IN THE COURT OF SHRI ARUN BHARDWAJ, SPECIAL JUDGE (P.C. ACT)(CBI-05), ROUSE AVENUE DISTRICT COURT, NEW DELHI

CC No. 173/2019
CNR No. DLCT11-000814-2019
RC No. DAI-2016-A-0003
U/s 120B IPC and Section 7 of PC Act, 1988.

CBI

Versus

1. **Sh. Prithvi Raj Meena @ P.R. Meena (Income Tax Officer)**
   S/o Sh. Mohan Lal Meena
   R/o H.No. 394, 1st Floor, Sector-4,
   Vaishali, Ghaziabad, Uttar Pradesh.

2. **Sh. Deepak Agarwal (CA)**
   S/o Sh. Suresh Chand Agarwal
   R/o H.No. 319, Sector-16, Faridabad, Haryana-121002.

3. **Ms. Parul Garg (CA) D/o Sh. P.K. Garg**
   R/o KP-310, Top Floor,
   Maurya Enclave, Pitampura, Delhi.

Date of Institution : 01.08.2016
Date of Arguments : 09.02.2021
Date of Decision : 18.02.2021

JUDGMENT

1. **Introduction:** Complainant Sh. Krishan Kumar is one of the partners of a firm known as M/s Square 9 Inn. Sh. P.R.

Meena/Accused No.1 was the Income Tax Officer (ITO) dealing with the ITR of the said firm. Sh. Deepak Aggarwal/Accused No. 2 is a Chartered Accountant in the firm known as M/s. P.K. Garg and Associates. Ms. Parul Garg/Accused No. 3 is also a Chartered Accountant in the said firm and is daughter of Sh. P.K. Garg and Sh. P.K. Garg is the husband of daughter of sister of Sh. Krishan Kumar/the complainant i.e. complainant is the maternal uncle of the wife of Sh.P.K.Garg. The share of Sh. P.K. Garg in this firm is 55%, shares of Accused No. 2 Sh. Deepak Aggarwal and Accused No. 3 Ms. Parul Garg are 15% each and one Sh. Satish Gupta is having remaining 15% share in the said firm.

2. **Chargesheet:-** The firm M/s Square 9 Inn had received a notice from Income Tax Department on 15.09.2015 regarding assessment of income for the Assessment Year 2013-2014. The complainant contacted his Chartered Accountant Sh. Deepak Aggarwal who dealt with the said notice. The complainant was told by Sh. Deepak Aggarwal that the ITO is demanding bribe of Rs. 5 Lacs and the complainant is required to meet him for settling this amount. A meeting was fixed between the complainant and the said ITO on 22.02.2016 between 3:00 to 4:00 pm at Income Tax Office.

3. Since the complainant did not want to give the bribe, he gave a written complaint in the office of CBI on 22.02.2016 mentioning all these facts and requested action as per law.

4. The complaint was marked to Sh. S.P. Singh, Inspector CBI for verification who arranged presence of independent witness Sh. Subhash Kumar, LDC, Service Tax Department, New Delhi. A DVR and a new memory card Sandisk 4 GB were arranged from the caretaker of the CBI office and after ensuring that the DVR and the memory cards are blank, the formal voice of the independent witness was recorded in the memory card through DVR. The independent witness, Inspector Sh. S.P. Singh and the complainant, duly armed with the said DVR, went to the office of Accused No. 1 Sh. P.R. Meena but to avoid any suspicion, the complainant went alone to meet the said Income Tax Officer in order to record the conversation with the help of said DVR containing the memory card, in recording mode. The complainant went inside the room of Accused No. 1 at about 15:15 hours and came out after about 25 minutes. The DVR was taken from the complainant and it was switched off by the Verifying Officer.

5. All three of them, namely, the Verification Officer, the complainant and the independent witness left the spot and reached CBI office at about 16:00 hours. When the DVR was played for hearing the conversation, it revealed demand of Rs.3,50,000/- as bribe by Accused No. 1 Sh. P.R. Meena from the complainant for settlement of the case of assessment of income tax for the Assessment Year 2013-2014. The extracts of the recorded conversation are as under:-

"...... Krishan Kumar	:	Aapke paas hi hai na case to...
P R Meena	:	Haan squire 9 mere pass he hai.
Krishan Kumar	:	haan ji ...."

"...... Krishan Kumar	:	wo to pahle 10 kah rahe the phir kuch kam kah rahe the
P R Meena	:	kam kitna kah rahe hai batao.
Krishan Kumar	:	aapko to pataa hi hoga.
P R Meena	:	mujhe nahi pataa aap batao aapko kitna bataya hai........
Krishan Kumar	:	ji 5.
P R Meena	:	bataya nahi ...... wo to theek hai … 5 ... dedo tax humko .... tax dedo ..."

" ...... Krishan Kumar	:	nahi aap ye bataa diya .... mai to isiliye aap aane ka faida ho isiliye aapse baat karke.
P R Meena	:	wo 10-20 hazar rupay kum dete aur kya kahu aap aaye.
Krishan Kumar	:	5 se baut jyada ho jaayga sabeb.
P R Meena	:	to kitna dena chahte ho. Batao aap rupay, mai itna dena chahta hun, aap bataa do bhai mai itnaa dena chahta hun.
Krishan Kumar	:	dhai dhai (2.5) kar lijiyega.
P R Meena	:	dhai me nahi hoga...................."

"....... P R Meena	:	aap to bilkul hi down ho rahe ho aisa thora hi hota hai mahraaj.
Krishan Kumar	:	nahi nahi aisi baat nahi hai.
P R Meena	:	itna itna mat dabao ki agla to bilkul ubhar hi naa paye.
Krishan Kumar	:	nahi nahi aise baat nahi hi saheb.

P R Meena:	:	*thora bahut to government ko do, thoda to kar do .... aisa karo aap ..... ye kar dena.*
Krishan Kumar	:	*kitne.*
P R Meena	:	*........................*
Krishan Kumar	:	*char (4)*
P R Meena	:	*theek hai.*
Krishan Kumar	:	*char (4) jyada ho jayegen ...... teen (3) tak kar lijiyega, meri maan lijiyega, phir aage aap ke hi saath hi rahna hai.*
P R Meena	:	*theek hai.*
P R Meena	:	*are aap mujhe pataa hai na ... aap logon ke saamne.*
Krishan Kumar	:	*nahi nahi aisi koi baat nahi ... aur kab rakhiyega...*
P R Meena	:	*wo ..... unse baat kar lena.*
Krishan Kumar	:	*achha*
P R Meena	:	*theek hai. Jyada nahi.*
Krishan Kumar	:	*to teen (3) tak le lijiyega.*
P R Meena	:	*nahi ekdum nahi ... thora sa theek rahega staff bhi hai.*
Krishan Kumar	:	*jyda ho jayega saheb jyda ho jayega thora .....*
P R Meena	:	*are aap to bhool rahe hai ye inspector bhi to hai*
Krishan Kumar	:	*ha ha ha ....*
P R Meena	:	*inko thora khus kar rakhiye*
Krishan Kumar	:	*saadhe teen (3.5) rakh lijiye chaliye. Theek hai.*
P R Meena	:	*theek hai, staff ko khus rakhiye.*
Krishan Kumar	:	*sadhe teen (3.5) jo hai .... mai jo hai......theek hai.*
P R Meena	:	*theek hai ...."*

" ......Krishan Kumar	*:*	*koi nahi jaisa aap kahegen, mai dekh lunga. Theek hai sir.*
P R Meena:	*:*	*theek hai.*
Krishan Kumar:	*:*	*mai baat karke jaise bhi.*
P R Meena:	*:*	*to aa aaj hi niklwa do usko.*
Krishan Kumar:	*:*	*to a aa kahaan par .... (inaudible)*
P R Meena:	*:*	*wo bataa dege unko ....* ***agrawal saheb*** *ko ......"*

"...... Krishan Kumar	*:*	*Aapki rehais kahaan par hai.*
P R Meena	*:*	*hamaari rehais to idhar hai janakpuri.*
Krishan Kumar	*:*	*janakpuri. Mai waise to Gurgaon rahta hu lekhin aaj mujhe udhar vikaspuri aana hai.*
P R Meena	*:*	*nahi nahi wo to unse baat kar lena* ***parul garg*** *ji se.*
Krishan Kumar	*:*	*ji theek hai*
P R Meena	*:*	*theek hai.*
Krishan Kumar	*:*	*ji aap mujhe number de dejiye wo agar kahegen to mai coordinate aap se kar lunga.*
P R Meena	*:*	*nahi nahi wo to* ***parul*** *se baat kar lena yeee inspector saheb se baat kar lena.*
Krishan Kumar	*:*	*theek hai"*

6. The above noted conversation showed demand of Rs.3.5 Lacs as bribe money and the role of CA Sh. Deepak Aggarwal and CA Ms. Parul Garg as middlemen to the commission of the crime. The conversation also showed familiarity amongst the accused persons.

7. The memory card was taken out from the DVR, kept back in its plastic cover which was signed by verification team members. The same was kept in a brown coloured envelope and sealed with the seal of CBI and was marked as Q-1 in CO 12 (E)/2016 and the independent witness, the complainant and the VO signed on the said envelop. Later on, to be more precise on 08.03.2016, Q-1 was sent to CFSL for preparing copies of the same for investigation purposes. After receiving the same, transcription of the conversation contained therein was prepared. So far as DVR is concerned, after removing the memory card, it was also sealed in a brown coloured envelope under the seal of CBI and the envelope was signed by verification team members and was marked as "DVR used in CO 12 (E)/2016" and was handed over to the independent witness along with the brass seal with the direction to produce the same on the date of laying trap. The facsimile of the CBI seal was embossed on the Verification Memo with ink. The facsimile of the CBI seal was taken in ink and lac on different sheets of paper which were signed by the independent witness and the VO. It was decided to lay a trap on 24.02.2016 as the complainant was not available on 23.02.2016. The recorded conversation required clarification about the person who had to be given the bribe amount and complainant clarified on telephone on 23.02.2016 that the bribe amount was directed to be given to Sh. Deepak Aggarwal as he was dealing with the file of the complainant Sh. Krishan Kumar.

8. Now, RC No. DAI-2016-A-0003 under Section 120-B IPC and Section 7 of PC Act, 1988 was registered against Accused No. 1 Sh. P.R. Meena, ITO and CA Accused No. 2 Sh. Deepak Aggarwal on 24.02.2016 and was assigned to Inspector Kuldeep Singh for investigation. On 24.02.2016, the Trap Laying Officer (TLO) constituted trap laying team comprising of eight members which included the complainant, four other officials of CBI, TLO and two independent witnesses as additional independent witness Sh. Sh. Vaneet Kumar was also included in the said team.

9. All the team members were formally introduced to each other and purpose of assembly for laying the trap on Accused No. 1 Sh. P.R. Meena and Accused No. 2 Sh. Deepak Aggarwal was explained to them. Independent witnesses and members of the trap party satisfied themselves about the genuineness of the complainant after going through the complaint, Verification Memo dated 22.02.2016 and further Verification Memo dated 23.02.2016. Complainant produced a sum of Rs. 3.5 Lacs G.C. Notes of Rs.500 denominations for giving to Accused No. 1 Sh. P.R. Meena as bribe amount and the distinctive numbers of the G.C. Notes were noted in the Handing Over Memo dated 24.02.2016. The bribe amount of Rs.3,50,000/- brought by the complainant was treated with phenolphthalein powder by one Inspector Ramesh Kumar, part of trap laying team. A demonstration was given to all present to explain the purpose

and significance of use of phenolphthalein powder and its chemical reaction with solution of sodium carbonate. It was explained that when an object comes in contact with phenolphthalein powder, if that object is washed in a solution of sodium carbonate and water, the colour of that solution would turn pink. Independent witness Sh. Vaneet Kumar was asked to touch tainted amount of Rs. 3.5 Lacs with his right hand fingers and afterwards was asked to dip them in the freshly prepared colourless solution of sodium carbonate and water in a glass tumbler. On doing so, the colourless solution turned Pink in colour and the said pink coloured solution was thrown away after explaining the significance of the reaction. The remaining phenolphthalein powder and glass tumbler used for demonstration were also left behind in the CBI office. The tainted bribe amount of Rs. 3.5 Lacs was then put in a white coloured carry bag on which RIVALDO jogger shoes was printed. This carry bag was also treated with phenolphthalein powder along with the bribe amount. Independent witness Sh. Vaneet Kumar put the said bag containing tainted amount in laptop bag for DELL of the complainant in the presence of another independent witness Sh. Subhash Kumar. The complainant was directed not to touch the tainted bribe amount and to hand over the same to Accused No. 1 on his specific demand or on his specific direction to some other person and not otherwise.

10. In the DVR which was produced by independent witness Sh. Subhash Kumar along with CBI seal used during verification, a new memory card was inserted and thereafter introductory voices of both the independent witnesses were recorded in it after ensuring that it was blank. Handing Over Memo was prepared which was signed by all concerned in token of its correctness and genuineness.

11. On the day of trap, on 24.02.2016, at around 14:45 hours, the CBI team and other members of the Trap Team left the CBI office in two official vehicles for the office of Accused No. 1 Sh. P.R. Meena. Independent witness Sh. Subhash Kumar remained outside the room of Sh. P.R. Meena to avoid any suspicion and the other independent witness Sh. Vaneet Kumar remained with CBI team. The DVR fitted with memory card containing the introductory voice of two independent witnesses was kept in the left pocket of coat worn by complainant, in recording mode. The complainant had gone to meet Accused No. 1 Sh. P.R. Meena at around 15:15 hours and came back after some time and the DVR was taken back and switched off. The complainant informed that he has been directed by Accused No. 1 Sh. P.R. Meena to hand over the bribe amount to CA/Accused No. 2 Sh. Deepak Aggarwal. The conversation was heard near CBI vehicles and it was decided to hand over the bribe amount to the said Accused No. 2 Sh. Deepak Aggarwal CA. The recorded conversation is as under:-

"...... P R Meena	:	*Chalo unko bhej dena. Wo aaye to the maine unko batya to tha.*
P R Meena	:	*haa ji bolo....... haa ji 2 minute.*
P R Meena	:	*aisa karo unko bhej dete na.*
Krishan Kumar	:	*achha, nahi wo kah rahe the ki kar dena.*
P R Meena	:	*haa to unko hi bhjejna hum aise nahi karenge...."*

"...... P R Meena	:	*unko hi bhejo.*
Krishan Kumar	:	*wo kahne lage ki app hi de aana.*
P R Meena	:	*nahi nahi. Unko hi bhejna hai.*
Krishan Kumar	:	*jaise aap kahe...... baat karu unse.*
P R Meena	:	*kar lena wahi ja ke baat.*
Krishan Kumar	:	*chaliye sir.*
P R Meena	:	*theek hai........."*

12. The conversation showed that Accused No. 1 Sh. P.R. Meena was not agreeable to accept the bribe money directly and he was referring to Accused No. 2 Sh. Deepak Aggarwal as confirmed by complainant in his statement.

13. The complainant contacted Accused No. 2 Sh. Deepak Aggarwal on mobile number 9810733490 to ascertain his availability in his office and the conversation between complainant and Accused No. 2 Sh. Deepak Aggarwal was also recorded on the memory card through DVR by keeping the mobile phone of the complainant on speaker mode. Thereafter, the DVR was switched off. The recorded conversation is as under:-

"*Deepak*	:	*Hello*
Krishna Kumar	:	*hello haa ji Deepak ji kya haal hai.*

Deepak	:	*badhiya hai Mama ji.*
Krishna Kumar	:	*achha kahaan ho.*
Deepak	:	*mai office me hu.*
Krishna Kumar	:	*achha .... aur pawan ji.*
Deepak	:	*pata nahi kahaan hai.*
Krishna Kumar	:	*achha achha. To office me abhi kitni der tak ho.*
Deepak	:	*batao na mai to idhar hi hun.*
Krishna Kumar	:	*wo actually paise jo hai mai to idhar se hi aa raha tha mai to sucha use hi de du to usne mana hi nahi to liye hi nahi.*
Deepak	:	*achha.*
Krishna Kumar	:	*to ab chod jata hu aap ke paas.*
Deepak	:	*mujhe pakra do mujhe pakra do koi baat nahi. ... hello.*
Krishna Kumar	:	*chalo theek hai mai aap ke pass hi aa raha hu.*
Deepak	:	*kitne hain.*
Krishna Kumar	:	*saadhe teen (3.5)*
Deepak	:	*theek hai.*
Krishna Kumar	:	*theek hai, mai aa raha hu".*

14. When the complainant went to meet Accused No. 2 Sh. Deepak Aggarwal, the DVR was in recording mode and was kept in left coat pocket of the complainant. The complainant met Accused No. 2 Sh. Deepak Aggarwal in his office along with independent witness Subhash Kumar who confirmed acceptance of bribe amount by Accused No. 2 Sh. Deepak Aggarwal from the complainant in his presence. This conversation between complainant and Accused No. 2 Sh. Deepak Aggarwal was also recorded on the memory card through DVR. When the complainant gave a call to TLO on his mobile, the trap team

challenged Accused No. 2 Sh. Deepak Aggarwal and confronted him regarding bribe accepted by him from the complainant, Accused No. 2 Sh. Deepak Aggarwal stated that this money was taken for handing over to Accused No. 1 Sh. P.R. Meena and he was the employee of Sh. P.K. Garg, CA since 1997 who was owner of M/s P. K. Garg and Associates. The tainted money was found kept on the ground below the table of Accused No. 2 Sh. Deepak Aggarwal.

