers in the State of Haryana and that Primary Education at that

time was in a state of utter neglect. He states that attrition was on account of superannuation/casualty which is around 3% annually and if teachers are not recruited then the vacancies keep getting accumulated. He admits that recruitment of JBT teachers is the duty of the Staff Selection Commission but there had been some failure somewhere which led to this situation. He admits the suggestion that the decision of the Cabinet on 08.09.1999 to take out posts of JBT teachers from the purview of the Staff Selection Commission was in view of the existing circumstances i.e. immediate filling of the large number of JBT teachers. He also states that in his opinion, this was the best course for expediting the process of selection.

116. PW-38 and PW-62 have also deposed to the effect that the recruitment was entrusted to DOP as the HSSC process was too lengthy and time consuming. It was also stated that there was huge shortage of teachers and whenever selection of particular staff is required urgently, the Government takes steps to take out the selection of the same from HSSC in order to make selections expeditiously.

117. It is, therefore, stressed that the Cabinet decision was taken in accordance with the settled procedure by a competent authority and as per the Rules of Business. There has been no allegation of pressure or of any special interest taken by A-4 from any person in the Cabinet and in view of

the consistent testimony depicting the sordid state of affairs in primary education it was indeed a requirement to entrust the selection process with DOP.

118. Another complementary argument is that the said decision was taken in the year 1999 and a new government took office under A-4 in March 2000. If the object was to manipulate the selection process, it would have been easier to do so by scrapping the previous decision and enlarging the size of the Haryana Staff Selection Commission. It is argued that it is simpler to manoeuvre selection in a small centralized body than in a large decentralized body of more than 50 persons spread over 18 districts of the State. Therefore, the allegation does not seem plausible of logical human conduct.

Transfer of R.P. Chander

119. It is alleged by the prosecution that the transfers of R.P. Chander and subsequently Ms. Rajni Sekhri Sibal were in furtherance of the conspiracy and with a view to appoint a person favorable to the main conspirators. Learned Counsel relies on the statement of PW-38 himself to meet this allegation. PW-38 admitted that on 24.04.2000, he had recorded a note mentioning that the work for the declaration of the result may be assigned to HARTRON and marked the file to FCEL and on 27.04.2000 FCEL

recorded his note on the said file. On being questioned regarding his transfer on 26.04.2000 being as soon as he sent the note for declaration of results, he admitted that he had sent the note on 24.04.2000, however he did not think his transfer had anything to do with the note.

120. Learned Counsel submits that a new government essentially re arranges the bureaucratic set up leading to routine transfers, which was essentially the case here. There is no evidence to show that there existed any enmity between A-4 and PW-38 or that he had defied the instructions of the former in any manner. It is also submitted that PW-63, the Investigating Officer was put a specific question regarding the motive behind transfer of PW-38 to which he replied that he did not make any enquiry into the same.

Transfer of Rajni Sekhri Sibal

121. Prosecution relies on the transfer of PW-23 to evidence the fact that since she was not cooperating in effecting the conspiracy, therefore, she was transferred.

122. Learned Counsel submits that PW-23 through her own admission had requested for her transfer a day after the sealing of the almirah. Though she was unable to conclusively affix the date for this request, however, it has been established that the sealing took place on 20.06.2000.

Therefore, as per her own version she made a request for transfer on 21.06.2000. It is pointed out that her order of transfer was finally issued on 11.07.2000, nearly 3 weeks after the request. The factum of her transfer being at her own request is further corroborated by the deposition of Vishnu Bhagwan A5/DW1 to whom she had made the request. No suggestion was put to either witness that PW-23 had not approached Vishnu Bhagwan with such a request.

123. The second limb of the argument is that A-3 was in no manner the chosen official showing favour towards either A-4 or A-5. Vishnu Bhagwan in his cross examination is specifically put a suggestion that it was the then CM and not him who had suggested the name of A-3 to take over the charge as Director Primary Education. Denying the suggestion he has stated that he suggested A-3 as he already had the experience of working in that department as Incharge of DPEP.

Enhancement of interview marks

124. It has been alleged by the prosecution that in order to achieve the purpose of tinkering with the selection process and to ensure selection of favored candidates, a meeting was held on 10.11.1999 under the chairmanship of A-4 wherein besides the fixing of norms of selection by DLSCs, the marks for interview were enhanced from 12.5% to 20%. For

this purpose, the prosecution relies on a note Ex.PW-38/E which notes that a meeting chaired by the Chief Minister and attended by the Finance Minister, Minister of State for Education, the Advocate General, the PS-CM, the Secretary Finance, Finance Secretary Education and others was held on 10.11.1999. The break-up of marks for each category towards selection were enlisted and the marks allotted for interview were mentioned 20 out of 100. This note is signed by PW-16, PW-38 and others.

125. Learned counsel submits that the instant note does not bear the signature of A-4 and his presence at any such meeting is not conclusively established. Even otherwise, enhancement of marks would not constitute any incriminating evidence in furtherance of conspiracy.

Note instructing DPEO Jind to reach Haryana Bhawan on 01.09.2000

126. Prosecution has alleged that Dhup Singh, DPEO Jind had received a telephonic message recorded in the telephone register (D-99) on 30.08.2000 from PW-9, Shadilal Kapoor, P.A to PW-1 Sanjeev Kaushal, Addl. Principal Secretary-II to the then Chief Minister (A-4) to instruct DPEO Jind and A-26 Ajit Sangwan and other members of JBT Selection Committee, Jind to reach Haryana Bhawan, New Delhi along with records on 01.09.2000. A-26, Ajit Sangwan had endorsed it "Seen and Signed". PW-1 Sanjeev Kaushal Addl PS-II to Chief Minister had communicated

this message to PW-9 Shadi Lal Kapoor on instructions received from the office of Chief Minister, A-4.

127. Learned Counsel has strongly challenged this allegation in wake of the testimony of PW-1 who deposed that he does not remember having passed any such message dated 30.08.2000 to PW-9. Having been declared hostile, he was cross examined by the Prosecutor and he clarified not remembering any such message particularly because he did not ever handle the education department.

128. Coming to the testimony of PW-9, he states that he did remember sending a message to DPEO Jind on 30.08.2000 as directed by PW-1, however, he did not remember the contents of the message. Learned Counsel urges there is, therefore, insufficient evidence to establish this allegation.

Testimony of A-3 Sanjeev Kumar

129. Sanjeev Kumar A-3, has testified in his examination under Section 315 Cr.P.C. that he met A-4 on 10.07.2000 at 9:00 a.m. over breakfast and A-4 Om Prakash Chautala, the then Chief Minister Haryana, asked him that second set of lists was to be prepared afresh at the earliest because his Government has got the clear majority of his own and there was no necessity to oblige the MLAs of the parties. Vidya Dhar (A-1) told him

that mandate for DPEOs is that fresh lists were to be prepared according to the list, which he (Vidya Dhar) would give to him, and the role of Sanjiv Kumar was to replace the list kept in the sealed almirah and declare the results as per the second set of award lists.

130. Learned Counsel has vehemently challenged the inherent worthiness of the testimony of A-3 on grounds of admissibility and reliability. Assuming arguendo even if his testimony were to be admissible, the credibility attached to the same is highly devalued in light of the following proven circumstances:

i) He was admittedly the sole custodian of the original award lists which were kept in a sealed almirah in his office. It is, therefore, impossible for anyone to undertake any substitution or replacement of the lists except with the leading and active participation of A-3.

ii) Prosecution witnesses PW-31 Sardara Singh, PW-56 Mohan Lal Gupta and PW-58 Balram Yadav being officials deputed in the office of A-3 have deposed that in the middle/end of August, 2000, despite the almirah being officially sealed, the award lists had been taken out. A-3 had directed these

officials to scan and examine the record to work out the possibility of minimizing the number of reserved category candidates entering the selection process. It is, therefore, writ large that the record had already been obtained and an effort was being made to carry on an in depth analysis to tamper with the selection process.

iii) Other prosecution witnesses being PW-2 Ravi Dutt, PW-5 Milap Singh, PW-14 Dhoop Singh and PW-17 Brij Mohan have also deposed that the preparation of fake award lists was under the direction and control of A-3.

iv) The Directorate lists that were implemented and on the basis of which appointments were made have been declared to be fake and in view of A-3 stand in trial that Directorate lists were genuine, it is the most cogent stark evidence of his guilt.

v) He has been consistently inconsistent on material aspects.

131. In addition, learned counsel has repeatedly pointed out that the factum of the alleged breakfast meeting was not put to A-4 in his examination under Section 313 Cr.P.C. and at the same time has been used

by the Trial Judge as the most incriminating evidence to prove guilt of A-4 which is impermissible under the mandate of Section 313 Cr.P.C.

Evidence of Conspiracy

132. Learned Counsel has elaborated the judicial principles evolved on principles of appreciation of evidence in a case of conspiracy. It is argued that when factum of conspiracy is sought to be inferred from circumstances, the same must give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit the offence. At the same time, concurrence cannot be inferred by a group of irrelevant facts artfully arranged so as to give an appearance of coherence.

133. Learned Counsel relies on following circumstances to render the allegation of conspiracy highly improbable:

i) The execution of a conspiracy of this scale required a person to be handpicked to the post of DPE to act as an engine of the conspiracy. In the instant case, there is no evidence to show that either R P Chandra or Rajni Sekhri Sibal or Sanjeev Kumar were appointed by prior agreement with A-4. There is no allegation that R P Chander was shifted from the said post

on instruction from A-4. It is also nobody's case that Rajni Sekhri Sibal was brought in with a prior meeting of minds to execute the nefarious designs. The circumstances in which Sanjeev Kumar had taken over rule out any interest having been shown by A-4 in his posting

ii) Learned Counsel has urged that the period of conspiracy needs to be properly demarcated in order to take benefit of Section 10 Indian Evidence Act. The report under Section 173 Cr.P.C. vaguely mentions the period of conspiracy to be 1999-2000. Learned Counsel however, relies on testimony of PW-63 the Investigating Officer who has deposed that conspiracies being hatched in darkness, it is difficult to state as to when the conspiracy started but the factum of asking Rajni Sekhri Sibal to change the lists is the foundation of the entire conspiracy. It is submitted that this testimony establishes that no conspiracy can be inferred prior to the taking over of Rajni Sibal vide her transfer orders on 27.04.2000. This is further strengthened by the fact that PW-63 had collected the call detail records only w.e.f 01.03.2000. Therefore, all decisions prior to this must

logically be divorced from consideration being regular administrative decisions without a taint of criminality.

iii) Learned Counsel argues that had there been an ulterior motive, A-4 would have put pressure to ensure that the selections take place before the election in order to reap the electoral harvest. Therefore, the probabilities strongly militate against the existence of conspiracy overarching over two periods of the government i.e prior to elections and after induction of new Cabinet

iv) It is also argued that had A-3 been acting according to dictates of A-4, their relations would be intimate having obliged the Chief Minister by committing serious crimes. It is, therefore, a moot question as to why and when they had a fall out. A number of FIRs were registered against A-3. It not the case of CBI that these FIRs were false or motivated.

v) It is argued that A-4 had won a fresh mandate with secured majority in the year 2000 which was to last till March, 2005. Hence, there was no reason for A-4 or his political companions to take any desperate measures for the selection of their chosen ones. The government could have dropped the

tedious process undertaken and got fresh selections held on ground of delay

ARGUMENTS ADVANCED BY CBI

LEGAL ARGUMENTS

134. The legal arguments raised by Learned Senior Counsel Mr. Cheema have been addressed by the prosecution in the first instance:

135. The first attack on the testimony of A-3 is on grounds of admissibility in view of the fact that he is a co-accused. At the outset it was highlighted that no provision in the law of evidence governing the field was cited to buttress the claim of inadmissibility of such statements. It is submitted that there is no prohibition encompassed in the language of Section 315 Cr.P.C. or law of evidence in India to warrant exclusion of such statements as inadmissible. It has been held since time immemorial and there exists profusion of authorities to evince that the test of admissibility lies in relevancy and evidence is admissible as long as it is relevant to the cause, subject to any expressed provision engrafted under law. For instance the contents of a statement tendered by an accused in custody of a police officer may seem to be relevant for the cause; however,

Section 25 of the evidence imposes a ban on proof of such statements and treats them as inadmissible.

136. Relience is placed on the decision of the Supreme Court in the case of ***Tribhuvan Nath*** *(supra)*, wherein it has been held that an accused may step into the witness box and choose to implicate his co-accused, such evidence would be admissible against the co-accused as long as an opportunity for cross examination was granted. The Supreme Court cited with approval the law in England in this regard, which has remained unchanged ever since that such evidence is admissible as long as an opportunity is given to the co-accused to cross-examine such accused who has implicated him. It is submitted that the very emphasis on securing this right to conduct cross-examination stems from the underlying principle that such evidence is admissible, otherwise there would have been no necessity to labour on providing an opportunity to conduct cross-examination if such evidence was ipso facto inadmissible.

137. The decision of the Supreme Court in ***Tribhuvan*** case *(Supra)* has been followed by the Bombay High Court in ***Hiten Prasan Dalai and Others v. Abhay Dharmasi Narottam and Another*****, (1998) 5 Bom CR 822** and ***Central Bureau Of Investigation, Bank Securities And Fraud Cell v.***

***Mulangi Krishnaswamy Ashok Kumar and Others*, (1999) 3 Bom CR 189**.

138. It is argued that the judgement of Gujarat High Court rendered in ***Yusufbhai*** case *(supra)* is in teeth with the law laid down in by Supreme Court in Tribhuvan case *(supra)* and is, therefore, not a good law. It may be highlighted that in fact the decision of the Gujarat High Court does not even notice the decision of the Supreme Court in ***Tribhuvan*** case *(supra)*.

139. It is reiterated that the Apex Court has always sounded a note of caution that judicial discipline obliges the High Courts of the land to follow the judgments of the Supreme Court and the fact that a particular argument was not considered or a provision was not cited, cannot denude the judgment of Supreme Court of its precedential value.

140. The Supreme Court of India in the case of ***Ambika Prasad Mishra v. State of U.P.*, (1980) 3 SCC 719** observed that every new discovery or argumentative novelty cannot undo or compel reconsideration of a binding precedent.

141. Reliance is also placed upon Section 21 of the Prevention of Corruption Act, 1988 to evidence the fact that a statement made by an accused against the interest of a co-accused is admissible and subject to cross-examination. The said section is pari materia Section 7 of the

Prevention of Corruption Act, 1947. It would be beneficial to extract the contents of Section 21 herein below: -

> "21. Accused person to be a competent witness.—Any person charged with an offence punishable under this Act, shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:
>
> Provided that—
>
> (a) he shall not be called as a witness except at his own request;
>
> (b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial;
>
> (c) he shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless—
>
> (i) the proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is charged, or
>
> (ii) he has personally or by his pleader asked any question of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution, or
>
> (iii) he has given evidence against any other person charged with the same offence."

142. Bare reading of proviso (c) sub-clause (iii) of the above extracted provision laments that when an accused person tenders evidence against his co-accused he may be questioned during his cross-examination about his previous convictions or bad character (which is otherwise impermissible under law in view of Section 54 of Indian Evidence Act, 1872). Therefore, proviso (c) sub-clause (iii) expressly contemplates reception of evidence by an accused against the co-accused, however in such cases the co-accused enjoys the right to expose the bad character of an accused who implicates him. The Prevention of Corruption Act, 1988 is a special act, later in time, and it overrides the provisions of the general law viz. the Code of Criminal Procedure and, therefore, section 21 of Prevention of Corruption Act, 1988 would prevail over Section 315 of Cr.P.C., 1973.

143. At any rate, it is argued that even Section 315 of Cr.P.C., 1973 does not prohibit the use of such evidence tendered by the accused against the interest of the co-accused as held in ***Tribhuvan*** case *(supra)* and there is no dichotomy as such between section 21 of the Prevention of Corruption Act, 1988 and the Cr.P.C., 1973, though the language of Section 21 is clearly more express in this regard.

Admissibility of deposition of an accused against the co-accused when such deposition is not self-incriminatory but exculpatory

144. The second legal objection canvassed by Counsels appearing on behalf of the appellants to the reception of evidence tendered by the accused against the interest of his co-accused at trial, is that such evidence must also necessarily implicate/inculpate the accused himself, failing which, the evidence of such accused would be inadmissible qua the co-accused.

145. It is submitted that there is no jurisprudential hiatus for such a submission as no such requirement has been engrafted by the legislature either in Section 21 of the Prevention of Corruption Act, 1988 Section 315 of Cr.P.C., 1973 or Section 133 of the Indian Evidence Act, 1872 which deals with the admissibility of the evidence tendered by accomplice. As a matter of fact, the prosecution has cited the decision of the Supreme Court of India in ***Subramania Goundan v. State of Madras*****, AIR 1958 SC 66**, and the decision of the Privy Council in ***Mahadeo v. The King,*** **(1936) 44 L.W 253**, wherein it has been held that an accomplice who completely exculpates himself may require corroboration and the court did not treat such evidence inadmissible per se. Reliance was also placed upon Para 31, inter alia, in the decision of the Supreme Court in ***Tribhuvan*** case *(supra)*,

wherein the Supreme Court was pleased to observe that the accused 3 was claiming his acts to be innocent and yet the Court while rejecting his claim of innocence, used his statements that incriminated the co-accused.

146. The concept of self incrimination emerges as a necessary pre-requisite for statements of the accused which fall within the ambit of Section 30 of the Indian Evidence Act.

147. At the outset, it is highlighted that evidence contemplated as admissible under Section 30 of the Indian Evidence Act is materially different in its nature and quality from the evidence of an accomplice which is admissible under Section 133 of the Indian Evidence Act. The judgment of the Supreme Court in ***Tribhuvan*** case *(supra)* clearly prescribes the applicability of Section 133 of the Indian Evidence Act to the testimony of an accused who steps in the witness box and deposes against the co-accused.

148. The confessional statements made by an accused under Section 30 may not necessarily be on oath, such statements are made behind the back of an accused and not in his presence, and significantly cannot be subjected to cross-examination by the accused against whose interest they may be made. The Apex Court has in fact held that such statements of accused falling within Section 30 of the Evidence Act are not even strictly speaking

"evidence" qua the co-accused for the purpose of Section 3 of the Evidence Act and is a mere material which can be taken into consideration by the Court after marshalling the other evidence against the accused. The reason is obvious, as it would be hazardous to use such statements of an accused as evidence against a co-accused; who does not even get an opportunity to cross examine the maker of such statement. The rationale/sanction for the limited use of such statements of an accused against the co-accused in terms of Section 30 of the Indian Evidence Act lies in the fact that the accused incriminates himself as well which affords some assurance of truth. Reliance is placed upon the observations in this regard comprised in the treatise of the eminent authors- *Sir John Woodroffe and Syed Amir Ali- Law of Evidence, Lexis Nexis Butterworths Wadhwa-Nagpur in Volume 2, Chapter 5 at Pages 1558-1559.*

149. In view of the above described sublime philosophy, the Apex Court has held that evidence under section 133 of the Indian Evidence Act is of superior quality and higher pedestal then evidence/ material under Section 30 of the Indian Evidence Act. [***Haricharan Kurmi v. State Of Bihar***, **AIR 1964 SC 1184** and ***Haroon Haji Abdulla v. State Of Maharashtra***, **AIR 1968 SC 832].**

150. Therefore, it is urged that self incrimination is not a condition precedent for admissibility of evidence of an accomplice against his co-accused. No such requirement has been engrafted in any statutory provision dealing with the evidence of accomplices. Rather insistence of self incrimination would militate against the very object of introducing Section 315 Cr.P.C. wherein an accused steps into the witness box in disproof of charges against him and he, therefore, cannot be expected / compelled by a convoluted interpretation of law to admit charges against him. Such insistence of self incrimination by an accused to render evidence admissible against the co-accused would also fall foul of Article 20 (3) of the Constitution of India.

The degree of corroboration required to act upon accomplice evidence.

151. Since time immemorial the Apex Court of our land has reiterated the principles which need to be kept in mind while appreciating the probative value of the evidence adduced by accomplices; who are in fact participant criminis and may themselves be culpable partners in the crime along with their confederates. Needless to say, that since such evidence does not spring from pious sources, the courts, as a matter of practice (rule of prudence) seek corroboration from independent sources before acting upon the evidence of such a witness. The said rule of caution stands embodied in

illustration (b) appended with Section 114 of the Indian Evidence Act, 1872 and it suggests that a Court may draw a presumption that an accomplice is unworthy of credit and requires corroboration in material particulars.

152. A bare reading of the said provision, brings to fore two striking features. *Firstly*, the use of the term 'may' suggests that such presumption is not automatic and is not required to be mandatorily drawn as a 'rule of law'. As a matter of fact, Section 133 of the said act laments that an accomplice is a competent witness and a conviction proceeding solely on the edifice of such uncorroborated evidence would not be illegal. *Secondly*, even when the Court chooses to draw such a presumption having regard the factual contours of the case, corroboration is required only in material particulars as distinct from every particular.

153. Significantly, the Supreme Court while considering the said issue has pertinently held that corroboration is not required even on every material particular because if independent evidence was required to corroborate the evidence tendered by an accomplice on every aspect, it would render the evidence of such accomplice superfluous and mere surplus age. The independent evidence must be such that it would be reasonably safe to believe the witness's story that the accused was amongst

those, who committed the offence. It has been held that the corroboration need not be of a kind which proves the offence against the accused. It is sufficient that it connects the accused with the crime. Furthermore, such corroboration need not necessarily be furnished by direct evidence and the same may be provided in form of circumstantial evidence.

154. The Learned Counsels for various appellants have laboured before this Court to submit that since the co-accused; who stepped into the witness-box in disproof of charges levelled against them, have themselves been held blameworthy by the prosecution and the Trial Court, it would ipso facto be impermissible to rely on their statements as they are inherently devoid of trustworthiness and the question of seeking corroboration would not even arise for consideration.

155. It is contended that said argument is liable to be repelled in view of decision of the Apex Court in the ***Tribhuvan's*** case *(supra)*, which is a self contained code to the law in this regard and a complete answer to the submission of the appellant. Even in ***Tribhuvan's*** case *(supra)*, the Court was pleased to place reliance upon the portion of the testimony of an accused that incriminated the co-accused and the residual portion (canvassing his own innocence) was rejected, consequently resulting in conviction of the said accused as well. Therefore, the fact that such an

accused is himself convicted and that his version is not held believable in its entirety by the Court, is no ground to detract the court from culling out the '*nuggets of truth*', if they are found to exist, and acting upon the same. It is a settled tenet of criminal jurisprudence in India that the doctrine of falsus in uno, falsus in omnibus (false in one particular, false in every particular) is not applicable in our country. The Court is under a bounden duty to make an endeavour to separate the grain from the chaff i.e. disengage truth from falsehood. It has been held in the ***Tribhuvans*** case *(supra)* that once an accused steps in the witness-box, he is like an 'ordinary-witness'. However, in view of the fact that he is a participant in the crime, while attaching testimonial-worth, the safeguards of appreciating evidence of accomplices apply to such evidence.

156. Therefore, the mere fact that an accused is blameworthy in crime and stands convicted himself, does not imply that owing to such stigma his evidence tendered against the co-accused must be thrown out from consideration lock, stock and barrel.

EXAMINATION UNDER SECTION 313

157. Learned ASG submits that the mere omission on part of the Trial Court to put certain incriminatory circumstances in form of questions during the examination of the accused in terms of section 313 Cr.P.C. does not

vitiate the trial as unfair and offensive of Article 21 of Constitution of India. Furthermore, such omission would also not necessarily lead to the exclusion of such evidence from consideration against the accused persons.

158. It is pointed out that most such incriminatory circumstances which were not put to the accused during their examination in terms of Section 313 Cr.P.C., as highlighted by the appellants before this Court, infact emerged during the course of defence evidence, particularly when some accused persons examined themselves as witnesses in their own defence under Section 21 of the Prevention of Corruption Act, 1988/Section 315 Cr.P.C. and shed valuable light on the misdeeds of their confederates in crime.

159. Relevant portion of Section 313 Cr.P.C. herein below:-

> "313. Power to examine the accused.—(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court—
>
> (a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;
>
> (b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:…"

160. Perusal of the said provision reveals that sub-clause (b) of Clause (1) of Section 313 Cr.P.C. is couched in mandatory terms as the legislature has employed the phrase "shall" as distinguished from the term "may" used in

sub-clause (a) preceding the same. Therefore, it seems the trial court conducted the examination of the accused after the culmination of prosecution evidence as obligated under sub-clause (b) but did not conduct any such examination thereafter.

161. It is also pointed out that at no stage any of the appellants-accused raised the issue of insufficient examination before the Trial Court, which was in the best position to conduct such additional examination, if desired necessary by the accused; who were represented by a battery of competent legal professionals. As a matter of fact the additional evidence which was led at the stage of defence evidence was subjected to gruelling cross-examination at the hands of the Learned Counsels for the effected accused persons and it was not the case that they were unaware about the introduction of such evidence against them and were taken by surprise at the time of pronouncement of judgment, so as to result in miscarriage of justice.

162. The Supreme Court has held since time immemorial that mere omission to question the accused with regard to certain incriminatory circumstances would not result in automatic exclusion of such evidence and the accused must demonstrate prejudice. It has also been held that when such an objection is not raised before the trial court which could have easily cured the defect, and such objection is belatedly raised for the first time before the

appellant court, that itself demonstrates that the appellants did not feel any prejudice.

163. It is submitted that the appellants before this Court have not even pleaded much less proved/ substantiated any prejudice and have only highlighted the alleged omission and claimed its exclusion from consideration against them. No appellant has even attempted to demonstrate how he was misled in his defence or taken by surprise by introduction of such evidence, which in fact he arduously subjected to cross-examination and addressed its credibility extensively at the stage of final arguments before the Learned Trial Court. Furthermore, the Apex Court has also held that all which an accused is entitled to in such cases is that his explanation, if any, be considered by the Appellate Court while evaluating the prosecution evidence and no more. As highlighted earlier, the appellants have not projected any such explanation which they desired to tender with regard to the circumstances upon which they claim they were not questioned by the Learned Trial Court.

FACTUAL ARGUMENTS

164. Learned ASG submits that A-4 chaired the Cabinet meeting dated 08.09.1999 and with his permission the issue of appointment of JBT teachers was taken up for consideration as it was not an item on the

agenda. It was decided to take the appointment of JBT teachers out of the purview of Haryana Staff Selection Committee (HSSC) – a statutory body and bring the same under the control of Directorate of Primary Education. It would be relevant to highlight that at the said time he was holding the portfolio of Education Minister as well. A meeting dated 10.11.1999 was chaired by the then Chief Minister- O.P.Chautala (A-4). It is in the said meeting, the vital decision of increasing the weightage of interview marks from 12.5 % to 20 % was taken in furtherance to the cabinet decision dated 08.09.1999 by which the JBT teachers appointment was taken out of the purview of the Haryana Staff Selection Committee (HSSC), which is a statutory body. The said meeting was also attended by his close aides – Vidya Dhar (A-1) and Sher Singh Badshami (A-2); who were occupying the post of his OSD and his political advisor respectively. Interestingly, O.P Chautala (A-4) had approved the "chayan" formula only a fortnight earlier i.e. on 12.10.1999 itself, wherein 12.5 % was the weightage prescribed for interview.

165. It is submitted that positive acts of A-4 and others, subsequent in time, would reveal that the said decision of taking the appointments out from the purview of HSSC and increasing the weightage to be accorded to interview marks substantially was not innocuous or a sheer co-incidence.

As a matter of fact these two ostensibly innocuous decisions formed the very edifice upon which the conspiracy to effect this employment scam of vast magnitude rested as it could not have been given effect to without these enabling policy decisions.

166. Addressing the contention that the period of conspiracy has been deposed by the Investigating-Officer (PW-63) to commence upon the demand of substituting the award lists being made to PW-23 and, therefore, the circumstances of removing JBT appointments from the purview of HSSC and increasing the weightage of interview marks pale into insignificance, it is pointed out that the IO has categorically deposed that- "The conspiracy in this case started when the then Chief Minister Sh. Om Prakash Chautala took a decision to withdraw the vacancies of the J.B.T Teacher from the purview of Staff Selection Commission and the conspiracy ended on appointment of undeserving candidates on the basis of directorate lists…" [Part 2(II)/Page 277]

167. Furthermore, if it was the case of the prosecution since the inception that the circumstances highlighted above were NOT an integral manifestation of conspiracy, the prosecution would not have labored and examined relevant witnesses to prove the said facts at trial. Reliance is placed upon the observations of Supreme Court in the case of ***State (NCT***

of Delhi) v. Navjot Sandhu @ Afsan Guru*, (2005) 11 SCC 600**. The Court observed that it is difficult to spell out with exactitude the details relating to the starting point of conspiracy and reiterated the view taken by it earlier in its decision in ***Esher Singh v. State of A.P., **(2004) 11 SCC 585** wherein it was held that it is not always possible to give affirmative evidence about the date of the formation of the Criminal Conspiracy.

168. It is also mentioned that a similar view has been echoed by the Supreme Court in ***Navjot Sandhu*** case *(supra)* wherein it was observed that agreement between the conspirators can be inferred by necessary implication.

169. It is argued that the conspiracy in the present case had commenced much before the induction of Sanjiv Kumar (A-3). The first overt manifestation of the conspiracy is found when the recruitment process was taken away from the purview of Haryana Staff Selection Committee (HSSC) and entrusted to Directorate of Primary Education vide a Cabinet decision dated 08.09.1999, when such issue was not even comprised in the agenda prepared for the meeting. Sanjiv Kumar (A-3) joined the conspiracy around 10.07.2000, when he met O.P.Chautala (A-4) at his residence over breakfast meeting.

170. The prosecution has enumerated and explained the gist of incriminating evidence against A-4 as under:

i) Transfer of PW-38, R.P.Chandra – Director Primary Education within two days of his initiating the note dated 24.04.2000 for compilation of the result through HARTRON [Part 8/D-37-D-66/D-40 (I)/Page 57].

ii) Deposition of PW-16 Prem Prashant to the effect that someone from the Office of the Chief Minister had informed him to attend the said meetings at Haryana Niwas and at residence of Vidya Dhar (A-1); who was as a matter of fact much junior to them.

iii) Pressure being exercised by his close aides- Vidya Dhar (A-1) and Sher Singh Badshami (A-2) in presence of his son- Ajay Chautala (A-5) upon PW-23 Rajni Sekhri Sibbal for substitution of fresh award lists in place of the original award list lying in her custody as Director Primary Education.

iv) Unjustifiably sitting - over the proposal for constitution of Results Compilation Committee till 16.07.2000, which had been initiated by PW-23 Smt Rajni Sekhri Sibal on 20.06.2000 and had reached the Office of the Chief Minister on 22.06.2000 itself [Part 8/D-37-D-66/D-40 (I) /Page 72-73], although the JBT

teachers appointment was purportedly taken out of the purview of HSSC on the pretext that there was acute shortage of such teachers and making appointments through HSSC would consume more time. It is argued that had the approval been granted by O.P.Chautala (A-4) during the tenure of PW-23, he would not have been successful in his illegal designs of getting the original award lists replaced as PW-23 had clearly conveyed her unwillingness to his representatives during the two meetings and she would have ensured that the original award lists be expeditiously handed over to representatives of HARTRON in front of the other members of the Result Compilation Committee. It is, therefore, only on 16.07.2000 that A-4 gave his nod to the proposal for declaration of results, once the new incumbent of his choice had been given additional charge as Director Primary Education on 11.07.2000 in place of PW-23, on the basis of informal orders conveyed after the breakfast meeting with Sanjiv Kumar (A-3) on 10.07.2000. It assumes significance that the attending circumstances in which PW-23 was herself compelled to seek transfer included– pressure/repeated demands in the two meetings by the aides of O.P Chautala (A-4) to

substitute the new award lists that were to be created in place of the original award lists lying in her custody, anonymous phone calls offering threats and bribe, theft at her residence etc.

v) Deposition of Sanjiv Kumar (A-3) in terms of Section 21 of P.C.Act / Section 315 Cr.P.C. highlighting a breakfast meeting dated 10.07.2000 with O.P.Chautala (A-4), wherein A-4 asked him to change the original award lists. The factum of such a meeting was also averred in the writ petition filed by Sanjiv Kumar (A-3) in the year 2003 and not that this version sprung for the first time during trial. [Part 8/D-37-D-66/D-64/Pages 25-53 at Page 31]. It has also been deposed by Sanjiv Kumar (A-3) that a suggestion had been made by O.P Chautala (A-4) that the almirah be broken open from its back side using a blow-torch and then re-welded thereafter.

vi) Message emanating from the Office of the Chief Minister requiring the DPEO's to attend meeting at Haryana Bhawan on 01.09.2000. Conjoint reading of the testimony of PW-1, PW-9 and PW-14 unequivocally evince the said fact.

vii) Presence of Sher Singh Badshami (A-2)-Political Advisor of O.P Chautala (A-4), amongst others, at Haryana Bhawan, Delhi on

01.09.2000 and at Punjab Guest House along with Vidya Dhar (A-1), and pressurizing various District Selection Committee Members to prepare fresh award lists. Section 10 of the Indian Evidence Act, 1872 envisages a concept of 'vicarious liability' in cases of conspiracy and act(s) of one co-conspirator bind the other and, therefore, the evidence emerging against one co-conspirator is to be read as evidence against the other conspirator as well.

viii) Despite the fact that O.P.Chautala (A-4) was not holding the portfolio of the Education Minister, the file relating to JBT teachers appointment was reaching his office for approval of almost every decision made during the process, such as change of Result Compilation Committee Members [Part 8/D-37-D-66/D-40(I)/Page 80, 86] and even declaration of result. According to the rules of business in vogue [Part 8/S.No.7-Miscellaneous Documents exhibited by the prosecution/Page 5-25] primarily the minister in charge was competent to take the final decision on a matter, however, the domain of the Chief Minister has been expressly carved out [Rule 6, 18 and Rule 28]. It is argued that from the positive evidence available in form of

departmental file notings, it can be safely inferred that at any rate, O.P.Chautala (A-4) was in complete stock of things and the file of JBT teachers appointment was reaching his office, warrantedly or unwarrantedly, for his approval on the matters comprised therein.

ix) Per Contra, curiously, O.P.Chautala (A-4) in his examination under Section 313 Cr.P.C. has feigned ignorance about the process of appointment of JBT Teachers after the Cabinet decision dated 08.09.1999. The file movement and notings as evidenced from the bare perusal of D-40 (I) clearly belie the stand projected by O.P.Chautala (A-4) in his statement under Section 313 Cr.P.C. and such false plea adds as an additional link in the chain of evidence against him. The Apex Court has held that such false plea can supply the missing link to the chain of circumstantial evidence against the accused. (caselaws to be added)

x) Praising Sanjiv Kumar (A-3) on 18.09.2000 at a function when the task assigned to Sanjiv Kumar (A-3) was successfully executed. The factum of such praise has been deposed to by Sanjiv Kumar (A-3) in his deposition in terms of section 21 of

P.C. Act / Section 315 of Cr.P.C. He has also got exhibited a DVD (Ext. A3/DW-9/D-1) containing the videography of the said function. This portion of his testimony has gone unchallenged in cross-examination.

171. Learned ASG submits that it would be too much for A-4 to feign blissful ignorance about the events which were transpiring around him and it cannot be termed as an innocuous coincidence that the key aides of O.P. Chautala (A-4) and his son were getting enforced such a scam of vast magnitude spanning over 18 districts of Haryana and that messages for the said purpose were even rallied through his Office by his staff unauthorisedly without his approval/directions/consent. Furthermore, the key policy decisions which gave impetus to the conspiracy were taken under his aegis. The period also saw successive transfer of two Directors of Primary Education who refused to toe the line dictated by the aides and son of O.P. Chautala (A-4). The file travelled to O.P. Chautala (A-4) for approval of almost every decision in the matter relating to JBT appointments and it was being cleared expeditiously, however, curiously when PW-23 initiated the proposal for declaration of result, the wheels of bureaucratic machinery jammed for no perceivable reason whatsoever and

moved only when the new incumbent; who was a newly joined co-conspirator had been inducted to achieve the ends of conspiracy that had been delayed/thwarted by PW-23. Fortunately for the society, a confederate of crime- Sanjiv Kumar (A-3) also furnished direct-evidence during trial, in addition to the overwhelming circumstantial evidence already adduced by the prosecution, about his breakfast meeting with O.P Chautala (A-4) and the mandate of changing the award lists which had been voiced by him at the said meeting.

172. It is argued that the version of the said accomplice has received ample corroboration from the circumstantial evidence led by the prosecution at trial and it is not the case that there exists no evidence otherwise to link O.P. Chautala (A-4) with the crime and the case against him hinges solely on the substratum of this breakfast meeting, which would make it unsafe to act upon the testimony of the accomplice. It is a settled proposition of law that corroboration need not extend to every circumstance deposed to by the accomplice as that would in fact render such accomplice evidence wholly superfluous. It is also settled proposition of law since time immemorial that corroboration can be received even through circumstantial evidence, as in the present case, and not necessarily by direct evidence. It has been often cited with approval by the Apex Court

that "witnesses may lie but circumstances do not lie". (caselaws to be added)

173. It is contended that even otherwise it would be unrealistic to expect direct evidence against the Chief-Minister: O.P. Chautala (A-4) from any person, other than an accomplice like-Sanjiv Kumar (A-3) in the present case, as O.P. Chautala (A-4) was the kingpin/author of the conspiracy, occupying his position at the pinnacle and was getting the same enforced through his son and aides. Thus, the submission on behalf of O.P. Chautala (A-4) that no member of the District Selection Committee or the three IAS officers have deposed against him and this fact is indicative of his innocence, is specious and liable to be rejected.

ARGUMENTS ADVANCED ON BEHALF OF A-5

Role of investigating agency

174. At the very outset Learned Counsel has sought to highlight the role of the investigating agency in desperately attempting to falsely implicate A-5 in the present case. It is demonstrated that the original statement of PW-16 under Section 161 Cr.P.C. was subjected to fabrication with a view to make out a case against A-5. The statement of PW-16, Ex.PW-16/DA is contained in a total of 7 pages out of which page 4 and 5 are in a font different from the remaining pages. Similar is the case with the statement of PW-26, Ex.

PW.26/DA wherein page 3 and 4 has a different font. It is also pointed out that pages 4 and 5 of Ex.PW-16/DA and pages 3 and 4 of Ex.PW-26/DA are in the same font. The relevance of these allegedly substituted pages is that these pages contain the details of the two meetings wherein the presence of A-5 is sought to be established by the prosecution.

175. Learned Counsel seeks to invigorate this argument by mentioning that these observations were put to PW-16 in his cross examination, however, he evaded the answer by saying that he was not an expert on this subject. PW-26 explained that the computer, on which his statement was being recorded, was so bad and defective that it was constantly being retyped which could have caused a difference in fonts.

176. It is further pointed out through the testimonies of PW-16, PW-23 and PW-26 that they were provided copies of their statement to refresh their memories prior to their deposition in court. It is submitted that the CBI was at pains to strengthen the evidence at trial to escape the consequences of illegal acts of fabrication. Learned counsel relies on the cases of ***Zahiruddin v. Emperor***, **AIR(34) 1947 Privy Council**, **75** and ***Ranbir Yadav v. State of Bihar,*** **(1995) 4 SCC 392** to bring home the point

177. Learned Counsel has invited my attention to portions of the testimony of PW-16, PW-23 and PW-26 to demonstrate the manner in which leading

questions were put to this witness to show involvement of A-5 in the entire conspiracy.

178. It is, therefore, strenuously argued that the entire trial particularly with regard to the meetings stands vitiated beyond redemption by the unethical tactics adopted by the prosecution. Learned Counsel relies on the case of ***Varkey Joseph v. State of Kerala,*** reported as **1993 Suppl(3) SCC 745** in this regard.

Testimony of PW-16

179. Learned Counsel seeks to challenge the credibility of PW-16 in view of the fact that he was the immediate superior officer of the Director Primary Education, Director Secondary Education and the Director of Higher Education. With a full fledged circus running right under his nose, it is rather strange that it all happened without his knowledge. He seems to have escaped being arrayed as an accused based on his self serving statement that he had objected to the suggestion for change of award lists. PW-26 did not corroborate any such suggestion and in fact squarely accused PW-16 for the situation created by way of meetings. Regarding the first meeting PW-16 has deposed that it was an informal meeting and he did not recollect other items which might have been discussed there. With regard to the meeting held at the residence of Vidya Dhar A-1, he states that he did not know the source

from which the message had come for the meeting. It is urged that the testimony of PW-16 paints the picture of a person being blamed by PW-23 and PW-26 for having dragged them to some meeting. He was questioned as to with what authority and on whose direction was the meeting called. Having been put on the defensive, he gave evasive answers.

Testimony of PW-26

180. Learned Counsel submits that the testimony of PW-26 is highly vague and suffers from tutored improvements at the behest of the Prosecutor intended at implicating A-5. His testimony has not been in sync with the case of the prosecution regarding the sequence of the meetings as he places the meeting at Haryana Niwas to be the second meeting wherein the issue of changing award lists was discussed by A-2

181. It is also argued that this witness has not given any specific details about the meetings

Testimony of PW-23

182. With regard to the testimony of PW-23 it is submitted that at no stage in the course of preliminary enquiry or the investigation did she name A-5 as the person who was present in either of the meetings. She mentions a person as 'Bhaisaab'. Considering the fact that A-5 was a sitting Member of

Parliament at the relevant time, it is highly unlikely for a senior bureaucrat to not know him in a small State like Haryana. It is, therefore, a very significant highly belated improvement in her statement to have named A-5 in court. A few other improvements have been pointed out regarding details of who had contacted her were not stated by her to CBI. She did not state in her previous statements that PW-16 had taken her by saying that these meetings had been convened by A-4. She also did not mention in her statement that on the following morning of the wrongful suggestion to her, she had met Vishnu Bhagwan and told him what had happened and requested for her transfer

183. It is also pointed out that PW-23 did not disclose these facts before the Supreme Court at the time when A-3 had filed the writ CWP No. 93 of 2003 and she was requested by the government vide letter Ex.PW-42/DA to give her version by way of an affidavit to which she gave a perfunctory reply merely stating the period of her tenure. This creates serious doubt on the extent of exaggeration in her deposition in court.

184. Coming to the aspect of her inability to remember the exact dates of the meetings, it is suggested that it is rather ironic for her to boast of having an iconic memory and yet not remember the exact dates when the alleged meetings took place. In her examination in chief and even through the cross examination by A-39 she maintained that the first meeting took place on

02.05.2000 at Haryana Niwas. During cross examination by A-38 when she was confronted with a note dated 25.05.2000 (Ex.PW-16/G) wherein she had written in her handwriting that it should be ensured that the record is sealed in the almirah, she still maintained that she had sealed the almirah on 02.05.2000, however, there being no record on file to say that this process had been undertaken, it was the first opportunity for her to place this fact on file. Interestingly, on further cross examination by A-1, she regained her iconic memory and corrected her sequence to be in order by stating that she had sealed the almirah on 25.05.2000 as per record and that is when the first meeting took place thereby belying her previous explanation to the note.

185. Learned Counsel now relies on the testimonies of subordinate officials in the office of PW-23 to establish that the sealing had in fact taken place on 20.06.2000. PW-13, Bhim Singh, clerk who had purchased the cloth vide cash memo Ex.PW-11/A dated 20.06.2000 had claimed to be reimbursed for the same vide note dated 22.06.2000 bearing his signature. He has deposed that the cloth was purchased on the date when the cash memo was prepared. PW-11, Ajay Singh, Assistant has identified the signature of PW-13 on the note. It is therefore, submitted that any illegal suggestion to change the change award lists was made on 20.06.2000 and by her own showing PW-23 had asked for her transfer on 21.06.2000 and as per the record, she was

transferred on 11.07.2000. It is submitted that this falsifies all claims of her having been under constant undue pressure and defies her credibility completely as a witness.

186. With reference to the conduct of PW-23, it is also argued that had she been an honest officer repulsed by the thought of the illegal suggestions allegedly made by A-2 and A-5 then she should have made a formal protest to that effect. My attention was brought to Rules 3 (ii) and (iv) of the CCS (Conduct) Rules, 1964, which provide that a government servant when acting under the directions of his/her official superior is required to obtain such direction in writing, wherever practicable, and where it is not practicable to obtain written direction, he/she shall obtain written confirmation as soon thereafter as possible. It light of this, it is submitted that the conduct of PW-23 was not becoming of an honest officer upon whom pressure had been exerted.

Conspiracy

187. Learned Counsel seeks to address the allegation of conspiracy by stating that A-5 was not part of the government in any manner even though he was a member of Lok Sabha from Bhiwani constituency from 1999 to 2004. He was, therefore, not in a position to take any decision or pass any order. The prosecution relies on 3 circumstances to prove conspiracy

i) The two meetings discussed hereinabove wherein A-5 was allegedly present

ii) Call record details between A-3 and A-5

iii) Disproportionately large number of people being selected from Bhiwani constituency

Call records

188. At the very outset Learned Counsel has urged that the prosecution has failed to prove the call detail records in accordance with the mandatory provision contained in Section 65B Indian Evidence Act and are, therefore, inadmissible. The witness PW-65/1 Chief Accounts Officer, MTNL examined by the prosecution stated that no certificate under Section 65B was obtained and also that that the call records Ex.PW-65/1/B did not bear the date and time when they were printed. Even otherwise, A-5 in his statement under Section 313 Cr.P.C. has explained that his residence at 18, Janpath was being used as an office of the INLD Party which was accessible by all party workers and secretarial staff. Therefore, merely evidence of call records does not prove that A-5 was in fact in touch with A-3 in absence of evidence to prove the content of these calls.

189. Learned Counsel further fortifies this argument by stating that A-3 has deposed that A-5 had called him to discuss about recommending candidates

for contractual teachers in DPEP, which are wholly unconnected with the present case.

Bhiwani Constituency

190. Learned Counsel points out that Bhiwani district and Bhiwani Parliamentary Constituency are not the same. There were 19 districts in the State of Haryana at the relevant time and 10 Lok Sabha Constituencies, therefore, each Parliamentary Constituency was spread over more than one or even two districts. It is, therefore, deceptive to suggest that the number of candidates selected from Bhiwani were equivalent to the number of candidates selected within the Bhiwani Lok Sabha Constituency.

ARGUMENTS BY CBI

191. With reference to his presence, it is submitted that the same has been deposed by PW-23 for having attended a meeting at Haryana Niwas and by PW-16, PW-23 and PW-26 for having attended a meeting at the residence of Vidya Dhar (A-1), wherein at both the meetings the issue of change of award lists was discussed. The said witnesses are senior IAS officers and have no *animus* or ill-will to falsely implicate the accused.

192. Call records evidencing telephonic exchange between him and Sanjiv Kumar (A-3) on 27.07.2000 and 30.08.2000.

193. Learned ASG submits that A-5 was a Member of Parliament from Bhiwani and Sanjiv Kumar was an IAS officer who was holding additional charge of Director Primary Education-Haryana. Ajay Singh Chautala (A-5) was unable to tender any satisfactory account of what necessitated such telephonic exchange and rather baldly denies having had any conversation with Sanjiv Kumar (A-3) and stating that 18, Janpath-New Delhi was being primarily used as an office of INLD. No defence evidence whatsoever (any party-worker, screen-shot from the website of the political party, any letter-head or printed literature of the political party depicting its official address as 18, Janpath-New Delhi) was led at trial to substantiate such a plea that at the relevant time it was essentially used as an office of INLD or that which person repeatedly made and received calls from Chandigarh on the said days.

194. It also assumes significance that on 30.08.2000, message was also transmitted from the Office of the Chief Minister to various DPEO's for attending a meeting to be held at Haryana Bhawan on 01.09.2000.

195. The Supreme Court in its decision in the case of ***Sidhartha Vashisht @ Manu Sharma v. State (NCT) of Delhi,*** **(2010) 6 SCC** 1has held that such exchange of calls unerringly point towards the close-proximity of accused persons and it is not the right approach of appreciation of evidence to

trivialize such circumstance by holding that in absence of proof of what transpired during the calls or its contents, such evidence would be value-less.

196. Referring to the contention that has been urged on behalf of the Appellant-Ajay Chautala (A-5) that the Prosecutor during Trial himself gave a suggestion "*with his eyes wide open*" to Sanjiv Kumar (A-3) that he got calls from Abhay Chautala from the residence of Ajay Chautala and this militates against the case sought to be projected by the prosecution otherwise [**Part 4/Page 64**]. It is argued that the said suggestion does not whittle down the consistent case of the prosecution that A-5 was in telephonic communication with A-3, as the said questioning of Sanjiv Kumar (A-3) was merely being conducted by the Learned Prosecutor in terms of Section 145 of the Indian Evidence Act, 1872 by confronting/contradicting the witness vis-à-vis his previous statement dated 19.07.2005 recorded under Section 161 Cr.P.C [**Part 8/S.no. 12-Misc Exhibits- Misc Defence Exhibits/Page 80-99 @ Page 89-90**], wherein he had made a statement to such effect before the Investigation Agency. The said manner of questioning is also evidenced from the last question asked by the Learned Prosecutor on the very next page i.e. Page 65 wherein express reference to the statement of Sanjiv Kumar (A-3) dated 19.07.2005 before the Investigating Officer is made.

197. Telephonic conversation between A-5 and Sanjiv Kumar (A-3) on 01.09.2000 (date of the crucial meeting at Haryana Bhawan, Delhi), as deposed to by Sanjiv Kumar (A-3) before the Trial Court. The said fact was not specifically controverted in cross-examination of Sanjiv Kumar (A-3).

198. A-5 was Member of Parliament from Bhiwani and 312 candidates were selected from District- Bhiwani (which is comprised in the Parliamentary Constituency of Bhiwani) as against the 60 advertised vacancies arising therein which further goes on to show that this particular district was favoured as part of the conspiracy.

ARGUMENTS ADVANCED ON BEHALF OF A-1

199. It is the case of the prosecution that A-1, was present at the meeting at Haryana Niwas as also the second meeting which was allegedly held at his residence, wherein the suggestion to change the award lists was made. Prosecution has alleged that the presence of A-1, the Officer on Special Duty to the Chief Minister, at such meetings was a reminder and affirmation of the involvement of A-4 in this conspiracy. The convening of the meeting at his residence wherein officials much higher in rank than him were called and the issue of changing lists was discussed, speaks volumes of his involvement in the conspiracy.

200. Presence of A-1 at the third meeting held at Punjab Guest House has been brought out by the evidence of A-3.

Meeting at Haryana Niwas

201. It is argued that PW-26 does not state that A-1 was present in first meeting held at Haryana Niwas. Similarly, PW-23 has not stated that A-1 was present in the first meeting held at Haryana Niwas, Chandigarh. Therefore, it is argued that testimony of PW-16 that A-1 was present in the meeting at Haryana Niwas should be disbelieved. It is pointed out that on showing PW-16 his statement under Section 161 Cr.P.C., he has admitted that in his statement, the name of A-1 does not appear with respect to first meeting. The Trial Judge has also accepted the plea that A-1 was not present in the first meeting

Meeting at residence of A-1

202. With reference to the venue of this meeting, it is urged that only PW-16 has categorically mentioned that it took place at the residence of A-1. PW-23 and PW-26 have only mentioned that they were taken to a house in Sector-7, Chandigarh. In the absence of corroboration of testimony of PW-16, it cannot be conclusively held that the meeting in fact took place in the residence of A-1.

Meeting at Punjab Guest House

203. At the outset it is pointed out that A-1 was not charged with the occurrence of this meeting and it has only come up by way of testimony of A-3. It is pertinent that the third meeting with respect to A-1 did not find mention in the charge sheet or the order on charge. It was not put to A-1 in his examination under Section 313 Cr.P.C. and consequently cannot be considered against him.

204. It is also argued that contrary to evidence, the Trial Judge has erroneously arrived at a finding that the Punjab Guest House and Water Supply & Sanitation Department, Punjab are the same, which is another material discrepancy that the prosecution has not been able to explain.

205. The next attack is on the corroborating testimony of PW-56 with regard to this meeting. It is alleged that A-3 and PW-56 are talking about different meetings held in different time periods with different participants. The following discrepancies are pointed out:

Event	**A-3/DW-9**	**PW-56**	**Inconsistencies**
Timing	He was called in Punjab Guest House, sometime in last week of August and on the 1st of Septemeber 2000 in Haryana Bhawan,	He states that 4-5 days after he returned from Delhi (referring to meeting at Haryana Bhawan on 01.09.00), he was directed to reach at	As per A-3/DW-9 the meeting was held in last week of August but PW-56 states that the meeting was held in first week of

	New Delhi (part IV, Pg 36)	Water Supply Guest House, 1257, Sec-18, Chandigarh (Part 2 Vol 2 Pg 96)	September. As per A-3/DW-9 the meeting held at Punjab Guest House was prior to meeting held at Haryana Bhawan while PW-56 states that the meeting held in Water Supply Guest House was held after the meeting in Haryana Bhawan
Participants	He states that the meeting was attended by A-1, A-2, Jagtar Singh Sandhu and Dharamveer (Part IV, Pg 41)	The meeting was attended by PW-56, A-3/DW-9 and some DPEO's (part 2 Vol 2 Pgs 96,97)	PW-56 does not talk about presence of A-1 in the meeting
Purpose	The meeting was convened to know the procedure for appointment of JBT teachers and to seek his explanation that why the almirah cannot be opened by blow torch (Part IV, Pg 41)	Meeting was attended by those DPEOs who could not reach Haryana Bhawan, Delhi for making/signing of the award list (Part 2, Vol 2, Pg 96)	By no stretch of imagination with such varied purpose can the two witnesses be speaking of the same meeting

206. Learned counsel reiterates the inconsistencies in the statements of PW-16, PW-23 and PW-26 as pointed out by Mr. Cheema, as also the arguments on admissibility and worthiness of evidence of A-3.

PW-23 RAJNI SEKHRI SIBAL

WHETHER A GENUINE WITNESS OF "IKONIC MEMORY"?

EVENT	EXAMINATION-IN-CHIEF	CROSS-EXAMINATION
First Meeting	Held on 02.05.2000 (Pg. 170) Haryana Niwas (Pg.170) PW-16, PW-26, A-2 and gentleman called Bhai Saheb was present in the meeting which I know is A-5 (Pg. 170)	• She states that the first meeting at Haryana Niwas took place after a gap of 4-5 days after she took over charge. (pg. 179) (she took over charge on 27.04.2000) • Reaffirms that the first meeting took place 02.05.2000 (pg. 184, 187) • Again states that the first meeting took place on 02.05.2000 (pg. 191) • Changes her version and says that first meeting took place on 25.05.2000, i.e. the day on which the almirah was settled. (pg. 192) • After having explained that the first meeting took place on 02.05.2000, she then states that the said date was stated by her inadvertently (pg. 196)
Second Meeting	The meeting was possibly held on 26/27/28.06.2000 a house in Sector -7, Chandigarh (Pg. 170) PW-16, PW-23, PW-26, A-1, Bhai Saheb and two more person attended the meeting at	• There was death in family on 29.06.2000. Second meeting took place a day or two before that i.e how I conclude that the meeting was held between 26.06.2000 – 28.06.2000. (Pg. 169 & 192)

	a House in Sector-7 (pg. 170 & 171)	
Sealing of Almirah	Probably the almirah was sealed on 02.05.2000 and was placed in her office on the same day at about 7:30 PM (Pg. 168) Sealed the almirah on 02.05.2000 after coming back from the first meeting. (pg. 171, 176) Sealed the almirah after the first meeting and next morning went to A-5/DW-1, told him the incidents and sought transfer (Pg. 171)	• On 02.05.2000, I came back from the first meeting and sealed back the almirah. (pg. 184, 185) • The almirah was sealed on 02.05.2000 evening. 25.05.2000 was the first opportunity for her to place the fact of sealing of almirah on file. (Pg. 187) • In complete contradiction she states that the almirah was sealed on 25.05.2000 (Pg. 192)

207. Although in her entire testimony she has been changing and improving upon her version, she is consistent only on one thing that the sealing of the almirah was done on the same day of first meeting. The evidence on the record of this case clearly proves beyond all reasonable doubt that the sealing of almirah was done on 20.06.2000.

208. It is next argued by Counsel for A-1 that arguendo, if the meeting did take place at residence of A-1 and his presence is accepted, the prosecution witnesses have not ascribed any specific role to him. It is merely his presence that is noted at these meetings, him being a silent spectator in them. It is trite law that mere knowledge or discussion of a plan per se is not enough to bring home the charge of criminal conspiracy against a non-participant accused.

ARGUMENTS ADVANCED BY CBI

209. Prosecution has alleged that documentary evidence available on record (Part 8/D-37-D-66/D-40 (I)/ Pages 25-26), demonstrates that A-1 was present at the meeting dated 10.11.1999 chaired by the then Chief Minister-O.P.Chautala (A-4) in capacity of his OSD. It is in the said meeting, the vital decision of increasing the weightage of the interview marks from 12.5 % to 20 % was taken in furtherance to the cabinet decision dated 08.09.1999 [Part 8/D-37-D-66/D-42-D-53/D-50/Pages 88-94] by which the JBT teachers appointment was taken out of the purview of the Haryana Staff Selection Committee (HSSC), which is a statutory body. Interestingly, O.P Chautala (A-4) had approved the "chayan" formula only a fortnight earlier i.e. on 12.10.1999 itself, wherein 12.5 % was the weightage prescribed for interview [Part 8/D-37-66/D-40 (II)/Pages 107-109].

210. It is submitted that positive acts of A-1 and others, subsequent in time, would reveal that the said decision of taking the appointments out from the purview of HSSC and increasing the weightage to be accorded to interview marks substantially was not innocuous or a sheer co-incidence. As a matter of fact these two ostensibly innocuous decisions formed the very edifice upon which the conspiracy to effect this employment scam of vast magnitude

rested as it could not have been given effect to without these enabling policy decisions.

211. It is pointed out that PW-16 Prem Prashant, has deposed about the presence of A-1 in the first meeting at Haryana Niwas, wherein the issue of changing the award lists was discussed. However, the Trial Court as a mark of abundant caution jettisoned from consideration his testimony in this regard as there was no mention of such fact in his statement made during investigation in terms on Section 161 Cr.P.C. and even the other witnesses – PW-23 and PW-26 have not deposed to such effect.

212. With reference to his presence in the second meeting, it has been consistently deposed to by PW-16, PW-23 and PW-26 which was organized at his own residence at Sector-7 Chandigarh [House No. 78, Sector-7 Chandigarh]. In this meeting as well PW-23 was being persuaded to change the award list.

213. Learned ASG highlights that according to the said witnesses, PW-16 had informed them that the said meeting was being convened as per the instructions of the then Chief Minister - O.P. Chautala (A-4). PW-16 during his deposition states that someone from the Office of the Chief Minister had informed him about the meeting.

214. Learned ASG argues that no animus or ill-will can be attributed to the said witnesses; who are senior IAS officials and have deposed consistently in unison against him, amongst others. It has been held by the Supreme Court of India in its decision in ***The State of Punjab v. Jagir Singh*** reported as **(1974) 3 SCC 277** that in arriving at a conclusion about the guilt of the accused charged with the commission of crime, the court has to judge evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. The fact that the witnesses are not able to recollect the dates of the said meetings or have confused themselves at certain junctures on the sequence of events is not unnatural but rather a hallmark of truth as they made their statements before the investigation agency after a period of four years and tendered their evidence before the Trial Court after nearly a decade. It would be apposite to state that Oscar Wilde has aptly remarked that "*memory is the weakest companion of a human being*". In catena of decisions the Apex Court while appreciating the evidence tendered by witnesses has consistently taken account the factum of fading away of human memory with the efflux of time.

215. It is submitted that due regard must also be had to the fact that the witnesses were summoned before the Court to depose against political big-wigs and on the first day of examination of PW-23 before the Trial Court i.e.

14.09.2011, whilst opposing the request of the defence counsels for deferring her cross-examination she informed the Court that she had received a threatening call owing to which she was under lot of pressure and requested that her cross-examination be completed as soon as possible. The said fact stands duly recorded in the order sheet dated 14.09.2011 and 26.09.2011 [Part 1/Vol 1A/Pages 182-183 & 193-195]. Therefore, their evidence is required to be appreciated in this light. It is not the case that the witnesses have projected an incompatible and a wholly different version at the Trial when juxtaposed with their statements made during investigation [***Sunil Kumar v. State Government of NCT of Delhi***, **(2003) 11 SCC 367**].

216. Reliance is placed on the erudite observations of the Supreme Court in its decision in ***Inder Singh And Another*** v. ***The State (Delhi Administration)*** reported as **(1978) 4 SCC 161** wherein it was observed:

> "Credibility of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect. If a case is proved too perfectly, it is argued that it is artificial; if a case has some flaws, inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty men must callously be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through

> human processes. Judicial quest for perfect proof often accounts for police presentation of fool-proof concoction. Why fake up? Because the courts asks for manufacture to make truth look true? No, we must be realistic."

217. Addressing the contention of various Appellants that certain pages in the statements of PW-16 and PW-26 recorded under Section 161 Cr.P.C. have been changed as reflected from different font and colour of the pages, which makes them 'stand out as a sore thumb' [Part 7 (II)/Page 156-159 @ Pages 158-159 and Part 7 (II)/Page 160-166 @ Pages 163-164], it was submitted at the outset that it assumes significance that during trial the witnesses have supported their statements recorded under Section 161 Cr.P.C. and have refuted the suggestions of interpolation etc. Furthermore, it is highlighted that had there been any extraneous/oblique motive, the name of Ajay Chautala (A-5) could have been expressly interposed in the said statement of PW-26 recorded under Section 161 of Cr.P.C. [Part 7 (II)/Page 156-159 @ Pages 158-159]. The investigation agency has conducted fair and impartial investigation and it is not the case that every family member of the Chautala family has been indiscriminately implicated. There were statements of Sanjiv Kumar (A-3) made during investigation which point towards the role of Abhay Chautala in the present case, however, the investigation-agency did not array him as an accused. If there was a political prosecution/persecution, as canvassed by the appellants, then the

investigation agency would not have spared this golden opportunity to ensnare Abhay Chautala and other family members of the Chautala family.

218. With regard to the argument that the witnesses had read-over their statements made during investigation, it is submitted that the witnesses have themselves truthfully disclosed the said fact and it is not the case that they attempted to conceal the said fact and the accused exposed their lies through independent evidence. The said witnesses are senior IAS officers and it militates against probabilities that they would depose under the pressure of police officials and toe the dotted lines dictated by them. It has not emerged in evidence that the witnesses have deposed before the Court by reading out from their previous statements in the witness-box and, therefore, nothing turns on this circumstance.

219. Coming to the argument that even according to Prosecution Witnesses, Vidya Dhar (A-1) and Ajay Chautala (A-5) remained silent in the meetings and, therefore, it cannot be construed that they were conspirators in the crime, it is argued that the said argument is rather tenuous as it is not the case of the prosecution that these accused persons were mere passer-by or mute spectators to a crime committed at a public place. The repeated illegal demands for the substitution of the original award lists by the new award lists and the pressure exerted on PW-23 in this regard, transpired at Haryana

Niwas and the residence of Vidya Dhar (A-1); where these accused persons were in attendance and were personally privy to such demands/discussion by Sher Singh Badshami (A-2). It is not the case that they protested/objected to such demands or left the meeting. Rather to the contrary, they were integrally involved at almost every preceding and succeeding step in the conspiracy. As a matter of fact the complicity of Vidya Dhar (A-1) can also be gauged from the fact that the second meeting was conducted at his residence itself and IAS officer's much senior to him were required to attend the said meeting. Since Sher Singh Badshami (A-2) was voicing the demands repeatedly in the two meetings, it was not necessary for Vidya Dhar (A-1) and Ajay Chautala (A-5) to repeat the same. Their consistent presence with each other at the two meetings, inter alia, manifested their unity/consensus of object. Remarking on the weight of evidence demonstrating his presence, it is stated that "*Silence can be as potent as words*".

220. Coming to the evidence of A-3, Sanjiv Kumar during his deposition as his own defence witness in terms of Section 21 of P.C. Act/ Section 315 of Cr.P.C. it is highlighted that the same reiterates the presence of Vidya Dhar (A-1) along with Sher Singh Badshami (A-2) at the meeting convened at Punjab Guest House, Chandigarh (House No. 1257, Sector 18-C,

Chandigarh) where several members of the various District Level Selection Committees were also called for creation of new award lists. Numerous accused persons (A-6, A-7, A-8 and A-59) in their statements recorded under Section 313 Cr.P.C. state that they attended the meeting at Punjab Guest House. The TA details of Smt. Prem Behl- DPEO Ambala (A-6) indicate that she travelled to Chandigarh on 30.08.2000 [Part 8/D-37-D-66/D-65/Page 3]. PW-49 and PW-56 also depose with regard to a meeting held at the Punjab Guest House wherein several committee members of various districts had been called for preparation of fresh award lists and the photocopies of the original list were offered to them for the said purpose.

221. Learned ASG points out that in the Writ-Petition [Part 8/ D-37-D-66/D-64/Page 25-53 @ Pg 26, 27, 31 & 49] filed by Sanjiv Kumar (A-3) before the Supreme Court and the rejoinder affidavit [Part 8/ D-37-D-66/D-64/Page 5-24 @ Pg 7] filed by him therein, Vidya Dhar (A-1) has been expressly named as an active participant in the conspiracy with O.P. Chautala (A-4) and it is not for the first time in his deposition before the Trial Court that he names him.

222. Addressing the contention that relatives of A-1 were not selected and appointed, it is submitted that the mere fact that certain distant relations of Vidya Dhar (A-1) were not selected would not militate against his

involvement in the crime as he was a mere enforcer acting on the commands of O.P. Chautala (A-4); who had conceived and authored the conspiracy. It is not necessary that O.P. Chautala (A-4) would have shown latitude to accommodate the candidates recommended by his subordinate- Vidya Dhar (A-1). Furthermore, it is also questionable whether Vidya Dhar (A-1) would himself be inclined to help his distant relations in village without any fruitful consideration. It also assumes significance that such evidence has surfaced at a belated stage and such fact was not stated by Vidya Dhar (A-1) in his statement under Section 313 Cr.P.C. or his written statement filed before the Trial Court in terms of Section 313(5) Cr.P.C., where he extensively speaks of his righteousness, unblemished career and principled character. No suggestion was given by Vidya Dhar (A-1) to any prosecution witness, including the Investigating Officer about his refusal to even help his relations in the matter of JBT teacher's appointment.

ARGUMENTS ON BEHALF OF A-2

223. It is the case of the prosecution that A-2 had attended four meetings wherein he pressurized various persons concerned with the selection process to change the award lists in furtherance of the criminal conspiracy as a representative of the Chief Minister. The four alleged meetings in which A-2 allegedly was a participant in are:

i) Meeting at Haryana Niwas

ii) Meeting at residence of Vidya Dhar

iii) Meeting at Guest House of Water Supply and Sanitation Department, Punjab (Punjab Guest House)

iv) Meeting at Haryana Bhawan

224. Prosecution relies on PW-16, PW-23 and PW-26 to prove that A-2 had in fact made the suggestion of changing the award lists in the first two meetings.

225. Learned Counsel appearing on behalf of A-2 has adopted the submissions advanced on behalf of A-5 with reference to the legal and factual arguments made regarding admissibility and reliability of evidence of A-3.

226. With reference to the first two meetings it is submitted that the presence of A-2 is based on a hypothesis that has culminated from a conjoint reading of the testimonies of PW-16, PW-23 and PW-26. There is no corroborative evidence to prove the factum of these meetings or the presence of A-2 in them. Learned Counsel seeks to impeach the veracity of these three witnesses on the grounds echoed by counsel for A-5.

227. In addition it is pointed out that the essence of these meetings, as is the case of the prosecution, is that A-2 made an illegal suggestion to change the award lists. A logical corollary to this hypothesis would be that A-2 was

aware of the results of the Selection Committees prior to the month of May, 2000. This is completely nullified with the fact that the original lists were removed by A-3 in August, 2000. In absence of evidence to the effect that A-2 was aware of the results prior to May, 2000, it was impossible for A-2 to have made any such suggestion. The testimony of PW-16, PW-23 and PW-26, therefore, stands falsified to this effect.

228. Coming to the alleged meeting at Punjab Guest House, it is argued that PW-49 and PW-56 are the only two eye witnesses to this meeting and their deposition does not even mention A-2

229. It is the case of the prosecution that the meeting at Haryana Bhawan took place on 01.09.2000 and a suite was booked in the name of A-2 on 31.08.2000 which was vacated the next day. The Visitors Register (D-132) contains an entry Ex.PW-45/A to this effect. In this meeting some Chairpersons and members were called and pressurized by A-2 to prepare a second set of award lists.

230. Learned Counsel submits that amongst the people who attended the meeting, PW-2, PW-5, PW-31 and PW-56 have not identified A-2 as having attended this meeting.

231. PW-25, Krishan Chand was the clerk posted in Haryana Bhawan at the time and has admitted the suggestion that a room can be booked in the name of a person while another person may be occupying the same.

232. A-3 in his examination has deposed that he had gone to Haryana Bhawan on 01.09.2000 to meet A-2 where he saw officials of the Primary Education Department. A-2 gave him a sheaf of papers relating to appointment of various JBT teachers to the posts under DPEP particularly from district Bhiwani. He interrogated him as to why written recommendations sent by Ajay Chautala were not considered despite the requisite qualifications. To this A-3 explained that qualifications to the post of JBT teachers under DPEP were not the same as that of the State Government.

233. Learned Counsel argues that A-3 has, therefore, only confirmed the presence of A-2 at this meeting. He has in fact explained that the content of their conversation was no where related to the present allegation

234. Learned Counsel now attacks the testimony of A-50, who appeared as a witness under Section 315 Cr.P.C. to show that A-2 could not have pressurized any one. A-50 has deposed that he arrived at around 2 pm and most of the Chairpersons/members of Selection Committees had already left by then but some were still present. It is argued that A-50 having arrived at a

time when the meeting was anyway concluded cannot give evidence of A-2 having pressurized any other official. It is also argued that A-50 never knew A-2 from before and identified him in court for the first time after a period of nearly 10 years, therefore, it cannot be conclusively established through this evidence that A-2 was indeed present in the alleged meeting.

235. Needless to state, learned counsel has repeated his arguments on accomplice evidence to impress upon this Court that evidence of A-50 and A-3 cannot be considered against A-2.

236. Learned Counsel has argued that the entry made in the Visitors Register is inadmissible in evidence as it has not been proved by the person who saw A-2 making such entry or by a person who can identify the signatures of A-2. Learned Counsel relies upon a case reported as ***Pawan Kumar v. State of Haryana***, **(2003) 11 SCC 2412** on this aspect. In the same breath it is also argued that amongst all the accused herein, A-2 is the only one whose signatures were not sent for forensic examination and, therefore, it cannot be conclusively established that the signatures were in fact of A-2 and consequently have to be excluded from consideration.

ARGUMENTS ADVANCED BY CBI

237. The argument regarding presence of A-1 at the meeting dated 10.11.1999 is reiterated in case of A-2, Sher Singh Badshami. He had also

attended this meeting wherein the decision of increasing the weightage of interview marks was taken in furtherance to the cabinet decision. Subsequent acts will demonstrate the worth of this seemingly innocuous evidence.