15. This conversation recorded in DVR was heard in presence of independent witnesses which corroborated that the bribe amount has been accepted by Accused No. 2 Sh. Deepak Aggarwal, CA for further handing it over to Accused No. 1 Sh. P.R. Meena, ITO. The conversation between complainant and Accused No. 2 Sh. Deepak Aggarwal is as under:-

160224_005
(Taken about 10 minutes in travelling)

Deepak	*:*	*aa jao udhar se aa jao.*
Krishna Kumar	*:*	*is meena ka pura naam kya hai.......... meena badaa kamina. Mai aise hi aa raha tha saale ko mai hi de du, kal to badi mithi mithi baat kar raha tha parso, aaj to chai bhi nahi pelai. Kahne laga ye unhe hi de do (3.5) sadhe teen lakh rupay parso to maana hi nahi. Pahle to kah raha tha gadi naam kara do mere, to maine kaha bhai gadi wadi to nahi, to kahne laga .... 3.5 decide hue the, abhi kah raha hai order to type karaa hua hai.*

Deepak	:	*Order to mujhe pataa hai saara kamm to paise de ke hone hai.....*
Krishna Kumar	:	*nahi abhi wo to kah raha hai bhej do mere paas paise, chalo achha, paani pilao pahle, paani pilao.*
Krishna Kumar	:	*aap ke sign bhi hote hai usme.*
Krishna Kumar	:	*kah raha tha wo jabi aayege jabi karege.*
Deepak	:	*haa wo discuss kar raha tha, aur last me order.*
Krishna Kumar	:	*achha.*
Krishna Kumar	:	*saale ko telephone to kar do shanti nahi ho rahi thi kah raha tha ki aaj hi de do.*
A	:	*............. inaudible..........*
Krishna Kumar	:	*nahi nahi kah raha tha aaj hi de do.*
A	:	*............. inaudible.........*
Krishna Kumar	:	*kah raha tha ji aaj hi de do, maine kahaa ji mai to le hi aaya tha. Kah raha tha Deepak ji ko aap telephone kar do ek baar.*
Deepak	:	*mai abhi kar deta hun paarul pe number hai, le ke kar deta hun.*
Krishna Kumar	:	*Achha, aap number le ke aap hi phone kar do na saale ko. Order aaj hi uthwa lo.*
Deepak	:	*order le lenge order ki koi chinta nahi hai.*
Krishna Kumar	:	*achha.*
Deepak	:	*koi tension nahi hai.*
Krishna Kumar	:	*aap number le ke aap hi telephone maar do saale ko....*
Krishna Kumar	:	*aap log.....aaj kal ye....achha frize me rakh diya hoga.*
Deepak	:	*nahi .... (inaudible)*
Deepak	:	*nahi wo aaya nahi to kya karen.*
Krishna Kumar	:	*chutti maar gaya.*
Deepak	:	*chutti maar gaya badi paresaani thi. Kya kare.*
Krishna Kumar	:	*....ja raha hai.... to jana to daily hota hoga*
Deepak	:	*almost daily....*

Krishna Kumar	*:*	*app jaoge aaj*
Deepak	*:*	*aaj to nahi jaunga kal jaunga....(inaudible)*
Deepak	*:*	*actually ek case aur bhi fasaa hua tha uspe.*
Krishna Kumar	*:*	*achha....wo jara chai banwao usse....kya samjhe... chai mangwao.... mai to actually … aaj delhi me ek kaam tha usi ke liye mai aaya hua tha, 3-4 ghante wahaan lag gay ek ghante ka kaam tha. Uske baad free hoke phir idhar aaya, maine kahaa wahi ssare ko jaounga ITO.*
Deepak	*:*	*(on mobile phone) ITO, mai phone kar raha tha aapko, not reachable bataa raha tha... accha achha wo jo....(inaudible) aapne mujhe whats up ki thi wo actually badi light aa rahi hai, usme na nazar nahi aa raha hai, kal aap subhah aaoge na idhar, to lete aana saheb idhar, haa meme yahaa photo khich jayegi .... kal subhash le aana..... aur nana ji wali.....ha charo ki chao ki.*
Krishna Kumar	*:*	*kiski meri wali photo.*
Deepak	*:*	*nahi aapki nahi kisi aur ki.*
Krishna Kumar	*:*	*ek jo hai pan card jo hai aaj kal colored banne lagega to wo colored banwa do wo saale pahle wala jo hai black & white wahi 35 saal purana.*
Deepak	*:*	*are naya banwao na.*
Krishna Kumar	*:*	*to usme to saali shakal bhi najar nahi aati.*
Deepak	*:*	*photo hai aapke paas.*
Krishna Kumar	*:*	*photooooo nahi abhi to nahi hogi.*
Deepak	*:*	*to mujhe 2 photo chahiye aapki aur*
Krishna Kumar	*:*	*achha 2 photo chahiye.*
Deepak	*:*	*1 residence proof.*
Deepak	*:*	*Gurgaon ka.*
Krishna Kumar	*:*	*Gurgaon ka.....chalo dekh lunga. Discuss kar lunga abhi rahne do....*

Deepak	:	*delhi ka chahiye par delhi ka hai nahi......*
Krishna Kumar	:	*koi nahi, haa dekh lenge. Aisa karlete hain.*
Deepak	:	*kyon ki gugaon jane me dikat hai.*
Krishna Kumar	:	*chalo ek baar dekh lenge. Discuss karke phir accordingly karwa denge.*
Krishna Kumar	:	*Peon to hai nahi chai kaun banayega.*
Deepak	:	*nahi niche se le aaye ga.*
Krishna Kumar	:	*achha achha, to phir telephone par parul....*
Deepak	:	*kyon aap tension le rahe ho.*
Krishna Kumar	:	*.................... kab jaoge iske paas.*
Deepak	:	*Shaam ko kal bulaya hai.*
Krishna Kumar	:	*kal duphar baad. Wo to aap ka intajaar kare baitha tha abhi bhi.*
Deepak	:	*achha.*
Krishna Kumar	:	*haa, kah raha tha ji baitha hu 6 baje tak.*
Deepak	:	*achha dekho abhi pawan ji se baat karke bataata hu shaam ko kya karunga.*
Krishna Kumar	:	*ha......wo parso bhi yahi kah raha tha.....*
Deepak	:	*kya....*
Krishna Kumar	:	*ki abhi mai to socha ki le ke aaoge.*
Deepak	:	*achha.*
Krishna Kumar	:	*to maine kahaa ki bhai abhi.....*
Deepak	:	*.....................(inaudible)*
Deepak	:	*aur aapka wo kaisa chal rahaa hai.*
Krishna Kumar	:	*hmm kiska.*
Deepak	:	*jo aap kah rahe the na wo jo......function.*
Krishna Kumar	:	*chal rahaa hai. Hm chal raha hai.*
Deepak	:	*kya progress chal raha hai.*
Krishna Kumar	:	*puri progress .... bataunga....1 minute toilet ho ke aata hu....ye yahi rakhna.*
Deepak	:	*koi baat nah.*

16. Thereafter, it was decided to make a call on the mobile of Accused No. 1 Sh. P.R. Meena through Accused No. 2 Sh. Deepak Aggarwal for handing over the bribe money. However, neither the complainant nor Accused No. 2 Sh. Deepak Aggarwal had the mobile number of Accused No. 1 Sh. P.R. Meena and first Accused No. 2 Sh. Deepak Aggarwal tried to contact Sh. P.K. Garg but when he could not be contacted, Accused No. 3 Ms. Parul Garg was contacted who gave the mobile number of Accused No. 1 Sh. P.R. Meena. The recorded conversation is as under:-

<u>160224 009</u>

Deepak	:	*hello.*
Parul	:	*Haan ji sir.*
Deepak	:	*Parul wo meena ka number hai kya tumhare paas.*
Parul	:	*Meena ka nahi....dekh rahi hu 1 second. Mere khyal se to nahi hai. Maine liya to tha us din......kya sardar singh se lu kya abhi.*
Deepak	:	*dekh lo mil jaye to...*
Parul	:	*achha mai puchti hu...mai dekh ke bataati hu*
sir.		*Mai dekhti hu mere paas pahle hai ki nahi.*
Deepak	:	*Theek hai.... ok.*

<u>160224 010</u>

Blank................

<u>160224 011</u>

Deepak	:	*Hello.*
Parul	:	*hello.*
Deepak	:	*haa Parul wo number liya kya.*

Parul	*:*	*Haa likhiye.*
Deepak	*:*	*haa ji.*
Parul	*:*	*9013869042*
Deepak	*:*	*hmm theek hai.*

17. When Shri Deepak Aggarwal called Shri P.R. Meena, the conversation was also recorded on the memory card through DVR by keeping the mobile phone of Accused No. 2 Sh. Deepak Aggarwal on speaker mode. Accused No. 1 Sh. P.R. Meena directed Accused No. 2 Sh. Deepak Aggarwal to meet him in his office for handing over the bribe money on that day itself and directed him to come alone and not with the complainant Krishan Kumar. The recorded conversation is as under:-

"...... Deepak	*:*	*wo milke gaye the na..... kishan ji.*
P R Meena	*:*	*ha ha.*
Deepak	*:*	*aaye the aap ke paas.*
P R Meena	*:*	*nahi.*
Deepak	*:*	*haa ji.*
P R Meena	*:*	*nahi.*
Deepak	*:*	*squire 9 inn wale.*
P R Meena	*:*	*haa aaye the.*
Deepak	*:*	*achha wo aa gaye hai mere paas ji.*
P R Meena	*:*	*aap ke paas aa gaye na.*
Deepak	*:*	*ha aa gaye hai ji mere paas baithe hai.*
P R Meena	*:*	*to theek hai aa jao phir.......*
Deepak	*:*	*achha thik hai wo aa gaye samaan bhi aa gaya hai.*
P R Meena	*:*	*are aap hi aana bhai saheb unko mat lana.*
Deepak	*:*	*theek hai ji aa raha hu aa raha hun. Theek hai........."*

18. On the direction of TLO, the bribe amount lying below the table of Accused No. 2 Sh. Deepak Aggarwal was recovered and put back in the same bag from which the complainant had given it to Accused No. 2 Sh. Deepak Aggarwal. This was done by Accused No. 2 Sh. Deepak Aggarwal himself. Now, the DVR was kept in switched on mode in the shirt pocket of Accused No. 2 Sh. Deepak Aggarwal who went with the bribe amount to meet Accused No. 1 Sh. P.R. Meena in his office. After coming from the office of Accused No. 1 Sh. P.R. Meena, Accused No. 2 Sh. Deepak Aggarwal told that Accused No. 1 Sh. P.R. Meena is asking for only Rs. two Lacs out of Rs. 3,50,000, Rs. 1 50,000 is for Sh. P.K. Garg and agreed to receive only Rs. 50,000 stating that he has already received Rs. 1,50,000 from Accused No. 3 Ms. Parul Garg. The trap laying team challenged Accused No. 1 Sh. P.R. Meena for demanding and agreeing to accept bribe. The conversation between Accused No. 1 Sh. P.R. Meena and Accused No. 2 Sh. Deepak Aggarwal was heard through DVR in the presence of independent witnesses and other team members. The recorded conversation is as under:-

“P R Meena	*:*	*baithey*
Deepak	*:*	*aur sunaiye kya haal hai....*
P R Meena	*:*	*badhiya hai.*
Deepak	*:*	*mil ke gay the wo.*
P R Meena	*:*	*mil ke gay the.....*
Deepak	*:*	*achha.*

P R Meena	:	paise laaye the wo.... mahraaj wo recovery ko dene hai.. mai to aap se kahaa tha.
Deepak	:	parul se baat hui thi, parul se, pawan ji se....
P R Meena	:	....
Deepak	:	achha achha.
P R Meena	:	aap ne hi to phone kiya tha na.
Deepak	:	nahi wo to maine baad me kiya tha. Maine to abhi kiya tha 10 minute pahle aaadhe ghante pahle.
P R Meena	:	haa to bas aapse hi baat hui hai meri, maine aap ka naam liya nahi agarwal ji aaye the unhi ko bhej dena.
Deepak	:	theek theek.
P R Meena	:	maine kahaa ji aapse baat nahi karunga wok ah rahe the ji mujhe paise dene hai, mai to lunga hi nahi na hi koi baat karunga....... baat ho gai thi mujhe to aapse baat ho gai hai mai rojaana thore hi karunga.
Deepak	:	theek baat hai.
P R Meena	:	bhai ab jo bhi kuch........
Deepak	:	pani nahi hai sir yahaan pe.
P R Meena	:	haa pani hai na yahaa pe.
Deepak	:	usme hai nahi paani.
P R Meena	:	paani hai.
Deepak	:	nahi hai sir usme......khatam hai.
P R Meena	:	mangwaata hu.
Deepak	:	chalo rahne do.
P R Meena	:	aaye to dekhlo koi ladka.
P.R. Meena	:	kya hai batao.
Deepak	:	de gay mere ko samaan ye sara.
P R Meena	:	kitna lekar aaye ho.
Deepak	:	sir sadhe teen (3.5) hai.
P R Meena	:	haa to wahi tha na.

Deepak	:	*de du aapko......kaise karu.*
P R Meena	:	*batao.*
Deepak	:	*isee rakh lo phir pawan ji se jaise karna hai kar dena nahi to parul se jaise karna ho......*
P R Meena	:	*nahi aapko kitne rupay bataye hai*
Deepak	:	*nahi mere ko to pataa nahi aapki kya baat hui hai unse phir ye to koi baatcheet hi nahi ..... mai to tha hi nahi .... (inaudible)*
P R Meena	:	*parul se meri 2 ki baat hui thi.*
P R Meena	:	*(on telephone) haa kamlesh ji ha wo na koi paani waala bhijwwa do na. Ye agarwal ji paani piyenge.. aur koi hai wahaan pe ... haa bhej do yaar .... aa..... achha achha.... theek hai theek hai.*
P R Meena	:	*hu ab kya kah rahe hain.*
Deepak	:	*nahi maine kahaa ya to rakh lo kar lena phone parul aayengi to jaise bhi hoga...*
P R Meena	:	*........ (inaudible)*
Deepak	:	*kaise karun batao phir.*
P R Meena	:	*mujhe to jo baat hui thi wahi chahiye*
Deepak	:	*achha.*
P R Meena	:	*mujhe jyda nahi chahiye. Aap rakho apne paas. Parul to ye kah rahi thi aap jo baat karo jitna lena chaho le lo par hame aap se....*
Deepak	:	*hmm hmm.*
P R Meena	:	*hamme aapse nahi chahiye...*
Deepak	:	*chalo to phir mai parul se ek bar baat kar leta hu phir jaisa hoga mai batata hu....*
P R Meena	:	*baat kar lena aur mujhe to 2 hi chahiye aur staff ko apni khushi se de dena*

Deepak	:	theek hai ji....to abhi ye naa du aapko.
P R Meena	:	mujhe kya dena usi me se 1 to liye rahna.
Deepak	:	haan ji.
P R Meena	:	1 de dete parul ko.
Deepak	:	achha mujhe to ye bhi pataa nahi tha sir, mujhe to bilkul hi nahi pata tha kyonki mai to aaya nahi tha us din kaun aaya tha us din.
P R Meena	:	nahi unke father aaye the us din.
Deepak	:	achha achha.
P R Meena	:	to aisa nahi hai dekho aapka hamara viswaas hona chahiye.
Deepak	:	hmm.
P R Meena	:	theek hai viswaas pe duniya chalti hai, aisa nahi hai, meri parul se baat hui thi, kyon ki usne ye kahaa tha ki wo mujhe milne aayenge jitna maane unse maang lena, mujhe koi dikkat nahi hai ab aisa nahi hai, ek baar baat ho gai hai.
Deepak	:	hmm.
P R Meena	:	mere paas sona bhi para hoga bola nahi....
Deepak	:	theek hai ji..
P R Meena	:	theek hai. Mujhe wo chaiheye bhi nahi.
Deepak	:	ji sir.
P R Meena	:	jo baat hui hai..
P R Meena	:	ab aisa hai yahaa abhi aur bhi case hain aapka.
Deepak	:	ji.
P R Meena	:	aisa nahi hai. to.......
Deepak	:	theek hai ji mai baat kar leta hu phir batata hu jaisa hoga.