238. It is argued that the testimony of PW-16, PW-23 and PW-26 unequivocally establish his presence at the first meeting at Haryana Niwas and the second meeting at the residence of Vidya Dhar (A-1) wherein he played a prominent role in discussing the issue of changing the award lists. No *animus* or ill-will can be attributed to the said witnesses who are senior IAS officials and have deposed consistently in unison against him, amongst others.

239. Reliance is also placed on testimony of A-3, Sanjiv Kumar who has deposed regarding the presence of Sher Singh Badshami (A-2) along with Vidya Dhar (A-1) at the meeting convened at Punjab Guest House, Chandigarh, where several members of the various District Level Selection Committees were also called for creation of new award lists.

240. It is submitted that numerous accused persons (A-6, A-7, A-8 and A-59) in their statements recorded under Section 313 Cr.P.C. state that they attended the meeting at Punjab Guest House. The T.A. details of Smt. Prem Behl- DPEO Ambala (A-6) indicate that she travelled to Chandigarh on 30.08.2000 [Part 8/D-37-D-66/D-65/Page 3]. PW-49 and PW-56 also depose

with regard to a meeting held at the Punjab Guest House wherein several committee members of various districts had been called for preparation of fresh award lists and the photocopies of the original list were offered to them for the said purpose.

241. Addressing the evidence of A-50, D.D.Verma it is highlighted that he has categorically deposed about the presence of Sher Singh Badshami (A-2) along with Sanjiv Kumar (A-3) at Haryana Bhawan on 01.09.2000 at Delhi, wherein he was pressurized by them to create new award list. In this context, it is pointed out that no *animus* has been suggested by Sher Singh Badshami (A-2) as to why D.D Verma (A-50) would falsely ensnare him and level such serious allegations.

242. Learned ASG submits that various District Selection Committee members admit of their presence at Haryana Bhawan in their statements under Section 313 Cr.P.C. [A-9,A-13,A-16, A-17, A-18,A-20,A-24, A-26, A-27, A-28, A-46, A-47, A-48, A-50, A-51, A-52 and A-56]. Testimony of PW-2 and PW-5 sheds light in this regard and is also corroborated by clinching documentary evidence in form of notings in the register [Part 8/D-99/Page 4] about the communication received from the Office of the Chief Minister on 30.08.2000 that a meeting at Haryana Bhawan-Delhi must be

attended by DPEO-Jind and entry in the vehicle log-book in this regard [Part 8/D-101/Page 58].

243. Reliance is also placed on testimony of A-3 who has deposed about the presence of Sher Singh Badshami (A-2) at Haryana Bhawan on 01.09.2000 at Delhi.

244. Learned ASG argues that cogent documentary evidence in form of the Old Wing Room Occupancy Register maintained at Haryana Bhawan (Part 8/D-153 (I)/Page 37), further corroborates the presence of Sher Singh Badshami (A-2) at Haryana Bhawan between 31.08.2000 and 01.09.2000. It is highlighted that the signatures of Sher Singh Badshami (A-2) found on the entry register at Serial No. 231 dated 31.08.2000, when juxtaposed and compared with his signatures appended on his statement before the Court under Section 313 Cr.P.C., bring to fore unmistakable and glaring similarity in the letter "S" which is found in the two signatures.

ARGUMENTS ADVANCED ON BEHALF OF COMMITTEE MEMBERS AND CHAIRPERSONS

245. Before going into the submissions of the Committee Members and Chairpersons, it would be appropriate to enumerate the various categories of appellants.

CATEGORIES OF APPELLANTS (A6-62)

i) Those who signed on both lists.

ii) Those who signed only on one list (Directorate list, claim it is genuine) and CBI could recover only one list qua them. (Panipat District Members and Chairperson, A-27 Madan Lal Kalra, Kurukshetra).

iii) Those who have denied their signatures on both lists (Members and Chairman of District Mahendergarh).

iv) Those who did not put their signatures on Directorate list. (A-49 Sudha Sachdeva).

v) Those who had attended meetings in Chandigarh or Delhi.

vi) Those claiming mistake of fact regarding signing of second list. (were told they were signing duplicate copy of first list)

vii) Those who claim they were never a member of any committee (Bani Singh A-39-Mahendergarh and Raksha Jindal A-45 whose defense is that she was never a member, was misled into signing both lists on account of having calculated the marks).

viii) Those who had only appended signature on alleged fake list without knowledge about contents of same under duress.

246. Since majority of the appellants (A6-62) fall in the category of having signed both lists, common arguments have been raised on their behalf and are recorded in the succeeding paras.

COMMON ARGUMENTS ON BEHALF OF COMMITTEE MEMBERS AND CHAIRPERSONS

Sanction under Section 197 CrPC and Section 19 PC Act

247. Sanction orders under Section 19 PC Act were obtained on behalf of A-1, A-3, A-13, A-24, A-28, A-36, A-39, A-54 and A-59. Rest of the accused persons had retired and, therefore, sanction was not obtained with respect to them.

248. It is argued that being public servants the requirement of sanction under Section 197 is mandatory even if the accused persons had retired because their act of commission or omission is directly related with their official duty. Reliance is placed on Section 465 Cr.P.C. to show that objection regarding sanction being raised at the trial stage as well and having been rejected has occasioned grave failure of justice.

Offence of Forgery under Section 467 and 471 IPC

249. At the outset it is submitted that merely exhibiting of a document does not lead to the conclusion that it has been proved. The compilation of Directorate lists and the Supreme Court lists has been exhibited as a complete document, contents whereof have not been proved in accordance with Section 67 Indian Evidence Act.

250. It is argued that if a person signs in his or her own name and admits to the same, it does not amount to forgery as an essential element of

impersonation is missing in completing the offence of forgery. Reliance is placed on Explanation 1 to Section 464- Making a false document and the illustration (a) thereof. Elaborating this argument it is submitted that Explanation 1 has to be understood in terms of illustration (a). A person's own signature may amount to forgery only when it is done intending that it may be believed that the signature was scribed by another person of the same name.

251. It is also argued that Section 467 is further not made out on the ground that the result declared on the basis of which appointments were made is not a valuable security. It has been held time and again that figuring of a person's name in the selection list does not create an indefeasible right of employment in favour of such person. Since the list on the basis of which the result was declared does not create any legal right, it cannot be called a valuable security.

Offence of Cheating under Section 418 IPC

252. It is submitted on behalf of the appellants that the present appellants were charged for the offence under Section 468 IPC as well however, at the stage of conviction the offence was not made out and was accordingly dropped. It is argued that in a given case when the offence under Section 468

is not made out consequently, the offence under Section 418 cannot be proved.

253. The argument advanced for the offence under Section 418 is that in the instant case there is no wrongful gain caused to any person. The prosecution has not alleged that there was any pecuniary advantage derived and consequently no evidence has been led in this behalf. The committee members were unaware that results would be declared on basis of which list.

254. It is argued that the requisite intention to deceive cannot be imputed towards the members as they were acting under duress and threat towards their near and dear ones.

Offence of Conspiracy

255. The appellants have consistently stated that they acted under pressure. The Investigating Officer has also recognized this and deposed to the effect. The Trial Judge has also mentioned that all the committee members were compelled to sign on the fake lists. It is argued that such concurrent finding completely absolves any kind of mens rea that can be attributed to the committee members. In absence of criminal intention, the committee members cannot be called conspirators.

256. It is further argued that there is no evidence of any monetary consideration nor any favor to relatives of committee members is alleged by the prosecution.

257. Some committee members have claimed TA/DA because they were under the impression that the meetings in Haryana Bhawan and Prerna Guest House were part of their official duty. It is argued that this evidence goes to show that there was no agreement between the members and chairpersons on the one hand and their political bosses on the other.

Parity with Brij Mohan PW-17

258. The argument advanced on behalf of the appellants is that the appellants were under severe pressure from their political bosses to sign on the second award list and did not have any intention to cause any wrongful loss or consequent wrongful gain for any particular person. There is admittedly no pecuniary advantage derived by any appellant to conspire to change the first award list of selected candidates. The Investigating Officer PW-63 has deposed to the effect that the appellants were under pressure.

259. In order to show that pressure exerted upon the appellants was active it is submitted that the present appellants were residents of the State of Haryana and could not have sought transfer.

260. It has been vehemently argued that the grant of discharge of Brij Mohan is opposed and contrary to scheme of law. The procedure contemplated by law is that the accused may be granted pardon on making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned. Therefore, unfair advantage was given to this accused despite being similarly situated with the remaining appellants.

261. The phrase "UP" is not a recognized abbreviation and does not mean anything. PW-17 retired soon after signing the list. The Trial Judge fell in error in discharging Brij Mohan on ground of proof of pressure in as much as similarly situated accused were under the same pressure. Other committee members were equally under duress just because it "clicked" the mind of PW-17 and not others it is not a fortuitous circumstance to show lack of duress with respect to other committee members.

262. Apart from the above, it is argued that compliance of Section 313 Cr.P.C. was done in a routine manner much opposed to the spirit of the provision owing to the fact that the same set of questions were mechanically

put to all the appellants, most of which were unconnected with the case of the particular appellant.

263. It is also pointed out on aspect of sentencing that the appellants who have admitted their signatures on the fake list have been awarded 4 years whereas appellants who have not admitted to the same have been awarded 10 years imprisonment. It is argued that an admission by the accused in examination under Section 313 Cr.P.C. cannot be used against him.

Members who have signed only one list and claim that it is the genuine list

264. A-32, A-40 and A-41 have signed only one list i.e. the Directorate list and claim that it is the genuine list and, therefore, cannot be convicted of the charged offences.

265. In order to appreciate submissions of aforementioned appellants, some facts need to be stated at this point. A-32, Madan Lal Kalra was the Chairman of District Selection Committee- Kurukshetra. District Kurukshetra has two set of lists, D-16 Part I for General candidates and D-16 Part II for B.A B.Ed candidates who were interviewed pursuant to an order of the Punjab and Haryana High Court. These two lists are the Directorate lists and the result was declared on the basis of these lists. A-3 on the other

hand has only filed an equivalent of the D-16 Part II list which is the Supreme Court list D-36.

266. The Trial Judge has arrived at a finding that the Directorate list of Kurukshetra is fake and A-32 having signed on the fake list is guilty of the offence of forgery, cheating, conspiracy and misconduct.

267. Mr. Vikas Pahwa, appearing on behalf of A-32 submits that there is no evidence on record, primary or secondary, to suggest that there was ever any fake list prepared of the interviews conducted in December, 1999. It is argued that if two views are possible, the one in favour of the accused has to be taken. Therefore, if there did not exist a fake list for Kurukshetra, the alternate cannot be presumed in favour of prosecution simply because the Directorate lists of other districts were found to be fake. Such presumption is unfounded and impermissible in law. Additionally, A-32 has not attended either of the meetings on 21.08.1999 and 01.09.2000 and there being no meeting of minds, the offense of conspiracy cannot be made out.

268. A-40, Daya Saini was the Chairperson of Panipat District Level Selection Committee. A-3 has not filed any list of Panipat district and, therefore, there is only one list of the District Panipat.

269. Ms Rebecca John appears on behalf of A-40 and in addition to the arguments of Mr. Pahwa, submits that since the finding that the Directorate

lists are fake is based on an analysis of the marking pattern in both the lists, the same would be inapplicable in the case of Panipat. There needs to be some evidence to prove that the available Directorate list, Panipat is fake. It is further submitted that the IO PW-63 has admitted that there is no evidence to show the manner in which this list i.e. the Directorate list Panipat was prepared. There is no evidence to show that A-40 attended either of the meetings. She was neither the Regular Chairperson of DLSC Panipat nor posted at Panipat. She was deputed from Headquarter, Chandigarh only to conduct interviews on account of retirement of Mrs. Ramesh Jain on 30.11.1999 without giving her the additional charge of DPEO, Panipat and, therefore, A-40 could not have been involved in the conspiracy to create fake list.

270. It is argued that relying upon the marking formula, the Trial Judge has concluded that the Directorate list is false, however, his opinion which was substituted as evidence cannot be used against A-40 as she was neither afforded the opportunity to cross examine on this aspect nor was it put to her in her examination under Section 313 Cr.P.C. The marking pattern is a fact in issue and has to be proved beyond all reasonable doubt by way of positive evidence.

271. Prosecution witnesses PW-16 and PW-23 have made a passing reference as to which list is fake and they have pointed at the Directorate list. It is submitted that they are not experts and their opinion on the matter cannot clinch the issue. A3/DW4 on the other hand is an expert and his opinion can be looked into

272. A-41 Ram Singh is represented by Mr. Vikas Pahwa and has made similar arguments as A-40.

Members who have denied their signature on both lists

273. A-37, Pushkar Mal Verma, the Chairman of DLSC- Mahendergarh (Narnaul) and its members Durga Dutt Pradhan (A-38) and Bani Singh (A-39) have denied having signed both the lists. A-39 has in fact denied being a member of the DLSC and having conducted interviews.

274. There are some common arguments raised on behalf of the aforementioned category of appellants and then some. Let us examine the common arguments first.

275. PW-48, O.P. Sharma, a clerk in the office of DPEO Narnaul, has deposed that A-37 was the Chairman of DLSC Narnaul, however, he could not tell if A-38 and A-39 were its members. He could also not identify their signatures on either list. The prosecution is, therefore, relying on the report

of the handwriting expert PW-64 to prove their signatures on the two sets of lists.

276. Mr. Manohar Lal appearing on behalf of A-37 submits that the appellant's presence at either meeting is not proved neither was any TA/DA claimed by him.

277. It is argued that as per the Clause 10 of the instructions issued by the department, every interviewer was required to prepare a separate list(3 member Committee, therefore, had 3 lists) and the Selection Committee was required to prepared one merit list of each district based on the 3 lists. He goes on to argue that the Supreme Court list and Directorate list are not the merit list as they are not in descending order. The authorship of any list is not proved in absence of each separate list of every interviewer not being on record.

278. Coming to the aspect of the specimen signatures, it is submitted that the opinion of the handwriting expert would be inadmissible in view of the blatant disregard for the procedure prescribed by law in procuring them by the Investigating Officer. It is admitted that the specimen signatures of all the appellants were not taken in compliance with Section 311A Cr.P.C. Reliance is placed on a Full Bench judgment of this Court reported as ***Sapan Haldar v. State,*** **191 (2012) DLT 225** wherein it was observed:

> *"*30. We answer the reference as follows:
>
> (i) Handwriting and signature are not measurements as defined under clause (a) of Section 2 of The Identification of Prisoners Act, 1920. Therefore, Section 4 and Section 5 of The Identification of Prisoners Act, 1920 will not apply to a handwriting sample or a sample signature. Thus, an investigating officer, during investigation, cannot obtain a handwriting sample or a signature sample from a person accused of having committed an offence.
>
> (ii) Prior to June 23, 2006, when Act No. 25 of 2005 was notified, inter-alia, inserting Section 311A in the Code of Criminal Procedure, 1973, even a Magistrate could not direct a person accused to give specimen signatures or handwriting samples. In cases where Magistrates have directed so, the evidence was held to be inadmissible as per the decision of the Supreme Court in Ram Babu Mishra's case (supra). According to Section 73 of the Indian Evidence Act, 1872, only the Court concerned can direct a person appearing before it to submit samples of his handwriting and/or signature for purposes of comparison."

279. The specimen signatures having been taken prior to 2006, they were required to confirm to the mandate prescribed under Section 73 Indian Evidence Act. As ***Sapan Haldar*** *(supra)* rightly points out, any such specimen signatures taken even after so directed by the Magistrate would be inadmissible except when in accordance with Section 73.

280. The supportive argument on behalf of A-37 is that the Investigating Officer who had allegedly taken the specimen signatures could not state where he had taken those signatures, in fact he could not even identify the appellant in court. The authenticity of the specimen signatures is further attacked by pointing out that the document Ex.PW-64/E is supposedly

executed in Office of DPEO, District Mahendergarh situated at Narnaul whereas the witnesses in whose presence the specimen signature were allegedly taken, an assistant and clerk, belong to the SDEO Mahendergarh Office which is situated at Mahendergarh, 30kms away from Narnaul. The witnesses to the document could have been examined by the prosecution in order to make the situation clear but they were deliberately not examined.

281. It is, therefore, urged that a conjoint reading of the aforementioned circumstances coupled with the fact that there is no corroborative evidence to support the sole opinion of the handwriting expert, it would be highly unsafe to rely on the same to conclude that the appellant had indeed signed both lists.

282. Learned Counsel has also assailed the conclusion arrived by the Trial Judge on having compared the signature of the appellant in his examination under Section 313 Cr.P.C., as also done in case of other appellants who have denied their signature, with the signature of the Directorate and Supreme Court lists and consequently arrived at a finding that the two signatures are in fact of the appellant. The signature appearing on the lists is a short signature whereas the one appearing in Section 313 examination is a full signature. It is submitted that inter-se comparison of full and short signatures is not feasible. Reliance is placed on a judgment of Madras High Court

reported as ***Sivanandha Steel Ltd., R.P. Krishnamurthi, Executive Director and P. Venkatesan, Managing Director both of Sivanandha Steels Ltd.* v. *Upasana Finance Ltd. rep. by Ragupathy*, 2010-1-LW (CRL) 1165** wherein it was observed:

> "8. A perusal of the impugned orders reveals that the learned Magistrate dismissed the petitions mainly stating that the petitions were filed at the defence stage and at the time of arguments and the signatures can be compared by the Court itself. This Court is of the view that it is not safe to compare the signatures of the accused by the Court itself as the Court cannot play the role of an expert.
> 9. The Hon'ble Apex Court in State of Maharashtra v. Sukhdeo Singh reported in 1992 SC 2100, has held as hereunder:
>
> > Court should be slow to compare disputed document with admitted document for comparison although Section 73 empowers the Court to compare disputed writings with the specimen/admitted documents shown to be genuine. Prudence demands that Court should be extremely slow in venturing an opinion on the basis of mere comparison, more so, when the quality of evidence in respect of specimen/admitted writings is not of high standard.
>
> 10. The Hon'ble Apex Court in Ajit v. State reported in AIR 1997 SC 3255 has held that,
> Therefore, despite no legal bar to Judge using his eyes, the Judge should hesitate to base his findings with regard to identity of handwriting solely on comparison made by himself.
>
> 11. Therefore, in view of the settled principle of law laid down by the Hon'ble Apex Court in the decisions cited supra,

> it is not safe and desirable for the Court to compare the signature of the accused with the admitted signature on its own and to base its findings and as such, the reason assigned by the learned Magistrate in dismissing the petitions is unacceptable and unreasonable."

283. A-39, Bani Singh has denied having signed either of the lists as also having been a member of the Selection Committee. Needless to state, arguments on aspect of admissibility of specimen signatures are echoed by Counsel on behalf of A-39. Reliance is placed on Ex.PW-31/DN, a note mentioning the names of the Chairpersons and members of District Selection Committees. In the said note the name of Pushkar Mal Verma has been mentioned as the Chairperson whereas the names of Durga Dutt Pradhan and Jai Dayal have been written as members.

284. The prosecution has relied on a document Ex.PW-31/DO to show that A-39 was in fact a member of the Selection Committee. It is argued that this document is a computer generated copy, neither signed nor stamped and no evidence has come forth as to when this document was created, who typed it, for what purpose and for whom. The credibility is further attacked on the ground that this document was not recovered from the office of Directorate of Primary Education, Haryana Chandigarh or from DPEO Narnaul, rather it was collected by the investigating agency from the office of DPEO, Jhajjar. The apparent contradiction of these two documents was put to the witness

PW-31 and he has not put forth any explanation to the same. There being no supporting evidence to show that A-39 participated in the interview process, it cannot be established merely on the basis of this sole document that A-39 was a member of the Selection Committee, Narnaul. It is also pointed out that this material circumstance was not put to A-39 during his Section 313 examination and, therefore, cannot be used against him.

285. A-38, Durga Dutt Pradhan has denied his signatures on both lists and has put forth the following arguments:

- Recording of FIR is fundamentally vitiated inasmuch it has been registered in name of a fictitious person, i.e. Mr. J.C. Rawat, the Registrar of the Supreme Court who has neither been examined as a witness in the present case nor any evidence has been put forth to authenticate that he was the Registrar of the SC on the relevant date. This tantamounts to violation of Section 154 Cr.P.C. It is further urge that as per the direction of the Supreme Court the complaint/FIR ought to have been registered on the statement of Sanjiv Kumar (A-3) only if it disclosed commission of an offence.
- Alleges violation of the CBI Manual, Rule 10.12 which requires mentioning of the name of the accused in the FIR. A-38 not

named in the FIR and, therefore, could not have been prosecuted.

- Inordinate delay in recording of the FIR.
- No contemporaneous DD Entry made with respect to the FIR
- Statement an accused cannot be taken under Section 161 Cr.P.C. as he cannot be a witness as prescribed under Section 161.
- Material evidence is fabricated as PW-63 RN Azad in his statement on oath @ Page 351 does not state that the investigation initiated on the writ petition filed by A-3 in the SC.
- D-99 @ Part 8, Volume 6 which provides details of telephone register of DPEO, Jind in which incoming calls are mentioned is a fabricated document in as much only nine pages of the said register are exhibited and the entire register has not be proved or placed on record.
- The charges framed against A-38 cannot be sustained as no evidence has been put forth to establish that A-38 was a member of the District Level Selection Committee.

- The Handwriting expert's opinion Ex.PW-64/A @ Part 8, Serial No. 6, D-150 is not substantive piece of evidence and can be used only for corroborative purposes. In fact the said report is not a report but only a letter which holds no evidentiary value. It is further contended that specimen signatures present on the said report were not admitted by A-38 at any stage though the same have been compared with the questioned signatures.
- As per A-38 in his statement under Section 313 Cr.P.C. in answer to question No. 292 @ Part 3(12), Page 123 which pertained to Ex.PW-64/A, he had already stated the said report is wrong, false and baseless.
- Ex.P.W.64/A was a surprise document which was not given to A-38 at the time of investigation and the same was produced for the first time at trial and, therefore, the same cannot be relied upon as evidence in trial. It is relevant note that vide order dated 15.01.2010 (Part 1(a), Page 92), it is recorded that the necessary documents asked by A-38 were supplied to him and there is no appeal from the said order.
- The specimen signatures were not obtained by PW-64 and he admitted the same in his cross examination by A-38 (PAGE

394). Also, PW-67 Mr. N.N. Asthana, the inspector who assigned the job of collection of various specimen signatures stated in cross examination that he did not remember whether A-38 was the same person from he collected the specimen signatures. This points out that no specimen signatures were collected from A-38 and their no evidence on record to show that any specimen signatures were collected from A-38.

- Even if it is believed that A-38 signed the list, he claims to have done it on blank sheets where no marks were filled and there is no report of a hand writing expert regarding the marks.
- There was no meeting of mind as far as the charge of conspiracy is concerned.

Member who did not sign the Directorate list

286. A-49, Sudha Sachdeva did not sign the Directorate list, which she claims is the fake list and as a consequence thereof she was placed under suspension. She has, therefore, not been convicted of the substantive offence of forgery, however, she stands convicted of criminal misconduct and conspiracy.

287. It is the case of prosecution that A-50, Darshan Dayal Verma was the Chairman of DPEO Rewari for the first three days of interviews after which

he was transferred and A-49 took over the post. Saroj Sharma (A-51) and Tulsi Ram Bihagra (A-52) were its members. The Supreme Court list bears the signatures of A-49 as well as all the other members. The Directorate list however, does not bear the signatures of A-49 but it is duly signed by other members.

288. Mr. S.C. Chawla appears on behalf of A-49 and argues that the only evidence against A-49 is the statement of A-50 in his defense. Apart from the line of arguments regarding defense evidence, it is argued that there is absolutely no evidence put forth by the prosecution to corroborate the story canvassed by A-50 and, therefore, merely on evidence of co-accused, in absence of any other incriminating evidence the conviction under conspiracy cannot be maintainable. Reliance is placed on a case reported as ***S. Arul Raja v. State of Tamil Nadu,*** **2010 8 SCC 233** wherein the Supreme Court has observed:

> "56. Furthermore, we find that the statement made by A1 is insufficient to implicate the appellant in the said conspiracy as the same is hit by Section 10 of the Evidence Act. Section 10 refers to the statement of a fellow conspirator that pertains to the common intention behind the act, and such a statement can be used against the other conspirators. In the present case, we have found and held that the prosecution has failed to substantiate the allegation of conspiracy against the appellant and therefore, he could not be under any circumstance be called a co-conspirator so as to attract the provisions of Section 10 of the Evidence Act. Furthermore, this Court in Mohd. Khalid v. State of West Bengal reported

in (2002) 7 SCC 334 and State of Gujarat v. Mohd. Atik and Ors. reported in (1998) 4 SCC 351 has held that a post-arrest statement would not fall within the ambit of Section 10 of the Evidence Act. Therefore, the statement made by Al in police custody cannot be used to implicate the appellant in the conspiracy to murder Aladi Aruna.

Members who deny being a member of any Committee

289. A-45, Raksha Jindal and A- 39 fall within this category. Arguments on behalf of A-39 have been recorded above.

290. A-45, Raksha Jindal has taken the defense that she was never appointed as member of the DLSC-Panchkula. However, she was misled by Rekha Sharma (A-44) who is another member of the committee and she signed the two award lists only as a token of having calculated the marks given in both the lists. In her Section 313 statements she states that PW-42, Savitri Wadhawan was the member of the committee and had conducted the interviews.

291. At the outset, Mr. Pahwa appearing on behalf of A-45 submits that the appellant had retired from service on 31.08.2000 i.e. before the fake lists were prepared and, therefore, could not have been tried for substantive offences under the Prevention of Corruption Act.

292. Reliance is placed on a document Ex.PW-42/DC enlisting the names of various members of the selection committees in each district. This

document demonstrates Savitri Wadhawan as a member in the district Panchkula and has no mention of Raksha Jindal. In addition my attention was drawn to another document Ex.PW-63/045/DA which is the Attendance Register of Teachers of G.H. Sr. Secondary School for the month of December, 1999 and it shows that Savitri Wadhawan, the Headmistress was on leave on the 2^{0th} day of the month. Learned counsel submits that the appellant has explained in her statement that it was Savitri Wadhawan who had conducted the interviews, however she went on leave on 2^{0th} December, 1999 which is why the appellant was asked to sign the interview marks on the pretext of calculating the interview marks, she being a mathematics teacher. This argument is further fortified by the fact that it was Savitri Wadhawan who was called to sign the affidavit of having made the fake list due to pressure from Sanjeev Kumar now exhibited as Ex.PW-42/DB. A-45 has not signed any such affidavit.

293. Learned counsel addresses the document Ex.PW-31/DN allotting the Roll Nos. to various districts along with the designated members by pointing out that the mention of Raksha Jindal as a member is handwritten as opposed to the rest of the members and chairpersons. It is explained that this is a tampered document to show Raksha Jindal as a member by applying fluid and replacing her name with the actual member.

ARGUMENTS ADVANCED BY CBI

294. In the first instance, the arguments raised on legal aspects by the appellants have been addressed by the prosecution:

Sanction

295. Addressing the argument that the omission to obtain sanction with respect to public servants under section 197 of the Code of Criminal Procedure, 1973 for the offences punishable under the Indian Penal Code vitiates the trial, it is explained that the Supreme Court has since time immemorial held that merely because the office held by the public servant furnished the opportunity to commit the crime, the same cannot be said to have a nexus with discharge or purported discharge of official duty. Even otherwise, Section 19(3)(a) of the Prevention of Corruption Act, 1988 mandates in unequivocal terms that: -

> "no finding, sentence or 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."

296. Corresponding provision in the Code of Criminal Procedure, 1973 akin to the above highlighted provision comprised in the Prevention of Corruption Act, 1988 is enunciated hitherto-fore :-

> *"*465. Finding or sentence when reversible by reason of error, omission or irregularity.—
>
> (1) Subject to the provisions hereinbefore contained, no finding,sentence or order passed by a Court of competent jurisdiction shall be reversedor altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.
>
> (2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings*."*

297. A conjoint reading of the above extracted provisions would reveal that a finding of guilt rendered by the Trial Court cannot be upset by the Appellate Court solely on the premise of absence or irregularity of sanction unless it is of the view that failure of justice has been occasioned thereby. It is argued that none of the appellants have been able to shed an iota of light on the crucial aspect as to how failure of justice has occasioned in the present case. Interpreting the above extracted provisions of law the Supreme Court has held that benefit from any irregularity in sanction is not automatic

in nature and the accused must demonstrate the failure of justice stemming from such irregularity.

Forgery

298. Attention is invited to section 464 IPC along with illustration *(h)* appended thereto and explanation 1 coupled with illustration *(d)* and *(e)*reveals beyond pale of controversy that the acts as proved to have been committed in the present case fall within the purview of making a false document.

299. Learned ASG submits that as proved by cogent evidence led at trial by the prosecution, the original award lists were illegally taken out of the sealed almirah and fresh award lists were created later in time with drastically different contents to achieve the ends of conspiracy and the said lists which were fraudulently created, were substituted in place of the genuine award lists. The present case is not of mere innocuous ante-dating of a document by its authorized maker as projected by the appellants but of fraudulent creation of a document giving an impression that it was created much earlier in time than it was actually created and having drastically different contents than the documents for which it was substituted. The fact that such document created later in time had drastically different contents than the original document signifies the fraudulent purpose for its creation.

300. It is contended that explanation 1 appended with Section 464 IPC unequivocally evinces that a man's signature of his own name may amount to forgery. Therefore, the argument that the accused had not tinkered with or executed the signatures of some other person without his lawful authority is of no avail and is liable to be rejected. It is a trite proposition of law that the explanation and illustrations appended with the main provision are to be harmoniously read together in interpreting the compass and scope of the main statutory provision.

Valuable Security

301. Reliance is placed on a Constitution Bench judgment of the Supreme Court in the case of ***Shankarsan Dash v. U.O.I*** reported as **(1991) 3 SCC 47** wherein it was held that *although successful candidates do not acquire an indefeasible right to be appointed and the same can be legitimately denied*, however, it does not mean that the State has the license of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. *If the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.* The Supreme Court has expressly recognized the rights of such candidates but qualified/subjected those rights to an overriding will of the State not to give

effect to such appointments for diverse policy considerations which must be legitimate. The fact that the Supreme Court has employed the phraseology- "*… successful candidates do not acquire an indefeasible right to be appointed…"*itself is indicative of the fact that such candidates do enjoy a right, however the same may not be absolute and can be defeated by the will of the State manifested through its policy decision not to go through the appointment for legitimate reasons that it would need to justify.

302. It has been further held that such persons enjoy a *right to be considered* for appointment and the appointing authority cannot ignore the select panel or decline to make an appointment on its whims [***A.P Aggarwal v. Govt. of N.C.T of Delhi and Another*, (2000) 1 SCC 600**].

303. The facts of the present case pertinently reveal that the appointments were not scraped by any policy decision of the Haryana Government, but rather the award lists prepared by the District Level Selection Committees were illegally substituted in furtherance of a well orchestrated conspiracy by fake/altered award lists prepared much later in time. Therefore, it cannot be urged that the select persons had no legal right in eyes of law. Significantly, at no point of time the government exercised its overriding will recognized under law to eclipse or negate the rights of such candidates but rather criminal efforts were directed towards substitution of lists. Thus, it is

submitted that since the "award lists" lead to the accrual of legal rights in favour of persons, such "award lists" fall within purview of the term "valuable-security" envisaged under Section 30 of the Indian Penal Code, forgery whereof is punishable under Section 467 of the Code as its aggravated form.

Handwriting and signature specimens

304. It is highlighted that in the present case the handwriting exemplars (specimens) of various accused persons were sent for forensic examination vide letter of request dated 08.05.06. Significantly, the said period is evidently prior in time to the date of effect of Section 311-A Cr.P.C. viz. 23-06-2006. It is submitted, that since Section 311-A Cr.P.C. was not operative at the relevant time when the investigation agency obtained the handwriting exemplars from the accused persons, there existed no provision under the law for the time being in force prescribing a duty or a procedure to approach the magistrate for obtaining such exemplars.

305. The Supreme Court in its recent judgment in the case of ***Rabindra Kumar Pal alias Dara Singh v. Republic of India*** reported as **(2011) 2 SCC 490**, negatived the contention of the appellant-accused that his exemplars were required to be obtained before the Magistrate and in its absence such evidence was liable to be jettisoned from consideration.

Reliance is also placed upon ***Navjot Sandhu case*** (*Supra*) wherein such an argument was repelled by the Hon'ble Supreme Court in the following terms:-

> "In this context, a contention was raised before the High Court that in view of Section 27 of POTA, specimen signature should not have been obtained without the permission of the Court. In reply to this contention urged before the High Court, Mr. Gopal Subramanium, the learned senior counsel for the State clarified that on the relevant date, when the specimen signatures of Afzal were obtained, the investigation was not done under the POTA provisions and de hors the provisions of POTA, there was no legal bar against obtaining the handwriting samples. The learned counsel relied upon by the 11 Judge Bench decision of this Court in State of Bombay v. Kattikalu Oghad : 1961CriLJ856 in support of his contention that Article 23 of the Constitution was not infringed by taking the specimen handwriting or signature of a person in custody. Reference has also drawn to the decision of this Court in State of U.P. v. Boota Singh : [1979]1SCR298. We find considerable force in this contention advanced by Mr. Gopal Subramanium. In fact this aspect was not seriously debated before us"

306. Thus, it is not open for the appellants to canvass the said argument before this Court. It has been repeatedly held by the Apex Court that judicial discipline obliges the High Courts of the land to follow the judgments of the Supreme Court and the mere fact that a particular provision or argument was not considered by the Supreme Court while deciding a case would not denude its precedential value.

307. Strong reliance is placed on a judgment of a Three-Judge Bench of this High Court in ***Sapan Haldar*** *(supra)*. As a matter of fact the judgment in ***Sapan Haldar case*** *(supra)* rightly recognizes the fact that the Magistrate could not have been approached by the investigating agency in terms of Section 5 of the Identification of Prisoners Act, 1920 for obtaining handwriting exemplars. The Court rightly opined in Para 31(i) that handwriting and signatures are not "measurements" and, therefore, do not fall within the ambit of the Identification of the Prisoners Act, 1920. However, it is submitted that in Para 19, it was erroneously concluded that the police officer during investigation could not have obtained such signatures on his own. It would be pertinent to highlight that the said conclusion is *sans* any reasoning or discussion whatsoever.

308. The High Court in Sapan Haldar's case (*supra*) did not advert its precious consideration to the definition of the term "investigation" prescribed under Section 2(h) of Cr.P.C. which has also been subject matter of interpretation in catena of judgments of the Supreme Court which have held it to have a broad and inclusive connotation. The High Court lost sight of the fact that the Supreme Court in its judgment in the case of ***Selvi v. State of Karnataka*** reported as **(2010) 7 SCC 263** has held that the term

"investigation" includes steps which are not exhaustively and expressly enumerated.

309. Learned counsel submits that the lawmakers never intended to expressly and exhaustively lay down in a statute such as the Code of Criminal Procedure, 1973 what "investigation" would mean and include. The legislature in its wisdom only provided an inclusive definition as has been recognized by the Apex Court. Therefore, the prosecution it is empowered to obtain the handwriting exemplars of the accused itself while exercising its wholesome powers of investigation (power coupled with duty) as inclusively defined under Section 2(h) of Cr.P.C. to be an act for the purpose of collection of evidence. Section 311-A Cr.P.C. introduced with effect from 23.06.2006 only regulates the procedure for obtaining such handwriting exemplars and was enacted in furtherance of the observations of the Supreme Court of India in its judgment in the case of ***State of U.P v. Ram Babu Misra,*** reported as **(1980) 2 SCC 343.** The said provision cannot be construed to be a provision which provides the source of power for obtaining handwriting exemplars but only a procedural safeguard introduced by the legislature for future to regulate the otherwise uncanalised power which pre-existed before enactment of the said provision.