P R Meena	*:*	*kar lena koi nahi aap ke paas hai to wo bhi mere paas hi rakhha hai.*
Deepak	*:*	*theek hai ji mai baat karke batata hu.*
P R Meena	*:*	*ha mahraaj.*
Deepak	*:*	*theek hai sir theek hai sir.*
Deepak	*:*	*sir unhone to liya nahi, wo kah rahe the mujhe to 2 ki baat hui thi, mujhe to 2 hi do aur mujhe nahi chahiye.*
Unknown	*:*	*To de do na yaar usko.*
Deepak	*:*	*nikal ke de du.*
Unknown	*:*	*haa nikaal ke de do.... de do.*
Deepak		*le lo sir.*
P R Meena	*:*	*uu*
Deepak	*:*	*2 de deta hu aapko.*
P R Meena	*:*	*koi aaya hai kya aap ke saath.*
Deepak	*:*	*chale gay.*
P R Meena	*:*	*nahi nahi wo to dedh (1.5) de gay na, dedh de gay na.*
Deepak	*:*	*achha.*
P R Meena	*:*	*50 hi dena.*
Deepak	*:*	*achha.*
P R Meena	*:*	*kal de dena.*
Deepak	*:*	*hmm*
P R Meena	*:*	*kal de dena kya ho gya hai itna jaldi thori na hai mahraaj.*
Deepak	*:*	*aap ki marji hai ji jaise aap kaho waise hi karna hai mujhe, jaisa aap kaho waisa hi mai karun.*
P R Meena	*:*	*mujhe koi dikkat nahi hai.*
Deepak	*:*	*theek hai ji.*
P R Meena	*:*	*mai ye kah raha tha nahi dena hai to kal hi de dena, aisa kuch bhi nahi agar aap ke paas rakhe hai to...*
Deepak	*:*	*mai ek baar baat kartaa hu.*
P R Meena	*:*	*koi aur bhi hai kya.*
Someone to Deepak	*:*	*namaskaar sir.*

Deepak	:	*haa badhiya hai sir aap bataiye.*
Deepak	:	*sir wo le nahi raha hai.............. sir wo ye kah rahe hai na (inaudible).....”*

19. The hand wash of Accused No. 2 Sh. Deepak Aggarwal was taken in solution of sodium carbonate and left-hand as well as right hand wash turned pink which were sealed in separate bottles which were sealed with wax and marked with the brass seal used during verification and the same was taken from the witness Sh. Subhash Kumar and white papers were pasted on the bottles and the clothes used for wrapping before sealing were signed by both the independent witnesses and TLO. Both the hand wash of Accused No. 2 Sh. Deepak Aggarwal were sent to CFSL on 08.03.2016 for examination and expert opinion and the expert gave the opinion that both the exhibits have given positive test for the presence of phenolphthalein and sodium carbonate.

20. The tainted bribe amount of Rs. 3,50,000 was tallied by both the independent witnesses and signed opposite the numbers mentioned in the Handing Over Memo in token of its correctness. The bribe amount was also sealed with CBI brass seal along with the envelope in which tainted bribe amount was kept. During search conducted in the office of Accused No. 1 Sh. P.R. Meena, file relating to M/s. Square-9 Inn regarding assessment of income tax for the year 2013-2014 was also taken into possession. A rough site plan of the place of occurrence was prepared signed by independent witnesses and other team members. A rough site

plan of the office of M/s. P.K. Garg and Associates where the bribe money was taken by Accused No. 2 Sh. Deepak Aggarwal was also prepared on 23.05.2016 and signed by independent witness, complainant and TLO.

21. On returning to office, the memory card used for recording the conversation between complainant and Accused No. 1 Sh. P.R. Meena and Accused No. 2 Sh. Deepak Aggarwal during the transaction of the bribe money was taken out from the DVR. It was kept in its original cover which was marked as "Q-2 in RC No. 003/2016". This cover was signed by both the independent witnesses and TLO. This cover was again kept in a brown envelope sealed with brass seal and marked as "RC-DAI-2016-A-003 Q-2". The two independent witnesses and TLO also signed on the brown envelop.

22. Thereafter, the DVR was fitted with another 4GB memory card where the introductory voice of both the independent witnesses, specimen voices of Accused No. 1 Sh. P.R. Meena and Accused No. 2 Sh. Deepak Aggarwal and the complainant Sh. Krishan Kumar were taken by selecting spoken sentences by them from the recorded conversations marked Q-1 and Q-2. After recording the sample voices, closing introductory voices of both the independent witnesses were again recorded. The memory card was taken out from DVR and was kept in its original cover which was signed by both the independent witnesses and TLO. This cover was again kept in a brown envelope and this envelope was

sealed with brass seal and marked as "sample voice in RC No. 003/2016, S-1, S-2 and S-3". This was also signed by two independent witnesses and TLO. Mobile phone of Accused No. 1 Sh. P.R. Meena and Accused No. 2 Sh. Deepak Aggarwal were seized and taken into possession. The brass seal used during trap proceedings was given to the independent witness. All the proceedings conducted by the trap team were reduced into writing vide Recovery Memo which was signed by the complainant, independent witnesses and trap team members on each page. The recovery memo was sealed with the brass seal on all the pages.

23. During investigation, transcript of all the recorded conversations was prepared. During investigation, Q-1 and Q-2 were sent to CFSL for expert opinion and the expert has given positive opinion on the voice of Accused No. 1 Sh. P.R. Meena and Accused No. 2 Sh. Deepak Aggarwal.

24. During investigation, Pawan Singh, Nodal Officer of Idea Cellular Ltd has proved that mobile no. 9810733490 was issued to Accused No. 2 Sh. Deepak Aggarwal and it was also investigated that mobile 9013869042 was issued to Accused No. 1 P.R. Meena and it was also investigated that there was conversation between the users of mobile 9810733490 and 9013869042 on 24.02.2016. There was also a call from 09810374521 to 09013869042 on 22.02.2016 at 20.09.45 hours for a duration of 59 seconds. During investigation it was also investigated that

mobile 09810374521 was issued to Accused No. 3 Ms. Parul Garg and there was a call from her number to the mobile number 09013869042 of Accused No. 1 Sh. P.R. Meena on 22.02.2016 at 20.09.45 hours for a duration of 59 seconds. It was also investigated during investigation that mobile 9958408585 was issued in the name of M/s Square 9 Inn and there was conversation between the user of this phone and 9810733490 on 24.02.2016.

25. The role of Accused No. 3 Ms. Parul Garg is stated to be that she was attending the proceedings of M/s. Square 9 Inn before Accused No. 1 Sh. P.R. Meena in her capacity as CA of the complainant's firm. Her signatures have been identified by the witnesses in the file seized from the office of P.R. Meena and conversation between Accused No. 1 Sh. P.R. Meena and Accused No. 2 Sh. Deepak Aggarwal on 24.02.2016 is also relied on to allege conspiracy by Accused No. 3 Ms. Parul Garg and the conversation is as under:-

"...... P R Meena	*:*	*nahi aapko kitne rupay bataye hai....*
Deepak	*:*	*nahi mere ko to pataa nahi aapki kya baat hui hai unse phir ye to koi baatcheet hi nahi... mai to tha hi nahi..... (inaudible)*
P R Meena	*:*	*Parul se meri 2 ki baat hui thi......"*

26. After obtaining sanction to prosecute Accused No. 1 Sh. P.R. Meena, chargesheet was filed under Section 120B of IPC read with Section 7, 12, and 13 (1) (d) read with Section 13 (2) of the PC Act, 1988 and also substantive offence under Section 7 and 13 (1) (d) read with Section 13 (2) of PC Act, 1988 against the accused persons.

27. **Order on charge**: Vide orders dated 20.03.2017, Accused No. 1 Sh. P.R. Meena was charged under Section 7 of the P.C. Act and under Section 13(1) read with 13(2) of the P.C. Act. All the three accused were charged under Section 120B of IPC and under Section 7 of P.C. Act read with 120B IPC. All the three accused were also charged for the offence punishable under Section 13(1) read with Section 13(2) of P.C. Act read with 120B IPC to which they pleaded not guilty and claimed the trial.

28. Prosecution examined 20 witnesses to prove its case. These witnesses are of seven categories namely-

(1) Complainant (PW-2),

(2) Two independent witnesses namely- Sh. Subhash Kumar (PW-3) and Sh. Vaneet Kumar (PW-6),

(3) Three CBI officers namely- Inspector S.P. Singh (PW-15) who was the Verification Officer, Inspector Kuldeep Singh (PW-19) Trap Laying Officer and Dy. SP Joseph Krelo (PW-20) who was the Investigating Officer of the case

(4) Two expert witnesses namely- Sh. V.B. Ramteke (PW-4) and Sh. Amitosh Kumar (PW-8)

(5) Four Nodal Officers namely- Sh. Rama Shankar Yadav (PW- 1), Sh. Pawan Singh (PW-7), Sh. Pradeep Kumar (PW-9) and Sh. Surender Kumar (PW-17)

(6) Five officials from Income Tax Department namely- Sh. Rati Ram (PW-5), Sh. Ravi Kumar (PW-10), Sh. Kamlesh Kumar (PW-11), Sh. Ashish Chandra Monhanti (PW-13) and Sh. P.K. Srivastava (PW-16)

(7) Three witnesses pertaining to M/s P.K. Garg & Associates namely- Sh. P.K. Garg (PW-12), Sh. Gaurav Gupta (PW-14) and Sh. Satish Kumar Gupta (PW-18).

29. The evidence of prosecution witnesses is noted briefly in the same manner for noticing the different documents/articles proved by them.

30. **PW-2 Sh. Krishan Kumar:-** The complainant, PW-2, has proved his written complaint dated 22.02.2016 as **Ex.PW2/1** (D-2). He proved Verification Memo dated 22.02.2016 as **Ex.PW2/3** (D-3). (There is no Exhibit PW-2/2 in this case). The Handing Over Memo dated 24.02.2016 was exhibited as **Exhibit PW-2/4** (D-5). Recovery memo dated 24.02.2016 was exhibited as **Exhibit PW-2/5** (D-6). He proved the Voice Identification-cum-Transcript Memo dated 11.04.2016 as **Exhibit PW-2/6** (D-19). He proved transcript of Q1 dated 11.04.2016 as **Exhibit PW-2/7** (D-19). The transcript of Q 2 was proved as **Exhibit PW-2/8** (D-19). He also proved signatures of Accused No. 2 Sh. Deepak Aggarwal on documents submitted in the case of M/s. Square 9 Inn as **Exhibit PW-2/9** (D-8). He also proved his signatures on the ledger

maintained by M/s. Square 9 Inn as **Exhibit PW-2/10** (D-8). Signatures of Sh. Deepak Aggarwal were also approved on document dated 23.12.2015 as **Exhibit PW-2/11** (D-8). Document dated 11.12.2015 signed by Sh. Deepak Aggarwal was proved as **Exhibit PW-2/12** (D-8). Document dated 04.12.2015 signed by Sh. Deepak Aggarwal was proved as **Exhibit PW-2/13** (D-8). The envelope in which Q1 was sealed was proved as **Exhibit PW-2/14**. The paper packaging bearing signature of this witness was proved as **Exhibit PW-2/15** and the SD card was exhibited as **Article P1**. He was shown document at page No. 219, D-8 and admitted that this is the notice which he had received on 15.09.2015 and was exhibited as **Exhibit PW-2/DX1**. He was shown Requisition Sheet **Ex.PW2/DX-2**, but could not say whether he has received the same alongwith Ex.PW2/DX1 or not. He also deposed that his daughter-in-law is also a CA and proved letter submitted by her to the Income Tax Officer as **Exhibit PW-2/DX3**.

31. **PW-3 Sh. Subhash Kumar:-** This witness was the independent witness called in CBI office on 22.02.2016 for verification proceedings. **Exhibit P-1** SD card was containing file 160222-001 which the witness identified to be his voice. Parcel Q-2 sealed with the seal of AK SSO II (Phy) CFSL CBI New Delhi was found containing khaki envelope which was exhibited as **Exhibit PW-3/1**. This envelope was further containing SD card packing as well as plastic casing of SD card which were exhibited

as **Exhibit PW-3/2** and **PW-3/3** respectively. Brown coloured envelope duly sealed with the seal of ACB CBI ND having five seals with all five seals intact was exhibited as **Exhibit PW-3/4** and it was found containing DVR which was exhibited as **Exhibit P-2**. SD card was found containing a file 160224-001 which the witness identified to be in his voice recorded on 24.02.2016. The SD card was exhibited as **Exhibit P-3**. Office-cum-Car Search Memo dated 24.02.2016 was exhibited as **Exhibit PW-3/5 (D-27)**. Two bottles marked RHW and LHW were exhibited as **Exhibit P-4 and Exhibit P-5** respectively.

32. **PW-6 Sh. Vaneet Kumar**:- This witness was the second independent witness in this case. He deposed that a rough site plan was prepared of the office of Sh. P.R. Meena which was exhibited as **Exhibit PW-6/1**. The Transcript Memo (D-19) was exhibited as **Exhibit PW-6/2**. In the SD card, **P-3**, he identified his voice in file 160224-002 recorded in CBI office on 24.02.2016. Brown envelope found in another envelope marked as Exhibit S1, S2 and S3 was exhibited as **Exhibit PW-6/3** as the same was also signed by this witness. The packaging of SD card was exhibited as **Exhibit PW-6/4**. The plastic case of SD card was exhibited as **Exhibit PW-6/5** and SD card was exhibited as **Exhibit P-6**. The witness identified his voice in file 160225-002 which was recorded in CBI office on 24.02.2016 in Exhibit P-6. Another envelope was exhibited as **Exhibit PW-6/6.** When this envelope was opened it was found to contain another envelope

which was exhibited as **Exhibit PW-6/7**. This envelope contained Rivoldo jogger shoes bag bearing the signatures of this witness and the bag was exhibited as **Exhibit PW-6/8**. This bag was found to contain 700 notes which were exhibited as **Exhibit P-7** to **P-706**. A laptop bag wrapped in a white cloth bearing signatures of this witness was exhibited as **Exhibit P-707** and the white cloth was exhibited as **Exhibit PW-6/9**.

33. **PW-15 Inspector S.P. Singh**:- This witness had verified the complaint given by the complainant Shri Krishan Kumar. He proved the Further Verification Report dated 23.02.2016 as **Exhibit PW-15/1**. He also proved the extracts of Dead Stock Register were exhibited as **Exhibit PW-15/PX2**.

34. **PW-19 Inspector Kuldeep Singh**:- This witness was the Trap Laying Officer in this case and deposed viz-a-viz proceedings conducted on 24.02.2016. He has proved the Arrest-cum-Personal Search Memo of A-1 Sh. P.R. Meena and Accused No. 2 Sh. Deepak Aggarwal as **Exhibit PW-19/A** and **Exhibit PW-19/B** respectively. He also deposed that Accused No. 2 Sh. Deepak Aggarwal is employee of Sh. P.K. Garg. He denied a suggestion that the complainant had asked the CBI to trap Sh. P.K. Garg. Since the witness was not able to recollect, he was shown his statement under Section 161 of Cr.P.C. recorded on 18.04.2016 where he had deposed that *"Complainant also disclosed that Sh. Pawan Kumar Garg, CA had earlier talked with*

accused Sh. P.R. Meena about his settlement of assessment of income tax and regarding payment of bribe amount in the presence of independent witnesses". The statement was exhibited as **Exhibit PW-19/DX**.

35. **PW-20 Sh. Joseph Krelo**:- This witness is the IO of the case and had taken over the investigation of the case on 07.03.2016. He proved letter dated 08.03.2016 of SP CBI forwarding three sealed envelopes Marked as Mark Q-1 CO-12 (A) 2016 and Q-2 in RC No. 003 (A) 2016 and Marked as Sample Voice in RC No. 003/16 "S-1, S-2 and S-3" as **Exhibit PW-20/A** (D-9) (This exhibit is not written on the document D-9). The certificate certifying that Director, CFSL is authorized to examine the exhibits was proved as **Exhibit PW-20/B** (D-9) (This exhibit is not written on the document D-9). The letter of SP CBI dated 08.03.2016 regarding hand wash of Accused No. 2 Sh. Deepak Aggarwal obtained by TLO on 24.02.2016 requesting chemical examination of the solution contained in the bottles for opinion regarding presence of phenolphthalein power and sodium carbonate in the solution was proved as **Exhibit PW-20/C** (D-10) (This exhibit is not written on the document D-10). The certificate certifying that Director, CFSL is authorized to examine the exhibits was proved as **Exhibit PW-20/D** (D-10) (This exhibit is not written on the document D-10). He deposed that he had collected certified copy of CDR, Cell ID Chart covering the CDR and certificate under Section 65B of Evidence Act of Mobile No. 9013869042, Exhibit PW-1/1 (D-11).

The CDR shows that a call was received on Mobile No. 9013869042 from Mobile No. 9810374521 on 22.02.2016 at 20:09:45 for 59 seconds. Letter dated 28.03.2016 (D-12) regarding preparation of five sets of copies in DVD from Exhibits by Director, CFSL, New Delhi addressed to SP CBI was proved as **Exhibit PW-20/E**. Letter dated 29.03.2016 (D-13) from Director, CFSL, New Delhi to SP CBI for collection of report and exhibits (regarding hand-washes of Accused No. 2 Sh. Deepak Aggarwal) was proved as **Exhibit PW-20/F**. Forwarding letter dated 26.04.2016 wherein the receipt of three sealed parcels [three envelopes containing three memory cards also referred in Ex. PW-20/A (D-9)] has been given by CFSL, CBI was proved as **Exhibit PW-20/G** (D-23).

36. **PW-4 Sh. V.B. Ramteke**:- This witness had chemically examined two sealed glass bottles sent by SP CBI for expert's opinion and proved his report as **Exhibit PW-4/1**. He deposed that both the exhibits had given positive test for the presence of phenolphthalein and sodium carbonate.

37. **PW-8 Sh. Amitosh Kumar**:- This witness had examined three exhibits sent to CFSL by SP, CBI where Exhibit Q-1 and Q-2 contained questioned recorded conversation of suspected persons and micro SD card S-1 contained the specimen voice of Accused No. 1 Sh. P.R. Meena, Accused No. 2 Sh. Deepak Aggarwal and complainant Krishan Kumar. He had reported that questioned voice Mark-Q1 (1) (A), Q-2 (1) (A), Q-2 (6) (A) and Q-

2 (7) (A) and specimen voice marked as S-1 (1) (A) are of the same person namely Sh. P.R. Meena on the basis of linguistic, phonetic and spectrographic examination. Similarly, the questioned voice marked as Q-2 (2) (B), Q-2 (3) (B), Q-2 (4) (B), Q-2 (5) (B), Q-2 (6) (B) and Q-2 (7) (B) and the specimen voice marked as S-1 (2) (B) are of the same person namely Sh. Deepak Aggarwal on the basis of linguistic, phonetic and spectrographic examination. He deposed that the specimen voice of Sh. Krishan Kumar contained in Exhibit S-1 was not compared with the questioned voice as no query was asked by the forwarding authority. He deposed that the micro SD cards Exhibit Q-1, Q-2 and S-1 were also examined for tempering/editing and it was found that no form of tempering was detected in the audio recording contained in Exhibit Q-1, Q-2 and S-1. The report prepared by the witness was proved as **Exhibit PW-8/1** (D-25).

38. **PW-1** :- Sh. Rama Shankar Yadav from MTNL had given letter dated 29.03.2016 to the IO alongwith CDR of Mobile No. 9013869042 alleged by prosecution to be in the name of Sh. P.R. Meena from 22.02.2016 to 24.02.2016, cell ID covering the aforesaid CDR and certificate under Section 65-B of Evidence Act in respect of aforesaid CDR which were proved as **Exhibit PW-1/1, PW-1/2, PW-1/3 and PW-1/4** (all part of D-11) respectively. The CDR, Exhibit PW-1/2 shows that from mobile number 09810374521 which is allegedly in the name of Accused No. 3 Ms. Parul Garg, a call was made to Mobile No.

9013869042 which is allegedly in the name of Sh. P.R. Meena for a duration of 59 seconds at 20:09:45 hours on 22.02.2016. It also shows a call from mobile No. 9810731490 to the alleged mobile of Sh. P.R. Meena 9013869042 on 24.02.2016 for a duration of 51 seconds at 17:09:45 hours.

39. **PW-7 Sh. Pawan Singh**:- This witness was Nodal Officer of Idea Cellular Ltd. and had provided Customer Application Form of Mobile No. 9810733490 along with CDR and certificate under Section 65B of Evidence Act to CBI. The Production-cum-Seizure Memo dated 08.04.2016 was exhibited as **Exhibit PW-7/1** (D-15), CDR of mobile No. 9810733490 of Sh. Deepak Aggarwal w.e.f. 22.02.2016 to 24.02.2016 as **Exhibit PW-7/2** (D-17), the certificate under Section 65B of Evidence Act was exhibited as **Exhibit PW-7/3** (D-16) and CAF was exhibited as **Exhibit PW-7/4** (D-18).

40. **PW-9 Sh. Pradip Singh**:- This witness was Alternate Nodal Officer with Vodafone Mobile Services Limited. He had provided vide his letter dated 11.04.2016, **Exhibit PW-9/1** (D-21) CDR of mobile number 9958408585 in the name of M/s. Square 9 Inn from 22.02.2016 to 24.02.2016, **Exhibit PW-9/2,** Certificate under Section 65B of Evidence Act as **Exhibit PW-9/3** and Customer Application Form in the name of M/s. Square 9 Inn as **Exhibit PW-9/4**. During cross examination on behalf of Accused No. 2 Sh. Deepak Aggarwal, it came on record that on 22.02.2016, at 11:00 AM, a call was made from mobile number

9958408585 to mobile number 9810014521 for a duration of 32 seconds and it has come in the evidence of PW-2 that mobile number 9810014521 is in the name of Sh. P.K. Garg.

41. **PW-17 Sh. Surender Kumar**:- This witness was the Nodal Officer of Bharti Airtel Ltd. and proved his letter dated 15.06.2016 as **Exhibit PW-17/1** vide which he had provided CDRs of telephone numbers 9810374521, 9810014521, 9810915473, 9212277174 and 9810013521 along with Customer Application Form to CBI. He had also provided certificate under Section 65 of the Evidence Act. The certificate was exhibited as **Exhibit PW-17/2**, CAF in respect of mobile No. 9810374521 was exhibited as **Exhibit PW-17/3**. Certified copy of CDR of mobile No. 9810374521 from 20.02.2016 to 23.02.2016 was proved as **Exhibit PW-17/4**. During cross examination by learned counsel for Accused No. 2 Deepak Aggarwal, the witness deposed that the telephone number 9810014521 is registered in the name of Sh. Pawan Kumar Garg. He further deposed that mobile No. 9810915473 is registered in the name of Sh. Pankaj Dogra and mobile No. 9212277174 is registered in the name of CPR Capital Service Ltd. and Mobile No. 9810013521 is registered in the name of Ms. Parul Garg. At that time, the court had recorded its observation that the photograph on the CAF brought by the witness for Mobile No. 9810013521 in the name of Ms. Parul Garg is different. The copies of CAF of these mobile phones were exhibited as Exhibit PW-17/DX-1 to Exhibit PW-17/DX-5. The

witness also produced CDR, location chart and CAF pertaining to Mobile Nos. 9810374521, 9810014521, 9810915473, 9212277174 and 9810013521 for the period from 01.12.2015 to 24.02.2016 along with certificate under Section 65B of Evidence Act and the two were exhibited as **Exhibit PW-17/DX6** and **Exhibit PW-17/DX7**. The CAF pertaining to Mobile No. 9810374521 in the name of Ms. Parul Garg was exhibited as **Exhibit PW-17/DX8**. The CDR of Mobile No. 98103745214 from 01.12.2015 to 24.02.2016 (79 pages) was proved as **Exhibit PW-17/DX9**. Certificate under Section 65B of Evidence Act regarding mobile numbers 9810374521, 9810013521, 9212277174, 9810014521 and 9810915473 was exhibited as **Exhibit PW-17/DX10**.

42. **PW-5 Sh. Rati Ram**:- This witness was posted in Ward 58 (3) where Sh. P.R. Meena was also posted in the year 2016. He deposed that on 29.01.2016, Accused No. 1 Sh. P.R. Meena had given him an assessment order to be uploaded in the system and he had uploaded the same in the system and entered into demand collection register whereafter he handed back the assessment order to Sh. P.R. Meena. When he was shown assessment order regarding the assessee M/s. Square 9 Inn, he deposed this was the assessment order which was handed over to him by Sh. P.R. Meena which was exhibited as **Exhibit PW-5/1** (D-8). The Income Tax Computation Form whose printout was taken by him after uploading the assessment order was

exhibited as **Exhibit PW-5/2**. The note sheets signed by Sh. P.R. Meena were proved as **Exhibit PW-5/3**.

43. **PW-10 Sh. Ravi Kumar**:-This witness is an official of Income Tax Department had assisted CBI team at Income Tax Office on 24.02.2016. In the presence of this witness, the car of Sh. P.R. Meena was searched by CBI. He identified his signatures on Memo Exhibit PW-3/5.

44. **PW-11 Sh. Kamlesh Kumar:-** This witness was also an official of income tax department and had handed over posting order of Sh. P.R. Meena vide his letter dated 11.04.2016 to CBI and the letter was exhibited as **Exhibit PW-11/1**. The posting order dated 12.06.2015 of Sh. P.R. Meena was exhibited as **Exhibit PW-11/2** (D-20).

45. **PW-13 Sh. Ashis Chandra Mohanty:-** This witness was Joint Commissioner of Income Tax at the relevant time and was Administrative Supervising Officer for the Assistant Commissioner and five Income Tax Officers working in different circles and wards. He deposed that the case of M/s. Square 9 Inn was selected for scrutiny as higher return was shown in Service Tax Return in comparison to Income Tax Return and unsecured loan was received from parties who had not filed their income tax return. During cross examination on behalf of Accused No. 2 Sh. Deepak Aggarwal he deposed that the date of assessment order of M/s. Square 9 Inn is 29.01.2016. During cross examination on

behalf of other accused, the Manual of Office Procedure of the Department was exhibited as **Exhibit PW-13/DX1**.

46. **PW-16 Sh. P.K. Srivastava**:-This witness was the Principal Commissioner Income Tax at the relevant time and had issued Sanction Order for prosecution of Accused No. 1 Sh. P.R. Meena. He deposed that he had received a letter/communication from Vigilance Department enclosing therewith a letter of CBI and certain documents and statements of witnesses. He deposed that after going through all these documents and due application of mind, he had accorded the sanction. He proved Sanction Order as **Exhibit PW-16/A (D-26)**.

47. **PW-12 Sh. P.K. Garg**:- This witness is one of the partners of M/s P.K. Garg and Associates. He deposed complainant Sh. Krishan Kumar was one of the clients of the said firm and the complainant is maternal uncle of his wife. He deposed he had never represented Sh. Krishan Kumar before Income Tax Department and Sh. Deepak Aggarwal was looking after the case of Sh. Krishan Kumar. He also deposed that Ms. Parul Garg also used to go to Income Tax Office along with Sh. Deepak Aggarwal to represent the case of Sh. Krishan Kumar regarding M/s. Square 9 Inn. He had provided Partnership Deed of the firm to CBI vide Production-cum-Seizure Memo dated 21.04.2016, **Exhibit PW-12/1** and the Partnership Deed was exhibited as **Exhibit PW-12/2** (D-22). During cross examination on behalf of D-2 Sh. Deepak Aggarwal, he deposed that the complainant Sh. Krishan

Kumar never discussed with him about his case at Income Tax Office. He admitted that his daughter Ms. Parul Garg had appeared before Income Tax Officer in the case of M/s. Square 9 Inn but submitted that she never participated in effective hearings and appeared only for seeking adjournments. He could neither admit nor deny if the case of M/s. Square 9 Inn was finalised on 29.01.2016. However, after seeing the file he deposed that the said case was finally decided on 29.01.2016.

48. **PW-14 Sh. Gaurav Gupta**:- This witness was Accounts Manager in M/s. P.K. Garg and Associates. He identified signatures of Accused No. 2 Sh. Deepak Aggarwal on note sheets already exhibited as **Exhibit PW-5/3**. In cross examination on behalf of Accused No. 2 Sh. Deepak Aggarwal he deposed he cannot identify any of the persons who had visited the office on 24.02.2016 as he had never met them before.

49. **PW-18 Sh. Satish Kumar Gupta**:- This witness deposed that he was an employee in the company M/s. CPR Capital Services Ltd. and Sh. P.K. Garg was the Director of this company. He identified signatures of Ms. Parul Garg and Sh. P.K. Garg on D-8, Exhibit PW-5/3 pertaining to M/s Square 9 Inn but could not identify the signatures of Sh. Deepak Aggarwal. He deposed that Sh. P.K. Garg used to deal normally with the clients and was the sole signatory of the account of the firm and used to take all major policy decisions on behalf of the firm also.

50. **Statements of the accused under Section 313 of Cr.P.C.**:- All the incriminating evidence was put to the accused persons for recording their statement. The response of Accused No. 1 Sh. P.R. Meena is mainly of denial of all the allegations and his response to the question whether he wants to say anything is that it is a false case. Recordings of voices are edited and tampered with. No bribe money was ever demanded by him nor any bribe was ever recovered from his possession. He is innocent and falsely implicated.

51. So far as Accused No. 2 Sh. Deepak Aggarwal is concerned, when he was asked whether he wants to say anything, he has deposed that no witness has stated that he demanded even a single penny from complainant for himself or Accused No. 1 Sh. P.R. Meena. He deposed his interactions with Accused No. 1 Sh. P.R. Meena are only official/formal and he had no personal or unofficial interaction with him. He has deposed that before contacting him, the complainant and CBI officials tried to contact Sh. P.K. Garg and thereafter Ms. Parul Garg and when they were not available, he was compelled under threats to call Accused No.1 Sh. P.R. Meena. He deposed that the conversation record does not show that Accused No. 1 Sh. P.R. Meena directed complainant to give alleged amount to him. He has stated that CBI officials have replaced the complaint as the earlier complaint was against Sh. P.K. Garg and Sh. P.R. Meena. Further Verification Memo dated 23.02.2016 was prepared later on to

falsely involve him in this case and even the FIR is ante dated. He deposed that on 24.02.2016, first an attempt was made to offer bribe to Accused No. 1 Sh. P.R. Meena but when he refused to accept that, an attempt was made to trap Sh. P.R. Meena through Sh. P.K. Garg and that also failed. Thereafter, under threat another attempt was made to pay bribe to Sh. P.R. Meena but that also failed as Sh. P.R. Meena refused to accept the money.

52. The stand of Accused No. 3 Ms. Parul Garg is also of denial and her submission is that she is innocent and falsely implicated.

53. Arguments were addressed on behalf of CBI by Sh. Mohd. Fareed, Ld. Sr. PP for CBI who referred to the chargesheet, evidence on record and the exhibited documents in support of CBI's case.

54. Sh. Lalit Valecha, Ld. Counsel for the Accused No. 1 Sh. P.R. Meena addressed arguments which are recorded in the order sheet of 18.01.2021 and 19.01.2021. He has submitted written arguments also.

55. On behalf of Accused No. 2 Sh. Deepak Aggarwal, arguments were addressed by Ld. Counsel Sh. P.K. Sharma which are recorded in order sheet of 21.01.2021, 22.01.2021, 25.01.2021, 27.01.2021, 28.01.2021, 29.01.2021, 01.02.2021 and he also filed written submissions on conclusion of rebuttal arguments by Ld. Sr. PP for CBI. In the interest of justice, Ld. Sr.PP for CBI

was again given an opportunity to address arguments on the written submissions of Accused No. 2 Sh. Deepak Aggarwal.

56. On behalf of Accused No. 3 Ms. Parul Garg, arguments were addressed by Ld. Counsel Sh. Hemant Shah. Those arguments are recorded in the order sheet of 21.01.2021. He also filed written arguments.

57. It is submitted on behalf of Accused No. 1 Sh. P.R. Meena that as per PW-2, neither Accused No. 1 Sh. P.R. Meena had called him nor accepted any money from him. The response of complainant has been “It is wrong to suggest that Accused No. 1 Sh. P.R. Meena agreed to accept Rs.3.5 Lacs. It is further wrong to suggest that Accused Sh. P.R. Meena stated to me that I should talk to Accused Sh. Deepak Aggarwal and send the money to him”. He has argued that it is proved that Accused No. 2 Sh. Deepak Aggarwal was not even having the mobile number of Accused No. 1 Sh. P.R. Meena which rules out whole prosecution case. It is submitted that as the name of Accused No. 1 Sh. P.R. Meena is not mentioned in the complaint Ex. PW-3/1, it shows that neither the complainant knew about Accused No. 1 Sh. P.R. Meena nor any bribe was demanded by him from the complainant. Prosecution has not collected evidence about source of money used as bribe by the complainant. Independent witness Sh. Subhash Kumar just signed on dotted lines on the directions of CBI and no conversation was ever played before him. This witness already knew on 21.02.2016 that he has to

report to CBI though the complaint was filed on 22.02.2016. The assessment order was already uploaded on internet on 29.01.2016 which will show that there was no occasion for Accused No. 1 Sh. P.R. Meena to demand any bribe from Accused No. 2 Sh. Deepak Aggarwal. It is also argued that according to PW-6, when the DVR was produced on 24.02.2016 by Sh. Subhash Kumar, a memory card was already inside, therefore, the recorded conversation has no evidentiary value as the same is not supported by their star witnesses. The report of the expert, PW-8, is only opining that it is a probable opinion and not a positive confirmation. It is argued that PW-19 has stated that he was told by the complainant that Accused No. 1 Sh. P.R. Meena has demanded Rs.5 Lakh from him which is in direct contradiction to the deposition of the complainant PW-2. Reliance is placed on evidence of PW-20 to submit that neither the complainant nor the co-accused were having mobile number of Accused No. 1 Sh. P.R. Meena. Prosecution has not proved that complainant had met Accused No. 1 Sh. P.R. Meena or knew his name prior to filing the complaint or he ever demanded any money from the complainant personally or telephonically. Twice effort was made to pay the bribe to Accused No. 1 Sh. P.R. Meena but he did not accept the same. Prosecution could not prove how the amount the Rs.3.5 Lacs was brought into existence although this figure was never mentioned by any accused persons. The recorded conversations and voice samples were not played during investigation or during trial to enable confirmation by prosecution witnesses that the proceedings were carrying the voice of any particular person/accused. Failure of the prosecution to get the voices identified through witnesses goes to the root of the case as the prosecution cannot take help of the alleged recorded conversation without such identification. Even if the conversations are discussed, the same do not match with the deposition made by the complainant in as much as if Accused No. 1 Sh. P.R. Meena had demanded any money from the complainant then he would have not refused the same when it was offered to him. Since accused neither demanded nor accepted any money, therefore, he did not commit any alleged offence and prosecution has failed to prove any offence by Accused No. 1 Sh. P.R. Meena who deserves acquittal.