310. In the alternative, it is also argued that even if handwriting exemplars have been obtained in violation of the procedure prescribed under law, such evidence obtained would not be rendered inadmissible. It has been held by the Apex Court that the law in this country as following suite from the law in England is that the test of admissibility lies in relevancy and an evidence cannot be excluded from judicial consideration merely because it was obtained in violation of procedure prescribed under law as long as there exists no such prohibition under the law of evidence governing the field.

Cheating

311. At the outset it is highlighted that the Trial Court has returned a finding of guilt for the offence punishable in terms of Section 418 of the IPC, amongst other offences. The provision is extracted herein below:-

> "418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.—Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

312. It is submitted that a bare perusal of the said provision would unequivocally evince that the said section contemplates the mere likelihood of wrongful loss as a sufficient ingredient of the offence and the prosecution

is not obliged to prove actual wrongful loss, contrary to the submissions that have been canvassed on behalf of the appellants *ipse dixit de hors* any jurisprudential basis. The term "cheating" is defined under Section 415 of the IPC and the contents of the same are also extracted hitherto-fore

> "415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionallyinduces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation orproperty, is said to "cheat"."

313. It is evident from the language employed by the legislature while penning the above extracted provision, that the prosecution may endeavour to pitch its casethrough either of the two limbs contemplated under the said provision i.e. either by proving fraudulent intent on part of the accused or a dishonest intent. The law, opposed to common parlance, carves a careful distinction between the term "dishonestly" as defined under Section 24 of IPC and "fraudulently" as defined under Section 25 of IPC.

> "24. "Dishonestly".—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly""

> "25. "Fraudulently".—A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise."

314. The Apex Court has held that perusal of section 24 laments the fact that it is sufficient for the prosecution to prove that the act was done either with the intention of causing wrongful gain or wrongful loss and it is not necessary to prove both. The courts across the land while interpreting the term fraudulently as defined under the IPC have consistently held that there exists a distinction between an act done dishonestly and an act done fraudulently. If the deceitful act willfully exposes anyone to the risk of loss, there is fraud. Thus, the prosecution is not obligated to prove actual wrongful loss but even risk of loss brings the act within the purview of the term "fraudulently". This is also in consonance with the ingredients of section 418 IPC, wherein as highlighted earlier, the likelihood of wrongful loss is sufficient to constitute the said offence.

315. In the facts of the present case it is pointed out that the prosecution was handicapped from leading evidence of actual wrongful loss or actual wrongful gain, as Sanjiv Kumar (A-3) withheld the original award lists of few districts in consequence of which a joint merit list of the genuine award lists could not be created during investigation to demonstrate which candidates actually deserved to have been selected if order of merit was

followed.As a matter of fact, Sanjiv Kumar (A-3) clearly admitted in his writ petition [Part 8/ D-37-D-66/D-64/Page 25-53 @ Pg 32 & 35] that he was in possession of the award lists for all the districts of Haryana, yet he wittingly did not hand over all the lists before the Supreme Court of India or the CBI during investigation. Upon being duly cross-examined by the Learned Prosecutor on this aspect, Sanjiv Kumar (A-3) was evasive and did not tender any plausible explanation whatsoever. However, as highlighted above, it is not the requirement of law for the prosecution to prove the actual wrongful loss and mere likelihood or risk of loss is sufficient to bring the acts of the accused within the four corners of Section 418 of IPC.

316. Even otherwise, it is highlighted that the prosecution examined two candidates (PW-51 and 53) from district Faridabad who had participated in the interview for the JBT teachers appointment held in December 1999 and the marks secured in the interview were substantially reduced in the Directorate List as compared to those secured in the Supreme Court List.

317. In conclusion, it is submitted that the Haryana Government was, therefore, induced by the fraudulent acts of the accused, to deliver 'property'-appointment letters in favour of persons. The Apex Court has held that the connotation "property" includes any document having value in the hands of its holder and may not necessarily possess pecuniary worth.

Appointment Letter would unquestionably be a species of such documents which may be termed as 'property' for the purpose of Section 415 of the IPC.

Discharge of Brij Mohan

318. Pithily stated, the Trial Court was of the considered view that by scribing 'UP' under his signatures, Brij Mohan had clearly disassociated himself from the conspiracy at the very inception and was, therefore, not liable to be charged.

319. It is highlighted that the said order attained the imprimatur of the High Court of Delhi in collateral proceedings; wherein the inherent jurisdiction of this Court was invoked by a co-accused- Pushkar Mal Verma seeking parity with Brij Mohan and praying for discharge. The petition was dismissed vide order dated 01.06.2012 [Vol- 1A/Pages 9-15] and the order dated 23.07.2011 passed by the Learned Trial Court was affirmed by this Court.

320. It is submitted that the appellants before this Court (A-6 to A-62) are not entitled to benefit of acquittal on the ground of parity with Brij Mohan on two counts, enunciated hitherto-fore :-

> Firstly, there is no shred of evidence whatsoever to indicate that the said appellants despite their appending signatures on the new award lists, did not subscribe with the intention of the other co-conspirators

to commit crime and in that sense there was no 'agreement' as envisaged under Section 120-B IPC.

The plea canvassed by some of the appellants that they were under pressure at the time of commission of crime (execution of signatures on the second award list) has been sought to be essentially substantiated by self-serving statements uttered in Section 313 and suggestions tendered during cross-examination to prosecution-witnesses which is not evidence in eyes of law- ***State v. Md. Misir Ali,*** **AIR 1963 Assam 151** (few appellant-accused examined defence witnesses to substantiate their defence of pressure). Furthermore, the pressure/threats pleaded by such appellants are not of such nature and quality, as required under our legislative policy manifested under Section 94 of the IPC –an anticipated harm of instant death, to immunize them from the consequences of their crimes. Therefore, arguendo, even if the assertions of various appellants that they were pressurized to append their signatures on the second award lists is accepted to be true, but even in such eventuality, defence of pressure cannot be successfully availed as the pressure pleaded to have been exerted was not of the hilt/degree as contemplated under Section 94 of the Indian Penal Code.

Learned ASG also points out that during the course of arguments in the present batch of appeals before this Court, some appellants have for the first time sought to claim the benefit under Section 90 of the Indian Penal Code. Section 90 of the IPC merely laments that consent is not a valid consent under the penal code, if the same is given under fear of injury or misconception of fact. It is respectfully submitted that the said provision is ex-facie inapplicable to the offences comprised in the present case and would only be applicable to those provisions (offences) of the Indian Penal Code, wherein "consent" is an integral ingredient thereof, such as Section 313- Causing miscarriage without woman's consent, Section 375-Rape etc.

Secondly, even if this Court were to hold that the order of discharge dated 23.07.11 passed by the Trial Court qua Brij Mohan is improper/illegal in the eyes of law, in as much as the Trial Court erred in not applying the test of Section 94 IPC to Brij Mohan; who was also not facing pressure of instant death like other co-accused/appellants, no consequent benefit can flow to the co-accused/appellants as Article 14 of the Constitution of India envisages equality as a positive concept and does not embody its negative connotation. It has been held by the Apex Court and various High Courts that advantage of an erroneous

acquittal of a co-accused would not accrue to an accused. The same principle applies with full force to the facts of the present case. Recently the Supreme Court in its judgment delivered on 17.09.13 in ***Ajoy Acharya v. State Bureau of Investigation,*** **Criminal Appeal No. 1454 of 2013** pertinently observed that "*Parity in law can be claimed only in respect of action rightfully executed and not otherwise.*"

321. It is also pointed out that there exist profusion of authorities and consensus of judicial opinion that the evidence of a person, who could have been arrayed as an accused or who has been improperly/illegally discharged, is admissible in evidence at trial. Therefore, the fact that Brij Mohan was not tendered pardon by the prosecution in accordance with the procedure established under the Code or even if the discharge of Brij Mohan is held to be illegal, his evidence tendered at trial as PW-17 would remain admissible. [***Sital Singh v. Emperor*****-(1919) ILR 46 Cal 700** *;* ***Banu Singh v. Emperor,*** **(1906) ILR 33 Cal 1353***;* ***Laxmipat Choraria and Others v. State of Maharashtra,*** **AIR 1968 SC 938***;* ***Chandran v. State of Kerala,*** **(2011) 5 SCC 161***;* ***Prithipal Singh v. State of Punjab*****, (2012) 1 SCC 10.**]

OBSERVATIONS ON LEGAL ARGUMENTS

322. I have heard rival submissions advanced on behalf of each appellant at painstaking length and considered the issues with reference to the evidence

on record and the applicable law in conscientious detail. Since certain arguments on behalf of A-1, A-2, A-4 and A-5 raise common questions, they are being dealt with at the beginning. Broadly examined, three main issues arise for consideration:

(i) Admissibility and intrinsic worth of testimony of A-3 inculpating other appellants under Section 315 CrPC,

(ii) Perfunctory examination of all appellants under Section 313 Cr.P.C. and

(iii) Credibility of testimonies of PW-16, PW-23 and PW-26 in light of the discrepancies pointed out.

323. At the first instance, it was argued that the statement made pursuant to Section 315 Cr.P.C. is only admissible to the extent that it is in disproof of the charges against the maker of that statement. Portions of such statement that are incriminating a co-accused are to be expunged from consideration.

324. Section 315Cr.P.C. is reproduced below

> "Section 315 - Accused person to be competent witness
>
> i) Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:
> Provided that—
>
> (a) he shall not be called as a witness except on his own request in writing;
>
> (b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise

to any presumption against himself or any person charged together with him at the same trial.

ii) Any person against whom proceedings are instituted in any Criminal Court under section 98, or section 107, or section 108, or section 109, or section 110, or under Chapter IX or under Part B, Part C or Part D of Chapter X, may offer himself as a witness in such proceedings:

Provided that in proceedings under section 108, section 109 or section 110, the failure of such person to give evidence shall not be made the subject or any comment by any of the parties or the Court or give rise to any presumption against him or any other person proceeded against together with him at the same inquiry."

325. Section 315 Cr.P.C., 1973 traces its historical roots to Section 342-A of Cr.P.C., 1898 which is pari materia similar except addition of a clause under Section 315 Cr.P.C., 1973 which does not assume relevance for the purpose of controversy at hand.

326. A careful and meaningful reading of the said provision brings to fore two relevant facts – firstly, there is no bar comprised in the said provision for use of statements made by an accused against a co-accused and secondly, the predominant object of the provision is to enable the accused to step into the witness box in disproof of charges against him or his co-accused and therefore, it is not incumbent upon him mandatorily to attempt to save the co-accused, although he is permitted to do so. The use of the word 'or'

employed by the legislature at this juncture assumes significance. It must also be born in mind that facts of a case may be such that an accused in order to disprove the charges leveled against him by the prosecution and to demonstrate his innocence in the matter, may be required to throw light upon the acts or omissions of the co-accused at trial; who according to him may be the real culprits. It would be unreasonable to contemplate a 'testimonial compulsion' in law warranting an accused to always depose in favour of his co-accused.

327. This view is further fortified by the observations of the Supreme Court in ***Tribhuvan Nath*** *(supra).* Paras 29, 30 and 31 throw some light on the issue and are reproduced as under:

> "29. The first question is, whether the trial Judge was right in using the evidence given by accused 3 which he gave as a witness in his defence the position with regard to such evidence is that when a person, accused along with others, voluntarily steps in the witness box as a witness in defence, he is in the same position as an ordinary witness, see Peoples Insurance co. Ltd. v. Sardar Sardul Singh Caveeshar AIR 1962 PUNJ 101 and Jibachh Shuh v. The State AIR1965Pat331 and is there-fore, subject to cross-examination by the prosecution counsel & evidence brought out in such cross-examination can be used against his co-accused, (see The King v. James Paul (1920) 2 K.B 183. (such a witness incriminates his co-accused, the other accused, jointly tried with him, has the right to cross-examine him if he wants so to do. (Rex. v. Hadwen (1902) 1 K.B. 882. This has been the position in England after 1898 when accused persons were made competent witness. The same

consequences must also flow after accused persons have been made competent witness for the defence Under Section 342A of the Cr. PC As counsel for the appellant informed us. since accused 3 volunteered to enter the witness box as a witness in his defence, he was in fact cross-examined not only by the prosecution but also by counsel for the other accused. Of-course, an accused person cannot be compelled to give evidence on "in disproof of the charges" in Section 342A. But once his evidence as a witness for the defence is on record, under Section 10 of the Evidence Act, 1872, evidence, as to the communications between one conspirator and the other during the time that the conspiracy is going on and relating to implementing that conspiracy, is relevant evidence. The statements by one accused to another and the evidence as to the acts done by him disclosing participation by the other accused in the conspiracy are also relevant. As to whether they merit reliance or not is another question depending upon their credibility.

30. As aforesaid, the evidence of Puransingh, Elavia and Mosin Burmawalla was held by the Trial Judge as accomplice evidence in that each of them had in one way or the other helped the accused in furthering their objectives. In such a case the duty of the court apprising the evidence clearly is to apply the double test as laid down in Sarwan Singh v. State (1902) 1 K.B. 882. The court, therefore, has first to see whether the evidence of an accomplice is reliable, and secondly, even if it is so, whether it is corroborated in material particulars by other independent evidence, direct or circumstantial. As Sarwan Singh's case 1957CriLJ1014 points out, the test of reliability is the same as the one applied to all witnesses. Therefore, it does not mean that an accomplice's evidence cannot be relied upon unless it is totally and absolutely blemishless. In majority of cases such is not the case and inspite of some discrepancies and other such infirmities, courts have often found it safe to act on the evidence of such witness. A case illustrating this proposition is to be found in Sarvanabohavan v. Madras 1966CriLJ949 where the evidence of the approver contained certain discrepancies and was also contradicted by the testimony of

another witness and yet that evidence was held to pass the test of being credible and was accepted as it was also corroborated by other evidence. Regarding the second test, that is, of the necessity of corroboration, such corroboration need not, on the one hand, be of every particular given by an accomplice, and on the other hand, of only minor particulars. The corroboration must be adequate enough to afford the necessary assurance that the main story testified by the accomplice can be reasonable and safely accepted as true. Ramanlal v. The State AIR1960SC961 .

31. Reading the evidence given by these witnesses, as also the evidence of accused 3, there were undoubtedly not only discrepancies in their evidence but each one of them was trying to make out that his acts were innocent and without the knowledge that he was furthering the culpable objects of the accused. A perusal of the very elaborate judgement of the Trial Judge shows, however, that he had kept in the forefront of his mind this fact and then had considered as an initial step the question whether their evidence notwithstanding the aforesaid infirmities, was credible in the sense that the things which they had deposed were true. It is impossible, for instance, to discard their version about the drafts and cheques having been illegally intercepted during their postal transmission, the opening of fraudulent bank accounts on the strength of forged introduction forms deceiving the bank employees into opening false accounts by false impersonation and ultimately obtaining cash proceeds under the said stolen negotiable instruments. There is also no doubt that this version found sufficient corroboration not only in the evidence of the payees to whom their constituents had sent those instruments and who never received them, but also in the evidence of the managers and agents of the different banks who were deceived by one or the other accused. In these circumstances, it is not possible to say that the Trial Judge acted on the accomplice without applying the double test laid down in Sarvan Singh's case."

328. It, therefore, clearly emerges that firstly, there is no bar on admissibility of evidence of an accused against his co-accused. The worthiness of such evidence is to be seen through the prism of corroboration. Secondly, once an accused steps into the witness box and gives evidence on oath, he is to be treated as an ordinary witness. All legal principles governing the credibility of a witness shall necessarily follow, including the test of veracity through cross examination. An accused deposing against a co-accused under Section 315 has to endure dual cross examination. Once by the prosecution which may bring forth discrepancies in a case where his statement is exculpatory qua him and then by a co-accused against whom he deposes giving inculpating evidence.

329. Much stress was laid on the term 'disproof' to demonstrate the purposive intent of legislature in enacting Section 315. Black's Law Dictionary defines 'disprove' as follows:

> **Disprove**- To refute; to prove to be false or erroneous; not necessarily by mere denial, but by affirmative evidence to the contrary

330. This definition further highlights that evidence in disproof of a charge includes affirmative evidence to the contrary. Such affirmative evidence may or may not incriminate a co-accused. To put things in perspective, as illustrated by Mr. Cheema, in a case of narcotics possession, the driver of a

car being a co-accused is permitted to say that he is merely a permissive user of the vehicle. Now in order to establish this, he will obviously have to point out to whom the vehicle belongs to and who is the actual owner of the contents found in that vehicle. As rightly pointed out by learned Counsel Mr. Khanna, if such evidence were inadmissible there would be no need to labour on conducting cross examination of such witness by a co-accused. Cross examination being the most powerful tool to illicit the truth, the very purpose of such cross examination is to provide a fair opportunity to a co-accused to destroy the credibility of such accused.

331. The ratio in ***Yusufbhai*** *(supra)* is opposed to the binding precedent laid down in Tribhuvan Nath and in ignorance of the principles laid down in Tribhuvan. Therefore, it cannot support the argument of the appellants.

332. Testimony of A-3 is then attacked on the ground the evidence of A-3 being in the nature of accomplice evidence has to confirm to the test of inculpating himself, failing which his evidence cannot be used against a co-accused.

333. It is factually correct that A-3's evidence is exculpatory qua the offences for which he was charged. Learned ASG for CBI has however urged that there is no requirement engrafted by the legislature either in Section 21 of the Prevention of Corruption Act, 1988 Section 315 of Cr.P.C.,

1973 or Section 133 of the Indian Evidence Act, 1872 which deals with the admissibility of the evidence tendered by accomplice.

334. As a matter of fact, the prosecution has cited the decision of the Supreme Court reported as ***Subramania Goundan* v. *State of Madras,* AIR 1958 SC 66** and the decision of the Privy Council reported as ***Mahadeo* v. *The King,*(1936) 44 L.W 253**, wherein it has been held that an accomplice who completely exculpates himself may require corroboration and the court did not treat such evidence inadmissible per se.

335. A conjoint reading of these two cases along with Para 31 of Tribhuvan (supra) clearly establishes that a statement cannot be inadmissible on the ground that it is wholly exculpatory.

336. It also assumes significance that the Learned Counsels for appellants could not cite any authority in support of their submission in this regard and Mr. R.S.Cheema, Learned Senior Counsel appearing in rebuttals in his fairness, admitted before the Court through a note dated 20.12.2013, that on first principle there may be no pre requisite of self incrimination for admissibility of statements made by an accused against the co-accused and no decision of any court in support of such a proposition which was canvassed by them earlier could be found.

337. I agree with the submission that the concept of self incrimination emerges as a necessary pre-requisite for statements of the accused which fall within the ambit of Section 30 of the Indian Evidence Act. The evidence contemplated as admissible under Section 30 of the Indian Evidence Act is materially different in its nature and quality from the evidence of an accomplice which is admissible under Section 133 of the Indian Evidence Act. The two cannot be adjudged on an equal footing. Tribhuvan case (Supra) clearly prescribes the applicability of Section 133 of the Indian Evidence Act to the testimony of an accused who steps in the witness box and deposes against the co-accused.

338. It can, therefore, be observed that the confessional statements made by an accused under Section 30 are not subject to cross-examination by the accused against whose interest they may be made. Such statements would put a co-accused at a disadvantaged position as he would not even get an opportunity to cross examine the maker of such statement. The purpose for the limited use of such statements of an accused against the co-accused in terms of Section 30 of the Indian Evidence Act lies in the fact that the accused incriminates himself as well which affords some assurance of truth.

339. In view of the above described sublime philosophy, the Apex Court has held that evidence under section 133 of the Indian Evidence Act is of

superior quality and higher pedestal then evidence/ material under Section 30 of the Indian Evidence Act. [***Haricharan Kurmi v. State Of Bihar*****,** **AIR 1964 SC 1184** and ***Haroon Haji Abdulla v. State of Maharashtra***, **AIR 1968 SC 832**]

340. Therefore, in ultimate analysis, self incrimination is not a condition precedent for admissibility of evidence of an accomplice against his co-accused. No such requirement has been engrafted in any statutory provision dealing with the evidence of accomplices. Rather insistence of self incrimination would militate against the very object of introducing Section 315 Cr.P.C. wherein an accused steps into the witness box in disproof of charges against him and he, therefore, cannot be expected /compelled by a convoluted interpretation of law to admit charges against him.

341. Appellants (A-1 to A-62) have unanimously taken issue on the aspect of perfunctory examination under Section 313 Cr.P.C. on two broad grounds. One group of appellants are aggrieved by the fact that incriminating evidence that has come forth by way of testimony of co-accused under Section 315 has not been put to them for their explanation under Section 313 Cr.P.C. The other group has made a general grievance regarding the manner in which the learned Judge has drafted common set of questions for all appellants who are committee members and questions unconnected with

their case have been put to them. As a consequent effect, it is urged that evidence not put to the appellants for their explanation should not be considered.

342. Section 313 Cr.P.C. reads as under:

> Section 313 - Power to examine the accused
>
> i) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court—
>
> (a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;
>
> (b) shall after the witnesses for the prosecution have been examined and before he is called on for his defence question him generally on the case:
>
> Provided that in a summons-case where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).
>
> ii) No oath shall be administered to the accused when he is examined under subsection (1).
>
> iii) The accused shall not render himself liable to punishment by refusing to answer such question, or by giving false answers to them.
>
> iv) The answers given by the accused may be taken into consideration in suchinquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he had committed.
>
> v) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of

written statement by the accused as sufficient compliance of this section.

343. The sublime philosophy behind Section 313 is to ensure that the accused has opportunity to explain the evidence in support of the charge against him at trial. The court is under a legal obligation to put the incriminating circumstances before the accused and solicit his response. The Supreme Court in the case reported as ***Jai Dev* v. *The State of Punjab*** **AIR 1963 SC 612** has elaborated on the test of this procedural compliance:

> "21. In support of his contention that the failure to put the relevant point against the appellant Hari Singh would affect the final conclusion of the High Court, Mr. Anthony has relied on a decision of this Court in Hate Sigh Bhagat Singh v. State of Madhya Bharat AIR1953SC468 . In that case, this Court has no doubt referred to the fact that it was important to put to the accused each material fact which is intended to be used against him and to afford him a chance of explaining it if he can. But these observations must be read in the light of the other conclusions reached by this Court in that case. It would, we think, be incorrect to suggest that these observations are intended to lay down a general and inexorable rule that wherever it is found that one of the point used against the accused person has not been put to him, either the trial in vitiated or his conviction is rendered bad. The examination of the accused person under s. 342 is undoubtedly intended to give him an opportunity to explain any circumstances appearing in the evidence against him. In exercising its powers under s. 342, the Court must take care to put all relevant circumstances appearing in the evidence to the accused person. It would not be enough to put a few general and broad questions to the accused, for by adopting such a course the accused may not get opportunity of explaining all the relevant circumstances. On the other hand, it would not be fair or right that the Court should put to the

> accused person detailed questions which may amount to his cross-examination. The ultimate test in determining whether or not the accused has been fairly examined under s. 342 would be to enquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity. It is obvious that no general rule can be laid down in regard to the manner in which the accused person should be examined under s. 342. Broadly stated, however, the true position appears to be that passion for brevity which may be content with asking a few omnibus general questions is as much inconsistent with the requirements of s. 342 as anxiety for thoroughness which may dictate and unduly detailed and large number of questions which may amount to the cross-examination of the accused person. Besides, in the present case, as we have already shown, failure to put the specific point of distance is really not very material."

344. It bears no reiteration that any omission on the part of the trial judge to put all incriminating evidence to the accused would not ipso facto vitiate the trial. The omission, if any, has to be judged through the scale of corresponding prejudice caused that results in miscarriage of justice. Observations of the Supreme Court in the case reported as ***Satyavir Singh Rathi* v. *State through C.B.I.*, AIR 2011 SC 1748/(2011) 6 SCC 1** assume significance. Relevant paras have been reproduced:

> "30. It must be highlighted that the judgment in this case was rendered in the background that in the absence of any provision in law to enable an accused to give his part of the story in court, the statement under Section 342 (now 313)

was of the utmost important. The aforesaid observations have now been somewhat whittled down in the light of the fact that Section 315 of the Code of Criminal Procedure now makes an accused a competent witness in his defence. In Vikramjit Singh's case (supra), this Court again dwelt on the importance of the 313 statement but we see from the judgment that it was primarily based on an overall appreciation of the evidence and the acquittal was not confined only to the fact that the statement of the accused had been defectively recorded. In Ranvir Yadav's case (supra) this Court has undoubtedly observed that even after the incorporation of Section 315 in the Code of Criminal Procedure, the position remains the same, (in so far as the statements under Section 313 are concerned) but we find that the judgment was one of acquittal by the Trial Court and a reversal by the High Court and this was a factor which had weighed with this Court while rendering its judgment. In any case the latest position in law appears to be that prejudice must be shown by an accused before it can be held that he was entitled to acquittal over a defective and perfunctory statement under Section 313. In Shivaji's case (supra), a judgment rendered by three Hon'ble Judges, it has been observed in paragraph 16 as under:

> "It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of an evidentiary material not being put to the accused, the court must ordinarily eschew such material from consideration. It is also open to the appellate court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate court any plausible or reasonable explanation

> of such circumstances, the court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial court he would not have been able to furnish any good ground to get out of the circumstances on which the trial court had relied for its conviction. In such a case, the court proceeds on the footing that though a grave irregularity has occurred as regards compliance with Section 342, Code of Criminal Procedure, the omission has not been shown to have caused prejudice to the accused."

31. The judgment in Santosh Kumar Singh's case (supra) is to the same effect and is based on a large number of judgments of this Court.

32. It is clear from the record herein that the Appellants, all police officers, had been represented by a battery of extremely competent counsel and in the course of the evidence, the entire prosecution story with regard to the circumstances including those of conspiracy and common intention had been brought out and the witnesses had been subjected to gruelling and detailed cross-examinations. It also bears reiteration that the incident has been admitted, although the defence has sought to say that it happened in different circumstances. It is also signally important that all the accused had filed their detailed written statements in the matter. All these facts become even more significant in the background that no objection had been raised with regard to the defective 313 statements in the trial court. In Shobhit Chamar's case (supra) this Court observed:

> "We have perused all these reported decisions relied upon by the learned advocates for the parties and we see no hesitation in concluding that the challenge to the conviction based on non-compliance of Section 313 Code of Criminal Procedure first time in this appeal cannot be entertained unless the Appellants demonstrate that the prejudice has been caused to them. In the present case, as indicated earlier, the prosecution strongly relied upon the ocular evidence of the eye witnesses and relevant questions with reference to this

> evidence were put to the Appellants. If the evidence of these witnesses is found acceptable, the conviction can be sustained unless it is shown by the Appellants that a prejudice has been caused to them. No such prejudice was demonstrated before us and, therefore, we are unable to accept the contention raised on behalf of the Appellants."
>
> 33. These observations proceed on the principle that if an objection as to the 313 statement is taken at the earliest stage, the court can make good the defect and record an additional statement as that would be in the interest of all but if the matter is allowed to linger on and the objections are taken belatedly it would be a difficult situation for the prosecution as well as the accused. In the case before us, as already indicated, the objection as to the defective 313 statements had not been raised in the trial court. We must assume therefore that no prejudice had been felt by the Appellants even assuming that some incriminating circumstances in the prosecution story had been left out. We also accept that most of the 15 questions that have been put before us by Mr. Sharan, are inferences drawn by the trial court on the evidence. The challenge on this aspect made by the learned Counsel for the Appellants, is also repelled."

345. Counsel for the appellants have argued that an additional examination should have been done when incriminating evidence cropped up after statement of co-accused. It is a factual position that objection to defective examination has only been raised at the appellate stage. I agree with the submission that if any accused would have felt prejudiced, the objection should have been raised at trial in order to cure the defect and failure to do so evidences the fact that the appellants were not prejudiced. In this regard, I would also say that having perused the 313 statements of appellants that

were pointed out during the course of arguments, as well as the evidence that has come up by way of defence evidence. It is my view that none of the appellants have been able to demonstrate exactly how they were prejudiced. Whether it is through omission to put a question or through putting of questions unconnected with the case of a particular appellant, I am not convinced that any material irregularity has occasioned causing miscarriage of justice.

346. In addition, the appellants have been adequately represented and those appellants who have given evidence under Section 315 have been extensively cross examined by the appellants they have deposed against. Therefore, the argument of perfunctory examination under Section 313 Cr.P.C. based on the aforementioned two grounds stands rejected.

APPEAL OF A-3

347. A-3 has put forth his defense on two broad aspects:

i) That the Supreme Court lists are fake and the result was declared on the basis of original lists i.e. Directorate lists

ii) Pointing out of evidence to show that he was not a conspirator and in fact was the only one who tried to prevent the conspiracy from execution and subsequently became the whistle blower.

Regarding the lists

348. Learned Senior Counsel Mr. Nigam has taken me through both lists of each district to support his case. I have considered rival submissions district wise as under:

I. **Faridabad**

i) Learned ASG Mr. Khanna has pointed out two features in the Directorate list of this district that are most striking. The first being presence of the date of "09.12.2000" on page 39 of the Directorate list and the second is the scribing of "UP" on the first few pages by a member of the Selection Committee, Brij Mohan (PW-17). The date "09.12.2000" mentioned on the Directorate list is handwritten and is reflective of the fact that this particular list was created in late 2000 and not in 1999 which leads to the irresistible conclusion that it is the fake list.

ii) Much stress has been laid on the question whether the alleged "UP" actually exists on the Directorate list and the testimony of PW-17 has been attacked on many counts. I will start with my impression of the "UP". Visually, I have examined the "UP" through a magnified lens and the "UP" is seemingly

present on pages 6 and 8 and is very clearly present on pages 3,5,9 as well as on pages 11 and 13. PW-17 has deposed that as evidence of protest, he had scribed "UP" on a few of the pages while signing the fake lists, however he could not do so on all the pages without inviting attention and, therefore, it is not present on all pages. This explanation is reasonable considering the fact that these lists were signed under pressure and it is not possible to leave evidence of protest that is very distinctive and eye catching in the presence of those very persons who were putting pressure to commit an illegal act. The testimony of PW-17 is also inconsonance with the "UP" that is present from pages 1 to 9 in D-4 which is the Directorate list of district Faridabad.

iii) It has also been urged on behalf of Sanjiv Kumar (A-3) that the forensic report does not evidence the existence of words "UP" and on its strength it is sought to be submitted that no such words have been scribed by Brij Mohan. Factually, the forensic report is silent on aspect of "UP". On behalf of CBI it is argued that Brij Mohan was not cross-examined by Sanjiv Kumar (A-3) and his version has gone uncontroverted

in evidence. Therefore, it is not open for him to belatedly dispute the said fact. I have perused the said list with a magnifying glass and it clearly evidences the existence of words "UP" under signatures of Brij Mohan on the first thirteen pages. This argument is, therefore, rejected.

iv) Next is the attack on the testimony of PW-17. A-3 has argued that the final report filed by the CBI is silent about the existence of "UP" on the Directorate list of this district. As pointed out by Mr. Khanna, this argument loses value in view of the fact that the statement of Brij Mohan under Section 161 Cr.P.C. mentions the existence of 'UP' under his signatures on the fake list and the said fact has also been taken note of by the trial Judge at the time of order on charge. Therefore, it cannot be said that the words 'UP' have been belatedly added. Furthermore, at the stage of submission of Final-Report, Brij Mohan was treated as an accused and not as a prosecution witness; therefore, his statement could not have been in the Final-Report.

v) It has also been submitted on behalf of Sanjiv Kumar (A-3) that the 'UP' does not find mention in the affidavit dated

26.07.2003 filed by Brij Mohan. With respect to the affidavits signed by all members, I am in agreement with the observation of the trial judge. These affidavits were signed by all members and chairperson of the Selection Committee of all districts and were 'stereo-type'. The deponents were merely made to sign on the dotted line under pressure. In view thereof, it cannot be expected that Brij Mohan would be in a position to get further facts inserted in the same. These facts clearly flow from the deposition of PW-17 Brij Mohan.

vi) It was pointed out on behalf of A-3 that Brij Mohan (PW-17) has appended his signatures on three lists, however he deposes about appending his signatures only on two lists. At the outset it was argued that Sanjiv Kumar (A-3) has not chosen to cross-examine the witness and is, therefore, disentitled at this stage from impeaching his testimony on this count. Counsel for CBI explains that the third list of District Faridabad [D-61] is akin to the Directorate List of District-Faridabad and may have been got signed from Brij Mohan along with the Directorate List; who being under immense pressure may have not observed that two lists were being got

signed from him. The veracity of this explanation cannot be tested at this stage. PW-17 may have been able to explain the third list if he were questioned in this regard. The fact remains that D-4 is the Directorate list of this district and the result was declared on the basis of interview marks awarded in this list. This list contains the signatures of PW-17 along with evidence of protest. Whether there is a third list which is a copy of D-4 also containing signatures of PW-17 does not create a doubt regarding the implementation of a list that he was made to sign. Neither is there any argument put forth in this regard by any appellant suggesting an alternate story or explanation that would doubt the correctness of the statement that the result was declared based on a list that contains evidence of protest by PW-17. I, therefore, do not see how this argument is directed at proving the genuineness or falsity of either list.

vii) It has also been argued that the signatures of R.S Kukreja (A-17) are not present on those pages of the Supreme Court List which reflect the interview marks for the first two days when he was the Chairperson of the Selection Committee before his

transfer whereas they are present on the Directorate list and, therefore, this goes on to show that the Directorate list is the genuine list and the Supreme Court list is the fake one. I have examined all three documents. As noticed by the trial judge, D-61 is in two parts, pages 1-28 containing a list that is identical to the Directorate list in terms of formatting and the marks awarded with the exception that it does not contain the signatures of R. S. Kukreja and pages 29-68 is a photocopy of the Supreme Court list obtained by placing a blank page on the portion where the interview and grand total marks were awarded. Mr. Khanna argues that R.S Kukreja (A-17) was an accused at trial and since Brij Mohan was also the member of the selection committee, he could have been in a position to explain under what attending circumstances R.S Kukreja omitted to append his signatures on the Supreme Court list, however he was not cross-examined in this regard. Therefore, it is submitted that an inadvertent omission of R.S Kukreja to append his signatures on the Supreme Court list before being transferred cannot tilt the balance in favour of the accused, especially in absence of cross-examination of the relevant

witness in this regard. It assumes significance that the members of District Selection Committees conducted these interviews for the first time as the JBT teachers appointments were earlier within the purview of HSSC and, therefore, some inadvertent mistakes are bound to occur. I am inclined to agree with this explanation. Part 2 of the document D-61 (pages 29-68) is clearly a photocopy of the Supreme Court list that is obtained by covering the interview and grand total marks. This is akin to the manner in which the fake lists were prepared from the original lists. Again said, at this point we can not speculate about the reason why R. S. Kukreja's signatures are not appearing on the Supreme Court list. Perhaps Brij Mohan could have shed some light on the matter but he was not cross examined in this regard. However, this by itself does not justify an implication that the Supreme Court list is the fake one. I say so especially in view of the two striking features of the Directorate list that have been pointed out i.e. the date of "09.12.2000" and presence of "UP".

viii) On behalf of Sanjiv Kumar (A-3) it has been vehemently contended that the discharge of Brij Mohan on the ground of appending his signatures on the second award list under pressure impelled the other accused to coin a similar defence and falsely implicate Sanjiv Kumar for securing parity with Brij Mohan. Mr. Khanna explains that even at the stage of investigation many accused persons claimed that they were under pressure from various quarters to create the second award lists in the year 2000. For instance, the statement of Ajit Singh Sangwan (A-26) dated 24-03-2006 recorded during investigation in terms of Section 164, and statement of Dilbagh Singh (A-35) dated 19-04-2006 highlights at the earliest opportunity that he was under pressure of Sanjiv Kumar (A-3). This submission is fallacious as it is premised on incorrect facts and is accordingly rejected.

ix) It is also submitted on behalf of Sanjiv Kumar (A-3) that non-examination of Suresh Giridhar by the prosecution casts suspicion since in his presence Brij Mohan claims to have scribed "UP" under his signatures. I do not see how that inference can be drawn. Brij Mohan has deposed that while

signing the second list he was apprehensive that Suresh Girdhar may notice that he was scribing 'UP' beneath his signatures and thus he stopped scribing the same after few pages when Suresh Giridhar got up from his seat. Therefore, Suresh Girdhar obviously did not see him write the "UP", question of examining Suresh Giridhar to prove the existence of "UP" does not arise. Even otherwise, it has been held that in cases of non-examination of a person as a witness, the Investigating-Officer must be questioned to illicit the reasons and in absence thereof, such an argument would not be entertained. The Supreme Court has reiterated this principle in a long line of decisions namely ***Jagdishprasad Kashiprasad and Ors. v. The State of Maharashtra,*** **AIR 1970 Bom 166**; ***Dahari and Ors. v. State of Uttar Pradesh***, **(2012) 10 SCC 256**; ***Onkar and Another v. State of Uttar Pradesh,*** **(2012) 2 SCC 273***;* ***Manjit Singh v. State of Punjab,*** **Criminal Appeal No. 2042 of 2010** decided by the Supreme Court on 13-09-2013. In the present case the Investigating Officer has not been subjected to questioning in this regard. Even otherwise, non-examination of an

additional-witness in support of the case of the prosecution is only a question of corroboration. Corroboration ought not to be demanded as a ritualistic formula. It is a settled proposition that Courts seek quality of evidence and not its quantity. The prosecution is not required to examine each and every witness on every minor point. The law in this regard is clearly enunciated in ***Sarwan Singh and Others v. State of Punjab,*** **(1976) 4 SCC 369**; ***Veer Singh v. State of U.P***, **Criminal Appeal Nos. 256-257 of 2009** decided by the Hon'ble Supreme Court of India on 10-12-20143; ***Ramjee Rai and Others v. State of Bihar***, **(2006) 13 SCC 229**; ***Chittar Lal v. State of Rajasthan,*** **(2003) 6 SCC 397**; ***Sunil Kumar v. State Government of NCT of Delhi***, **(2003) 11 SCC 367**; ***Namdeo v. State of Maharashtra,*** **(2007) 14 SCC 150**; ***Bipin Kumar Mondal v. State of West Bengal***, **(2010) 12 SCC 91**.

x) Much emphasis has been laid on the fact that the prosecution has suppressed one Brij Mohan s/o Late Ram Singh; who was proposed to be examined as a prosecution witness as evidenced from the List of Witnesses appended along with

the Final-Report and rather the prosecution surreptitiously examined at trial accused-Brij Mohan s/o Sh. Ram as PW- 17. The said submission is *ex facie* misconceived as PW-17 was examined as a witness in furtherance of the order of his discharge passed by the Trial Court and the observations passed by the Court therein that he would serve as an important witness. Brij Mohan s/o Late Ram Singh was a mere formal witness-Superintendent in HSSC, Chandigarh; who was not examined before the Trial Court as was not deemed necessary by the prosecution. There is no link whatsoever between the two and I am unable to appreciate the relevancy of this argument. In any case, no question or suggestion in this regard was ever put to the Investigating Officer (PW-63).

II. Jind

i) The prosecution in relying on the testimonies of PW-14, PW-5 and PW-2 to prove the falsity of the Directorate list of this district.

ii) Learned Counsel on behalf of A-3 attacks the testimony of PW-14 Dhup Singh on the ground that he was not a member

of the Selection Committee and as such presence of his signatures on either list cannot be used as evidence of genuineness or falsity of either list. According to this witness, he did not sign the fake list, however, no explanation has been put forth to explain why he did not sign it. Whether he did not sign it on moral grounds or was it because he had no authority to sign it in the first place, is very unclear. It has emerged from the evidence of PW-5 that PW-14 did not sign the fake list as he was on leave that particular day. A-3 cannot be permitted to discredit the testimony of this witness on this ground. The reason why did not sign the fake list pales into insignificance as his testimony is being examined to establish the genuineness and falsity of both lists. It is immaterial whether he had authority to sign or not. The Directorate List of District Jind which has been implemented and claimed by Sanjiv Kumar (A-3) to be genuine also bears the signatures of PW-2 Ravi Dutt and PW-5 Milap Singh; who were not the members of the District Selection Committee. Thus, the argument canvassed on behalf of Sanjiv Kumar (A-3) is self defeating. Even otherwise, it has been explained by PW-14

during his deposition that he had appended his signatures on the Supreme Court list as a token of preparing various columns.

iii) The next argument on behalf of A-3 is aimed at establishing that the copies of the original award lists were already available with the District Selection Committee-Jind. Therefore, it was not required that the original award list of District Jind be supplied to Ajit Singh Sangwan (A-26) at instance of Sanjiv Kumar (A-3) for getting the same photocopied. A-3 seeks support from Subhash Chander (A-3/DW-11) who was examined in his defense to purport a claim that the fake award list for District Jind were dispatched in a sealed envelope by Ajit Singh Sangwan (A-26) through the said Subhash Chander on the first Saturday of September 2000 and he delivered the said envelope to Vidya Dhar (A-1) at his residence. According to Sanjiv Kumar (A-3), the said envelope was handed over as it is by Vidya Dhar (A-1) to Sanjiv Kumar (A-3) and Sanjiv Kumar (A-3) without opening the said envelope submitted the same before the Supreme Court. The Investigating Officer had taken into custody the

said sealed envelope from the registry of the Supreme Court. A-3 has argued that although he had opened all the fake lists thrusted upon him for implementation before presenting the same in the Supreme Court, but, he had deliberately kept the envelope received from Jind, duly sealed and it was opened in the Supreme Court. It is argued by A-3 that this proves that sealed envelope containing the fake Jind list opened in the Supreme Court, is the same list which Subhash Chander delivered to Vidya Dhar. Subhash Chander has also identified his writing on the Jind envelope Ex.PW-43/DA-1. It is contended that the Trial Court being empowered in this regard, did not make an attempt to compare the handwriting of this witness with the one on the sealed envelope.

iv) I have perused the testimony of A-3/DW.11 and I agree with the reasoning put forth by the CBI, the said witness had no reason to oblige Ajit Singh Sangwan (A-26) by carrying his confidential documents to Chandigarh as he was of his own admission not subordinate to the DPEO. Additionally, it is also rather unusual that A-26 would trust a total stranger with documents of such a sensitive nature.

v) This witness has deposed that he delivered the fake lists to Chandigarh on 1st Saturday of September, 2000. This version is at variance with the dates stated by PW-14, PW-5 and PW-2. It is also highly improbable that A-1 would not check the list and have it remained sealed. There is another reason to disbelieve the version projected by this witness. The story about finding A-3 in Delhi to narrate his version is most suspicious. A-3 being the prime accused, would have made an attempt to forward the statement of this witness to the CBI. If he did it, he did not make any suggestion to the IO regarding withholding of this information. If he did not do it, then the story of this witness seems a much belated version. It also assumes significance that A-3 makes no mention of any meeting with this witness in his statement under Section 315 Cr.P.C.

vi) The trial judge has also noticed that the photocopy of his typed statement, purportedly faxed by his son, was in fact sent through a fax machine from a residence in Vasant Kunj i.e. near to the residence of A-3.

vii) This witness is also evasive in giving his specimen handwriting for comparison. For the foregoing reasons, I do not think this witness to be reliable in the least.

III. Panchkula

i) Both lists of this district are computerized. The prosecution is relying on the testimony of PW-20 Hitesh Bansal, PW-18 Pradeep Kumar, PW-63 R.N. Azad and the scientific evidence adduced by PW-65 U. Ramamohan- Computer Forensic Expert, APFSL to show that a part of the Supreme Court List of this district (D-21) was created on the computer of Hitesh Bansal on 17.12.1999 at the instance of Rekha Sharma (A-44), Member of District Selection Committee, Panchkula. A printout of the award list from the seized computer of Hitesh Bansal shows that the list was prepared on 17.12.1999 and it tallies with the Supreme Court list. Learned Counsel Mr. Khanna highlights that the HARTRON list is also found appended with the Directorate List of District Panchkula from Pages 13-19 which also creates suspicion and lends credence to the fact that it is the fake list.

ii) A-3 has pointed out testimony of PW-65 who has deposed that the MS Word software in the computer of PW-20 was updated to the 2000. This is pointed out to prove that a computer having the 2000 version of MS Word could not have printed a list that was made in the year 1999 and that the CBI has created false evidence to support their case. It is pointed out that PW-65 has deposed in his cross examination that it is possible to alter the clock in the system thereby fortifying the argument that the CBI has tampered with evidence. It is argued that the print out Ex.PW-20/C tallies with the Supreme Court list and was in fact created in the year 2000 and is, therefore, the fake list. It is argued on behalf of A-3 that the hard disk of the computer belonging to PW-20 should have been seized which would have given correct information regarding the dates on which documents are created through chronological stamping. This was deliberately avoided with a view to bury important evidence regarding genuineness of the list.

iii) Merely on account of an updated version of MS Word in PW-20 computer, it is not possible to conclude that a printout duly

examined by a forensic expert is a fabricated piece of evidence. An updated 2000 version does not mean that the documents created earlier in time could not be viewed or were not recoverable. It is my understanding and I am in agreement with the observation of the trial judge that there is a difference between upgrading to a 2000 version and updating to the 2000 version. Perhaps the expert PW-65 could have explained how a document created on 17.12.1999 exists in a computer that has an updated version of 2000 MS Word; however, he was not questioned in this regard. Neither was any suggestion of tampering given to PW-20 or PW-63. In view of the law laid down by the Supreme Court in this regard, the accused is disentitled from raising such an argument belatedly as the witness is no longer available to tender explanation. Therefore, merely eliciting from PW-65 that it is theoretically possible to alter the system clock is of no avail. The Supreme Court has observed in ***Navjot Sandhu*** case *(supra)* that the testimony of an expert witness on hypothetical aspects cannot dent the positive evidence led in the case. Even the United States Court of Appeals, Ninth

Circuit, in ***United States of America* v. *Daniel Bruce Bonallo***, **(858 F.2d 1427)** observed the fact that it is possible to alter data contained in a computer is plainly insufficient to establish untrustworthiness.

iv) A-3 has also pointed out that it has emerged in cross-examination of PW-65 that the date of last access of the computer of PW-20 is up to November 2004. Mr. Khanna explains that the report of the said expert was prepared on 05.10.2004 and his statement on this aspect is evidently inaccurate owing to inadvertence. No date of last access is mentioned in the report by the expert. In my view it assumes significance that the witness has not been questioned on the aspect as to how the date of last access could be after the preparation of his report. No suggestion of fabrication or tampering was given to the relevant witnesses, including him, and even otherwise it has been pertinently held by the Apex Court in its recent judgment delivered on 12.11.2013 ***Sukhwinder Singh* v. *State of Punjab*,** **Criminal Appeal No. 1023 of 2008** that *"...it is too much to presume that the doctor and the Chemical Analyser would conspire and*

fabricate a false report". The Supreme Court has also held that it is an archaic notion to appreciate the evidence of police-officers with inherent distrust. There is no presumption that evidence of police witnesses is always tainted, especially when no evidence is brought on record to suggest that they bore a grudge against the accused. The presumption under Section 114 illustration (e) that all judicial and official acts are performed regularly equally applies to the police officers. [***Sushil Sharma* v. *State (N.C.T of Delhi),*** **Criminal Appeal No. 693 of 2007** decided by the Supreme Court on 08-10-2013; ***Devender Pal Singh* v. *State of N.C.T of Delhi and Anr.***, **(2002) 5 SCC 234**]. Therefore, the argument on the last date of access is of no avail and is accordingly rejected.

IV. Rewari

i) The prosecution is relying on a conjoint reading of the testimonies of PW-39 and PW-40 as well as A-50 who has got examined himself in defense to prove its version. Om Prakash (PW-39) was a teacher who had worked with Darshan Dayal Verma (A50), Chairperson for three

days, Sudha Sachdeva (A49), subsequent Chairperson as well as with Saroj Sharma (A-51) & Tulsi Ram Bihagra (A52) who were members of the committee. PW-39 has deposed that he had prepared the Supreme Court list Ex.PW-39/A in his own handwriting except the last three columns under the instructions of dealing hand Krishan Kumar and Phool Singh during the period 01.12.1999 to 17.12.1999 when the interviews were conducted by the members of the interview committee in district Rewari. He also testified that another award list Ex.PW-15/B of district Rewari (i.e. the Directorate list) was also prepared by him in September, 2000 when he was asked to prepare this list again as it was stated by the dealing clerk and Superintendent that the earlier list was not proper. PW-40 Subhash Chand is another teacher of district Rewari. He testified that page no. 14, 30, 31 & 32 of the Directorate list have been written by him except last three columns.

ii) On behalf of A-3, two factual aspects are pointed out. The Directorate list is signed by all the members except A-49,

therefore, it is argued that the list which contains the signatures of all members should be the fake list owing to the fact that the then government was ruthless and no person employed in its service had the audacity to refuse a direction that had authoritative sanctity of the government. The other factual aspect of the Supreme Court list is that Darshan Dayal Verma (A-50) has signed as "Ex DPEO" on first 12 pages of the award list and thereafter, Sudha Sachdeva has signed as the chairperson. Since Darshan Dayal Verma (A-50) would have signed for first three days as DPEO and not as Ex DPEO, this is another circumstance to establish the falsity of the Supreme Court list. Reliance is placed on the affidavit (D -58) of Sudha Sachdeva which mentions that she had signed the second list, therefore, the list which bears the signatures of Sudha Sachdeva should be the fake list.

iii) Both witnesses PW-39 and PW-40 have deposed in detail regarding preparation of both lists and their contribution to it. I see no reason to doubt their testimony and agree with the view taken by the trial judge about their truthfulness. Coming to the two factual observations made by A-3,

suffice it is say that the appellant is trying to belatedly create his defense by pointing minor gaps in evidence he very well chose not to question at the stage of trial. I say so especially in view of the cross examination of A-50 by A-3. The question asked was:

"Q- Accordingly, you have appended your signatures on the award lists made in December 1999 for three days only in your capacity as DPEO-Rewari?
A- It is correct."

There is no mention of why you have signed as "Ex DPEO". Mr. Khanna points out that it is highly probable that he signed the Supreme Court List after having received the transfer orders and, therefore, chose to write Ex DPEO. Whatever be the explanation, the Supreme Court List cannot be termed as the fake list on this count in view of the evidence given by PW-39 and PW-40.

V. Bhiwani

i) The prosecution in relying on the testimony of PW-30 Tara Chand, who was the Deputy Superintendent in the office of

District Primary Education Officer, Bhiwani. This witness has deposed that he had signed the original list as a token of having checked the academic particulars of all candidates on all pages. His signatures appear on the Supreme Court list and are absent on the Directorate list.

ii) A-3 has sought to impeach testimony of this witness by pointing out an inconsistency in his version. According to PW-30, the advertisement was issued on 15.11.1999 and the applications started coming in which continued up to 28.11.1999 and he had started typing the list category wise from 26.11.1999. On behalf of A-3 it is pointed out that the administrative instructions clearly show that the applications were to be submitted only on one single day i.e. 28.11.1999 and the original certificates of candidates were to be checked and returned back to them the very same day after 4 p.m.

iii) As rightly pointed out by Mr. Khanna, A-3 did not cross examine this witness on this aspect, he was not confronted with the said administrative instructions and at this stage he cannot be permitted to challenge his testimony on this ground.

VI. Rohtak

i) The Supreme Court list of this district is a carbon copy in which the columns containing interview and grand total marks have been left blank. The directorate list is complete and duly signed by all members of the Selection Committee. The focus of argument on behalf of A-3 is that the Supreme Court list of this district cannot possibly be the original list, therefore, as a consequent deduction the Directorate list is the original one. Here lies the basic fallacy in A-3's defense. It is admittedly the prosecution version that firstly, the Directorate lists are the fake ones created in furtherance of conspiracy and secondly, the Supreme Court lists are the original set of lists that were sought to be replaced. However, proving fact two to be false does not automatically conclude proof of fact one. In other words, pointing out evidence demonstrating descripancies in a Supreme Court list and consequently proving that the same could not have existed in an original list does not lead to a corollary that the corresponding Directorate List is the original. It has to be borne in mind that

the Supreme Court lists adduced in evidence have been obtained from the custody of A-3 himself. Pointing out discrepancies in the Supreme Court list of a particular district, it cannot be concluded that the Directorate list of that district is necessarily the original one. In essence, the prosecution seeks to establish that the set of lists on the basis of which appointments were made was a fraudulent one. This can be done through the testimonies of various witnesses who have identified either list to be original or fake and by examining certain features that are common to a set of lists. For instance, the prosecution is additionally relying on a specific marking pattern that exists in the fake lists to prove their falsity. As rightly held by the trial judge, the original list of this district is missing as the Supreme Court list is an incomplete carbon copy of the original one. The prosecution is relying on the marking pattern in interview marks to support its case. I will discuss the marking pattern towards the end, however, it is noticed that the interview marks awarded in the Directorate list are in the extremes.

ii) On behalf of the CBI is it contended that Sanjiv Kumar (A-3) has alleged that the bunch of Supreme Court Lists were handed over to him by Vidya Dhar (A-1) for substituting them in place of the original award lists. It is submitted that Om Prakash Chautala (A-4) and others would not be in a position to fulfill their sinister motives by handing over a list to Sanjiv Kumar (A-3) for implementation which does not carry the interview and grand total marks. Therefore, the Supreme Court List cannot be the fake award list as sought to be canvassed by Sanjiv Kumar (A-3).

iii) As highlighted by Mr. Khanna, A-3 has not placed the award lists of all the eighteen (18) districts of Haryana before the Supreme Court and has selectively withheld some lists, even though he has unequivocally averred in his Writ Petition that VidyaDhar (A-1) handed over to him a bundle of fresh award lists of all the districts of Haryana[Part 8/ D-37-D-66/D-64/Page 25-53 @ Pg 32 & 35]. PW-63 R.N Azad deposed that despite repeated requests A-3 did not hand over the remaining lists during investigation [Part 2(II)/PW-63/Page

237]. The said portion of his testimony has not been challenged by A-3 in cross-examination.

iv) Therefore, in my view it is evident that the original award list of District Rohtak containing the interview and grand total marks has been wittingly withheld by A-3 and has not been placed before the Supreme Court, along with many other lists, even though he was admittedly in possession of the award lists of all the districts of Haryana.

v) Perhaps the reason for the existence of such a list which does not carry the interview and grand total marks, surfaces from the explanation tendered by accused- Jeet Ram Khokhar (A-46), Nirmal Devi (A-47) and Amar Singh (A-48) under Section 313 Cr.P.C that they had separately sent such an award list (carbon copy) without marks in the interview column, in addition to the award list which duly carried marks in the interview and grand total column.

VII. Kurukshetra

i) The Directorate list of this district is in two parts, the first being the general list and the second being the award list of B.Ed candidates exhibited as Ex.PW-15/D. The Supreme

Court list of this district is a part list and an equivalent of the list carrying interview marks of the B. Ed candidates.

ii) The challenge to authenticity of the Supreme Court list is premised on an observation that the stationary/sheets used in preparation of the Supreme Court list is the same as that of the lists of Yamunanagar. Reliance is placed on the Section 313 statement of A-59, DPEO Kurukshetra, wherein he states that in the second week of Sept. 2000 he signed an award list of B.Ed. candidates in the office of DPEO Kurukshetra.

iii) Learned Counsel Mr. Khanna submits that factually the interviews of the B.Ed candidates were conducted at Kurukshetra by the DPEO Yamunanagar. Therefore, the fact that the said list appears in the same format or handwriting does not cast any suspicion and is in fact natural. I agree that this sufficiently explains the similar formatting in both lists.

iv) It is submitted on behalf of A-3 that the award lists for B. Ed candidates were received after the almirah containing the original lists was sealed by PW-23. A-59, in his statement under Section 313 has said that he had deposited the sealed award lists by hand on 01.08.2000 to Om Prakash Kundu.

PW-31 has deposed that Mr. Kundu was a clerk in his branch and was deputed to collect the award lists of B. Ed candidates from Kurukshetra and deliver them to M.L. Gupta. The original lists were in the possession of M.L. Gupta and A-3 took charge of Directorate of Primary Education on 11.07.2000. If A-3 was part of the conspiracy, then he would not need to call for the original list. Instead he could have got fresh list made of B. Ed candidates based on the new formula.

v) I agree with the submission made by Mr. Khanna that Sanjiv Kumar (A-3) is not so juvenile to foist the fake lists without even calling for the original award lists from Kurukshetra. This would have left him substantially exposed as the Committee would have known that the result was declared on the basis of a fraudulent list since the original was not even called for. This circumstance is immaterial is absolving A-3 of his role in the conspiracy.

vi) Additionally, Mr. Khanna points out that it has been established by testimony of PW-56 M.L. Gupta that the members of the Result Compilation Committee were handed over the list of B.Ed candidates interviewed at Kurukshetra

along with award lists of other districts on 16-09-2000. Significantly, it was deposed that the said list of B.Ed candidates was lying in the drawer of Sanjiv Kumar (A-3) and it was collected from there whilst being handed over to the members of the Result Compilation Committee on 16.09.2000. Yet again, the said portion of his evidence has not been challenged by Sanjiv Kumar (A-3) in cross-examination.

VIII. Karnal

i) It has been urged on behalf of A-3 that the Directorate List of District Karnal (D-9) is in consonance with the description testified by PW-28 Dheeraj Kumar; who deposed that the members of the selection committee used to sign the last page of the interview list on each date of the interview and, therefore, the Directorate List is genuine.

ii) This is factually incorrect as the Directorate List bears the signatures of the Dy. DPEO at every single page, rather, the Supreme Court List of District Karnal (D-27) answers to the description deposed by PW-28 Dheeraj Kumar.

iii) As pointed out by Mr. Khanna the Supreme Court List of District Karnal (D-27) at Page 43 indicates that interviews of JBT candidates Roll No. 35151 to 35194 have been taken in presence of the Committee member on 04.12.1999 except Roll Nos. 35158, 35163 and 35194. *Per contra*, the Directorate List of District Karnal (D-9) does not contain any such certificate. Rather at Page 52, the result of a candidate bearing Roll No. 35163- Julie Chhabra is comprised.

iv) The existence of a certificate by the members of the District Level Selection Committee that the interview of certain candidates has not been conducted, lends an assurance of contemporaneity. However, the absence of such a certificate is a tell-tale mark of fabrication done at a later stage. It militates against natural human conduct that a forgeror while fabricating a document would add superfluous details in the forged document that were non-existent in the original. Whereas, owing to inadvertence he may always omit to incorporate a trivial detail in the forged document which was present in the original.

IX. Yamuna Nagar

i) It has been contended on behalf of Sanjiv Kumar (A-3) that prosecution failed to explain how signatures of A-61 Urmil Sharma and A-62 JoginderLal from District Yamunanagar appear together on the Supreme Court List (D-29), despite the fact that A-62 JoginderLal was only a reserve member who took the place of A-61 Urmil Sharma during her absence.

ii) Both A-61 Urmil Sharma and A-62 JoginderLal stepped into the witness-box in terms of Section 315 Cr.P.C. A-62 JoginderLal was not subjected to cross-examination altogether by Sanjiv Kumar (A-3), even though he identifies the Directorate List of District Yamunanagar (D-11) as the fake list prepared subsequently, and A-61 Urmil Sharma, though cross-examined by Sanjiv Kumar (A-3), was not questioned on the said aspect. The said witnesses were in the best position to explain under what circumstances their signatures appeared together on the Supreme Court List of District Yamunanagar (D-29). However, in absence of cross-examination on this aspect, despite opportunity, no benefit can accrue to A-3.

X. Gurgaon

i) A-3 points out the marking pattern in the Supreme Court list to show that academic and interview marks have been awarded in decimals thereby leading to an inference that such marks cannot be the basis of fair interviewing and, therefore, the Supreme Court list of this district is the fake one.

ii) The CBI is relying on the marking pattern in the Directorate list of this district.

iii) In my view, the sole premise of interview marks being in decimals is not indicative of the same being a fake list. No rules of business have been putforth to show a policy prohibiting the same. This circumstance does not show any determinative certainty in proving that the Supreme Court List is fake. In any case, no suggestion has been made to the Investigating Officer regarding this fact and the same can not be belatedly pressed.

XI. Panipat

The CBI is relying on the marking pattern. There is no Supreme Court list of this district.

XII. Remaining Districts (Fatehabad, Mahendergarh, Ambala, Jhajjar, Sirsa, Sonepat, Kaithal and Panipat)

i) The CBI is solely relying on marking pattern in the Directorate list of these districts.

ii) Arguments advanced on behalf of A-3 with regard to these districts were incomprehensible and did not disclose any material that could displace the prosecution version on the falsity and genuineness of the two lists.

ARGUMENTS ON CONSPIRACY

349. In essence, the prosecution is relying on two broad theories to support its case. The marking pattern that is evident from the Directorate lists of all districts demonstrates an apparent bunching of marks in the extremes. I have perused all the lists and I am in agreement with the observation of the trial judge regarding the marking pattern evident in the Directorate lists. There exists a stark/unnatural feature of bunching of marks running as an 'omnipresent' thread across all the Directorate Lists, which leads to an irresistible conclusion that all these lists are fake. Per Contra, the pattern of marks awarded to the candidates in the Supreme Court Lists is more evenly spread which is a hallmark of truth.

350. The second theory canvassed by Mr. Khanna is that if the prosecution has been able to prove that the Directorate list of even one district is fake i.e. created in August-September, 2000 (fruit of the poison tree) and not prepared in December 1999, it would be legitimate to draw a presumption that the entire set of Directorate Lists which were handed over by Sanjiv Kumar (A-3) to representative of HARTRON on 16.09.2000 is fake and created in August-September 2000. This theory is based on the admitted case of Sanjiv Kumar (A-3) as emerging in his writ petition and deposed to before the trial court that a *bundle of lists* for all districts of Haryana were handed over to him by Vidya Dhar (A-1) at the instance of O.P. Chautala (A-4) for being substituted in place of the original award list that were lying sealed in the almirah under his custody as Director Primary Education. Discussion with regard to the same also took place with O.P. Chautala (A-4) on 10.07.2000 during a breakfast meeting at his residence.

351. When such an offer/direction was given to Sanjiv Kumar (A-3) to become party to the conspiracy by implementing the mandate of O.P. Chautala (A-4) by substituting the award lists, natural probabilities of human behaviour dictate that either Sanjiv Kumar (A-3) would have substituted the entire bunch of award lists in place of the original award lists and complied with the mandate of O.P.Chautala (A-4) or he would have righteously

abstained from committing the crime and not substituted any list whatsoever. If in the view of the Court, the prosecution has been able to prove by clinching evidence that even one particular Directorate List is fake (created in August-September, 2000), it would be legitimate to presume that the entire bunch of Directorate-Lists that have been implemented is fake as no person in the position of Sanjiv Kumar (A-3) would after acceding to commit the crime, substitute only one fake/subsequently created award list and not substitute the others and, therefore, only partially comply with the mandate.

352. Learned Counsel Mr. Khanna argues that Section 114 of the Indian Evidence Act, 1872 permits the Court to draw presumption of 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 the facts of the particular case. [***T.Shankar Prasad v. State of A.P***, **(2004) 3 SCC 753**]

353. I would agree. This means that the fake set was kept together. Given that the Court is convinced by positive evidence of the falsity of the Directorate Lists regarding districts of Faridabad, Jind, Panchkula, Bhiwani, Rewari, Rohtak and Kurukshetra, a legitimate presumption can be drawn

under Section 114 of the Indian Evidence Act that the Directorate Lists of the remaining districts are also fake.

354. Arguendo, if the version projected by Sanjiv Kumar (A-3) is accepted to be true and the lists submitted by him before the Supreme Court which he claims to have righteously not implemented and, therefore, victimized by the wrath unleashed by O.P. Chautala (A-4), it would reveal that marks of approximately 5,500 persons were increased and that the marks of approximately 1,000 persons were decreased by the conspirators. The said acts do not stand to logic and strike a discordant note. It militates against rudimentary sense of prudence that marks of 5,500 odd candidates are increased although the total number of vacancies are 3206 only. Rather the reverse scenario (case of the prosecution), is in line of natural probabilities that during preparation of fake award lists i.e. the Directorate Lists which were implemented, marks of around 1,000 odd candidates were increased and marks of approximately 5,500 candidates were reduced for accommodating the favoured candidates in the 3206 vacancies. I am in agreement with this explanation and it corroborates the already established version by the prosecution regarding falsity of the Directorate Lists. Tabular analysis of two lists of 18 districts is reproduced below:

NAME OF DISTRICT AND ROLL NOS. ALLOTTED TO THAT DISTRICT	NO. OF CANDIDATES WHOSE MARKS WERE INCREASED	NO OF CANDIDATES WHOSE MARKS WERE DECREASED	NO OF CANDIDATES WHO WERE INELIGIBLE	CANDIDATES WHOSE MARKS NOT CHANGED	TOTAL NUMBER OF CANDIDATES	NO OF VACANCIES ADVERTISED	NO. OF JBT TEACHERS RECRUITED
AMBALA (Roll Nos 0001 to 5000)	17	140	05	02	164	143	57
BHIWANI (Roll Nos 5001 to 10000)	154	539	03	11	707	60	312
FARIDABAD (Roll Nos 10001 to 15000)	39	333	01	01	374	161	96
FATEHABAD (Roll Nos 15001 to 20000)	133	622	02	21	778	292	335
GURGAON (Roll Nos 20001 to 25000)	**THE PHOTOCOPY OF DL IS NOT VISIBLE HENCE NO ANALYSIS IS POSSIBLE**					210	171
JHAJJAR (Roll Nos 25001 to 30000)	14	501	32	01	548	259	196
JIND (Roll Nos 30001 to 35000)	81	350	09	10	540	120	265
KARNAL (Roll Nos 35001 to 40000)	51 **1 candidate was given marks in DL, who was not interviewed (51+1= 52)**	322	10	05	389	408	146
KURUKSHETHRA (Roll Nos 40001 to 45000)	**ONLY PART SUPREME COURT LIST IS AVAILABLE HENCE ANALYSIS IS NOT POSSBILE**					304	163
KAITHAL (Roll Nos 45001 to 50000)	86	304	08	01	399	335	224
NARNAUL (Roll Nos 50001 to 55000)	20	558	NIL	06	584	83	283
PANIPAT (Roll Nos 55001 to 60000)	**SUPREME COURT LIST IS NOT AVAILABLE**					97	47
ROHTAK (Roll Nos 60001 to 65000)	**SC LIST DOES NOT CONTAIN INTERVIEW AND GT MARKS HENCE ANALYSIS NOT POSSIBLE**					15	29
REWARI (Roll Nos 65001 to 70000)	25	546	02	03	576	42	161
SIRSA (Roll Nos 70001 to 75000)	104	380	NIL	13	497	214	250
SONEPAT (Roll Nos 75001 to	92	388	29	09	518	158	172

80000)							
YAMUNANAGAR (Roll Nos 80001 to 85000)	25 **1 candidate given marks in DL list but not given any marks in SL List (25+1=26)**	197	23	04	250	292	98
PANCHKULA (Roll Nos 85001 to 90000)	18	57	NIL	01	76	13	27
TOTAL	**861**	**5237**	**124**	**88**	**6400**	**3206**	**3032**

355. None of the appellants have putforth any argument disputing the above mentioned tabular representations. It is, therefore, established that the Directorate lists were in fact the fake lists and the appointments were made on the basis of these fake lists.

356. I will now deal with the evidence pointed out by A-3 to absolve him of any role in conspiring to replace these lists. In order to probablise the defence of A-3 that the application forms were being compared with HARTRON Lists at Prerna Guest House, reliance has been placed upon the response of PW-55 Mukesh Bajaj; a representative from HARTRON during cross-examination by A-3 to evidence the fact that the application forms had been taken out from HARTRON by S.S.Tanwar and Balram.

357. It would be relevant to extract the series of questions posed by A-3 on this aspect during cross-examination of this witness and his response thereon.

"Q. Is it correct that the gate pass has been shown to have been issued in the name of one Sh. Sardara Singh and one Sh. BalramYadav on the 25th August of 2000? I draw your attention to the gate pass in the name of S. S. Tanwar of Directorate of Primary Education dated 25.8.2000, (now exhibited as Ex. PW55/DA) and gate pass in the name of Balram (Assistant) of DPE, also dated 25.8.2000 (now exhibited as Ex. PW55/DB) in D-59.

A. I have seen these gate passes. Ex. PW55/DA shows district wise descending list of JBT, T records 8192 and Ex. PW55/DB shows thatascending list of JBT, T records 8192. "T" written in these gate passes stands for "total".

Q. Is it correct that the aforementioned lists mentioned in gate passes Ex. PW55/DB and Ex. PW55/DA relate to the date entry of academic records, which had been completed by HARTRON on 4th August 2000.

A. I do not recollect as to what was the documents as mentioned in the aforementioned gate passes since it was not issued by me. However it is correct that these two persons from DPE office came to HARTRON for purpose of proof reading as well as taking away all the application forms of the individual candidates sent from the district.

Q. Do you recall as to how these documents were carried by these two staff members of DPE office from HARTRON on 25th August 2000? I suggest it to you that the said documents were carried by those staff members in two black leather bags.

A. I do not recollect."

358. It can be seen that PW-55 Mukesh Bajaj himself candidly admits in his cross-examination that he is not aware of the documents mentioned in the

gate passes as the same were not issued by him. The witness also expresses ignorance on the aspect if the said documents were carried away in two black leather bags, as suggested by A-3. The witness merely states that two persons from DPE office had visited HARTRON for the purpose of proof reading and to take away the application forms. However, pertinently, this witness does not state that the said application forms were actually taken away from HARTRON by the said persons on 25.08.2000 and admittedly he is not privy to the events which transpired on the said date. At the time of cross-examination in the year 2012 (twelve years since the relevant event), PW-55 Mukesh Bajaj did not even remember if the said lists were in district wise ascending/descending with total marks of JBT candidates. The said witness also claimed ignorance whether these lists were category wise, although he was incharge of the said assignment [Part 2 (II)/ PW-55/ Page 83]. Thus, a stray remark by PW-55 Mukesh Bajaj that two persons from Directorate of Primary Education had come to take away the applications forms is of not much importance. Furthermore, as pointed out by Mr. Khanna, the said fact also does not find mention in his statement recorded before the Central Bureau of Investigation in terms of Section 161 of Cr.P.C. recorded at the stage of investigation, when the events were still fresh in his mind [Part 7 (1)/ Page 47-55 @ Page 54]. It assumes significance that

neither does the gate-pass dated 25.08.2000 support the fact that the application forms were taken away from the premises of HARTRON. Therefore, no assistance can be derived by A-3 from the testimony of PW-55 Mukesh Bajaj to probabalise his defence.

359. No suggestion has been given by A-3 to PW-31 Sardar Singh and PW-56 Mohan Lal Gupta, that the application forms were also taken out of HARTRON on 25.08.2000 and the same were being compared with the ascending/ descending list of 8192 JBT candidates compiled by HARTRON. Rather, PW-56 Mohan Lal Gupta during cross-examination by A-3 was questioned if he was aware that it was Sardar Singh and Balram Yadav, who had taken out the computerized lists from HARTRON on 25.08.2000 [Part 2 (II)/ PW-56/ Page 105, 107]. Similar question has been put to PW-63 R.N Azad [Part 2 (II)/ PW-63/ Page 336]. From the said line of questioning, it is demonstrated that it was never the case of A-3 that the application forms were also taken out from the premises of HARTRON on 25.08.2000. It is evident that the said case was belatedly set up at the stage of examining defence witnesses. During the prosecution evidence, A-3 was merely attempting to suggest that the computerized lists received from HARTRON on 25.08.2000 were being checked at Prerna Guest House and not the

original award lists that were supposedly lying in the sealed almirah under his custody.