58. On behalf of Accused No. 2 Sh. Deepak Aggarwal, it is submitted that Agreement between accused persons for doing unlawful act is not proved. There is no reasonable material to establish prior meeting of mind between accused persons, connection between alleged conspiracy and act done pursuant to said conspiracy. Accused No. 2 Sh. Deepak Aggarwal was not even having telephone number of co-accused Sh. P.R. Meena and he was forced to take the telephone number of Sh. P.R. Meena and to make a call to him. The CDR of mobile of Sh. Deepak Aggarwal and Sh. P.R. Meena shows no conversation except on 24.02.2016 and that too under the directions of TLO. The mobile

phones of Accused No. 2 Sh. Deepak Aggarwal as well as Accused No. 1 Sh. P.R. Meena were seized during investigation and did not show that mobile number of one another was saved in their mobiles. Prosecution has not proved by any clinching evidence for meeting of mind of Sh. Deepak Aggarwal and Sh. P.R. Meena. PW-15 has falsely and fraudulently introduced D-3, Exhibit PW-15/1, Further Verification Memo to connect Sh. Deepak Aggarwal with the conversation *"unko de dena"*. Moreover, if PW-2 was instructed by Sh. P.R. Meena to deliver the bribe to Sh. Deepak Aggarwal, the raiding party would not have visited the office of Sh. P.R. Meena to deliver him the bribe on 24.02.2016. When Sh. P.R. Meena refused to accept the bribe, then the bribe bag containing the bribe was dropped in the cabin of Sh. Deepak Aggarwal as Sh. P.K. Garg and Ms. Parul Garg were not available in the office at that time. Sh. P.R. Meena refused to accept the bribe even from Sh. Deepak Aggarwal at ITO office on 24.02.2016. Had there been any conspiracy between Sh. P.R. Meena and Sh. Deepak Aggarwal, Sh. P.R. Meena would not have refused to accept the bribe from Sh. Deepak Aggarwal on 24.02.2016. Consequently, CBI failed miserably to show/prove any link, conversation, meeting of mind between Sh. Deepak Aggarwal and Sh. P.R. Meena prior to raid and there is not even a slightest evidence about existence of criminal conspiracy between Sh. Deepak Aggarwal and Sh. P.R. Meena, thus, allegations of conspiracy flatly false and remain unproved and if so, Sh. Deepak Aggarwal deserves clear acquittal as charges under Section 7 and 13(1)(d), 13(2) of P.C. Act cannot be proved against him being a non-public servant. Reliance is placed on ***Dashrath Singh Chauhan vs. CBI***, Crl. Appeal No. 1276/10 decided by the Hon'ble Supreme Court on 09.10.2018 where one public servant was acquitted of the charge of conspiracy as well as the charge under P.C. Act and the other public servant was acquitted of the charge of conspiracy but was convicted under P.C. Act as it was held that it was not proved that the money recovered from the possession of public servant who was acquitted of both the charges was as a fact the bribe money meant for appellant for holding him guilty for the offences under Section 7, 13(2) read with 13(1)(d) of P.C. Act. It is further submitted that no Recovery Memo of alleged bribe amount shown to be recovered from the cabin/office of Sh. Deepak Aggarwal was prepared on recovering the said bribe. Hand wash of Sh. Deepak Aggarwal was not taken in his cabin/office. Site plan showing recovery of bag was not prepared at the spot on 24.02.2016 itself. Rather, PW-3 has deposed that Recovery Memo and Site Plan were prepared at CBI office prior to raid. There is serious doubt about the genuineness of prosecution case and recovery of bribe amount from the office of Sh. Deepak Aggarwal is also not proved by the prosecution beyond doubt. It is submitted that demand, acceptance and recovery of bribe are essential requirements to prove the offence under Section 7 and proving of one of the ingredient is not sufficient to convict the public servant. Reliance is placed on ***M.K. Harshan vs. State of***

Kerala, 1996 (11) SCC 720. It is submitted that recorded conversation is not admissible for violation of Indian Telegraph Act, 1885 as no prior permission to record telephonic conversation was taken. Reliance is placed on ***PUCL vs. Union of India***, 1997 (1) SCC 301. It is submitted there is contradiction on handing over seal to PWs, make of the seals, its availability and existence of two seals. The blank spaces in the conversation remained unexplained and made conversation doubtful. It is further submitted that the electronic evidence is corroborative evidence in nature and no conviction can be made on the basis of the alleged conversation. There is contradiction on the point when transcripts were prepared and whether they were heard at that time or not. PW-2 and PW-3 have deposed that they have signed the transcripts and memos without reading and without knowing their contents. The contents of memory cards were not downloaded on laptop or desktop for preparing transcripts and the expert has not checked possibility of erasing the voices/conversation at blank spots in the memory cards. Since, PW-2 has deposed that recovery memo, site plan and other documents were prepared at CBI office before going for raid, serious doubt is created on the case of prosecution. The assessment order was already prepared and uploaded on the website of ITO on 29.01.2016 and there can be no question of demanding and giving bribe on 22.02.2016 or 24.02.2016. It is submitted that PWs deposed before the IO that Sh. P.K. Garg was involved, if at all. Infact, for the reason best known to the

TLO/IO Sh. P.K. Garg, a suspect was made witness in lieu of accused, if at all. The FIR is ante dated that is why the name of Sh. Deepak Aggarwal appears in the FIR though in the Handing Over Memo, prepared after FIR, the name of Sh. Deepak Aggarwal was not mentioned. It is submitted that benefit of doubt should always be given to the accused and it is prayed that Sh. Deepak Aggarwal be acquitted.

59. On behalf of Accused No.3 Ms.Parul Garg it is submitted in the written submissions that two important factors noticed in the conversations for charging the accused were that she was regularly appearing for the complainant before Accused No. 1 Sh. P.R. Meena and on 22.02.2016, the date of verification, it was she who provided the number to Sh. Deepak Aggarwal. It is submitted that no voice sample of accused Ms. Parul Garg was ever obtained and there is no expert opinion on the voice of Ms. Parul Garg whereby she was providing the mobile number of Sh. P.R. Meena to Sh. Deepak Aggarwal on 22.02.2016. In the absence of any such corroboration of the voice to match with the alleged voice of the conversation on 24.02.2016, the accused cannot be fastened with any commission of offence. It is further submitted that on 24.02.2016, when the complainant handed over the bag to Sh. Deepak Aggarwal, the movement of Sh. Deepak Aggarwal was restricted and he was detained by CBI officers. The call made by Sh. Deepak Aggarwal to the accused Ms. Parul Garg for obtaining the number of Sh. P.R. Meena is a

subsequent conduct of Sh. Deepak Aggarwal after he was apprehended/detained/restricted by CBI officials. Any act which was after his apprehension and during his detention cannot be read against him or any other accused person. Therefore, the call on 24.02.2016 cannot be the basis to connect Ms. Parul Garg with the commission of crime. Reliance is placed on ***Paramhansa Jadab Vs. State***, AIR 1964 Orissa 144 to submit that police custody for the purpose of Section 26 of the Evidence Act does not commence only when the accused is formally arrested, but would commence from the moment his movements are restricted and he is kept in some sort of direct or indirect police surveillance. Reliance is also placed on ***Lay Maung Vs. Emperor,*** AIR 1984 Rangoon 173 where the dangers of construing the police custody in Section 26 of the Evidence Act in a more narrow technical sense as commencing from the time when the accused is formally arrested is pointed out. It was observed that if such a view is taken, it will be very easy for the police to evade that Section and that the correct interpretation would be that as soon as an accused or suspected person comes into the hands of a police officer, he is, in the absence of any clear and unmistakable evidence to the contrary, no longer at liberty and is therefore, in custody within the meaning of Sections 26 and 27 of the Evidence Act. Reliance is also placed on ***Harun Vs. Emperor,*** AIR 1932, Sind 149 **and *Pharho Shahwali Vs. Emperor,*** AIR 1932, Sind 201 to submit that even indirect control over the movements of suspects by the police would amount to police custody within the meaning of that Section. Reliance is also placed on ***Gurdial Singh Vs Emperor*,** AIR 1932, Lahor 609 **and in *Re-Edukondalu*,** AIR 1957 A.P 729 where it is observed that police custody may be without formal arrest. On the basis of these judgments it is submitted that any subsequent act by the accused Sh. Deepak Aggarwal after his apprehension will amount to an extra judicial confession and cannot be read into. It is submitted that PW-2, the complainant, has deposed that Sh. Deepak Aggarwal had taken the mobile of Sh. P.R. Meena from somebody from his office, but does not name Ms. Parul Garg. The complainant, PW-2 has also admitted that he never had any discussion or conversation with Ms. Parul Garg pertaining to present Income Tax matter. He was not even knowing that Ms. Parul Garg was a partner of the firm. He has also stated that Ms. Parul Garg has never received notice on his behalf. The complainant has also denied that on 24.02.2016 when Sh. P.K. Garg and Ms. Parul Garg were not found in the office, the bag containing bribe was handed over to Ms. Deepak Aggarwal. Therefore, it cannot be argued that the complainant was ever looking for Ms. Parul Garg to deliver the alleged money. It is argued that as per PW-3, the mobile phones of other persons in the office of Sh. Deepak Aggarwal were switched off. Therefore, apart from CBI officials, everyone's mobile was switched off including the mobile of Sh. Deepak Aggarwal. In such a situation, there is no evidence as to how Sh. Deepak Aggarwal could make any call to Ms. Parul Aggarwal without switching on his mobile. It is submitted that Sh. Deepak Aggarwal has made the calls at the instance of CBI officials during his detention. It is submitted that the DVR was switched on after obtaining the number of Sh. P.R. Meena, therefore, conversation between Sh. Deepak Aggarwal and Ms. Parul Garg could not have been recorded. It is submitted that Ms. Parul Garg was also not having the number of Sh. P.R. Meena. It is submitted that D-19 shows that Ms. Parul Garg was not having the mobile number of Sh. P.R. Meena. Therefore, it is the submission that Ms. Parul Garg be acquitted in the present matter.

60. **Points for determination:-** Considering the charge framed against the three accused persons, evidence of prosecution witnesses and arguments addressed, points for determination in this case are as under:-

1. Whether Accused No. 1 Sh. P.R. Meena demanded gratification of Rs.3.5 Lacs from the complainant Sh. Krishan Kumar through Accused No. 2 Sh. Deepak Aggarwal on 22.02.2016 as a motive or reward for showing favour to the complainant in the assessment of income of M/s Square 9 Inn for assessment year 2013-2014 and thereby committed an offence under Section 7 of P.C. Act, 1988? This point for determination also requires to decide:-

(a) Whether Accused No. 1 Sh. P.R. Meena was in a position to help the complainant in his income tax return for the assessment year 2013-2014 as on 22.02.2016 or whether the said order was already passed by him on 29.01.2016?

(b) Whether the prosecution has proved demand and acceptance of bribe by Accused No. 1 Sh. P.R. Meena from the complainant through Accused No. 2 Sh. Deepak Aggarwal?

2. Whether Accused No. 1 Sh. P.R. Meena by corrupt and illegal means and abusing his official position agreed to settle the income tax notice issued by him to the complainant and in consideration thereof obtained pecuniary benefit of Rs.3.5 Lacs for himself through Accused No. 2 Sh. Deepak Aggarwal and thereby committed an offence under Section 13(1) read with 13(2) of P.C. Act, 1988?

3. Whether Accused No. 1 Sh. P.R. Meena, Accused No. 2 Sh. Deepak Aggarwal and Accused No. 3 Ms. Parul Garg conspired to obtain illegal gratification from the complainant as a motive or reward for showing such a favour to the complainant and thereby committed an offence punishable under Section 120B of IPC and also under Section 7 of P.C. Act read with 120B IPC and under Section 13(1) read with 13(2) of P.C. Act, 1988?

This point for determination will further require a decision:-

(a) Whether the FIR is ante dated?

(b) Whether Further Verification Memo dated 23.02.2016 Ex. PW-15/1 is a false document?

(c) Whether any other person has escaped prosecution in this case and is liable to be summoned to face the trial under Section 319 of Cr.P.C?

61. **Ante Dated FIR:-** The submissions on behalf of Ld. Counsel for Accused No. 2 Sh. Deepak Aggarwal are that the FIR is ante dated and further Verification Memo dated 23.02.2016 Ex. PW-15/1 is also a false document.

62. These are serious allegations and the court will consider them in the very beginning.

63. A perusal of Ex. PW-3/1A reveals that it is recorded on 24.02.2016 at 10:30 AM and the accused are Sh. P.R. Meena and Sh. Deepak Aggarwal under Section 120B and under Section 7 of P.C. Act, 1988.

64. Ex. PW-2/3, D-3 which is the Verification Memo dated 22.02.2016 has recommended registration of FIR only against Sh. P.R. Meena under Section 7 of P.C. Act, 1988.

65. D-9 is Ex. P-15/1, Further Verification Report dated 23.02.2016 prepared by Inspector S.P. Singh, Verification Officer. According to this report, the Verification Officer had verified about the version of suspect officer Sh. P.R. Meena during verification that *"Unko de dena"* and ascertained from the complainant that suspect Sh. P.R. Meena, ITO was indicating towards Sh. Deepak Aggarwal, CA as Sh. Deepak Aggarwal was dealing with the

case of complainant. Though the report is said to be dated 23.02.2016, the report opens with the sentence "As directed today i.e. on 23.03.2016, I have verified about the version of Suspect Officer.....".

66. On the other hand, the complainant, PW-2 has deposed that on 22.02.2016, the Verification Officer Inspector S.P. Singh had asked him his availability for laying the trap. The complainant deposed that he was not available on 23.02.2016 and therefore it was decided that the trap would be laid on 24.02.2016. Further, PW-2 has deposed about the proceedings of 24.02.2016. No effort was made during his examination-in-chief to elicit from him about investigation by Inspector S.P. Singh in the form of Ex. PW-15/1, D-9. The complainant reiterated during his cross-examination that he had told Inspector S.P. Singh that he will not be available on 23.02.2016. He further deposed during cross-examination on behalf of Sh. Deepak Aggarwal that he did not have a talk with the IO on 23.02.2016 as he had conveyed to him that he would be going out of Delhi on 23.02.2016.

67. In the face of such evidence of complainant, what is the deposition of Verification Officer Inspector S.P Singh, PW-15?

68. He deposed that on 23.02.2016, he had made a telephonic call to the complainant and inquired from him as to what context accused Sh. P.R. Meena was referring *"Unko de dena".* He deposed that he was told by the complainant that Sh. P.R.

Meena was saying to deliver the money to Sh. Deepak Aggarwal. During cross-examination he deposed that he had talked to the complainant on his mobile number from the land line number of his office. He could not tell the land line number of his office. He deposed that he can only tell the extension number as he used to dial '0' number for making any call. The CDR of complainant is available on record as Ex. PW-9/2 (D-21). During recording of evidence and during final arguments, it was not shown from the CDR whether there was a call received by the complainant from the office of PW-15 Inspector S.P. Singh. He also deposed that he had not recorded the statement of the complainant on 23.02.2016. He also admitted that he was told by the complainant on 22.02.2016 that he will not be available on 23.02.2016 and will come on 24.02.2016. The attention of the witness was drawn to D-5, Handing Over Memo Ex. PW-2/4 from Page X to X which is as under:-

"On the basis of Verification Memo, a case FIR No. RC 003(A)/2016/CBI/ACB/Delhi has been registered against Sh. P.R. Meena, ITO. The complaint were also read over and explained to all present. On being inquired by the witnesses, the complainant owned his complaint and informed that the same was signed and submitted by him voluntarily. The other independent witness and members of the trap party satisfied themselves about the genuineness of the complaint by asking some questions to the complainant and going through the Verification Memo dated 22.02.2016"

69. In this regard, reliance has been placed heavily by Ld. Counsel of Sh. Deepak Aggarwal on the evidence of PW-19 Inspector Kuldeep Singh who was the Trap Laying Officer and one of the signatories on the Handing Over Memo, D-5, Ex. PW-2/4. The relied on evidence is as under:-

"Handing Over Memo is prepared after going through the contents of FIR. The name of Deepak Aggarwal was not mentioned in the Handing Over Memo and name of Sh. P.R. Meena has been mentioned because name of Sh. Deepak Aggarwal was left to be mentioned because of a mistake.

Question: Why there is no explanation for mentioning of preparing of subsequent Verification Memo dated 23.02.2016 in the Handing Over Memo prepared on 24.02.2016?

Answer: It might have been left by mistake."

70. PW-19, TLO Inspector Kuldeep Singh admitted that as per the Handing Over Memo, witnesses have been shown the documents prepared on 22.02.2016 and no document prepared on 23.02.2016 was shown.

71. From the above, it is apparent that the complainant had told the Verification Officer PW-15 that he would not be available on 23.02.2016 for investigation purposes. The evidence of PW-2, the complainant shows that he had not spoken to the Verification Officer PW-15 on 23.02.2016. The CDR of the mobile phone of the complainant, Ex. PW-9/2, does not show any call from the

office of Verification Officer Inspector S.P. Singh on 23.02.2016. The Further Verification Memo Ex. PW-15/1 mentions that the directions were received by the Verification Officer on 23.03.2016 though the date below the signature is 23.02.2016. This Memo does not mention that the verification from complainant is conducted telephonically. This Memo does not find mention in Handing Over Memo, Ex. PW-2/4 (D-5). This Handing Over Memo does not note that FIR is registered on the basis of Verification Memos dated 22.02.2016 as well as 23.02.2016. The Handing Over Memo is silent regarding registration of FIR against Sh. Deepak Aggarwal.

72. From the above, it appears that the FIR Ex. PW-3/A is ante dated as Further Verification Memo Ex. PW-15/1 stated to be dated 23.02.2016 which is the basis of registration of FIR against Sh. Deepak Aggarwal itself was not in existence on 23.02.2016. Therefore, Ex. PW-15/1 is also a false document.