360. The prosecution has established by means of positive evidence led at trial in the form of testimonies of PW-31, PW-56 and PW-58 that the original award list which were supposed to be lying sealed in the almirah were infact taken out by A-3 and were handed over to PW-31 and PW-56 for the purpose of being taken to Prerna Guest House, Panchkula, in the second-third week of August of 2000. It was mandated by A-3 that the said lists be checked for ascertaining the number of candidates from the reserved category who would encroach upon the seats of the General Category.

361. It has been strenuously urged on behalf of A-3 that the said exercise was a sheer impossibility without the availability of a Joint Merit List and, therefore, the version of prosecution that A-3 mandated such an exercise is clearly facile.

362. Mr. Khanna submits that the various prosecution witnesses in their depositions before the trial Court have highlighted the fact that since they were unable to successfully comply with the directions of A-3, the task was aborted. Therefore, the fact that the task mandated by A-3 could not be successfully performed in absence of a Joint Merit List does not detract from the fact that an attempt in that direction was made at his instance.

363. It also assumes significance that if a legitimate exercise was sought to have been conducted at the instance of A-3 the same could have been conducted within the office premises itself. Perhaps, with a view to avoid unnecessary exposure and gaze of entire staff, the trusted men were specially sent to Prerna Guest House to execute the assignment. It has emerged in evidence of PW-31 Sardar Singh that A-3 was infuriated when he came to know that without his permission PW-58 BalramYadav had also been associated in the task assigned by him to PW-31 Sardar Singh and PW-56 M.L. Gupta.

364. I would agree. The credibility of these witnesses is not dented simply because they were assigned a task that was subsequently shown to be impossible. The cumulative effect of their testimonies clearly demonstrates that an attempt was made to check how many reserved category candidates were encroaching upon the general category.

365. In this connection, it has also been contended on behalf of Sanjiv Kumar (A-3) that no specific question was put to him during his examination in terms of Section 313 of Cr.P.C. to the effect that the application forms were received from HARTRON on 03.10.2000 along with the result.

366. It is not the case of the prosecution that the application forms were being compared with the computerized HARTRON lists at Prerna Guest

House in August 2000. The said version has been propounded only by A-3 in his defence. Therefore, the fact that the said application forms were made available much later in October,2000 need not be put to the accused. The said circumstance is in the nature of the fact which merely improbabilises the defence of the accused, being inconsistent thereto, and the accused need not be specifically questioned on the said aspect.

367. It has also been urged on behalf of A-3 that the testimony of Prosecution Witnesses such as- PW-2 Ravi Dutt, PW-5 Milap Singh, PW-14 Dhoop Singh and PW-30 Tara Chand is liable to be discarded as they were not the authorized members of the District Level Selection Committee's and the fact that their signatures are found on the Supreme Court Lists evidences the fact that the said lists are fake.

368. Mr. Khanna has addressed this argument and points out that the said witnesses have clearly testified that they have appended their signatures on the award list in token of verifying/checking the particulars filled in the said award lists. Therefore, the factum of their signatures appearing on the various 'Supreme Court Lists' is not a tell-tale mark of fabrication, as such by A-3. Rather the said argument is self-defeating as many 'Directorate Lists'- District such as that of District Jind; which are claimed by A-3 to be

genuine, themselves bear the signatures of such persons who are not the member(s) of the Direct Level Selection Committees.

369. It has also been urged on behalf of A-3 that the version/explanation of several accused person(s) on various facets of the episode, as unraveled in their Statements in terms of Section 313 Cr.P.C, strikes a discordant note with the evidence led by the prosecution at Trial and, therefore, such variances detract the credibility of the case of the prosecution.

370. It is difficult to appreciate such a contention. It is a fundamental tenet of jurisprudence that the case of the prosecution suffers from infirmities, if it is unable to crease-out the contradictions emerging in its own evidence. However, the case of the prosecution is not weakened by the stand adopted by accused persons, which is bound to be not in consonance with the testimonies of the prosecution witnesses.

371. It has been argued on behalf of A-3 that prosecution has not led any direct evidence when the seal of the almirah was actually broken open by A-3. I agree with the submission that A-3 being the custodian of the almirah it was upon him to explain as to how and under what circumstances the fake/fresh award lists have been implemented. Also it is unrealistic to expect direct evidence on this issue. In view of the fact that this Court has accepted

that the Directorate lists were the fake lists, it is a fact in his special knowledge and he is liable to explain how the lists were substituted.

372. It has been strenuously contended on behalf of Sanjiv Kumar (A-3) that the site plans [Part 8/D-88]prepared by the Central Bureau of Investigation do not evidence the presence of any wooden screen and, therefore, the said version of the prosecution about the presence of a wooden screen in the Office of the Director Primary Education behind which the sealed almirah was placed is false. Mr. Khanna has drawn my attention to the site-plan prepared upon the pointing out of PW-23 [Part 8/D-88/Pages 2-3] and it clearly indicates the presence of a wooden screen in the room of the Director Primary Education. With regard to the other site-plans wherein no wooden screen has been depicted, suffice would it be to state that every person possesses a different level of recollection and may attach varying degree of importance to a fact, in consequence of which he may not disclose the same owing to his perception that it is trivial/irrelevant for the purpose of inquiry. The quality of response elicited from a witness at the stage of investigation also considerably depends upon the questions posed to him and the skill of the investigator. Furthermore, the said submission clearly overlooks the fact that the site plan was prepared by the Central Bureau of Investigation after an elapse of four years from the relevant point of time.

373. PW-31 Sardar Singh in his response to a question to this effect by A-3 has thrown light on this aspect of the matter and stated that when the site plan was prepared, the Directorate had been shifted from that place and so was the almirah [Part 2(I)/PW-31/Pages 316-317].

374. Reliance has also been placed on behalf of A-3 upon the Whistleblowers Protection Act, 2011 and the resolution of the Ministry of Personnel, Public Grievances and Pensions-Department of Personnel and Training dated 21-04-2004 to contend that he is a 'Whistleblower' and miscarriage of justice has occasioned by arraying him as an accused.

375. Mr. Khanna submits that the commission of the present offence pertains to the year 2000 and it was admittedly brought to light in the year 2003 by A-3; who preferred W.P (Crl.) 93/2003 before the Supreme Court and unraveled the scam by painting a distorted picture exculpating himself. Vide Order dated 25.11.2003, the Supreme Court was pleased to direct investigation into the allegations by the Central Bureau of Investigation. In respectful compliance thereof, the Central Bureau of Investigation registered a Preliminary Enquiry [PE 1(A)/2003/ACU-IX] on 12.12.2003 and criminal justice machinery was set into motion.

376. Suffice it is to state that neither the Whistleblowers Protection Act, 2011 (assented to by the President on 09.05.2014) nor the resolution of the

Ministry of Personnel, Public Grievances and Pensions-Department of Personnel and Training dated 21.04.2004 was in operation at the said point of time. Furthermore, the Central Bureau of Investigation complied with the directions passed by the Supreme Court in accordance with law and prevalent procedures. Investigation revealed that the picture painted by A-3 in his Writ-Petition was distorted and he was infact a confederate in crime along with others in successful execution of the scam. Since the Supreme Court was monitoring the investigation of the said case vide order dated 13.05.2005 ***Sanjiv Kumar v. Om PrakashChautala and Another***, **(2005) 5 SCC 510** the Supreme Court after perusing the material available on record was pleased to vacate its Order dated 21.02.2005 whereby it had been directed that A-3 would not be arrested and no proceedings against him be filed by CBI except by the leave of the Court. It assumes significance that while monitoring the case no illegality was found by the Supreme Court in the procedure adopted by the CBI to initiate its investigation.

377. Even otherwise, no such objection was ever taken A-3 either during investigation or before the trial Court which unequivocally evidences the fact that no prejudice was felt or suffered by him.

378. It is also pointed out that the Writ Petition filed by A-3 comprised allegations of rampant criminal misconduct by the Chief Minister of Haryana

and his aides in collusion with employees of Haryana Government, whereas bare perusal of the resolution dated 21.04.2004 reveals that it is applicable to cases wherein there are allegations of corruption or misuse of office by an employee of the Central Government and not State Government.

379. The Supreme Court of India in its decision reported as **(2003) 6 SCC 195, *Union of India v. Prakash P. Hinduja*** has held that any error or illegality in investigation would not vitiate the cognizance and the trial thereupon. In the said case, the court observed that even assuming for the sake of argument that CBI committed an error or irregularity in submitting the chargesheet without the approval of CVC, the cognizance taken by the trial Judge on the basis of such a chargesheet could not be set aside nor could further proceedings in pursuance thereof be quashed.

380. Even though as highlighted above, the consideration of the provisions of the Whistleblowers Protection Act, 2011 and the resolution dated 21-04-2014 does not arise in the present case, however it may be noticed that even the provisions comprised therein do not contemplate a concept of 'automatic pardon' or a carte-blanche immunity to an informant who is himself found to be "*in-pari delicto*" and a "*participant criminis*", masquerading in the guise of a public spirited 'Whistleblower'.

381. A-3 has argued that the discharge of Brij Mohan and imposing liberal sentences on those who pleaded pressure, served as an 'inducement' to take recourse to the 'pressure-theory' and thus falsely implicate A-3. As already noted above, I do not agree with this submission. At the stage of recording statements in terms of Section 313/315 Cr.P.C, the co-accused could have no premonition that the trial Judge would impose lesser sentences on those who would admit their signatures and plead the circumstance of acting under pressure. With regard to the submission that discharge of co-accused A-19 Brij Mohan gave impetus to testify against Sanjiv Kumar (A-3), suffice would it be to state that from the very inception i.e. the stage of investigation innumerable accused persons stated that they were subjected to immense pressure to co-operate in the creation of fresh/fake award lists. In this regard reliance is placed upon the statement of Ajit Singh Sangwan (A-26) dated 24.03.2006 recorded during investigation in terms of Section 164, which is available on record [Part 8/D 135/Page 13-17] and statement of Dilbagh Singh (A-35) dated 19.04.2006[Part 7(II)/Page 28-34] unequivocally highlights such a stand at the earliest opportunity that they were under pressure of A-3. Thus, the said contention canvassed on behalf of A-3 is liable to be negatived.

382. It has also been canvassed on behalf of A-3 that the approval from the Office of the Chief Minister- O.P. Chautala (A-4) was not forthwith granted to the proposal for the constitution of the Result Compilation Committee initiated by PW-23 Rajni Sekhri Sibal vide file noting dated 20.06.2000 as the result of a candidate from District-Karnal (Julie Chhabra) was received by the Directorate of Primary Education only on 13.09.2000 because her interview was conducted in compliance of the directions passed by the Hon'ble Punjab and Haryana High Court in CWP 16220/1999 vide Order dated 19.07.2000.

383. As explained by Mr. Khanna, the said submission is of no avail as in any case A-4 did not accord his approval to the constitution of the Result Compilation Committee after 13-09-2000 viz. when the result of Julie Chhabra was received at the Directorate of Primary Education. Rather the approval was conveyed by A-4 vide noting dated 16-07-2000, when A-3 assumed the additional charge of Director Primary Education after the breakfast meeting which had taken place between them on 10-07-2000. Interestingly, the said approval was conveyed by A-4 even before the directions of the Punjab and Haryana High Court in CWP 16220/1999 were passed. Therefore, the delay in granting approval to the proposal for

constitution of Result Compilation Committee has no connection whatsoever with the case of Julie Chhabra.

384. It has been contended on behalf of Sanjiv Kumar (A-3) that the prosecution has not been able to establish the circumstances under which list of B.Ed candidates interviewed at Kurukshetra was substituted by Sanjiv Kumar (A-3) as the said list was received by the Directorate of Primary Education only after the sealing of the almirah containing other award lists and was in possession of PW-56 M.L. Gupta.

385. It has now been established through the testimony of PW-56 M.L Gupta that the members of the Result Compilation Committee were handed over the list of B.Ed candidates interviewed at Kurukshetra along with award lists of other districts on 16.09.2000. Significantly, it was deposed that the said list of B.Ed candidates was lying in the drawer of Sanjiv Kumar (A-3) and it was collected from there whilst being handed over to the members of the Result Compilation Committee on 16.09.2000.[Part 2(II)/PW-56/Page 151]. The said portion of his evidence has not been challenged by Sanjiv Kumar (A-3) in cross-examination.

386. I agree with the submission that A-4 would have never handed over the additional charge of Director Primary Education to A-3 on the basis of oral/informal orders dated 11.07.2000 which were confirmed/approved later

on 17.07.2000, unless he would have expressed his whole-hearted agreement to subscribe to the object of the conspiracy at the breakfast meeting held on 10.07.2000 at the residence of the Chief Minister. This assumes significance specially in light of the fact that the previous incumbent had proved to be an impediment in the execution of their illegal designs.

387. Mr. Khanna has pointed out the response of A-3 during his cross-examination by the Public Prosecutor, wherein he admits the suggestion that the only reason for him to have been endowed additional charge as Director Primary Education was for substitution of the original award list. [Part 4/ A-3/DW9/Page 66]

388. Even otherwise, it militates against natural human conduct that if A-3 never intended to be part of the conspiracy and substitute the fake award lists in place of the original award lists, he would accept the bundle of fake award lists from A-1 in the first place, as stated by him in his Writ-Petition before the Supreme Court and his deposition before the Trial Court.

389. Another circumstance demonstrating guilt of A-3 stems from the fact that de hors the statements of innumerable co-accused as recorded in terms of Section 313 Cr.P.C., the depositions of co-accused (A-50 D.D. Verma and A-23 Sher Singh) ; who stepped in the witness-box as envisaged under Section 315 Cr.P.C. have clearly testified about the pressure exerted by A-3

in creation of the fake award lists. Their depositions are corroborated by the chain of circumstances emerging in evidence against A-3

390. The complicity of A-3 in the process of preparation of fresh/fake award lists can also be gathered by perusing the contents of Billing Print-Outs[Part 8/D-94/Page 7],wherein at Serial No.s 294, 295, 298 and 300 various fax messages and calls are evidenced to have been made from the Office of Directorate of Primary Education to D.C. Panipat and DPEO Jhajjar on 31.08.2000. The said fact has been deposed by PW-63 R.N Azad [Part 2(II)/PW-63/Pages 309-310] and the said portion of his testimony has not been challenged by Sanjiv Kumar (A-3) in cross-examination.

391. After consideration of all the aspects pointed out by Learned Counsel Mr. Nigam and the arguments and explanations put forth by the Learned ASG Mr. Khanna, I am convinced that A-3 had a very prominent role in execution of the entire conspiracy. In fact he was the main executor and was explicitly involved in carrying out the instructions of A-4 by pressurizing the committee members to commit illegal acts. His consistent false stand taken at every opportunity during the trial is an additional circumstance that proves his guilt and his role in the conspiracy. I am, therefore, of the opinion that the over whelming evidence that has emerged against A-3 competes the chain of circumstances pointing towards the guilt of A-3.

DISCUSSION ON APPEAL OF A-4

392. The incriminating circumstantial evidence pressed into service by the prosecution to prove A-4, Om Prakash Chautala as amongst the prime conspirators is as follows:

i) The Cabinet meeting wherein the selection of JBT teachers was taken out of the purview of HSSC and entrusted with the DLSC under the Directorate of Primary Education;

ii) Enhancement of marks allotted towards the interview from 12.5% to 20%;

iii) Transfer of PW-38 R.P.Chandra – Director Primary Education within two days of his initiating the note dated 24.04.2000 for compilation of the result through HARTRON;

iv) Pressure being exercised by his close aides- A-1 and A-2 in presence of his son- A-5 upon PW-23 for substitution of fresh award lists in place of the original award list lying in her custody.

v) Unjustifiably sitting over the proposal for constitution of Results Compilation Committee till 16.07.2000;

vi) Message emanating from the Office of the Chief Minister requiring the DPEO's to attend meeting at Haryana Bhawan on 01.09.2000;

vii) Presence of A-2 -Political Advisor of A-4, amongst others, at Haryana Bhawan, Delhi on 01.09.2000 and at Punjab Guest House along with Vidya Dhar A-1, and pressurizing various District Selection Committee Members to prepare fresh award lists;

viii) The breakfast meeting at the residence of A-4 wherein the issue of replacing lists was discussed with the prime executor, A-3;

ix) A-4 in his examination under Section 313 Cr.P.C. has feigned ignorance about the process of appointment of JBT Teachers after the Cabinet decision dated 08.09.1999.The file movement and notings as evidenced from D-40 (I) clearly belie the stand projected by A-4 and such false plea adds as an additional link in the chain of evidence against him.

393. At the outset, I would like to begin discussion on this appellant by stating that every circumstance, seemingly incriminating against appellant, when viewed independently and divorced from each other might not conclusively point towards his guilt. However, when viewed as a whole, the evidence is conclusive and unerringly points towards his conscious involvement in the entire conspiracy.

394. I have heard rival submissions regarding the Cabinet meeting marking the beginning of the period of conspiracy. The prosecution seeks to rely on this circumstance to demonstrate that this decision was taken with the oblique motive of furthering the conspiracy. The personal involvement of A-4 is reflected from the fact that the issue of appointment of JBT teachers was taken up for consideration with the permission of A-4 as it was not an item on the agenda. Counsel for the appellant has argued that the Cabinet meeting and any decision taken therein is perfectly within the realm of permitted rights and responsibilities of a Chief Minister and unless every other person who attended that meeting and approved the said decision is arrayed as an accused, the said decision cannot be used as incriminating evidence against the appellant. Portions of testimony of PW-16 and PW-38 have been pointed out to explain that the said decision was on account of major deficit in recruitment of teachers and on grounds of urgency the JBT Selection was

entrusted with the Directorate of Primary Education, the process of appointment through HSSC being a lengthy one.

395. I will have to admit, at the first blush the argument regarding the Cabinet decision being a perfectly legal one seemed most logical. Nothing illegal can be found with a Chief Minister introducing an item as an agenda in a Cabinet Meeting without prior notice. More so when he holds the portfolio of the Education Minister as well. Even the decision to take JBT selection out of purview of HSSC and entrusting to Directorate of Primary Education has been explained and justified. However, after much analysis and examining of evidence that has come forth in this case, I am convinced that execution of this entire employment scam required certain crucial policy decisions that could be effected only with the approval of A-4. Entrusting the appointment process with Directorate of Primary Education was one such vital decision. Enhancing the interview marks from 12.5% to 20% was the other. Enhancement of marks stands out as additionally incriminating owing to the fact that on 12.10.1999, less than a month from when this decision was taken, A-4 had approved the "chayan" (selection) formula where 12.5% marks were allotted towards the interview. The sudden change in policy lends credence to the theory that the appellant and his co-conspirators required more control in the selection process and since the interview marks

is the only variable factor in their hands, it was crucial that they have increased proportionate control.

396. Counsel for the appellant has also argued that the prosecution has not specifically demarcated the period of conspiracy. The Investigating Officer, PW-63 has deposed that perhaps the conspiracy commenced when PW-23 was asked to replace the original award lists and, therefore, no conspiracy can be inferred prior to the taking over of Rajni Sibal vide her transfer orders on 27.04.2000. I have carefully perused the testimony of PW-63 and as rightly pointed by the CBI, PW-63 has deposed:

> "The conspiracy in this case started when the then Chief Minister Sh. Om Prakash Chautala took a decision to withdraw the vacancies of the J.B.T Teacher from the purview of Staff Selection Commission and the conspiracy ended on appointment of undeserving candidates on the basis of directorate lists…"[Part 2(II)/Page 277]

397. Even otherwise, on the aspect of period of conspiracy, it has been held time and again by the Supreme Court that conspiracies being hatched in utmost secrecy it is not always possible to give affirmative evidence of the date of its commencement. Reliance is placed on the observations made in ***Navjot Sandhu's*** case *(supra)* in which the Court reiterated the view taken by it earlier in its decision in ***Esher Singh's*** case *(supra)*. The Court in case of ***Navjot Sandhu*** *(supra)* observed as under:

"Dr. Sri Hari Singh Gour in his well known 'Commentary on Penal Law of India', (Vol.2, 11th Edn. page 1138) summed up the legal position in the following words:

> *"*In order to constitute a single general conspiracy there must be a common design. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished. The evil scheme may be promoted by a few, some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be general plan to accomplish the common design by such means as may from time to time be found expedient."
>
> (emphasis supplied)

398. Observations of Coleridge, J. in ***R. v. Murphy,*** **173 E.R. 502**, have been cited with approval since time immemorial by the Supreme Court.

> "...I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design and to pursue it by common means, and so to carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object.

> The question you have to ask yourselves is, 'Had they this common design, and did they pursue it by these common means - the design being unlawful?"
>
> (emphasis supplied)

399. The first overt manifestation of the conspiracy is found when the recruitment process was taken away from the purview of Haryana Staff Selection Committee (HSSC) and entrusted to Directorate of Primary Education on 08.09.1999. This was followed by the enhancement of interview marks. Then came the transfer of PW-38, which was done two days after he moved the proposal to declare the results through HARTRON. PW-23 was the next appointee to the office of Director of Primary Education and has deposed in detail about the meetings that took place wherein she was being convinced to enforce the conspiracy by de sealing the almirah and changing the award lists. It is noteworthy that the circumstances in which PW-23 was compelled to seek transfer included repeated demands in the two meetings by the aides of A-4 to substitute the new award lists that were to be created in place of the original award lists lying in her custody, anonymous phone calls offering threats and bribe, theft at her residence etc. Once she made her stand clear, she was also transferred in order to bring in someone more susceptible to their demands.

400. Another circumstance is the delay caused in approval for compiling the result. PW-23 had initiated the proposal for preparation of results through the Results Compilation Committee on 20.06.2000 and this proposal had reached the office of A-4 on 22.06.2000. However, the approval of this proposal was granted only on 16.07.2000 after the person of his choice i.e. A-3 was appointed on the basis of oral orders. This completely belies the reasoning behind taking out the appointments from the purview of HSSC. The decision to do so has been explained on ground of urgency in appointments and the long drawn procedure under HSSC. The delay was clearly being caused when circumstances were not supportive.

401. Mr. Khanna has also drawn my attention to the file notings demonstrating that A-4 was promptly receiving all updates regarding the appointments and was not unaware of the same as stated in his Section 313 statement. Despite the fact that O.P. Chautala (A-4) was not holding the portfolio of the Education Minister, the file relating to JBT teachers appointment was reaching his office for approval of almost every decision made during the process, such as change of Result Compilation Committee Members [Part 8/D-37-D-66/D-40(I)/Page 80, 86] and even declaration of result. According to the rules of business in vogue [Part 8/S.no.7-Miscellaneous Documents exhibited by the prosecution/Page 5-25] primarily

the minister in charge was competent to take the final decision on a matter, however, the domain of the Chief Minister has been expressly carved out [Rule 6, 18 and Rule 28]. Therefore, a false defence under Section 313 examination affords an additional link in the chain of circumstantial evidence against A-4.

402. A-3 has examined himself in defence and deposed about a breakfast meeting that took place between him and A-4, at the residence of A-4. I have already discussed on the admissibility of testimony of A-3 giving evidence of guilt of his co-accused. The worth of his evidence and the extent of reliance that can be placed on it is the most crucial aspect. A-3 has stated in his cross examination that sometime in July 2000, he had attended a breakfast meeting with A-4 wherein he was told that a new set of lists had to be implemented and A-3 was required to foresee the process of preparation and execute the new set of lists. This was perhaps due to the fact that INLD had got a clear majority in the mid-term elections in 2000 and the new set of lists should be reflective of the preferences of the ruling government as opposed to the original lists which were prepared when the coalition government was ruling. A-3 has subsequently deposed about the meetings at Haryana Bhawan and Punjab Guest House wherein the Chairman and

members of the Selection Committee of various districts were called and instructed on their respective roles.

403. The law laid down by the Supreme Court in ***Tribhuvan Nath*** *(supra)* unequivocally declares that an accused who examines himself under Section 315 in defense is to be treated as an ordinary witness. This means that all legal principles governing appreciation of evidence of an ordinary witness shall follow. The fundamental consideration as law laid down by the Supreme Court regarding appreciation of ocular testimony assumes significance and relevant paragraph is reproduced as under:

> "14. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act has categorically laid it down that "no particular number of witnesses shall in any case be required for the proof of any fact." The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's 'Law of Evidence' - 9th Edition, at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in s. 134 quoted above. The section enshrines the well recognized maxim that "Evidence has to be weighed and not counted". Our Legislature had given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not

seldom that a crime had been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely :

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

15. In the first category of proof, the court should have no difficulty in coming to its conclusion either way - it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be

> indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have, therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."

404. A-3 is undoubtedly a witness of the third category. He is neither wholly reliable nor wholly unreliable. He has gone to lengths to prove that the lists that were implemented were the original lists and he had no part to play in the conspiracy thereby absolving him of all blame. This has been proven to be a false theory and amongst other things, A-3 is not a reliable witness in as much as he deposes about the implementation of the fake lists. In so far as his testimony relates to the breakfast meeting with A-4, I am convinced the same to be a true account of the events that transpired leading to the execution of the conspiracy. It is not the case that the breakfast meeting is the sole circumstance connecting A-4 to the conspiracy. The

involvement of A-4 is traceable from the time the Cabinet decision was taken. Subsequent events read in conjunction with these decisions paint a picture of a person, having knowledge of the conspiracy in the very least. The evidence of breakfast meeting is the material evidence that directly shows involvement of A-4. Therefore, the preceding events are reinforced with the evidence of the breakfast meeting and afford the necessary corroboration. Needless to state, A-3 was withstood lengthy cross examination on the aspect of this meeting. The factum of the breakfast meeting was also averred in the writ petition filed by A-3 in the year 2003 and it is not that this version sprung for the first time during trial.

405. Mr. Khanna has pointed out that Section 10 of the Indian Evidence Act, 1872 envisages a concept of 'vicarious liability' in cases of conspiracy and act(s) of one co-conspirator bind the other and, therefore, the evidence emerging against one co-conspirator is to be read as evidence against the other conspirator as well. The role of A-1 Vidya Dhar and A-2 Sher Singh Badshami and their respective involvement in the conspiracy stands proved. Therefore, I agree that their conduct would also be read in evidence pointing towards the guilt of A-4.

406. Again said, all the aforementioned circumstances when viewed independent of each other may seem innocuous, however, on careful

consideration of the sequence of events and the accompanying conduct of A-4 and those close to him, I am convinced that A-4 was actively involved in the conspiracy and chain of circumstantial evidence pointing to his guilt is complete. I find it difficult to believe that A-4 was in complete ignorance about the events which were transpiring around him and it was a sheer innocuous coincidence that his key aides A-1, A-2 as well as his son A-5 were getting enforced a scam of such vast magnitude spanning over 18 districts of Haryana and that messages for the said purpose were even rallied through his Office by his staff unauthorisedly without his approval/directions/consent. Furthermore, the key policy decisions which gave impetus to the conspiracy were taken under his aegis. The period also saw successive transfer of two Directors of Primary Education who refused to toe the line dictated by the aides and son of A-4. The file travelled to A-4 for approval of almost every decision in the matter relating to JBT appointments and it was being cleared expeditiously, however, curiously when PW-23 initiated the proposal for declaration of result, the wheels of bureaucratic machinery jammed for no perceivable reason whatsoever and moved only when the new incumbent; who was a newly joined co-conspirator had been inducted to achieve the ends of conspiracy that had been delayed/thwarted by PW-23. Fortunately for the society, a confederate

of crime, A-3 also furnished *direct-evidence* during trial about his breakfast meeting with A-4 and the mandate of changing the award lists which had been voiced by him at the said meeting.

407. It is not the case that there exists no evidence otherwise to link A-4 with the crime and the case against him hinges solely on the substratum of this breakfast meeting, which would make it unsafe to act upon the testimony of the accomplice. It is a settled proposition of law that corroboration need not extend to every circumstance deposed to by the accomplice as that would in fact render such accomplice evidence wholly superfluous. It is also settled proposition of law since time immemorial that corroboration can be received even through circumstantial evidence, as in the present case, and not necessarily by direct evidence.

408. Direct evidence in a scam of this magnitude is very difficult to obtain. Only a co-conspirator can give evidence explaining the role of his accomplices. It would also be apposite to cite the luminous observations of the Supreme Court in its judgment dated 07.10.2013 reported as ***Gulam Sarbar v. State of Bihar,*** **Criminal Appeal No. 1316 of 2012** wherein it has held that:

> "The High Court rightly observed that normally the perpetrator of crime in a case of conspiracy does not take part in the execution rather such conspirator hires some criminal directly or indirectly to execute the evil design

> planned by him. There may be circumstances where the conspirator remains vigilant to conceal his identity and would not disclose the actual motive behind the conspiracy."

409. Therefore, in my view there exists clinching, clear, cogent, credible and legally admissible evidence available on record to demonstrate beyond reasonable doubt the complicity of O.P. Chautala (A-4) in this crime.

410. Reliance was placed on ***Sharad Birdhichand Sarda v. State of Maharashtra***, **(1984) 4 SCC 116** to urge that the facts in a criminal trial require to be so established so as to be consistent only with the hypothesis of guilt of the accused and the chain of evidence must be so complete so as to not leave any reasonable ground for the conclusion consistent with the innocence of accused. Many of the circumstance pressed into service by the prosecution have alternate explanations and, therefore, A-4 should get the benefit thereof. There are profusion of authorities wherein the Supreme Court has observed that the connotation 'benefit of doubt' signifies a reasonable doubt entertained by a conscientious judicial mind and not a vacillating human mind swayed by idle skepticism. Benefit of doubt is not a legal dosage to be administered at every segment of evidence, but an advantage that is to be afforded to the accused at the final end after consideration of the entire evidence, if the Judge conscientiously and reasonable entertains doubt regarding the guilt of the accused. It is nearly

impossible in any criminal trial to prove all the elements with scientific precision. Evidence need not be so strong as to exclude even a remote possibility that the accused could not have committed the crime. The utopia of absolute proof is a myth. The evidence act does not insist on absolute proof for the simple reason that perfect proof in this imperfect world is seldom to be found. Prof. Brett felicitously puts it "all exactness is a fake". Modern thinking is in favour of the view that proof beyond reasonable doubt is the same as proof which affords moral certainty to the Judge. [***State of Haryana v. Bhagirath and Others***, **(1999) 5 SCC 96**; ***M.G Agarwal v. State of Maharashtra,*** **AIR 1963 SC 200**; ***Himachal Pradesh Administration v. Shri Om Prakash,*** **(1972) 1 SCC 249**; ***State of Maharashtra v. Mohd. Yakub and others***, **(1980) 3 SCC 57**; ***Lal Singh v. State of Gujarat and Another***, **(2001) 3 SCC 221.**

DISCUSSION ON APPEAL OF A-5

411. The incriminating evidence sought to be used with respect to A-5, Ajay Chautala is as follows:

i) A-5 has been identified by PW-23 at the first meeting in Haryana Niwas wherein the subject of replacing the original lists was initiated. He has also been identified by PW-16, PW-

23 and PW-26, for being present in the second meeting which was held in the residence of A-1, Vidya Dhar,

ii) Call records demonstrating that A-5 was in touch with A-3 during the time the conspiracy to replace the lists was in motion and

iii) The disproportionate number of candidates being selected from Bhiwani over and above the no. of vacancies that were advised in order to appease the people of Bhiwani, that being A-5's constituency.

412. I have closely examined the testimony of PW-23, PW-26 and PW-16. I will discuss their testimonies individually. PW-23, it seems has given the most detailed and incriminating account of the events that transpired sometime around May and June, 2000. PW-23 categorically identifies presence of a certain "Bhaisaab" at the meeting in Haryana Niwas wherein the subject of replacing the award lists was initiated and then again at the second meeting. She specifically names A-5, Ajay Chautala for the first time in Court. It was argued on behalf of A-5, that being a senior bureaucrat in the State of Haryana, it is most unlikely that she did not know who exactly Ajay Chautala was. I do not agree. PW-23 was surely a senior bureaucrat in

Haryana at the time but was not required to report to A-5 for official work on a daily basis. It is quite possible that she had no interaction with him earlier. Also the defense has not forth evidence to contradict this aspect of her testimony and in absence thereof, I do not see this instance as capable of discrediting her version. Much has been said about the ikonic memory of PW-23. Appellants have argued that she has made major lapses in the sequence of events and in view of her assertion of having such a sterling memory; it should be used to discredit her version. I do not agree. Apart from the obvious fact that she was deposing after a considerable period of time and certain discripancies are bound to creep in, her deposition when viewed as a whole leads to the most plausible version of the events regarding which she has deposed. Her objectivity and truthfulness is evidenced when she very categorically deposes that the Chief Minister was not present at either of the two meetings, neither did he ever contact her or instruct her to change any list. She also does not claim to have been threatened directly by A-5 during the meetings. She truthfully states what was suggested to her and makes her best effort in tracing the dates on which the illegal directions to change the lists were being made. Therefore, in my view PW-23 is a credible and reliable witness who has truthfuly deposed in Court.

413. PW-16 and PW-26 also endorse PW-23's version on presence of A-5 at the second meeting. Both officials clearly state that A-5 was present at the meeting where the issue was again discussed by A-2.

414. They are senior bureaucrats who have unanimously deposed about the presence of A-5 at the aforementioned two meetings. The issue regarding replacing of lists was discussed at length in these meetings. It was argued on behalf of the appellant that mere presence at the meetings affords no evidence of guilt. It is true that none of the three witnesses have deposed regarding being threatened by A-5 or even having spoken to him. The picture painted by these witnesses is limited to his presence at these meetings. However, in my opinion, that is the most incriminating evidence of guilt in itself. A-5 was not only a Member of Parliament from Haryana, he was also the son of the sitting Chief Minister. A discussion on committing of an illegal act that screams corruption of the highest order takes place in his presence and he stays mute. The political advisor to his father repeatedly suggests that interview marks of certain candidates should be changed and he says nothing. Senior bureaucrats present at these meetings explain that these suggestions cannot be considered to be executed as they do not want to be involved in illegal activities and he still doesn't say anything at all. It is not the case that A-2 made these illegal suggestions and A-5 threatened to

apprise his father of the same or he even protested or objected to the execution of the conspiracy. Also since A-2 was already discussing the issue of changing the lists, it was not required of A-5 to replicate the same. I am of the view that his presence and subsequent silence at these meetings is reflective of his unequivocal involvement and evidence of being one of the prime conspirators in the conspiracy.

415. Learned Counsel Mr. Cheema has pointed out two instances that reflect a biased role played by the investigating agency in order to include the name of A-5 in the conspiracy. I was made to go through the Section 161 statements of PW-16 and PW-26 to show that certain pages are in a different font and appear to be in a different colour than the rest of the stack. It is these pages in which the presence of A-5 has been highlighted. The other instance is the fact that the witnesses have admitted to having seen their Section 161 statements and refreshed their memory prior to testifying in Court.

416. A statement made by a witness under Section 161 can be used to contradict his/her testimony in Court. When a witness confirms the story elaborated in the previous statement, it lends credibility to his/her testimony. I agree with the observation of the trial Judge that if the change in font or colour of the pages were a result of interpolation by the CBI then a more

colourful picture could be painted regarding role of A-5. Specific words and a specific role could be ascribed to him. These witnesses have deposed in Court regarding the two meetings and denied suggestions of interpolation in cross examination. On the other aspect of refreshing memory prior to deposition, suffice it is to say that the witnesses have themselves truthfully disclosed this fact and it is not the case that they attempted to conceal the said fact and the accused exposed their lies through independent evidence. The said witnesses are senior IAS officers and it militates against probabilities that they would depose under the pressure of police officials and toe the dotted lines dictated by them. It has not emerged in evidence that the witnesses have deposed before the Court by reading out from their previous statements in the witness-box and, therefore, nothing turns on this circumstance.