73. The Hon'ble Supreme Court in ***State of Andhra Pradesh vs. Punati Ramulu & Ors.***, AIR 1993 SC 2644 has held as under:-

"Once we find that the Investigating Officer has deliberately failed to record the First Information Report on receipt of the information of a cognizable offence of the nature, as in this case, and had prepared the First Information Report after reaching the spot after due deliberations, consultations and discussions, the conclusion becomes inescapable that the investigation is tainted and it would, therefore, be unsafe to rely upon such a tainted investigation, as one would not know

where the police office would have stooped to fabricated evidence and create false clues".

74. The Hon'ble Supreme Court in ***Karan Singh vs. State of Haryana***, 2013 AIR SC 2348 has held as under:-

"12. The investigation into a criminal offence must be free from any objectionable features or infirmities which may give rise to an apprehension in the mind of the complainant or the accused, that investigation was not fair and may have been carried out with some ulterior motive. The Investigating Officer must not indulge in any kind of mischief, or cause harassment either to the complainant or to the accused. His conduct must be entirely impartial and must dispel any suspicion regarding the genuineness of the investigation. The Investigating Officer, "is not merely present to strengthen the case of the prosecution with evidence that will enable the court to record a conviction, but to bring out the real unvarnished version of the truth." Ethical conduct on the part of the investigating agency is absolutely essential, and there must be no scope for any allegation of mala fides or bias. Words like 'personal liberty' contained in Article 21 of the Constitution of India provide for the widest amplitude, covering all kinds of rights particularly, the right to personal liberty of the citizens of India, and a person cannot be deprived of the same without following the procedure prescribed by law. In this way, the investigating agencies are the guardians of the liberty of innocent citizens. Therefore, a duty is cast upon the Investigating Officer to ensure that an innocent person should not suffer from unnecessarily harassment of false implication, however, at the same time, an accused person must not be given undue leverage. An investigation cannot be interfered with or influenced even by the courts. Therefore, the investigating agency must avoid entirely any kind of extraneous influence, and investigation must be carried out with equal

alacrity and fairness irrespective of the status of the accused or the complainant, as a tainted investigation definitely leads to the miscarriage of criminal justice, and thus deprives a man of his fundamental rights guaranteed under Article 21 of the Constitution. Thus, every investigation must be judicious, fair, transparent and expeditious to ensure compliance with the rules of law, as is required under Articles 19, 20 and 21 of the Constitution. (Vide: Babubhai v. State of Gujarat & Ors., (2010) 12 SCC 254).

13. In Ram Bihari Yadav v. State of Bihar & Ors., AIR 1998 SC 1850, this Court observed, that if primacy is given to a designed or negligent investigation, or to the omissions or lapses created as a result of a faulty investigation, the faith and confidence of the people would be shaken not only in the law enforcing agency, but also in the administration of justice.

A similar view has been re-iterated by this Court in Amar Singh v. Balwinder Singh & Ors., AIR 2003 SC 1164.

Furthermore, in Ram Bali v. State of Uttar Pradesh, AIR 2004 SC 2329, it was held by this Court that the court must ensure that the defective investigation purposely carried out by the Investigating Officer, does not affect the credibility of the version of events given by the prosecution.

14. Omissions made on the part of the Investigating Officer, where the prosecution succeeds in proving its case beyond any reasonable doubt by way of adducing evidence, particularly that of eye-witnesses and other witnesses, would not be fatal to the case of the prosecution, for the reason that every discrepancy present in the investigation does not weigh upon the court to the extent that it necessarily results in the acquittal of accused, unless it is proved that the investigation was held in such manner that it is dubbed as "a dishonest or guided investigation", which will exonerate the accused.

(See: Sonali Mukherjee v. Union of India, (2010) 15 SCC 25; Mohd. Imran Khan v. State Government (NCT of Delhi), (2011) 10 SCC 192; Sheo Shankar Singh v. State of Jharkhand & Anr., AIR 2011 SC 1403; Gajoo v. State of Uttarakhand, (2012) 9 SCC 532; Shyamal Ghosh v. State of West Bengal, AIR 2012 SC 3539; and Hiralal Pandey & Ors. v. State of U.P., AIR 2012 SC 2541).

Thus, unless lapses made on the part of Investigating authorities are such, so as to cast a reasonable doubt on the case of the prosecution, or seriously prejudice the defence of the accused, the court would not set aside the conviction of the accused merely on the ground of tainted investigation.

15. This Court in Dayal Singh & Ors. v. State of Uttaranchal, (2012) 8 SCC 263, has laid down certain norms for taking stern action against an Investigating Officer, guilty of dereliction of duty or misconduct in conducting investigation, and held that the State is bound to initiate disciplinary proceedings against such officers even ignoring the law of limitation, and even if such officer has retired".

75. Considering the above directions of the Hon'ble Supreme Court, this court will scrutinize the matter more closely and carefully to find out to what extent the prosecution case is reliable.

76. The prosecution evidence is in the form of testimony of prosecution witnesses and transcripts of call records.

77. **Status of Transcripts:-** In the case of ***Ram Singh & Ors. vs. Col. Ram Singh,*** AIR 1986 SCC 3, the Hon'ble Supreme Court has laid down the following tests for determining the admissibility of tape-recorded version:-

"1. The voice of the speaker must be identified by the maker of the other persons recognizing the voice. Where maker is unable to identify the voice, strict proof will be required to determine whether or not it was the voice of the alleged speaker.

2. The accuracy of the tape-recorded version must be proved by the maker of the record by satisfactory evidence: direct or circumstantial.

3. Possibility of tampering with or erasure of any part of, the tape-recorded statement must be totally excluded.

4. The tape-recorded statement must be relevant.

5. The recorded cassette must be sealed and must be kept in safe or official custody.

6. The voice of the particular speaker must be clearly audible and must not be lost or distorted by other sounds or disturbances."

78. In **Mahabir Prasad Verma vs. Dr. Surender Kaur,** (1982) 2 SCC 258, it was argued that rendering of the tape-recorded conversation can be legal evidence by way of corroborating the statement of a person who deposes that the other speaker and he carried out that conversation or even of the statement of a person who deposes that he overheard the conversation between the two persons and what they actually stated, have been tape-recorded. The Hon'ble Supreme Court held that tape-recorded evidence can only be used as corroboration evidence. In SCC Para 22, it is observed as follows:-

"22. ..... Tape-recorded conversation can only be relie*d upon as corroborative evidence of conversation deposed by any of the parties to the conversation and in the absence of evidence of any such conversation, the tape-recorded conversation is indeed no proper evidence and* *cannot be relied upon. In the instant case, there was no evidence of any such conversation between the tenant and the husband of the landlady; and in the absence of any such conversation, the tape-recorded conversation could be no proper evidence."*

79. The above judgment is cited with approval in the case of **Nilesh Dinkar Paradkar Vs State of Maharashtra, (2011) 4 SCC 143** where it is further held that the evidence of voice identification is at best suspect, if not, wholly unreliable. Accurate voice identification is much more difficult than visual identification. It is prone to such extensive and sophisticated tampering, doctoring and editing that the reality can be completely replaced by fiction. Therefore, the Courts have to be extremely cautious in basing a conviction purely on the evidence of voice identification.

80. The Hon'ble Supreme Court cited the case of **R.V. Chenia (2004) 1 ALL ER 543** where one of the minimum safeguards to be observed before a Court can place any reliance on the voice identification evidence is that the officer attempting a voice recognition should not be provided with a transcript bearing the annotations of any other officer.

81. The Hon'ble Supreme Court further observed that voice identification should be conducted taking precautions similar to the precautions which are normally taken in visual identification of suspects by witnesses. Attempt should be made to mix the questioned voices with some other unidentified voices.

82. Same are the directions of the Hon'ble Delhi High Court in the case of ***Anil Kumar Tito @ Anil Kumar Sharma vs. State, NCT of Delhi,*** Cri. Appeal No. 66/2013 dated 29.05.2015.

83. In the case of ***Sudhir Chaudhary Vs State (NCT of Delhi)*****,** (2016) 8 SCC 3017, the Hon'ble Supreme Court had noted the submissions of the appellants that the process of drawing the voice samples must be fair, so as to be consistent with the right of the appellants under Article 21 of the Constitution. The requirement of a fair investigation, it was argued, is implicit in Article 21 and the procedure which is adopted for drawing a voice sample must be fair and reasonable. It was held that it is not possible that the text which is to be read by the person in the course of drawing his voice samples should not contain inculpatory words which are part of disputed conversations. A commonality of words is necessary to facilitate a spectrographic examination. Directions were given to the prosecuting agency to prepare the written text for voice samples using words, but not sentences, appearing in the disputed conversation in such number as the Director/Scientific Officer may consider necessary for the purpose of comparison. Therefore, the directions were that the text which the appellants would be called upon to read out for the purpose of drawing their voice samples will not have sentences from the inculpatory text. Text was permitted to contain words drawn from the disputed conversation to meet the legitimate concern of the investigating authorities for making a

fair comparison. The passage should contain words but not the sentences appearing in the disputed conversation.

84. In the light of above noted directions of the Hon'ble Supreme Court and the Hon'ble Delhi High Court, first of all this Court will decide whether the recorded conversation meets the standards laid down above and fulfills the conditions for admissibility.

85. In this case, while recording the sample voice of Accused no.1 Sh. P.R. Meena and Accused No. 2 Sh. Deepak Aggarwal, entire inculpatory sentences were included in the sample text, whereas only inculpatory words should have been included in the sample text. Further, voice identification was conducted without taking any precautions similar to the precautions which are normally taken in visual identification of suspects by the witnesses. No attempt was made to mix the voices of Sh. P.R. Meena and Sh. Deepak Aggarwal with some other unidentified voices. In the wordings of Hon'ble Supreme Court in the case of Nilesh Dinkar (supra), in such circumstances, the voice identification evidence would have little value.

86. Vide letter dated 26.04.2016, D-23, Ex.PW20/G, the questioned voices and sample voices of Sh. P.R. Meena and Sh.Deepak Aggarwal were sent to CFSL with the request for an opinion whether the specimen voice tallies with the questioned voices. A perusal of the letter shows that the identity of the maker of specimen voice and questioned voice was explicitly mentioned in the said letter. This letter does not mention that transcript of

conversation and sample transcript was also being sent to CFSL. However, a perusal of D-25, Ex.PW8/1, which is the report of CFSL dated 22.07.2016, it is mentioned that CFSL was also provided transcription comprising of total 24 pages.

87. The voice of Sh. Deepak Aggarwal could have been identified by the complainant, independent witness PW-3 Sh. Subhash Kumar, Verification Officer Inspector S.P. Singh (PW-15), Trap Laying Officer Inspector Kuldeep Singh (PW-19) and witnesses pertaining to M/s P.K. Garg & Associates namely Sh. P.K. Garg (PW-12), Sh. Gaurav Gupta (PW-14) and Sh. Satish Kumar Gupta (PW-18). However, none of these witnesses was called to identify the voice of Sh. Deepak Aggarwal. Similarly, the voice of Sh. P.R. Meena could have been easily identified by the complainant PW-2 Sh. Krishan Kumar, PW-5 Sh. Rati Ram, Office Superintendent, PW-12 Sh. Ravi Kumar, PW-10 both from Income tax office and Sh. P.K. Garg. However, none of these witnesses were called to identify the voice of Sh. P.R. Meena.

88. The case of CBI is that the memory card Q-1 containing conversation between complainant and Accused No. 1 Sh. P.R. Meena dated 22.02.2016 was sealed and the seal was given to independent witness PW-3 Sh. Subhash Kumar. PW-3 Sh. Subhash Kumar has deposited the said seal in the Court as Ex. Q-5. According to prosecution, only one seal was used during the entire proceedings, but PW-19, TLO Inspector Kuldeep Singh, deposed that he got a seal issued. The Investigating

Officer PW-20 Dy. SP Joseph Krelo deposed that he has received the CBI seal enclosed with the case diary.

89. D-19, Ex.PW2/6 is the Voice Identification-cum-Transcription Memo. It notes that the complainant had identified the voice of Accused No. 1 Sh. P.R. Meena and Accused No. 2 Sh. Deepak Aggarwal. It fairly mentions that the draft transcript was kept ready by the IO of the case and on finalization of the transcript, each page of the transcript was signed by all the persons namely the IO, the two independent witnesses and the complainant. Therefore, this is the only evidence of identification of voice of Sh. P.R. Meena and Sh. Deepak Aggarwal with the prosecuting agency. However, the complainant, PW-2 Sh. Krishan Kumar, has only deposed that he was summoned to CBI office in April 2016 for preparation of transcript of the recording. After preparing the transcript, he signed the same. He identified his signatures on the Voice Identification-cum-Transcript Memo dated 11.04.2016. He deposed that these transcripts were prepared in his presence. It is only a matter of inference or conjectures or surmises that the complainant would have heard and identified the voice of Sh. P.R. Meena and Sh. Deepak Aggarwal at the time of preparing the transcripts. However, there is no positive evidence from PW-2 complainant that when the recorded conversation was played before him, he had identified the voice of Sh. P.R. Meena and Sh. Deepak Aggarwal. Moreover, before playing the recorded conversations, admittedly, the directions in the case of Nilesh

Dinkar (supra) were not followed. It is again noted here that the Hon'ble Supreme Court in the said judgment has directed that voice identification be conducted taking precautions similar to the precautions which are normally taken in visual identification of suspects by witnesses. No attempt was made to mix the voices of Sh. P.R. Meena and Sh. Deepak Aggarwal with some other unidentified voices. In similar circumstances, the Hon'ble Supreme Court has held that the voice identification evidence of this type to be of little value. Moreover, when the draft transcript was kept ready by the Investigating Officer, rest was fait accompli.

90. Considering the aforementioned legal provisions regarding voice identification and considering that voice recording is easily susceptible to editing, modification and tampering and considering the various shortcomings and discrepancies in voice recording, in the considered opinion of this Court the recorded conversation has not mustered the test to be admissible.

91. **Whether Sh. P.R. Meena was in a position to help the complainant on 22.02.2016:-** It is an important ingredient of Section 7 of PC Act, 1988 that the public servant should be in a position to do any official act or forbear to do any official act or show or forbear to show, in the exercise of his official functions, favour or disfavour to any person. Similarly, for Section 13 (1)(d) of PC Act, 1988, the public servant should be in a position to

abuse his authority for obtaining valuable thing or pecuniary advantage.

92. So the first point of determination which is taken up for consideration is whether Accused No. 1 Sh. P.R. Meena was in a position to help the complainant in his income tax return for the assessment year 2013-2014 as on 22.02.2016 or whether the said order was already passed by him on 29.01.2016?

93. The case of prosecution is that Accused No. 1 Sh. P.R. Meena had issued notice dated 15.09.2015, Ex.PW2/DX-2 (D-8, page 220) to M/s Square 9 Inn in connection with assessment for the assessment year 2013-14. In response to the said notice, the assessee/M/s Square 9 Inn had filed documents through its Chartered Accountant Firm M/s P.K. Garg & Associates under signatures of Accused No. 2 CA Sh. Deepak Aggarwal on 23.12.2015, 11.12.2015 and 04.12.2015, Ex.PW2/11 (D-8, page 38), Ex.PW2/12 (D-8, page 45) and Ex.PW2/13 (D-8, page 133) respectively. Ex. PW-2/9 (D-8, Page 14) is another letter dated NIL filed by M/s P.K. Garg & Associates under signatures of CA Sh. Deepak Aggarwal before Accused No. 1 Sh. P.R. Meena. However, the Income Tax Officer Accused No. 1 Sh. P.R. Meena was not satisfied and demanded bribe from the complainant through Accused No. 2 Sh. Deepak Aggarwal, CA.

94. As the complainant was not willing to pay the bribe he had approached CBI on 22.02.2016 and his complaint was verified

and on 24.02.2016 a trap was laid and a bribe amount of Rs.3.5 Lacs was recovered from Accused No. 2 Sh. Deepak Aggarwal.

95. The submission of Accused No. 1 Sh. P.R. Meena was that the order in question was already passed on 29.01.2015 itself and he was not in a position to show any favour or disfavour to the assessee as on 22.02.2016 or 24.02.2016. In this regard, reliance is placed on evidence of PW-5 Sh. Rati Ram, Office Superintendent who has deposed that on 29.01.2016, Accused No. 1 Sh. P.R. Meena had given him an assessment order to be uploaded in the system and he had uploaded the same in the system and entered into demand collection register whereafter he handed back the assessment order to Sh. P.R. Meena. When he was shown assessment order regarding the assessee M/s. Square 9 Inn, he deposed this was the assessment order which was handed over to him by Sh. P.R. Meena which was exhibited as **Exhibit PW-5/1** (D-8, page 1). In this order, the return of NIL Income filed by the assessee was accepted. The Income Tax Computation Form whose printout was taken by him after uploading the assessment order was exhibited as **Exhibit PW-5/2** (D-8, page 2). The note sheets signed by Sh. P.R. Meena were proved as **Exhibit PW-5/3** (D-8, page 3). PW-13 Sh. Ashish Chandra Mohanti, Joint Commissioner, Income Tax has also deposed during his cross examination that the date of Assessment Order of M/s Square 9 Inn is 29.01.2016. PW-12 Sh. P.K. Garg has also deposed after seeing the file that the case

was finally decided on 29.01.2016. However, PW-2 Sh. Krishan Kumar, the complainant has denied the suggestion that he knew that his Income Tax matter was finalized on 29.01.2016. He has deposed that he was not conveyed by anybody about passing of Assessment Order dated 29.01.2016 and he has also deposed that he has never seen Assessment Order dated 29.01.2016.

96. D-27 is the Office-cum-Car Search-cum-Seizure Memo Ex.PW3/5 (D-27) vide which file titled as "M/s Square 9 Inn, 1281/50, Naiwala Bagh, Karol Bagh, New Delhi-05, File No. W-35(3) Misil No.23/25 Assessment year 2013-14 containing pages 1/N to 4/N and 1/c to 293/c" was seized on 24.02.2016 from the office of Accused No. 1 Sh. P.R. Meena. A perusal of the note sheet shows that the last noting on 4/N is dated 23/12/15 where following is noted:-

"Present Sh. Deepak Aggarwal, CA AR of the assessee and reply filed dated 23.12.2015 which is placed on record. Case adjourned to 31.12.2015.

Signed at point A by Sh. P.R. Meena (as per evidence of PW-5) Signed at point C by Sh. Deepak Aggarwal (as per evidence of PW-14)"

97. There is no note-sheet of order dated 29.01.2016 noting passing of final Assessment Order by Accused No. 1 Sh. P.R. Meena. There is no note-sheet of 31.12.2015 or any other note-sheet including 29.01.2016 on record. The Assessment Order, Ex.PW5/1 is not even signed by Accused No. 1 Sh. P.R. Meena.

This shows that no order was passed by Accused No. 1 Sh. P.R. Meena on 29.01.2016.

98. PW-2 Sh.Krishan Kumar has deposed about his discussions with Accused No. 1 Sh. P.R. Meena on 22.02.2016 as under:-

"When I reached inside the office of the income tax officer, some people were sitting in his office. After those persons had left, I introduced myself to the income tax officer who was P.R. Meena. I told him that I had submitted all the documents which have been required and further told him that I had been asked to meet him. He stated that I must have been informed what was required to be done and I told him that I was only informed that he wanted to meet me in order to settle this case. He again asked me that I must have been informed what was it that I was required to do and I stated that I had not been given any such information. He continued insisting and finally I said that I was informed that I was to give Rs. 5 Lacs. He then said that if it was so I should pay five Lacs. I told him that I had a very small business and I used to regularly pay my income tax dues and there was nothing in my business for which he should be demanding any bribe. He then during the course of conversation said that from my balance sheet he could see that I owned a BMW. He said that though I owned a BMW but never gave anything to him. He further said that as the BMW must have been old by how I should give the BMW to him. I replied by saying that there was nothing in my balance sheet which could show any deficiency and therefore, I should not be asked to pay the bribe. He retorted by saying that the deficiencies could be created by him easily. He specifically stated that he would not accept the calculation of depreciation charge which was reflected in my balance sheet and would added to my income. I replied by saying that what I claimed as

depreciation was completely legal and available to me under law. He replied by saying that he knew how to deal with this claim. When I realized that P.R. Meena was adamant on taking a bribe, I started negotiated with him with regard to the amount. After negotiations, accused P.R. Meena agreed to accept Rs.3.5 lacs. Thereafter, I inquired from accused P.R. Meena that how should I deliver this amount of Rs.3.5 lacs to him. He replied him that I should talk to Deepak Aggarwal and send the money to him through Deepak Aggarwal."

99. There is no evidence led on record by Accused No. 1 Sh. P.R. Meena that order dated 29.01.2016 was ever conveyed to the complainant by sms/e-mail or in physical form.

100. Therefore, it is apparent that no order on 29.01.2016 was ever passed by Accused No. 1 Sh. P.R. Meena and therefore, he continued to be in a position for doing or forbearing to do any official act or showing or forbearing to show favour or disfavour to the complainant in assessment of his income for the assessment year 2013-14.

101. **Offence under Section 7 of P.C. Act, 1988:-** The next point for determination is whether Accused No. 1 Sh. P.R. Meena demanded gratification of Rs.3.5 Lacs from the complainant Sh. Krishan Kumar on 22.02.2016 as a motive or reward for showing favour to the complainant in the assessment of income of M/s Square 9 Inn for assessment year 2013-2014 and thereby committed an offence u/s 7 of P.C. Act, 1988. Indisputably, the demand of illegal gratification is a sine-qua-non for constitution

and offence u/s 7 of the P.C. Act, 1988 [See, ***State of Maharashtra vs. Dnyaneshwar Laxman Rao Wankhede***, 2009 (15) SCC 200].

102. The evidence of complainant PW-2 Sh. Krishan Kumar about his discussions with Accused No. 1 Sh. P.R. Meena on 22.02.2016 has been quoted at length in para 83 above. The witness has deposed that he had tried to convince Sh. P.R. Meena about his case stating that he has submitted all the documents which were required. He has deposed that Sh. P.R. Meena asked him that "I must have been informed what was required to be done". When the complainant did not say that he has been told by his CA to pay the bribe to the ITO, Sh. P.R. Meena again insisted that he must have been informed what was it that he was required to do. On the insistence of Sh. P.R. Meena, the witness has deposed that he was told that he was to give Rs.5 Lacs. Sh. P.R. Meena retorted that if it was so, he should pay Rs.5 Lacs. The witness has deposed that he tried to convince the ITO that he had a small business and he was paying income tax regularly and there was nothing in his business for which ITO should be demanding any bribe. The witness has deposed that the ITO pointed out that the complainant owns BMW but has never given anything to him. The ITO threatened that deficiencies could be easily created in the balance sheets and specifically stated that he would not accept the calculation of depreciation charge which was reflected in his balance sheet and would add it to the income. The witness

had still submitted that the depreciation was legal and available under law but the ITO had replied that he knows how to deal with this claim. At this stage, the witness realized that Sh. P.R. Meena was adamant in taking bribe and begin negotiating with him and Sh. P.R. Meena agreed to accept Rs.3.5 Lacs.

103. The above evidence of complainant PW-2 Sh. Krishan Kumar leaves no doubt that Sh. P.R. Meena demanded a bribe of Rs.5 Lacs and agreed to accept Rs.3.5 Lacs for accepting the income tax return of the firm of complainant for assessment year 2013-2014.

104. The offence under Section 7 of P.C. Act, 1988 is therefore proved against Accused No. 1 Sh. P.R. Meena.

105. The necessity of corroboration of evidence from its very nature depends on the facts and circumstances of each case, including, *inter alia* the status and caliber of the witnesses and the quality of their testimony. It is indeed a rule of caution devised to seek assurance and dispel doubts in regard to the credibility of the evidence and is dictated by judicial experience of the common course of human conduct. No hard and fast rule demanding rigid adherence need or can be formulated to be followed in all cases without considering the background, the totality of circumstances and the intrinsic quality of testimony in each case. In the case in hand, considering the status and caliber of complainant and quality of his testimony, there is no need for corroboration to the

evidence of complainant. However, corroboration is available in the evidence of PW-3 Sh. Subhash Kumar and PW-15 Inspector S.P. Singh who have also deposed that they had heard the recording of 22.02.2016 which showed that Sh. P.R. Meena was demanding bribe from Sh. Krishan Kumar.

106. **Offence under Section 13(1)(d) read with 13(2) of P.C. Act, 1988:-** The next point of determination is whether Accused No. 1 Sh. P.R. Meena by corrupt and illegal means and abusing his official position agreed to settle the income tax notice issued by him to the complainant and in consideration thereof obtained pecuniary benefit of Rs.3.5 Lacs for himself through Accused No. 2 Sh. Deepak Aggarwal and thereby committed an offence under Section 13(1) read with 13(2) of P.C. Act, 1988?

107. For proving the offence under Section 13(1)(d) read with 13(2) of P.C. Act, 1988 it is essential to prove demand, acceptance and recovery of the amount of illegal gratification.

108. The complainant PW-2 Sh. Krishan Kumar has deposed that on 24.02.2016, he had reached CBI office carrying Rs.3.50 Lacs in the denomination of Rs.500 notes. He has deposed the numbers of currency notes were recorded in a list and a white coloured powder was applied on every note brought by him. The tainted money was then put in a white polythene bag and the bag was further put in his laptop bag. He has also deposed that independent witness Sh. Vaneet Kumar was asked to touch the

notes and the polythene bag and when he dipped his finger in a solution that had turned pink. The Handing Over Memo dated 24.02.2016, D-5 was proved as Ex. PW-2/4. This memo records the distinctive number of GC Notes totaling 700 in number. However, the witness deposed that this memo was prepared after they had reached back to CBI office on 24.02.2016. PW-6 Sh. Vaneet Kumar, the second independent witness has also identified his signatures on Handing Over Memo, Ex. PW-2/4. He has also identified his signatures at point D where he had signed after tallying the number of currency notes with the numbers recored in Handing Over Memo Ex. PW-2/4. PW-2 Sh. Subhash Kumar, the first independent witness has deposed that the numbers of currency notes were recorded by CBI on a separate piece of paper. This he has spoken when deposing about the proceedings on 24.02.2016 before going to ITO. He has identified his signatures at point B and also at point C and clarified that signatures at point C were obtained at the office of Accused Sh. P.R. Meena after the notes were tallied.

109. PW-15 Inspector S.P. Singh, Verification Officer has also proved his signatures on Handing Over Memo, Ex. PW-2/4 prepared during pre-trap proceedings.

110. PW-19 Inspector Sh. Kuldeep Singh, Trap Laying Officer has also proved his signatures on Handing Over Memo, Ex. PW-2/4 at point D and also identified signatures of Inspector Sanjay Upadhyay at point H, Inspector Ramesh Kumar at point J and

Inspector Harnaam Singh at point K. He has deposed that all these proceedings had taken place in CBI office prior to leaving for the spot and signed by all the trap team members including the complainant and both the independent witnesses.

111. The complainant PW-2 Sh. Krishan Kumar has stated that on 24.02.2016, he had offered the money demanded by Sh. P.R. Meena but he was told that he was not called by Sh. P.R. Meena and was not asked to deliver the money to Sh. P.R. Meena and that the complainant should follow the procedure which Sh. P.R. Meena had told him. He insisted that complainant should meet him (Unko) and do as he has been told. The witness deposed that Sh. P.R. Meena did not accept the money. After coming out from the office of Sh. P.R. Meena, he had briefed the team about what had transpired and then it was decided to deliver the money to the person about whom the accused Sh. P.R. Meena was referring that is the Accused Sh. Deepak Aggarwal.

112. At this stage, it is noted that in D-19, which is Voice Identification-cum-Transcription Memo Ex. PW-2/8 it is recorded at Page No. 12 that there is a reference of Sh. Deepak Aggarwal by the complainant and the response of Sh. P.R. Meena was “Ha Aggarwal Ji”. Thereafter, Sh. P.R. Meena is referring to 'Unko'. It shows that Sh. P.R. Meena was asking the complainant to pay the bribe amount to Sh. Deepak Aggarwal. However, as the call record has not been considered admissible as not passing the test laid down in the case of Ram Singh (Supra), Nilesh Denkar

(Supra) and Sudhir Chaudhary, this corroborative evidence shall not be read against Sh. Deepak Aggarwal.

113. The only evidence now is of PW-2 Sh. Krishan Kumar who deposed that he was told by Sh. P.R. Meena to deliver the bribe amount to Sh. Deepak Aggarwal. PW-3 has also deposed that the complainant after coming out from the room of Sh. P.R. Meena on 24.02.2016 had informed that Sh. P.R. Meena had refused to accept the payment and payment would only be accepted through 'some' Deepak Aggarwal. PW-6 Sh. Vaneet Kumar has also deposed that on 24.02.2016 when the complainant came out from the office of Sh. P.R. Meena he had told Trap Laying Officer Inspector Kuldeep Singh that Sh. P.R. Meena had refused to accept the money and instructed to deliver the money on his behalf to Deepak Aggarwal. PW-19 Inspector Kuldeep Singh has also deposed that after coming out from the room of Sh. P.R. Meena, the complainant told him that Sh. P.R. Meena will take the bribe through Sh. Deepak Aggarwal. Therefore, without relying on D-19, Ex. PW-2/8 which is Voice Identification-cum-Transcription Memo, it is proved on record that Sh. P.R. Meena had not agreed to accept the money directly from the complainant and had told him to give this bribe amount to Sh. Deepak Aggarwal.

114. Before going to the office of Sh. Deepak Aggarwal, the complainant made a call to him to find out his availability in the office. The same is evident from D-17, Ex. PW-7/2 where at point

X there is a call from Mobile No. 9958408585 to Mobile No. 9810733490 at 16:17:23 for a duration of 54 seconds. As per D-15, Production-cum-Seizure Memo dated 08.04.2016, Ex. PW-7/1 and D-18, Customer Application Form, Ex. PW-7/4 Mobile No. 9810733490 is in the name of Sh. Deepak Aggarwal. As per D-21, Ex. PW-9/1 Mobile No. 9958408585 is in the name of M/s Square 9 Inn where the complainant is a partner. The CDR of Mobile No. 9958408585 also shows a call made at Mobile No. 9810733490 of Sh. Deepak Aggarwal at 16:17:23 for a duration of 54 seconds.

115. The complainant had gone to the office of Sh. Deepak Aggarwal for delivering the bribe amount on the directions of Sh. P.R. Meena accompanied by PW-3 Sh. Subhash Kumar. PW-2, the complainant Sh. Krishan Kumar has deposed that on meeting Sh. Deepak Aggarwal he told him what had transpired between him and Sh. P.R. Meena. The complainant then told Sh. Deepak Aggarwal that he had brought Rs.3.5 Lacs and that he can give that money to him or Sh. Deepak Aggarwal can accompany him to Sh. P.R. Meena. Sh. Deepak Aggarwal told him to leave the money and assured that it was not a problem and he would have the money delivered to Sh. P.R. Meena. The witness deposed that he gave the bag containing the bribe amount to Sh. Deepak Aggarwal. PW-3 Sh. Subhash Kumar who had accompanied the complainant to the office of Sh. Deepak Aggarwal has deposed that he along with complainant had met Sh. Deepak Aggarwal at

his office. Initially, some general conversation took place between complainant and Sh. Deepak Aggarwal as complainant might be related to Sh. Deepak Aggarwal because Sh. Deepak Aggarwal addressed complainant as “Mamaji”. Thereafter, the complainant told Sh. Deepak Aggarwal that he had brought the payment for Sh. P.R. Meena and handed over the bag to Sh. Deepak Aggarwal. Sh. Deepak Aggarwal opened the bag and then peeked into the polythene bag and then closed the laptop bag and placed underneath his table.

116. What transpired between the complainant and Sh. Deepak Aggarwal in the office on 24.02.2016 is mentioned in D-19 Ex. PW-2/8, Pages 15-17. However, for reasons noted above, the said transcript is not being relied upon for deciding the case. Nevertheless, the allegation of acceptance of Rs.3.5 Lacs as bribe amount for Sh. P.R. Meena by Sh. Deepak Aggarwal stands proved by the evidence of PW-2 and PW-3.

117. PW-19 Inspector Kuldeep Singh, the Trap Laying Officer has also deposed that on receiving call from the complainant, he went in the office of Sh. Deepak Aggarwal with the team and the cloth bag containing trap money was with Sh. Deepak Aggarwal.

118. PW-6 Sh. Vaneet Kumar has also deposed that the bag containing the money was found under the table of Sh. Deepak Aggarwal.

119. In the opinion of this court, the offence under Section 13 1(d) read with Section 13(2) of P.C. Act, 1988 by Sh. P.R. Meena is completed at this stage.

120. There was a motive for Sh. P.R. Meena to demand bribe from the complainant. The motive being pendency of assessment of the firm of the complainant for assessment year 2013-2014. The demand of bribe is already recorded to be proved against Sh. P.R. Meena.

121. The acceptance of bribe by Sh. P.R. Meena has taken place through Sh. Deepak Aggarwal, the Chartered Accountant of the complainant Sh. Krishan Kumar, PW-2 to avoid from getting caught red handed in trap proceedings. Therefore, both the charges against the public servant Sh. P.R. Meena are proved. It is proved that he committed the offence under Section 7 of P.C. Act, 1988. It is also proved that he committed the offence under Section 13(1)(d) read with Section 13(2) of P.C. Act.

122. **Conspiracy:-** Now, the court shall decide the point for determination of criminal conspiracy amongst the three accused persons and the role of Accused No. 2 Sh. Deepak Aggarwal and Accused No. 3 Ms. Parul Garg.