417. Call records between A-3 and A-5 during the relevant period have been pressed into service to demonstrate that A-5 was regularly in touch with A-3, taking updates on the preparation of the new award lists. Without getting into the numerous authorities cited by both, the appellant as well as the CBI, the law has been clearly enunciated by the Supreme Court in ***Anvar P.V. v. P.K. Basheer,*** **(2014) 10 SCC 473** in the following terms:

> "20. In State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru, (2005) 11 SCC 600, a two-Judge Bench of this Court

had an occasion to consider an issue on production of electronic record as evidence. While considering the printouts of the computerized records of the calls pertaining to the cell phones, it was held at Paragraph-150 as follows:

> **150.** According to Section 63, secondary evidence means and includes, among other things, "copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies". Section 65 enables secondary evidence of the contents of a document to be adduced if the original is of such a nature as not to be easily movable. It is not in dispute that the information contained in the call records is stored in huge servers which cannot be easily moved and produced in the court. That is what the High Court has also observed at para 276. Hence, printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service-providing company can be led in evidence through a witness who can identify the signatures of the certifying officer or otherwise speak of the facts based on his personal knowledge. Irrespective of the compliance with the requirements of Section 65-B, which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely, Sections 63 and 65. It may be that the certificate containing the details in Sub-section (4) of Section 65-B is not filed in the instant case, but that does not mean that secondary evidence cannot be given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely, Sections 63 and 65.

21. It may be seen that it was a case where a responsible official had duly certified the document at the time of production itself. The signatures in the certificate were also identified. That is apparently in compliance with the procedure prescribed Under Section 65B of the Evidence Act. However, it was held that irrespective of the compliance with the requirements of Section 65B, which is

> a special provision dealing with admissibility of the electronic record, there is no bar in adducing secondary evidence, Under Sections 63 and 65, of an electronic record.
> 22. The evidence relating to electronic record, as noted herein before, being a special provision, the general law on secondary evidence Under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia special bus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in **Navjot Sandhu** case (supra), does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements Under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible."

418. The decision in ***Anwar P.V.*** *(supra)* was delivered on 18.09.2014 after these appeals were reserved on 11.07.2014 and, therefore, could not be taken up at the argument stage. However, it has been taken into consideration thereafter. Admittedly, the certificate requirement under Section 65B Indian Evidence Act was not complied with. In absence thereof, the same is clearly inadmissible and is, therefore, eschewed from consideration.

419. The other circumstance found incriminating against A-5 is the disproportionate number of candidates being selected from Bhiwani in the Directorate lists. Bhiwani being the constituency of A-5 at the relevant time and the selection of candidates exceeding the vacancies advertised, the prosecution has alleged that this evidences the fact that A-5 wanted to appease his people and thus corroborates his involvement in the conspiracy. A-5 was Member of Parliament from Bhiwani and 312 candidates were selected from District- Bhiwani, which is comprised in the Parliamentary Constituency of Bhiwani, as against the 60 advertised vacancies arising therein. I have already observed in preceding paragraphs that the Directorate lists were the fake lists. The disproportionate selection lends credence to the theory that this conspiracy was staged in order to gain political mileage and further political prospects.

420. It is, therefore, proved by positive evidence that A-5 was indeed amongst the prime conspirators and had the maximum to gain on execution of the conspiracy.

DISCUSSION ON APPEAL OF A-1

421. The prosecution seeks to trace the involvement of A-1 from 10.11.1999 wherein the decision to increase the interview marks first took place pursuant to the cabinet decision. I have already discussed regarding the

period of conspiracy while deaing with case of A-4. It is pointed out that A-1 was present at the meeting that took place on 10.11.1999.

422. With reference to the first meeting held at Haryana Niwas, it is argued that it is only PW-16 who has deposed to the presence of A-1. PW-23 and PW-26 have been categorically asked and they have answered that infact A-1 was not present in this meeting. The trial judge has also not considered his presence as proved at this meeting, in view of the fact that this fact was not mentioned in the S.161 statement of PW-16. I agree with the finding of the learned trial judge on this aspect.

423. Coming now to the meeting that purportedly took place at the residence of A-1, it is argued that it only through the categorical assertion made by PW-16 that the venue of this meeting is being attributed as the residence of A-1. PW-23 and PW-26 do not corroborate this assertion and only mention that they were taken to a house in Sector-7 Chandigarh. The testimony of PW-16 is also attacked on the ground that this assertion is not supported by any explanation on the time gap between the two meetings, the date and time of the second meeting. It is also argued that PW-23 has faulted on certain material dates and the sequence of events leading up to this incident and it would be unfair to rely solely on the testimony of PW-16 to conclude that the second meeting took place at his residence.

424. Learned ASG has argued that no animus or ill-will can be attributed to the said witnesses; who are senior IAS officials and have deposed consistently against A-1. It has been held by the Supreme Court in its decision reported as ***The State of Punjab* v. *Jagir Singh*, (1974) 3 SCC 277** that in arriving at a conclusion about the guilt of the accused charged with the commission of crime, the court has to judge evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. The fact that the witnesses are not able to recollect the dates of the said meetings or have confused themselves at certain junctures on the sequence of events is not unnatural but rather a hallmark of truth as they made their statements before the investigation agency after a period of four years and tendered their evidence before the Trial Court after nearly a decade.

425. Observations of the Supreme Court in its decision reported as ***Inder Singh And Another v. The State (Delhi Administration)*, (1978) 4 SCC 161** are noteworthy:

> "Credibility of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect. If a case is proved too perfectly, it is argued that it is artificial; if a case has some flaws, inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty men must callously be allowed

> to escape. Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes. Judicial quest for perfect proof often accounts for police presentation of fool-proof concoction. Why fake up? Because the courts asks for manufacture to make truth look true? No, we must be realistic."

426. I would also like to state that this argument focusing on the venue of the second meeting is misguided in as much as it is the fact that A-1 was present at such a meeting where officials much senior to him were present and were directed to commit a crime is of most relevance. Whether or not such a meeting took place at his residence is a secondary issue. All three witnesses have spoken in unison of the fact that A-1 was present at this meeting was privy to events that transpired therein. Even otherwise I would agree that the discrepancies pointed out are minor and do not affect the collective value of statement of these three witnesses who have categorically deposed against A-1. In view of the considerable time gap between these meetings to the time that these witnesses have deposed in court, some minor variations are justifiably present and do not cast doubt on the genuineness of their testimony.

427. With regard to the meeting at Punjab Guest House, the prosecution largely relies on the testimony of A-3 as a witness in his defence. A-3 has deposed that A-1 was present in a separate room at this meeting along with

A-2 and Jagtar Singh Sandhu and the discussion on change of lists was discussed. PW-56 has deposed regarding this meeting and stated that he was called to this meeting as were some other DPEOs who had not come to Haryana Bhawan and were told that they can collect copy of award lists in case they did not have one. In order to be briefed about their job they were called to a room where some other persons were also present. Therefore, PW-56 though does not specifically state that A-1 was present in this meeting, he corroborates the presence of A-3.

428. The question now remains whether the testimony of A-3 regarding presence of A-1 at this meeting can be believed. A-3 has mentioned A-1 as an active participant in the conspiracy to change the award lists in the writ petition and the additional affidavit filed by him in the Supreme Court. It is not that the name of A-1 figures for the first time through the testimony of A-3. Even in his testimony, A-3 does not ascribe any express words that were stated by A-1 in furtherance of the conspiracy. He simply says that A-1 was present at this meeting. I, therefore, agree with the finding of the trial judge that presence of A-1 at Punjab Guest House can be believed on a conjoint reading of testimony of A-3 and PW-56.

429. Counsel for the appellant has argued that even if presence of A-1 is proved at these meetings, he was a silent spectator and no role has been

ascribed to him. I disagree. It is not a case where a person is being roped in and accused of a crime merely because he was found at the crime scene. Consistent presence of A-1 at all the meetings is symbolic of the fact that he is not a person unaware and unconnected with the conspiracy at hand. His presence at all these crucial meetings stands established. In the absence of any disapproval or objection regarding the conspiracy, his presence indicates that he was a willing participant. I agree with the submission of CBI that when the political advisor and the son of the Chief Minister (A-2 and A-5) were expressly discussing the issue of change of award lists, it was not essential that A-1 also duplicate their words. He has not pleaded that he was under any pressure from any other person to be present at these meetings. I, therefore, hold that A-1 was a willing participant to the conspiracy and was actively involved in ensuring execution of the same.

430. It has been argued that had A-1 been a conspirator in this scam, his relatives who were candidates in the recruitment process would have gained positively, however, the interview marks of his relatives have been decreased in the Directorate List thereby evidencing that he had nothing to gain by being involved in the conspiracy. I do not agree. Just because his relatives were not favoured in the process of conspiracy does not absolve him of involvement in it. As pointed out by Mr. Khanna, we don't know if A-1 was

at all interested in helping his relatives. Especially in view of the fact that this fact was never mentioned in his statement under Section 313 Cr.P.C. I do not find merit in this argument, it is accordingly rejected.

DISCUSSION ON APPEAL OF A-2

431. So far as the involvement of A-2 in the first two meetings is concerned, the same has been unequivocally proved through the testimonies of PW-16, PW-23 and PW-26. I have carefully gone through the tabular representation depicting the inconsistencies in the version of the three witnesses. The inconsistencies pointed out by Counsel for the appellant are minor and justifiable by the time gap after which the witnesses have deposed regarding their particulars. I have already adverted two testimonies of all these three witnesses in preceding paragraphs. PW-16 has very specifically pointed out that it was A-2 who initiated the subject of changing the award lists in both meetings. PW-23 and PW-26 corroborate this version and have withstood the test of cross examination. I see no justifiable reason to reject their testimony.

432. With regard to the third meeting, the testimony of A-3 is crucial. He had mentioned in the writ petition that sometime in August/September a meeting had taken place wherein all the members of selection committees were called and the conspiracy to replace the lists was explained to the

members. So it is not the case that A-3 has deposed regarding this meeting and presence of A-2 in it for the first time at trial. PW-56 has also deposed regarding this meeting. While it is true he does not mention the presence of A-2, he corroborates the testimony of A-3 to the extent that such a meeting indeed took place at the Water Supply Guest House, wherein DPEOs were briefed and some other persons were also present. I see no reason to disbelieve this portion of his testimony.

433. Documentary evidence to prove the meeting at Haryana Bhawan is in the form of the visitors register containing the signature of A-2. An entry is made on 31.08.2000 in the name of A-2 containing his signature. The witness examined by A-2 in his defense Mr. Mukesh Kumar has deposed that he had stayed in Haryana Bhawan on the said date and had signed in the name of A-2. This witness does not help the case of A-2 because he testifies in cross examination that he had left Haryana Bhawan on 01.09.2000 at 8:30 a.m. The entry in the visitor register shows that A-2 stayed in Haryana Bhawan on 01.09.2000. I have perused the entry in the register and I agree with the observation of trial Jude that the signature of A-2 as appears on his statement under Section 313 is similar to the one in the register.

434. The other witness who has testified regarding presence of A-2 at Haryana Bhawan is A-50. He clearly states that he went to Haryana Bhawan

on 01.09.2000 and arrived around 2:00 p.m. and met A-3 who informed him that he was late and that necessary instructions had been given. On displaying hesitation to prepare the fake lists, he was taken into a room where A-2 was also present and threatened about the consequences of refusal.

435. I find the account of A-50 to be truthful and see no reason as to why he would depose against A-2. A-3 on one hand confirms the presence of A-2 at Haryana Bhawan but conveniently takes no blame upon him. A-50 corroborates the version of A-3 regarding presence of A-2 in Haryana Bhawan and in addition also explains the reason for his presence. In order to properly execute this conspiracy, the presence of A-2 at all these meetings was an affirmation to all the committee members that instructions regarding the creation of fake lists are stemming directly from the Chief Minister.

436. The cumulative effect of all the evidence is that A-2 first tried to pressure PW-23 in a meeting held in Haryana Niwas, Chandigarh to change the award lists. A second attempt was made by him at the residence of A-1 by pressurizing PW-23 in the presence of PW-16 and PW-26. Testimony of A-3 proves that A-2 was present along with A-l and A-3 in the guest house of Water Supply and Sanitation Department of Punjab at Chandigarh, where as per M.L. Gupta (PW-56) some Chairpersons and the members were asked

to take the copy of award lists. A-2 actively pressurized and threatened the other chairpersons and the members of the District Level Selection Committees on 01.09.2000 in Haryana Bhawan. Therefore, a complete chain of evidence is available on record about him being an active participant in the entire conspiracy from beginning to the end.

LEGAL SUBMISSIONS – COMMITTEE MEMBERS

Sanction

437. The remaining accused, i.e. A-6 to A-62 are committee members and Chairpersons that have been convicted under Sections 418, 467 and 471 of The Indian Penal Code as well as under Section 13 of The Prevention of Corruption Act. Factually, sanction orders under Section 19 of The Prevention of Corruption Act, 1988 have only been obtained with respect to A-1, A-3, A-13, A-24, A-28, A-36, A-39, A-54 and A-59. Rest of the accused persons had retired and, therefore, sanction was not obtained with respect to them.

438. It is argued across the board on behalf of all accused (barring A-2, as he was not a public servant) that that being public servants the requirement of sanction under Section 197 Cr.P.C. is mandatory even if the accused persons had retired because their act of commission or omission is directly related with their official duty. Reliance is placed on the case reported as

***State of Madhya Pradesh v. Sheetla Sahai and Ors.*, (2009) 8 SCC 47**

Relevant paragraphs are reproduced as under:

> "60. This leaves us with the question as to whether an order of sanction was required to be obtained. There exists a distinction between a sanction for prosecution under Section 19 of the Act and Section 197of the Code of Criminal Procedure. Whereas in terms of Section 19, it would not be necessary to obtain sanction in respect of those who had ceased to be a public servant, Section 197 of the Code of Criminal Procedure requires sanction both for those who were or are public servants.
>
> 61. Strong reliance has been placed by Mr. Tulsi on a judgment of this Court in Centre for Public Interest Litigation and Anr. v. Union of India and Anr. : (2005) 8 SCC 202. In that case, it was held:
>
> > 9. 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 from 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.

10. Use of the expression "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

> 11. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed.

62. Were the respondent Nos. 1 to 7 required to act in the matter as a part of official duty?

Indisputably, they were required to do so. Be he an Executive Engineer, Superintending Engineer, Chief Engineer, Engineer-in-Chief, Secretary or Deputy Secretary, matters were placed before them by their subordinate officers. They were required to take action thereupon. They were required to apply their own mind. A decision on their part was required to be taken so as to enable them to oversee supervision and completion of a government project. The Minister having regard to the provisions of the Rules of Executive Business was required to take a decision for and on behalf of the State. Some of the respondents, as noticed hereinbefore, were required to render their individual opinion required by their superiors. They were members of the Committee constituted by the authorities, viz., the Minister or the Secretary. At that stage, it was not possible for them to refuse to be a Member of the Committee and/or not to render any opinion at all when they were asked to perform their duties. They were required to do the same and, thus, there cannot be any doubt whatsoever that each one of the respondent Nos. 1 to 7 was performing his official duties.

63. For the purpose of attracting the provisions of Section 197 of the Code of Criminal Procedure, it is not necessary that they must act in their official capacity but even where a public servant purports to act in their official capacity, the same would attract the provisions of Section 197 of the Code of Criminal Procedure. It was so held by this Court in Sankaran Moitra v. Sadhna Das and Anr. (2006) 4 SCC 584."

439. My attention is invited towards Section 465 Cr.P.C. to show that objection regarding sanction being raised at the trial stage as well and having been rejected has occasioned grave failure of justice.

440. Mr. Khanna argues that the Supreme Court has since time immemorial held that merely because the office held by the public servant furnished the opportunity to commit the crime, the same cannot be said to have a nexus with discharge or purported discharge of official duty. A finding of guilt rendered by the Trial Court cannot be upset by the Appellate Court solely on the premise of absence or irregularity of sanction unless it is of the view that failure of justice has been occasioned thereby. It is argued that none of the appellants have been able to shed an iota of light on the crucial aspect as to how failure of justice has occasioned in the present case. Interpreting the above extracted provisions of law the Supreme Court has held that benefit from any irregularity in sanction is not automatic in nature and the accused must demonstrate the failure of justice stemming from such irregularity.

441. Let us examine the relevant provisions:

> **"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 [4][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-C, Section 376-D 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.

Section 19(3) (a) of the Prevention of Corruption Act, 1988 reads as under:

> …."no finding, sentence or 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.*"*

442. Corresponding provision in the Code of Criminal Procedure, reads as under:

> "**465. Finding or sentence when reversible by reason of error, omission or irregularity**.—
>
> (1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.
>
> (2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."

443. A conjoint reading of the above extracted provisions would reveal that a finding of guilt rendered by the trial Court cannot be upset by the Appellate Court solely on the premise of absence or irregularity of sanction unless it is of the view that failure of justice has been occasioned thereby. I would agree that none of the appellants have been able to convincingly demonstrate any failure of justice in omission to obtain sanction. The very nature of the acts

for which the accused persons have been charged under various provisions of the Indian Penal Code (Section 467 IPC, Section 420 IPC, and Section 120-B IPC) are such that by no stretch of imagination they can be said to have an organic nexus with the discharge of official duty, so as to bring the present case within the protective umbrella of Section 197 Cr.P.C. The sordid facts of the present case demonstrate total anarchy in the governance of the State of Haryana, wherein more than 50 senior and seasoned public servants posted across various districts in the department of education consciously indulged in commission of act of forgery at the behest of their superiors who all were integrally part of the well designed conspiracy to give effect to this employment scam of vast magnitude. The second set of award lists were consciously created in the year 2000 (end of August and early September) and were substituted for the original award lists after breaking open the sealed almirah. The acts highlighted above exhibit contrivance and brazen criminal misconduct, committed consciously to execute the ends of conspiracy. The argument on omission to obtain sanction is, therefore, rejected.

Handwriting and Signature specimens

444. Strong resistance has come on behalf of appellants with regard to admissibility of the report of the handwriting expert. It was argued that the

handwriting and signature specimens were obtained in blatant disregard of all prescribed procedure and the same has to be eschewed from consideration. Reliance is placed primarily on the Full Bench judgment of this Court in ***Sapan Haldar*** *(supra)*.

445. Learned trial judge has taken note of the Supreme Court decision in ***Rabindra Kumar Pal alias Dara Singh v. Republic of India,*** **(2011) 2 SCC 490**, wherein the argument on admissibility of report of handwriting expert was urged and the Court observed that the same would be admissible despite having obtained the specimen handwriting and signature without permission of Court.

446. I have meticulously gone through the case laws cited at the Bar. The decision of the Supreme Court in ***Navjot Sandhu*** *(supra)* and reiterated in ***Dara Singh*** *(supra)* is quite clear. Expert evidence in the form of report on handwriting and signature specimens is not barred from consideration on the ground that they were obtained without permission of Court. The law on obtaining handwriting specimen is now specifically incorporated under Section 311A Cr.P.C. which came in to effect on 23.06.2006. The specimens were taken prior to this date and, therefore, the procedure prescribed by the section could not be adhered to. The decision in Ram Babu Mishra (supra) was based on the question whether the Magistrate is empowered to direct an

accused to give his specimen writing and signature under Section 73 of the Evidence Act for the purpose of enabling the Court to “compare" such writings with writings alleged to have been written by such person. The Court in Ram Babu Mishra interpreted the purport of Section 73 and held that the words "for the purpose of enabling the Court to compare" assume continuance of some proceeding before the Court in which or as a consequence of which it might be necessary for the Court to compare such writings. The direction is to be given for the purpose of 'enabling the Court to compare'. If the case is still under investigation there is no present proceeding before the Court in which or as a consequence of which it might be necessary to compare the writings. It was observed that the language of Section 73 does not permit a Court to give a direction to the accused to give specimen writings for anticipated necessity for comparison in a proceeding which may later be instituted in the Court. The ratio of this case was, therefore, limited to observing that Section 73 Indian Evidence Act is not an enabling provision for the Magistrate to give any such direction to an accused in a matter that is pending investigation. However, it cannot be said that as a necessary corollary to this principle, the specimen handwriting and signature is not obtainable at all during investigation. The investigating officer in a criminal case is empowered under Section 2(h) Cr.P.C to collect

evidence and undertake various steps in that endeavor. The Supreme Court in ***Selvi v. State of Karnataka,*** **(2010) 7 SCC 263** has endorsed this view and held that the term "investigation" includes steps which are not exhaustively and expressly enumerated. Even otherwise, experience suggests that every crime requires its own tailor made investigation which may be peculiar to the circumstances of the case. It would not be prudent and neither possible to exhaustively catalogue such steps taken during investigation in a code like Cr.P.C. Thus absence of a specific provision enabling a particular step under investigation does not imply that the investigation agency is disabled from taking that step under its power/duty (power coupled with duty) to conduct investigation. For e.g. the police during investigation of a murder case prepares the site plan, collects/seizes the blood stained earth, seizes various articles lying on the spot, seizes the weapon used during commission of crime, seizes the clothes of the victim and the accused etc. However, there is no such express provision in the Cr.P.C. or other statute to enable the police to undertake such acts for collection of evidence during investigation.

447. In this context I am reminded of the observations of Lord Halsbury in ***Quinn v. Leathem,*** **(1901) A.C. 495 at p. 506**, quoted with approval by a Constitution Bench of this Court in ***State of Orissa v. Sudhansu Sekhar***

Misra; **(1970) ILLJ 662 SC** and again in ***Orient Paper and Industries Ltd. and Anr. v. State of Orissa and Ors.***; **[1991] Supp. 1 SCC 81**, at page 96:

> "Now, before discussing the case of Allen v. Flood and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

448. The decision in ***Sapan Haldar*** *(supra)* again has considered the question whether handwriting and signature specimens are obtainable under Section 4 and 5 of the Identification of Prisioners Act, 1920 and the Court observed that since both handwriting and signature of a person are not a mark of identification, the same cannot be "measurement" as defined under Section 2(a) of the Identification of Prisoners Act. However, the very next line which declares that an investigating officer, during investigation, cannot obtain a handwriting sample or a signature sample from a person accused of having committed an offence is in teeth with the view adopted by the Supreme Court in ***Navjot Sandhu*** *(supra)* and ***Dara Singh*** *(supra).*

449. In view of the aforesaid discussion, I am of the opinion that the report of the expert and analysis of handwriting and signature specimens of the accused persons cannot be rendered inadmissible on the ground that it was obtained in violation of prescribed procedure.

Forgery

450. Factually, there are two sets of lists, both containing the signatures of relevant committee members. I have already observed in the preceding paragraphs that the Directorate lists, on the basis of which the results were declared and appointments were made, are the fake lists. The trial Court has returned a finding of guilt under Sections 467 and 471 IPC with regard to the committee members.

451. It is argued on behalf of CBI that the act of fraudulent substitution of the original selection lists by a new set of ante-dated lists actually prepared later in time and having different contents amounts to making a 'false document' in terms of section 464 IPC. The Sections are reproduced as under:

> **Section 463 – Forgery**
>
> [Whoever makes any false documents or false electronic record or part of a document or electronic record with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part

with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Section 464 - Making a false document

[A person is said to make a false document or electronic record--
First.--Who dishonestly or fraudulently--
(a) makes, signs, seals or executes a document or part of a document;
(b) makes or transmits any electronic record or part of any electronic record;
(c) affixes any [electronic signature] on any electronic record;
(d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature],
with the intention of causing it to be believed that such document or pan of document, electronic record or[electronic signature] was made, signed, scaled executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, singed, sealed, executed or affixed; or
Secondly.--Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with [electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or
Thirdly.--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his [electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.]

452. The present case is not of mere innocuous ante-dating of a document by its authorized maker but of fraudulent creation of a document giving an

impression that it was created much earlier in time than it was actually created and having drastically different contents than the documents for which it was substituted. The fact that such document created later in time had drastically different contents than the original document signifies the fraudulent purpose for its creation.

453. Learned Counsel Mr. Khanna cites the decision in the case reported as ***Rao Shiv Bahadur Singh and Anr. v. The State of Vindhya Pradesh***; **AIR 1954 SC 322** to support the argument on antedating of document. It was observed as under:

> "21. All these circumstances go to show that far from these documents coming into existence on the respective dates which hey bore they were in fact brought into existence on the afternoon of 11th April, 1949 at the Constitution House as alleged by the prosecution and were ante-dated to 1st April, 1949 and 2nd April, 1949 respectively with a view to show that the resumption order had already been granted by Appellant 1 to the Syndicate at Rewa on 2nd April, 1949. The evidence of Nagindas and Pannalal thus in resect of the forgery of these documents bears the stamp of truth and deserves to be accepted."

454. My attention is also invited to the observations in the case reported as ***Dharmendra Nath Shastri vs. Rex through Sheoraj Singh***; **AIR 1949 ALL.** Relevant paras are reproduced as under:

> "**15.** The first point argued was that no charge of forgery could be made out under S. 463, Penal Code, as the writing Ex. A

which is the subject of the charge was not a "document", as defined in S. 29, Penal Code. That definition runs as follows:

> "The word 'document' denotes any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means intended to be used or which may be used as evidence of that matter."

16. Mr. Pathak, appearing for the accused, contended that as the writing, Ex. A could not by itself be evidence of the truth of its contents, it could not be a 'document' within the meaning of S. 29, Penal Code. The word 'evidence' occurring in this section precedes the words "of that matter" and the word "matter" as occurring in the opening portion of the section is qualified by the words "expressed or described upon any substance by means of letters," etc. This means that the matter contemplated by this section is what is expressed or described upon any substance, and the question is whether such a matter can be evidence of its existence. It is obvious that the matter expressed or described upon any substance would certainly be the evidence of the fact that matter exists, though it may not by itself be a proof of the truth of the contents of that matter. The contention raised by the learned counsel for the accused is evidently based on a confusion of thought, inasmuch as it assumes that the word "evidence" in S. 29, Penal Code, implies evidence of the truth of the matter expressed and not merely of its existence. The word "evidence" or the word "evident" only means "that which can be seen with the naked eye". It is not necessarily synonymous with the word "proof". When the question is whether a certain writing was filed in certain proceedings, the production of the writing was obviously the evidence of the fact of that writing having been produced, though it may not be any evidence of the truth of the contents of that writing. In *Madapusi Srinivasa Ayyangar* v.*Queen*, 4 Mad. 393 at p. 395, it was remarked that:

> "The term 'evidence' in its ordinary sense signifies that which makes apparent the truth of a matter in question. It is no doubt more frequently applied to

> proof by a judicial tribunal, but it is not necessarily confined to this sense."

17. The actual meaning of the word 'evidence' would depend on the question as to what is the matter of which evidence is in question. Is it the existence of a writing, if the question has arisen in connection with that, or is it the truth of the subject of the writing? In the present case the question obviously comes within the former and not within the latter, that question being what was in fact the writing which the accused had filed before the House Controller on 31st January 1946. There is no question as to whether the contents of that writing were true or false and on the question as to what that writing was, the production of the writing would certainly be evidence within the meaning of S. 29, Penal Code. We, therefore, hold that the contention that the writing Ex. A, which is the subject of the charge, is not a 'document' within this section or within section 463 is incorrect.

18. The next point argued was that the charge levelled by the prosecution being one only of a substitution of a fresh writing in place of the writing originally existing it did not come within the offence charged, such a case not being one of an alteration of a document within cl. (2) of S. 464, Penal Code. While this may be true, it is also true that the case set up by the complainant would be clearly covered by cl. (1) of S. 464, which, along with the opening words of the section, reads as follows:

> "A person is said to make a false document who dishonestly or fraudulently makes … a document… with the intention of causing it to be believed that such document… was made … at a time at which he knows that it was not made …"

19. If, therefore, the writing, Ex. A was not in existence on 31st January 1946, on which date the accused filed his written statement, but had come into existence later and was shoved into the file of the House Controller, as if it had been there since 31st January 1946 and was really the written statement originally filed by him it would be obviously covered by the said clause of S. 464. We, therefore, reject this contention also."

455. On behalf of the appellants the challenge to applicability of this Section is centered on the contention that a man's own signature may amount to forgery only when he intends that it may be believed that the document on which he has signed was drawn by another person of the same name. In effect, it is basically urged that a person's signature cannot be said to be forged unless there is an element of impersonation involved. This is quite an absurd explanation of Explanation 1 to the section. Explanation 1 says that a man's own signature may amount to forgery. Illustration (a) describes a situation where a person's signature may amount to forgery even when he signs in his own name. Illustration (h) to the Section describes another situation where a person's own signature will amount to forgery. Under illustration (h), creating a false conveyance deed by ante dating the same, A intended to defraud Z and, therefore, signing on such conveyance deed in his own name, he is not impersonating a third person rather the intention is to defraud through creation of an ante dated document. The underlying purpose of both illustrations is the intent to deceive, whether it is by signing an antedated document or by signing one's own name on a document knowing fully well that the authorized person having the same name the document is likely to cause deception of having been signed by the

authorized signatory. The position of law emerging on a conjoint reading of the decisions in ***Rao Shiv Bahadur*** *(supra)* and ***Dharmender Nath Shastri*** *(supra)* further clarifies that it is the intent to defraud through creation of an antedated document that is of the essence. This can also be done by signing a document in one's own name, as has been done in the present case. The contention is, therefore, rejected.

456. On behalf of the appellants the challenge to applicability of this Section is centered on the contention that a man's own signature may amount to forgery only when he intends that it may be believed that the document on which he has signed was drawn by another person of the same name. In effect, it is basically urged that a person's signature cannot be said to be forged unless there is an element of impersonation involved. This is quite an absurd interpretation of Explanation 1 to the section. Explanation 1 says that a man's own signature may amount to forgery. Illustration (a) describes a situation where a person's signature may amount to forgery even when he signs in his own name. Illustration (h) to the Section describes another situation where a person's own signature will amount to forgery. Under illustration (h), creating a false conveyance deed by ante dating the same, A intended to defraud Z and, therefore, signing on such conveyance deed in his own name, he is not impersonating a third person rather the

intention is to defraud through creation of an ante dated document. The underlying purpose of both illustrations is the intent to deceive, whether it is by signing an antedated document or by signing one's own name on a document knowing fully well that the authorized person having the same name the document is likely to cause deception of having been signed by the authorized signatory. The contention is, therefore, rejected.

457. The next attack on invoking of Section 467 on the ground that the award lists cannot be termed as "valuable security". There being no right to appointment emanating from the selection lists, the same are not valuable security.

Section 467 - Forgery of valuable security, will, etc

> Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquaintance or receipt acknowledging the payment of money, or an acquaintance or receipt for the delivery of any movable property or valuable security, shall be punished with[1][imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 30 - "Valuable security"

> The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created,

> extended, transferred, restricted, extinguished or released, or where by any person acknowledges that he lies under legal liability, or has not a certain legal right.

458. I do not agree. The selection lists do not create a legal right of appointment most definitely; however, they do create a valid legal right to be considered for appointment. In the present case, appointments were subsequently made on the basis of these fake award lists that were implemented. The Constitution Bench decision in ***Shankarsan Dash v. U.O.I***, **1991 (3) SCC 47** has acquiesced the proposition that though successful candidates do not acquire an indefeasible right to be appointed, however, the right to be considered cannot be arbitrarily denied. It was held in the following terms:

> "1. This appeal was earlier Heard by a Division Bench and was referred to a Constitution Bench for examining the question whether a candidate whose name appears in the merit list on the basis of a competitive examination, acquires indefeasible right of appointment as a Government servant if a vacancy exists. Reference was made to the decision in State of Haryana v. Subhash Chander Marwaha and Ors. (1973)IILLJ266SC ; Miss Neelima Shangla, Ph. D. v. State of Haryana and Ors. [1986]3SCR785 and Jitendra Kumar and Ors. v. State of Punjab and Ors. [1985] 1 SCR 899. …….
>
> xxxx xxxx xxxx xxxx
>
> xxxx xxxx xxxx xxxx
>
> 7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely

amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha and Ors.: (1973)IILLJ266SC ; Miss Neelima Shangla v. State of Haryana and Ors. [1986]3SCR785 and Jitendra Kumar and Ors. v. State of Punjab and Ors. [1985] 1 SCR 899.

8. In State of Haryana v. Subhash Chander Marwaha and Ors., (supra) 15 vacancies of Subordinate Judges were advertised, and out of the selection list only 7, who had secured more than 55% marks, were appointed, although under the relevant rules the eligibility condition required only 45% marks. Since the High Court had recommended earlier, to the Punjab Government that only the candidates securing 55% marks or more should be appointed as Subordinate Judges, the other candidates included in the select list were not appointed. They filed a writ petition before the High Court claiming a right of being appointed on the ground that vacancies existed and they were qualified and were found suitable. The writ application was allowed. While reversing the decision of the High Court, it was observed by this Court that it was open to the Government to decide how many appointments should be made and although the High Court had appreciated the position correctly, it had "somehow persuaded itself to spell out a right in the candidates because in fact there were 15 vacancies". It was expressly ruled that the existence of vacancies does not give a legal right to a selected candidate. Similarly, the claim of some of the candidates selected for appointment, who were petitioners in

Jitendra Kumar and Ors. v. State of Punjab and Ors., was turned down holding that it was open to the Government to decide how many appointments would be made. The plea of arbitrariness was rejected in view of the facts of the case and it was held that the candidates did not acquire any right merely by applying for selection or even after selection. It is true that the claim of the petitioner in the case of Miss Neelima Shangla v. State of Haryana, was allowed by this Court but, not on the ground that she had acquired any right by her selection and existence of vacancies. The fact was that the matter had been referred to the Public Service Commission which sent to the Government only the names of 17 candidates belonging to the general category on the assumption that only 17 posts were to be filled up. The Government accordingly made only 17 appointments and stated before the Court that they were unable to select and appoint more candidates as the Commission had not recommended any other candidate. In this background it was observed that it is, of course, open to the Government not to fill up all the vacancies for a valid reason, but the selection cannot be arbitrarily restricted to a few candidates notwithstanding the number of vacancies and the availability of qualified candidates; and, there must be a conscious application of mind by the Government and the High Court before the number of persons selected for appointment is restricted. The fact that it was not for the Public Service Commission to take a decision in this regard was emphasised in this judgment. None of these decisions, therefore, supports the appellant."

459. Similar observations were made by the Supreme Court in case of ***A.P Aggarwal v. Govt. of N.C.T of Delhi and Another***, **(2000) 1 SCC 600** wherein the Court reiterated the principle laid down in ***R.S Mittal v. Union of India*** , **1995 Supp(2) SCC 230**. Relevant portions are reproduced below:

"14. In R.S. Mittal v. Union of India 1995(2)SCALE433 the question arose with regard to selection of candidates to the post of Judicial

Member, income-tax Appellate Tribunal. The selection was made by a Selection Board consisting of a sitting Judge of this Court. The Selection Board prepared a panel of selected candidates which included the name of the appellant before this Court and sent its recommendations. The candidates who were at numbers 1 and 2 in the panel did not accept the appointment. The Bench observed that though a person on the select panel has no vested right to be appointed to the post for which he has been selected has a right to be considered for appointment and at the same time the appointing authority cannot ignore the select panel or decline to make an appointment on its whims. The Court said that when a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, ordinarily there is no justification to ignore him for appointment and that there has to be a justifiable reason to decline to appoint a person who is on the select panel. However, on the facts of the case the Bench did not give any relief to the appellant as he was only No. 4 and no information was available about the stand of the person who was at No. 3 of the select panel. While reversing the findings given by the Central Administrative Tribunal to the extent indicated in the judgment the Bench dismissed the appeal but directed the Government to pay cost of the proceedings to the appellant which was quantified at Rs. 30,000."

460. Observations of N. Krishnaswamy Reddy, J in ***Daniel Hailey Walcott & Anr. v. State,*** **AIR 1968 Mad 349** regarding the jural concept of a legal right are noteworthy:

"21. Legal right is a difficult concept. It is not defined. It is, therefore, necessary to note carefully what the eminent jurists have said about this concept of legal right. Roscoe Pound in his Jurisprudence (Vol. IV, Chap. 21, p. 70) stated as follows-:-

> **.....by the end of the last century a legal right had come to be defined as a secured interest, or as a capacity of asserting a secured interest, or as a claim that could be asserted in the Courts.**

Roscoe Pound prefers to follow the English analytical jurists and thinks of legal right lies in the capacity of assertion rather than of an assertable claim. In the same page, it is stated:

> The capacities of asserting it (legal right) before Courts and administrative agencies by which the interest is given efficacy are some At pp. 70 and 71, it is stated:
>
> **"The capacities of creating, divesting and altering legal rights in the stricter sense or of creating liabilities, as means of securing recognised interests (legal powers) are some conferred and some recognised.....The exemption on certain occasions from liability for what would otherwise be infringements of legal rights, are sometimes conferred, as in case of emergency privileges.....in all of these juristic conceptions through which recognised and delimited interests are secured, there is a capacity of asserting them before Courts and administrative agencies.**

At pp. 74 and 75, Roscoe Pound again says:

> **I should put the juristic conceptions by which legally recognised and delimited interests are secured as legal rights (in the stricter sense), powers, liberties, privileges, duties and liabilities.**

Salmond on Jurisprudence (12th Edn. at p. 224) states that a legal right in the generic sense may be defined as any advantage or benefit conferred upon a person by a rule of law. Again at p. 233, under the headnote "The kinds of legal rights", it is stated:

> **A perfect right is one which corresponds to a perfect duty; and a perfect duty is one which is not merely recognised by the law, but enforced.....In all ordinary cases, if the law will recognise a right at all, it will enforce it. In all fully developed legal system, however, there are rights and duties which, though undoubtedly recognised by the law, yet fall short of this typical and perfect form.....Examples of such imperfect legal rights are.....claims against foreign**

states or sovereigns, as for instance due on foreign bonds.....No action will lie for their maintenance; yet they are, for all that legal rights and legal duties, for they receive recognition from the law.

W. Panton in his Text-book of Jurisprudence, 3rd Edn. at p. 250 states as follows:--

.....The characteristics mark of a legal right is its recognition by a legal system..... Enforceability by legal process has, therefore, sometimes been said to be the sine qua non of a legal right.....There are certain rights sometimes called imperfect rights, which the law recognises but will not enforce directly.

At p. 251, he again says:

.....in some systems Courts of justice do not control an adequate machinery for enforcement. Thus in international law there is no power in the Court to enforce its decree. Hence, ultimately, the answer to the question whether the essence of a legal right lies in its enforceability will depend on our definition of law. Dicey distinguished between constitutional conventions and laws, the test of the latter being that they will be enforced by the Courts, whereas the conventions will not. Many constitutional lawyers point out, however, that if we apply rigorously the test of enforcement in a Court of law, we are left with too narrow a view of constitutional law.....Because of the difficulties which sometimes arise in the enforcement of particular rights, it is better to define a legal right in terms of recognition and protection by the legal order. This does not unduly narrow the meaning of legal right. Thus an international Court would recognise any rights granted by international law and would protect them so far as it cold, even although there was no machinery for direct enforcement. The element of enforceability is important in questions of jurisdiction and private international law.

> From the statements made by the jurists noted above, the following principles can be deduced broadly to understand what a 'legal right' is: (1) Legal right in its strict sense is one which is an assertable claim, enforceable before Courts and administrative agencies; (2) In its wider sense, a legal right has to be understood as any advantage or benefit conferred upon a person by a rule of law; (3) There are legal rights which are not enforceable, though recognised by the law; (4) There are rights recognised by the International Court, granted by international law; but not enforceable; and (5) A legal right is a capacity of asserting a secured interest rather than a claim that could be asserted in the Courts.
>
> 22. It is, therefore, clear that the test of enforceability, though it may be a normal one, is not the only test for determining a legal right. A legal right may be one recognised by rule of law, either by Municipal law or International law, without the capacity of being enforced. A legal right may be asserted even before administrative agencies. It includes the liberty of freedom from penalty. In short, it can be said that a legal right is one which is either enforceable or recognised."

461. A legal right may or may not be enforceable. A valid legal right to be considered was created in favour of the candidates when their names figured on the fake selection lists. They were also appointed on the basis of these lists. It is also a fact that such appointments are in challenge in separate proceedings. Whatever may be the fate of these appointments eventually, the selection list that was implemented gave rise to a legal right to be considered for appointment of all selected candidates. I, therefore, do not find merit in

the contention that the selection lists were not a valuable security so as to be denuded from the purport of Section 467 IPC.

462. In view of the aforesaid discussion, I am of the opinion that the offence under Sections 467 and 471 IPC have been duly proved by the prosecution.

Cheating and Pecuniary advantage

463. The trial Judge has returned a finding of guilt for the offence punishable in terms of Section 418 IPC. The Section is reproduced for ready reference:

> "Section 418 - Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect
>
> Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

464. It is contended on behalf of the appellants that cheating necessarily implies dishonest intent to cause wrongful loss to one and wrongful gain to another. There being no evidence of any pecuniary advantage derived by any

committee member, they cannot be said to have wrongfully gained from this conspiracy to attract the offence of cheating.

465. Section 415 IPC is reproduced below:

> "Section 415 - Cheating
>
> Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".
> Explanation,--A dishonest concealment of facts is a deception within the meaning of this section.
>
> Section 24 - "Dishonestly"
> Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".
>
> Section 25 - "Fraudulently"
> A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise."

466. Mr. Khanna argues that it is evident from the language employed by the legislature while penning the above extracted provision, that the prosecution may endeavour to pitch its case through either of the two limbs contemplated under the said provision i.e. either by proving fraudulent intent on part of the accused or a dishonest intent. The law, opposed to common parlance, carves a careful distinction between the term "dishonestly" as

defined under Section 24 of IPC and "fraudulently" as defined under Section 25 of IPC.

467. The Apex Court has held that perusal of section 24 laments the fact that it is sufficient for the prosecution to prove that the act was done either with the intention of causing wrongful gain or wrongful loss andit is not necessary to prove both. The courts across the land while interpreting the term fraudulently as defined under the IPC have consistently held that there exists a distinction between an act done dishonestly and an act done fraudulently. If the deceitful act willfully exposes anyone to the risk of loss, there is fraud (***A Veeraiah v. State,*** **AIR 1957 A.P 663**). Thus, the prosecution is not obligated to prove actual wrongful loss but even risk of loss brings the act within the purview of the term "fraudulently". This is also in consonance with the ingredients of section 418 IPC, wherein the likelihood of wrongful loss is sufficient to constitute the said offence.

468. It is submitted that the prosecution was handicapped in the present case from leading evidence of actual wrongful loss or actual wrongful gain, as Sanjiv Kumar (A-3) withheld the original award lists of few districts in consequence of which a joint merit list of the genuine award lists could not be created during investigation to demonstrate which candidates actually deserved to have been selected if order of merit was followed. Sanjiv Kumar

(A-3) clearly admitted in his writ petition [**Part 8/ D-37-D-66/D-64/Page 25-53 @ Pg 32 & 35**] that he was in possession of the award lists for all the districts of Haryana, yet he willingly did not hand over all the lists before the Supreme Court or the CBI during investigation. Upon being cross-examined by the Prosecutor on this aspect, he was evasive and did not tender any plausible explanation whatsoever.

469. I agree with the contention that it is not the requirement of law for the prosecution to prove the actual wrongful loss and mere likelihood or risk of loss is sufficient to bring the acts of the accused within the four corners of Section 418 of IPC. The language of the Section is clear; the act of cheating can be proved through either dishonest or fraudulent intention (***Tulsi Ram v. State of Uttar Pradesh,*** **AIR 1963 SC 666**). Dishonest intention also implies either wrongful gain to one or wrongful loss to another. These meanings are further circumscribed in Section 418 wherein only the likelihood of wrongful loss needs to be proved. In the present case, the Haryana Government was induced by the dishonest acts of the appellants, to deliver 'property'- appointment letters in favour of persons that were not entitled to receive the same. The Supreme Court has held that the connotation "property" includes any document having value in the hands of its holder and may not necessarily possess pecuniary worth. Appointment Letter would

unquestionably be a species of such documents which may be termed as 'property' for the purpose of Section 415 IPC. Therefore, the challenge to invoking of Section 418 IPC against the appellants stands rejected.

470. With reference to the offence under Section 13 (1)(d) P.C. Act, suffice it is to say that the Committee Members being public servants and having committed offences of forgery and cheating and conspiring with the main conspirators in breach of their solemn duties are guilty of the offence of criminal misconduct. I am in agreement with the findings of the Trial Judge after considering the case of ***Rakesh Kumar Chhabra vs. State of H.P.***, **2012 Crl.L.J. 354** in this regard.

Parity with Brij Mohan PW-17

471. Committee members have urged that in terms of circumstances, they were similarly placed as Brij Mohan PW-17 and since he was discharged by the trial Court on grounds that he was under pressure to have signed the fake lists, they ought to be given the same benefit. It was argued that merely because PW-17 had the wisdom to scribe a "UP" under his signature and the others having encountered the same pressure did not think of doing the same, they cannot be proven to have a guilty intent. As a supplementary argument it was argued that even if Brij Mohan had to be given benefit of the "UP", it

should have been through proper procedure. He should have faced trial and granted pardon subsequently as opposed to a complete discharge.

472. The trial Court discharged Brij Mohan, who was cited as an accused during arguments on charge vide order dated 23.07.2011. This order was challenged in the High Court and the findings of the trial Judge were confirmed vide order dated 01.06.2012.

473. Mr. Khanna submits that the appellants are not entitled to benefit of acquittal on the ground of parity with Brij Mohan on two counts. Firstly, there is no evidence whatsoever to indicate that the said appellants despite appending their signatures on the fake award lists, did not subscribe with the intention of the other co-conspirators to commit crime and in that sense there was no 'agreement' as envisaged under Section 120-B IPC. The plea canvassed by some of the appellants that they were under pressure at the time of commission of crime (execution of signatures on the second award list) has been sought to be essentially substantiated by self-serving statements uttered in Section 313 and suggestions tendered during cross-examination to prosecution-witnesses which is not evidence in eyes of law ***State v. Md. Misir Ali,*** **AIR 1963 Assam 151**, few appellants examined defence witnesses to substantiate their defence of pressure). Furthermore, the pressure/threats pleaded by such appellants are not of such nature and

quality, as required under our legislative policy manifested under Section 94 of the IPC – an anticipated harm of instant death, to immunize them from the consequences of their crimes. Therefore, arguendo, even if the assertions of various appellants that they were pressurized to append their signatures on the second award lists is accepted to be true, even in such eventuality, defence of pressure cannot be successfully availed as the pressure pleaded to have been exerted was not of the hilt/degree as contemplated under Section 94 of the Indian Penal Code.

474. Secondly, even if this Court were to hold that the order of discharge passed by the trial Court qua Brij Mohan is improper/illegal in the eyes of law, in as much as the test of Section 94 IPC was not applied to Brij Mohan; who was also not facing pressure of instant death like other appellants, no consequent benefit can flow to the appellants as Article 14 of the Constitution of India envisages equality as a positive concept and does not embody its negative connotation. It has been held by the Apex Court and various High Courts that advantage of an erroneous acquittal of a co-accused would not accrue to an accused. The same principle applies with full force to the facts of the present case. The Supreme Court in a recent case ***Ajoy Acharya v. State Bureau of Investigation,*** **2013 Cri LJ 4763** pertinently

observed that "*parity in law can be claimed only in respect of action rightfully executed and not otherwise*."

475. I have given considerable thought to this proposition. The Investigating Officer has also opined that the committee members were under pressure. While it is true that nearly all appellants have pleaded pressure from their seniors to sign the lists and stated the threats they received regarding their transfer to remote places on refusal to sign, there is fundamental difference between them and Brij Mohan. Brij Mohan has given positive evidence of the fact that he was under pressure. I agree with the observation of the trial Judge that it may be possible that some committee members were in sync with the main conspirators while others may have been genuinely threatened. However, there is no evidence distinguishing the two. Bald assertions in the Section 313 statement are not sufficient to absolve them of a guilty intent.

476. It would also be relevant to highlight that during the course of arguments, some appellants have for the first time sought to claim the benefit under Section 90 of the Indian Penal Code. Section 90 of the IPC merely laments that a consent is not a valid consent under the penal code, if the same is given under fear of injury or misconception of fact. To that extent the said provision is *ex-facie* inapplicable to the offences comprised in the

present case and would only be applicable to those provisions (offences) of the Indian Penal Code, wherein "consent" is an integral ingredient thereof, such as Section 313- Causing miscarriage without woman's consent, Section 375-Rape etc.

477. There exist profusion of authorities and consensus of judicial opinion that the evidence of a person, who could have been arrayed as an accused or who has been improperly/illegally discharged, is admissible in evidence at trial. Therefore, the fact that Brij Mohan was not tendered pardon by the prosecution in accordance with the procedure established under the Code or even if the discharge of Brij Mohan is held to be illegal, his evidence tendered at trial as PW-17 would remain admissible. [***Sital Singh v. Emperor***, **(1919) ILR 46 Cal 700**; ***Banu Singh v. Emperor***, **(1906) ILR 33 Cal 1353**; ***Laxmipat Choraria and Others v. State of Maharashtra***, **AIR 1968 SC 938**; ***Chandran v. State of Kerala,*** **(2011) 5 SCC 161**; ***Prithipal Singh v. State of Punjab***, **(2012) 1 SCC 10**. This contention is, therefore, rejected.

478. While most appellants have restricted their challenge to this appeal through the common arguments advanced in preceding paragraphs, there are some unique facts with regard to certain individual appeals.

I. Members who signed both lists

Members and Chairperson of Selection Committees who have signed both lists are further categorized. One category admits their signature on the lists and claim pressure was exerted on them, therefore, there was no agreement or 'meeting of minds' as such to justify their conviction. There are other categories as well, some who deny their signature and some who deny being a member. These categories of appellants have been dealt with in succeeding paragraphs.

With regard to appellants whose signatures appear on both lists, the prosecution has examined witnesses from every district to prove the signatures of the concerned appellants. Observations of the trial Judge are accepted in this regard. These appellants have addressed legal arguments that have been dealt with in the preceding paragraphs.

II. Members who have signed only one list

i) Three appellants/members (A-32, A-40 and A-41) have signed only one list, the Directorate list, and claim that it is the genuine list. A-32 is the Chairman of Selection Committee, Kurukshetra and the general category Supreme Court list of this district was not filed by A-3. It is argued on behalf of this appellant that there being no evidence to show that he attended either meeting;

it cannot be held that he committed the charged offences solely on the basis of his signatures on the Directorate list.

ii) I have already observed in preceding paragraphs that the Directorate lists were the fake lists. The appellant's signatures appear on the fake list. the offences of cheating, forgery and criminal misconduct stand proved. There does not need to be evidence of every member of selection committee having attended the meetings. The purpose of the meeting was to facilitate a conspiracy to change. Once there is evidence of that conspiracy being executed by way of appellant's signature on the fake list, there can be a reasonable presumption drawn by the Court under Section 114 Indian Evidence Act, that the appellant was in fact part of the conspiracy.

iii) It is argued on behalf of A-40; Daya Saini that there is no Supreme Court list of district Panipat and the CBI is relying on the marking pattern to prove falsity of Directorate list. There being no occasion to compare the two lists, the Directorate list cannot be proved as the fake list. I disagree with this argument for two reasons. First, the CBI is not solely relying on the marking pattern to prove falsity of lists. There are other

circumstances like bunching of marks and a presumption that all fake lists were put together. Therefore, it is not only on the basis of a comparative analysis between the two lists that this Court has arrived at a finding regarding falsity of Directorate lists. Second, even if the Supreme Court list is not available, what matters in the circumstances is that the appellant's signature appears on the list that has been declared fake by the Court. As mentioned earlier, it is the signature on the fake list that is best evidence of guilt. Even otherwise, the Directorate list of Panipat clearly shows a pattern of bunching of marks in both extremes which is on consonance with the theory of Directorate list being fake.

III. Members who denied their signatures on both lists

i) Committee members of district Mahendergarh- Narnaul (A-37, A-38 and A-39) have collected denied their signatures on both lists. The prosecution has not been able to put forth any witness identifying the signatures of these appellants. The prosecution is, therefore, relying solely on the report of the forensic expert to prove their signatures.

ii) I have observed in preceding paragraphs that the report of the handwriting expert is admissible. I have perused the report and the expert has opined that the signatures match the specimen signatures obtained from the appellants. The argument that the opinion of a handwriting expert is not substantive evidence and can only be used for corroborative purpose is also rejected in view of the two judgments cited by the trial Judge; ***Murari Lal v. State of M.P.***, **AIR 1980 SC 531** and ***Jaipal v. State,*** **2011 Cri LJ 4444** wherein the view of the Supreme Court is reiterated observing that there is no rule of law nor any rule of prudence that the evidence of handwriting expert must not be acted upon, unless substantially corroborated. As rightly observed by the trial Judge, when a piece of evidence directly connects a person with the offence, it becomes substantial piece of evidence. The presence of appellants' signatures on the fake list is evidence of their guilt and clearly demonstrates that they were part of the conspiracy. As abundant caution, the signatures of all three appellants have been further compared by the trial judge from their statements under Section 313 Cr.P.C.

iii) A-39, Bani Singh has denied being a member of the selection committee. Reliance is placed on a document exhibited as Ex.PW-31/DN, a note mentioning the names of committee members, wherein the name of A-39 does not find mention. It is argued that the prosecution has not been able to prove that A-39 was in fact a member and in absence thereof, the signature evidence loses significance. The trial Judge has observed that during the interviews many member and chairpersons were transferred and the note mentioning the designated members and chairpersons was not strictly adhered to. This observation is supported by the fact that transfers were made in Panipat (Daya Saini was appointed prior to interviews), Rewari (D.D. Verma) and Kurukshetra (M.L. Kalra). I has also been observed that PW-31, Sardar Singh was cross examined by the appellant on the aspect of the note Ex.PW-31/DN and he specifically points at page 19 of D106 (Ext.PW.31/DO) wherein Bani Singh is shown as a member. No suggestion being put to this witness regarding interpolation or manipulation of this document assumes significance and the fact that a suggestion was made that Bani Singh was pressurized to be member of the selection

committee has been taken into account to conclude that he was in fact a member of the selection committee. I agree with these observations, A-39 has baldly suggested to PW-48 (clerk in office of district- Mahendergarh) that A-37 and PW-48 have forged the signatures of A-39. In absence of any suggestion being put to the I.O. nothing turns on this unsubstantiated suggestion. The signature of A-39 is duly proved; he has put forth no explanation as to why his signatures appear on the Directorate list. I, therefore, conclude that A-39 was a member of the selection committee Mahendergarh and he signed the Directorate list pursuant to conspiracy to change the award lists.

iv) Relevant arguments on behalf of Durga Dutt pradhan are essentially centered around the evidence of handwriting expert. In view of the fact that the report of handwriting expert clearly opines that the signatures on the Directorate list were that of A-38, his involvement in conspiracy stands proved.

Members who have not signed the Directorate list

i) A-49, Sudha Sachdeva was the Chairperson of the selection committee Rewari and had taken charge after a period of three days from the date of interviews. Her signatures do not appear on the Directorate list. It is argued on behalf of A-49 that the only evidence being that of A-50, as

a witness in his defence, there is no corrobartion by any independent evidence so as to point towards her complicity in the conspiracy.

ii) I have perused the testimony of A-50, who has got himself examined under Section 315 Cr.P.C. He states that he was called sometime in September, 2000 to prepare the fake lists under pressure from A-2 and A-3. In compliance with a telephonic message he went to Rewari where Sudha Sachdeva was present and she had dictated the interview and grand total marks to him. He got the same signed by the other two members and signed himself for the first three days that he had conducted the interviews. The trial Judge has held this witness to be a reliable one for two reasons. First because his testimony has gone unimpeached despite lengthy cross examination by A-49 and secondly because he did not absolve himself of all blame and only testify against A-49. He honestly states on oath that he did the needful in preparing the fake lists and signed on the same. I agree with the observations of the trial Judge in this regard. A-49 was involved in the conspiracy and did her part. She was wise enough to avoid signing on the fake list without being detected as A-50 had already signed on the first few pages of the lists when he had conducted the interviews. This saved her from the substantive offence of forgery, however, she did

conspire to get the fake lists prepared and would, therefore, be guilty of conspiracy and criminal misconduct.

Members who deny being a member of any Committee

i) The case of A-39, Bani Singh has been dealt with under the preceeding head. A-45, Raksha Jindal has denied being a member of any committee rather it is her case that she merely signed the lists as a token of having calculated the marks. Her signatures appear on both the Directorate and the Supreme Court lists of district Panchkula.

ii) I do not find this explanation to be a reasonable one. The witness PW-42 has testified that she was a headmistress and junior in rank to the then BEO and, therefore, could not have been a member of the selection committee. The document Ex.PW-31/DN clearly memtions A-45 as a member of the selection committee and the fact cannot be doubted merely because her name is handwritten. Even otherwise it is illogical for a person who is not authorised to be a member to sign the award lists merely on the pretext of having calculated the total marks. The argument is, therefore, rejected and A-45 is held guilty of Section 13(2) P.C. Act and Sections 418, 467, 471 and Section 120-B IPC r/w Section 418/467/471 IPC rw Section 13(2) P.C. Act.

479. On consideration of the entire volume of evidence that has emereged in the instant case, in my view the prosecution has convincingly demonstrated how the conspiracy unfolded, the methodology adopted in execution thereof and the specific role played by every appellant. As rightly described by Mr. Khanna, there are three categories of appellants in this case. The authors of the conspiracy, A-4 and A-5, who conceived the idea and were in a position to get the same executed. A-1, A-2 and A-3, the enforcers who actively pursued and pushed for the execution of the conspiracy and the executors, A-6 to A-62 who were required to give life to the entire conspiracy.

480. In view of the detailed discussion, the prosecution has conclusively established the offence of conspiracy under Section 120-B IPC r/w Section 418/467/471 IPC rw Section 13(2) PCAct with regard to appellants A-1, A-2 and A-5.

481. Appellants A-3 and A-4 stand convicted of offences u/s 13(2) rw 13(1)(d) of Prevention of Corruption Act in addition to the offence of conspiracy under 120-B IPC r/w Section 418/467/471 IPC r/w Section 13(2) PC Act.

482. Appellants A-6 to A-62, with the exceptions of A-23, A-35, A-41 and A-62 as they had retired when the second set of award lists was prepared and

except A-14, A-18, A-34, A-42, A-53 & A-58 who have already expired and except A-19 who had already been discharged, stand convicted under Section 13(2) rw 13(1)(d) of Prevention of Corruption Act.

483. Appellants A-6 to A-62 (except who died or were discharged) also stand convicted u/s 418 IPC. Appellants A-6 to A-62 (except A-49 and those who died or were discharged) also stand convicted u/s 467/471 IPC.

484. In addition all appellants i.e. A-6 to A-62 (except those who have expired or discharged) stand convicted u/s 120-B IPC r/w Section 418/467/471 IPC r/w Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988.

SENTENCING

485. On the aspect of sentencing, it is argued on behalf of the committee members that these are aged people who have faced trial towards the end of their career for offences that they were pressurized into committing. The sentence of four years is unduly harsh and lenient view may be taken in view of the circumstances under which they were made to create the second set of lists.

486. Mr. Khanna, learned ASG and Ms. Rajdipa Behura, learned SPP support the sentence awarded by the trial Judge and submit that the judicial discretion exercised towards the District Selection Committee members has

not been exercised arbitrarily and is edificed on rational reasoning. Those members of the Selection Committee; who raised the plea of pressure at the time of commission of offence and which was accepted by the trial Court, were awarded a liberal sentence (Four years imprisonment). The factum of committing the crime under pressure of high functionaries of state machinery, with the motive of insulating oneself from unpleasant consequences that may ensue in future, was treated as a mitigating circumstance by the trial Court while awarding sentence, although under the existing scheme of law it could not serve as a complete defence for the crime in view of the mandate of Section 94 of the Indian Penal Code.

487. Those accused who never even pleaded pressure and much less were able to prove the same, were visited with a greater penal consequences (Ten years imprisonment).

488. The Supreme Court in its decision reported as **(2013) 11 SCC 401**, ***Jasvir Kaur v. State of Punjab*** expressed concern on the absence of a sentencing policy in the country and, therefore cautioned the Courts to callibrate the punishment with due care and upon taking into account the relevant attending circumstances. The Supreme Court quoted with approval the luminous observations of English Judge Henry Alfred McCardie which are reproduced hitherto-fore:

> "…Trying a man is easy, as easy as falling off a log, compared with deciding what to do with him when he has been found guilty."

489. Chapter 19 of the Delhi High Court Rules deals with sentencing of offenders and throws insights on this aspect.

> **"1. The award of suitable sentence depends on a variety of considerations**—The determination of appropriate punishment after the conviction of an offender is often a question of great difficulty and always requires careful consideration. The law prescribes the nature and the limit of the punishment permissible for an offence, but the Court has to determine in each case a sentence suited to the offence and the offender. The maximum punishment prescribed by the law for any offence is intended for the gravest of its kind and it is rarely necessary in practice to go up to the maximum. The measure of punishment in any particular instance depends upon a variety of considerations such as the motive for the crime, its gravity, the character of the offender, his age, antecedents and other extenuating or aggravating circumstances, such as sudden temptation, previous convictions, and so forth, which have all to be carefully weighed by the Court in passing the sentence. "

490. The facts of the present case as unfurled by the overwhelming evidence led by the prosecution at trial reveal a shocking and spine-chilling state of affairs prevalent in our country. An ingenious employment scam spanning across eighteen (18) districts of State of Haryana was given effect to by persons at the helm of power and the entire bureacratic machinery fell prey to its satanic influence. Laudably, few individuals who were examined at the trial were forthright in the hour of adversity and did not succumb to the

pressures exerted upon them from all quarters. Some individuals, such as PW-14 Dhup Singh, were not even high ranking officers of the Civil Services, but mustered courage to successfully repel the pressure exerted upon them.

491. It is submitted that the authors of the present crime were essentially public servants; who were duty bound to preserve and uphold the dignity of law. Some had even been administered 'oath' in terms of the Constitution of India. Yet they chose to flagrantly violate the law, betraying the trust reposed in them by the citizens and the Constitution. The very nature of the present crime, its magnitude, ramifications, designed manner of execution and the deleterious impact on the society at large, warrants a strict view, *lest*, justice be rendered sterile.

492. Very recently the Supreme Court in its decision pronounced on 06.05.2014 in the case of ***Dr. Subramanian Swamy v. Director, Central Bureau of Investigation and Another***, **(2014) 8 SCC 682** while holding section 6A of the Delhi Special Police Establishment Act, 1946 to be ultra-vires took serious note of malaise of corruption in our country and pertinently observed:-

> "77. This Court in Shobha Suresh Jumani, took judicial notice ofthe fact that because of the mad race of becoming rich and acquiringproperties overnight or

because of the ostentatious or vulgar show ofwealth by a few or because of change of environment in the society byadoption of materialistic approach, there is cancerous growth of corruptionwhich has affected the moral standards of the people and all forms ofgovernmental administration.

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xxx xxx xxx xxx xxx

80. …In the supplementing judgment, A.K. Ganguly, J. while concurring with the main judgment delivered by G.S. Singhvi, J. observed:

> "Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of the Indian democracy and the Rule of Law. The magnitudeof corruption in our public life is incompatible with the concept of a socialist secular democratic republic. It cannot be disputed thatwhere corruption begins all rights end. Corruption devalues humanrights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our Preambular vision.Therefore, the duty of the court is that any anti-corruption law hasto be interpreted and worked out in such a fashion as to strengthen the fight against corruption..."

81. In Balakrishna Dattatrya Kumbhar, this Court observed thatcorruption was not only a punishable offence but also, "undermines humanrights, indirectly violating them, and systematic corruption, is a humanrights' violation in itself, as it leads to systematic economic crimes".

82. In R.A. Mehta, the two-Judge Bench of this Court made the following observations about corruption in the society:

> "Corruption in a society is required to be detected and eradicated atthe earliest as it shakes "the socio-economic-political system in anotherwise healthy, wealthy, effective and vibrating society". Libertycannot last long unless the State is able to eradicate corruption from public life. Corruption is a bigger threat than external threat to thecivil society as it corrodes the vitals of our polity and society.Corruption is instrumental in not proper implementation andenforcement of policies adopted by the Government. Thus, it is not merely a fringe issue but a subject-matter of grave concern andrequires to be decisively dealt with."
>
> 83. … It was observed:
>
> "Abuse of public office for private gain has grown in scope and scale and hit the nation badly. Corruption reduces revenue; it slows downeconomic activity and holds back economic growth. The biggest lossthat may occur to the nation due to corruption is loss of confidence in the democracy and weakening of the rule of law."…"

493. In the celebrated words of Martin Luther King, Jr.- "*Morality cannot be legislated, but behavior can be regulated. Judicial decrees may not change the heart, but they can restrain the heartless.*"

494. With regard to the District Selection Committee Members, I am of the opinion that being public servants they have a bounden duty to uphold the law and fiercely protect the confidence bestowed upon them on taking charge of their office. In the instant case, these appellants were entrusted with the task of judging merit of prospective junior teachers and awarding them with appointments. They however, were pressurized by their bosses to

aid and assist in preparation of another list devoid of any merit. They succumbed to the pressure and resultantly this scam was able to have far reaching effect in all 18 districts in Haryana. As fate would have it, the scam was unearthed and the guilty have been convicted.

495. I am conscious of the fact that these appellants (A-6 to A-62) were under immense pressure to commit these crimes. The investigating officer has deposed regarding the same and the trial Judge has also mentioned his observations in this regard. I am in agreement with the same. However, I disagree with his observations with regard to appellants A-32, A-37, A-38, A-39, A-40 and A-41. Barring A-37, Pushkar Mal Verma they have not pleaded that they were under pressure owing to the fact that their defense was that they have not abetted in creating the second set of lists. This defense has been proven to be false but I am of the opinion that they cannot be penalized for taking a false defense as regards sentencing. The false defense has been used as an additional circumstance to prove their guilt, however, I feel they were similarly situated as the remaining teachers in the preparation of these lists.

496. L.N. Rangarajan in his book "*Kautilya-The Arthashastra*" has indicated the obligations which are placed upon a Ruler. It would be apt to

quote what stands reproduced in Part VIII Law and Justice (Penguin Edition, first published in the year 1992)

> "It is the power of punishment alone, when exercised impartially in proportion to the guilt, and irrespective of whether the person punished is the King's son or an enemy, that protects this world and the next."

497. Accordingly, I sentence appellants A-6 to A-62 (except A-49 and those who expired or were discharged) to rigorous imprisonment for a period of two years and a fine in the sum of Rs.1,000/- each for the offence under Section 13(2) of Prevention of Corruption Act. In default of payment of fine, they shall undergo simple imprisonment for six months each.

498. I sentence A-6 to A-62 (except A-49 and those who expired or were discharged) to rigorous imprisonment for a period of two years and a fine in the sum of Rs. 100/- each under Section 120-B IPC r/w Section 418/467/471 IPC rw Section 13(2) of Prevention of Corruption Act. In default of payment of fine, they shall undergo simple imprisonment for one month each.

499. I sentence A-6 to A-62 (except A-49 and those who expired or were discharged) to rigorous imprisonment for a period of one year under Section 418 IPC and rigorous imprisonment for two years under Section 467 IPC with fine of Rs.100/- each. In default of payment of fine, they shall undergo simple imprisonment for one month each. I further sentence them to rigorous imprisonment for two years under Section 471 IPC and fine in the sum of

Rs. 100/- each. In default of payment of fine, they shall undergo simple imprisonment for one month each.

500. A-49, Sudha Sachdeva is sentenced to rigorous imprisonment for a period of two years and a fine in the sum of Rs.1,000/- for the offence under Section 13(2) of Prevention of Corruption Act. In default of payment of fine, she shall undergo simple imprisonment for six months each.

501. She is sentenced to rigorous imprisonment for a period of two years and a fine in the sum of Rs.100/- under Section 120-B IPC r/w Section 418/467/471 IPC r/w Section 13(2) of Prevention of Corruption Act. In default of payment of fine, she shall undergo simple imprisonment for one month each.

502. With regard to the sentence imposed upon appellants A-1 to A-5, I am in agreement with the findings of the Trial Judge. Education is a tool, which can be skilfully used by competent teachers to model the youth (our most precious human resource) in their formative years, to enable them to become productive citizens in future and herald India to epitome of success. Yet the instant case demonstrates how the process of appointing competent teachers was also vilified and not spared from the malaise of corruption. Such scams not only result in dissemination of poor quality education to the millions of children; who are bound to suffer, but also unfairly deprive the competent

participants in such selection processes an opportunity to gain public employment and meaningfully serve the country. Public confidence is bound to get shaken, resulting in frustration/anxiety amongst the youth; who eagerly await the scarce employment opportunities, giving further impetus to the culture of corruption.

503. The modern state has moved far away from its concept as the 'Leviathan' with its traditional role symbolised by the two swords it wielded- one of war and the other of justice. The modern, pluralist, social-welfare state with its ever-expanding social and economic roles as wide-ranging as that of an Economic-Regulator, Industrial Producer and Manager, Arbitrator, Educationist, Provider of Health and Social-Welfare services etc., has become a colossal service-corporation. The bureaucracy, through which the executive organ of the state gives itself expression, cannot escape both the excitement and the responsibility of this immense social commitment of the Welfare-State. Today the bureaucracy in this country carries with it, in a measure never before dreamt of, the privilege and the burden of participation in a great social and economic transformation, in tune with the ethos and promise of the Constitution for the emergence of a new egalitarian and eclectic social and economic order-a national commitment which a sensitive, devoted and professionally competent administrative set-up alone can

undertake. A cadre comprised of men inducted through patronage, nepotism and corruption cannot, morally, be higher than the methods that produced it and be free from the sins of its own origin. Wrong methods have never produced right results. Nepotism and corruption are gnawing at the vitals of our country.

504. The common thread between appellants A-1, A-2, A-3, A-4 and A-5 is the flagrant disregard towards the system. Each one of them played a role in disrupting the established process to achieve their object. Not only did they offend every duty they had to the office they were holding but in the process, they also challenged the ethical standard of every other public servant and compelled them to abandon their otherwise perfect career records. It may be argued that A-4 being an aged person, towards the tail end of his political career should be shown some mercy. It is for this very reason that I do not agree with this submission. The man was the Chief Minister of Haryana, capable of much hope and an inspiration to the youth of the State. Cheating them of their future deserves punishment of the highest kind. The appellant committee members also are all mostly senior citizens, respectable teachers either retired from government service or nearing retirement. A-4 has played a role in sharing their guilt as well. The sentence of A-1 to A-5, therefore,

remains unchanged. The sentences imposed on all the appellants above shall run concurrently.

505. All the appeals stand dismissed. All pending applications also stand disposed of. The conviction of all appellants is upheld. The sentences imposed are modified as above. All bail bonds stand cancelled, sureties discharged accordingly. The appellants shall surrender forthwith to undergo the remaining portion of their respective sentences.

506. A copy of this judgment be sent to the Superintendent, Central Jail, Tihar by Express Messenger for necessary information and compliance.

SIDDHARTH MRIDUL
(JUDGE)

MARCH 05, 2015
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