123. It is already noted that M/s Square 9 Inn had received notice dated 15.09.2015 Ex. PW-2/DX1 (D-8, Page 219). The said firm has four partners and one of them is Sh. Krishan Kumar. This is evident from the records available in D-8, Page 12. Sh. Deepak

Aggarwal and Ms. Parul Garg, Chartered Accountants appeared before the Income Tax Officer Sh. P.R. Meena on 07.07.2015 and received the notice under Section 142(1) of I.T. Act. On 15.07.2015, both of them appeared again and filed reply. On 20.08.2015, Sh. Deepak Aggarwal appeared and filed letter dated 20.08.2015 on behalf of assessee. On 27.08.2015, Ms. Parul Garg appeared and sought adjournment. She again appeared on 15.09.2015 and received notice under Section 142(1) of I.T. Act along with questionnaire. On 28.09.2015, 12.10.2015, 04.12.2015, 11.12.2015 Sh. Deepak Aggarwal appeared before the ITO and on 18.12.2015 Ms. Parul Garg appeared and filed letter dated 18.12.2015. On 23.12.2015 Sh. Deepak Aggarwal appeared and filed reply dated 23.12.2015 and matter was adjourned to 31.12.2015. There is no other noting in the file and the notings are Ex. PW-5/3. Therefore, both of them were appearing actively before the ITO Sh. P.R. Meena. No one can say that his or her role was simpler in comparison to the role of other. Both of them are partners in M/s P.K. Garg & Associates having 15% share each. Partnership Deed of the firm is Ex. PW-12/2 (D-22). The status of Ms. Parul Garg would be higher than the status of Sh. Deepak Aggarwal in as much as she is the daughter of Sh. P.K. Garg, who has 55% share in the firm M/s P.K. Garg & Associates. Therefore, both of them were familiar with Sh. P.R. Meena as they were appearing before him in the case of M/s Square 9 Inn. The role of Ms. Parul Garg in the assessment proceedings of M/s Square 9 Inn can be considered more because in addition to having Assessee – CA relation, she is also closely related to Sh. Krishan Kumar, who is maternal uncle (Mamaji) of his mother. All the matters pertaining to income tax of M/s Square 9 Inn firm were being taken care by M/s P.K. Garg & Associates. The complainant used to issue cheques to M/s P.K. Garg & Associates in respect of services rendered by the company about income tax matters. Still, the complainant deposed that he had never had any discussion or conversation with Ms. Parul Garg pertaining to the present income tax matter.

124. As per Ex. PW-2/1, D-2 which is the complaint dated 22.02.2016, the complainant has mentioned that after receiving notice from Income Tax Department he contacted CA Sh. Deepak Aggarwal and to meet the concern of ITO, necessary documents were filed. It is further stated in the complaint that in the month of February 2016 CA informed him that the ITO need to meet him and finalize the bribe of Rs.5 Lakh he is demanding and he should thus meet the ITO directly, if he decides so to settle the case properly. He has further stated that a meeting was fixed between 3 to 4 PM on 22.02.2016.

125. In the examination-in-chief, PW-2 did not depose that the ITO wants the complainant to meet him to finalize the bribe of Rs.5 Lacs. He deposed that when he inquired about the reason for the same, Sh. Deepak Aggarwal told that he was not aware about the details but it was regarding some money. From this information, he felt that a bribe was being demanded from him.

During his cross-examination on behalf of Sh. Deepak Aggarwal, the complainant had volunteered that Sh. Deepak Aggarwal had conveyed him that Sh. P.R. Meena wanted some money from him. However, when his attention was drawn to his examination-in-chief where he had earlier deposed that the reason for meeting was regarding some money, he admitted that the said statement is a correct statement. Therefore, evidence of PW-2 has not shown that Sh. Deepak Aggarwal had told him to meet the ITO and finalize bribe of Rs.5 Lacs. To this extent, the witness has not supported his own complaint Ex. PW-2/1 (D-1).

126. Evidence of PW-1 has shown that Ms. Parul Garg had made a call to Sh. P.R. Meena on 22.02.2016 at 20:09:45 for a duration of 59 seconds. Therefore, Ms. Parul Garg had called Sh. P.R. Meena at late evening hours on the day complainant had met Sh. P.R. Meena for verification purposes. What discussion took place is shrouded in secrecy. In proceedings under Section 313 Cr.P.C. when the CDR of the mobile of Sh. P.R. Meena was put to her, her stand was that it is a matter of record. Surprisingly, the stand of Sh. P.R. Meena to his CDR is of denial.

127. Sh. Deepak Aggarwal had also made a call to Sh. P.R. Meena on 24.02.2016. However, this call was at the time of trap proceedings on the directions of Trap Laying Officer.

128. In the evidence of PW-9, it has come on record that on 22.02.2016 (i.e. on the date when the complainant had filed a complaint with CBI and verification of his complaint had taken

place) at 11:00 AM, a call was made from the mobile number of complainant to the mobile number of Sh. P.K. Garg for 32 seconds.

129. PW-2 initially denied that mobile no. 9810014521 is the mobile number of Sh. P.K. Garg. However, when he was asked to check the same in his mobile, he stated that he has saved this number in the name of "Pawan Ji" and Pawan Ji and Sh. P.K. Garg are one and the same person. Now, he admitted that he had received two calls from the mobile number of Sh. P.K. Garg on 22.02.2016 at 12:50 PM and 12:54 PM. He also admitted that he had received a call from Pawan Ji from Cell No. 9810014521 at 20:08:40 on 22.02.2016. This is the day when the complainant had given the complaint and had assured Sh. P.R. Meena during verification proceedings, that he will give a bribe amount of Rs.3.5 Lacs to him.

130. On the other hand, there is no call record of call exchanged between complainant and Sh. Deepak Aggarwal except the call of 24.02.2016 when complainant inquired about the presence of Sh. Deepak Aggarwal in the office. As per transcript D-19, Ex. PW-2/8, Page 14, first of all the complainant has asked about the whereabouts of Pawan Ji.

131. The above shows that on 22.02.2016 Ms. Parul Garg had called Sh. P.R. Meena at late evening hours and the complainant was constantly in touch with Sh. P.K. Garg on 22.02.2016 and 24.02.2016. On the other hand, there is no call record of Sh.

Deepak Aggarwal and Sh. P.R. Meena except the call made on 24.02.2016 on the directions of Trap Laying Officer.

132. It has also come on record that Sh. Deepak Aggarwal was not having the mobile number of Sh. P.R. Meena and Sh. P.R. Meena was also not having the mobile number of Sh. Deepak Aggarwal saved on his mobile. Both the mobile phones were seized during investigation but the investigating officer could not show that these numbers were saved in the mobiles of each other.

133. When, Sh. Deepak Aggarwal was called upon to contact Sh. P.R. Meena for handing over the bribe amount, he had to take the mobile number of Sh. P.R. Meena from Ms. Parul Garg. Ms. Parul Garg gave the mobile number of Sh. P.R. Meena, when Sh. Deepak Aggarwal called him second time but it is also not on record whether she was having the mobile number of Sh. P.R. Meena or she managed to get the same from some other person.

134. When Sh. Deepak Aggarwal went to deliver the bribe amount to Sh. P.R. Meena on the directions of TLO, Sh. P.R. Meena refused to accept the bribe amount from him.

135. The transcript, Ex. PW-2/8, Page 21, D-19 would show that Sh. P.R. Meena had told Sh. Deepak Aggarwal that *"Parul se meri do ki baat hui thi".* Had these call records been proved, it would have made a difficult case for Ms. Parul Garg. However, as the call records have been found to be not admissible, this conversation

is not being read against Ms. Parul Garg. The final position remained that Sh. P.R. Meena did not accept the bribe amount from Sh. Deepak Aggarwal. It is one of the strongest arguments on behalf of Sh. Deepak Aggarwal that had there been any conspiracy, he would have known that the ITO has to be given Rs.2 Lacs only and Sh. P.R. Meena would have accepted the bribe amount from Sh. Deepak Aggarwal.

136. Be that as it may, it has come in the evidence of PW-2 and PW-3 that Sh. Deepak Aggarwal had accepted the bribe amount of Rs.3.5 Lacs from the complainant for handing over to Sh. P.R. Meena. Though, in the transcript D-19, Ex. PW-2/A Page 16 when the complainant insisted that Sh. Deepak Aggarwal should meet Sh. P.R. Meena that evening itself, the response of Sh. Deepak Aggarwal was that he will talk to Pawan Ji and then he will tell the complainant about the plan to meet Sh. P.R. Meena in the evening. Mere acceptance of the bribe amount of Rs.3.5 Lacs by Sh. Deepak Aggarwal from the complainant makes him a co-conspirator. It is well known that conspiracies are hatched in darkness and direct evidence is seldom possible. The acceptance of bribe amount by Sh. Deepak Aggarwal from the complainant is the important evidence for proving his role as a co-conspirator. He knew that the proceedings of the complainant were pending before Sh. P.R. Meena which were not yet finalized. Therefore, acceptance of bribe and assuring that it will be handed over to Sh. P.R. Meena makes Sh. Deepak Aggarwal

also a co-conspirator. Sh. P.R. Meena had demanded the bribe from Sh. Krishan Kumar but directed him to pay the same to Sh. Deepak Aggarwal. This bribe amount was accepted by Sh. Deepak Aggarwal for further making payment to Sh. P.R. Meena. Therefore, the offence of conspiracy between Sh. P.R. Meena and Sh. Deepak Aggarwal stands proved. In this regard, reference can be made to the judgment of ***Firozuddin Basheeruddin & Ors. vs. State of Kerala***, Appeal (Crl.) 357-359 of 1998 dated 20.08.2001 of the Hon'ble Supreme Court of India relied on by Sh. Mohd. Fareed, Ld. Sr. PP for CBI. In this case, the Hon'ble Supreme Court has referred to its previous judgment in the case of State through Superintendent of Police, CBI/SIT vs. Nalini & Ors. (1999) 5 SCC 253 where one of the principles governing the law of conspiracy is stated to be that the agreement need not be entered into by all the parties to it at the same time but may be reached by successive actions evidencing their joining of the conspiracy. Reference is also made to the judgment in the case of Yashpal Mittal vs. State of Punjab, (1977) 4 SCC 540 where it is held that it is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-conspirators in the main object of the conspiracy.

137. It is further held by the Hon'ble Supreme Court that one of the models to approach determination of conspiracy is that of a chain

where each party performs a role that aids succeeding parties in accomplishing the criminal objectives of the conspiracy.

138. In the opinion of the court, the offence of criminal conspiracy under Section 120B IPC read with Section 13(1)(d) read with 13(2) of P.C. Act, 1988 is therefore proved against Accused No. 1 Sh. P.R. Meena and Accused No. 2 Sh. Deepak Aggarwal.

139. So far as Ms. Parul Garg is concerned, the evidence shows that she was appearing before Sh. P.R. Meena in the proceedings pertaining to the firm of complainant. She was telephonically in touch with Sh. P.R. Meena as is evident from CDR of Sh. P.R. Meena of 22.02.2016. She had provided the mobile number of Sh. P.R. Meena to Sh. Deepak Aggarwal. Although her voice sample was not taken but the said fact is evident from the CDR. Her role stops at this stage. The role of Ms. Parul Garg is therefore not such to hold that the offence of conspiracy is proved against her beyond all reasonable doubts. She is entitled to benefit of doubt.

140. In this judgment, while discussing points for discussion, the evidence favourable to the accused and as submitted in their written arguments have been discussed and therefore their written arguments are not required to be dealt with again.

141. Resultantly, in the considered opinion of this court, the conclusion of the trial is as under:-

(1) The offence under Section 7 of P.C. Act, 1988 is proved against Accused No. 1 Sh. P.R. Meena. He is convicted accordingly.

(2) The offence under Section 13(1)(d) read with 13(2) of P.C. Act, 1988 is proved against Accused No. 1 Sh. P.R. Meena. He is convicted accordingly.

(3) The offence under Section 120B IPC read with Section 13(1)(d) read with 13(2) of P.C. Act, 1988 is also proved against Accused No. 1 Sh. P.R. Meena. He is convicted accordingly.

(4) The offence under Section 120B IPC read with Section 13(1)(d) read with 13(2) of P.C. Act, 1988 is proved against Accused No. 2 Sh. Deepak Aggarwal. He is convicted accordingly.

(5) The offence under Section 120B IPC read with Section 13(1)(d) read with 13(2) of P.C. Act, 1988 is not proved against Accused No. 3 Sh. Ms. Parul Garg. She is acquitted accordingly.

142. **Proceedings under Section 319 Cr.P.C.:-** This court has considered whether Sh. P.K. Garg was also a co-conspirator and has escaped prosecution. The evidence against Sh. P.K. Garg is that he is the partner of M/s P.K. Garg & Associates having 55% shares. His daughter Ms. Parul Garg is having 15% share in the firm. Therefore, they have 70% shares in the firm. As per PW-18 Sh. P.K. Garg used to deal normally with the clients and was the sole signatory of the account of the firm and used to take all major policy decisions on behalf of the firm. The complainant is a

very-very close relation of Sh. P.K. Garg. The complainant is real brother of the mother of the wife of Sh. P.K. Garg. Complainant is maternal uncle (Mamaji) of the wife of Sh. P.K. Garg. All the income tax matters of M/s Square 9 Inn were being handled by M/s P.K. Garg & Associates. The daughter of Sh. P.K. Garg has been appearing before the ITO in the proceedings of M/s Square 9 Inn. She has escaped by a whisker as the call records have not been taken into consideration which otherwise showed her damning involvement in conspiracy. Sh. P.K. Garg has been in touch with the complainant on the date of meeting of complainant with Sh. P.R. Meena. It is unbelievable that Sh. Deepak Aggarwal conspired with Sh. P.R. Meena behind the back of Sh. P.K. Garg for demanding bribe from the complainant Sh. Krishan Kumar.

143. When the bribe amount was not accepted by Sh. P.R. Meena, the complainant frantically tried to contact Sh. P.K. Garg. He was constantly asking about the whereabouts of Pawan Ji which shows that the complainant actually wanted to handover the bribe amount to Sh. P.K. Garg but when he could not find Sh. P.K. Garg and Ms. Parul Garg, he went ahead in giving the bribe amount to Sh. Deepak Aggarwal which proved his guilt by accepting the same with the assurance that he will hand it over to the ITO, P.R. Meena.

144. In this regard, Recovery Memo, D-5, Ex. PW-2/5 is referred to where following is recorded:-

"On being asked Sh. Deepak Aggarwal stated that this money has been taken to further handover to accused P.R. Meena. He also stated that he is the employee of one Sh. Pawan Kumar Garg, CA and owner of M/s P.K. Garg & Associates since 1997 and this bribe amount has been taken on behalf of him to further hand it over to accused Sh. P.R. Meena. The complainant also corroborated the version of Sh. Deepak Aggarwal. Complainant further disclosed that Sh. Pawan Kumar Garg is his relative and Sh. Deepak Aggarwal is his employee. Complainant also disclosed that Sh. Pawan Kumar Garg, CA had earlier talked with accused P.R. Meena about his settlement of assessment of income tax and regarding payment of bribe amount in presence of independent witnesses".

145. In this regard, it is important to refer to the statement of TLO, Inspector Kuldeep Singh, Ex. PW-19/DX where it is recorded:-

"Complainant also disclosed that Sh. Pawan Kumar Garg, CA had earlier talked with accused P.R. Meena about his settlement of income tax and regarding payment of bribe amount in the presence of independent witnesses".

146. The law with regard to summoning a person not summoned earlier to face the trial under Section 319 of Cr. P.C. is noted in ***Hardeep Singh vs. State of Punjab***, 2014 (3) SCC 92 and has been quoted again in ***Saeeda Khatoon Arshi vs. State of Uttar Pradesh & Anr.***, 2020 (2) SCC 323. In Para 18 in the case of Saeeda Khatoon (Supra), it is held as under:-

"18. The decision of the Constitution Bench of this court in Hardeep Singh lays down the principles governing the exercise of the jurisdiction under Section 319 observing

that "it is the duty of the court to do justice by punishing the real culprit", the court observed:-

"13. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial."

Expounding upon this duty, the Constitution Bench held:

"18. The legislature cannot be presumed to have imagined all the circumstances and, therefore, it is the duty of the court to give full effect to the words used by the legislature so as to encompass any situation which the court may have to tackle while proceeding to try an offence and not allow a person who deserves to be tried to go scot free by being not arraigned in the trial inspite of the possibility of his complicity which can be gathered from the documents presented by the prosecution.

19. The Court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.

19. As regards the satisfaction of the court before it exercises the power under Section 319, the Constitution Bench held:-

"105. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that

some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and caviler manner.

106. Thus, we hold that though only a prime facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C., the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "for which such person could be tried with the accused". The words used are not "for which such person could be convicted". There is therefore, no scope for the court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused".

147. Considering:

(1) Sh. P.K. Garg is the dominating partner of the firm M/s P.K. Garg & Associates who was handling all the income tax matters of the complainant's firm M/s Square 9 Inn.

(2) All the major decisions of M/s P.K. Garg & Associates were being taken by Sh. P.K. Garg.

(3) Sh. Deepak Aggarwal only has 15% shares in the firm of M/s P.K. Garg & Associates and could not have entered into

conspiracy to take bribe from the complainant unless Sh. P.K. Garg was co-conspirator.

(4) Sh. P.K. Garg and the complainant are closely related to each other as the complainant is the maternal uncle of the wife of Sh. P.K. Garg and therefore Sh. Deepak Aggarwal could not have entered into conspiracy to take bribe from the complainant unless Sh. P.K. Garg was co-conspirator. The circumstances speaks for themselves, res ipsa loquitor, for role of Sh. P.K. Garg as co-conspirator.

(5) On the date when the complainant went to meet Sh. P.R. Meena for settling the bribe amount i.e. on 22.02.2016, there is a telephonic conversation between Sh. P.K. Garg and complainant for 32 seconds at 11:00 AM.

(6) On the same date he had also received two calls from Sh. P.K. Garg at 12:50 PM and 12:54 PM.

(7) On 22.02.2016 the complainant had received call from Sh. P.K. Garg at 20:08:40.

(8) After coming out of the office of Sh. P.R. Meena, the complainant had tried to contact Sh. P.K. Garg.

(9) As per Ex. PW-2/5 which is Recovery Memo, the complainant had disclosed that Sh. Pawan Kumar Garg, CA had earlier talked with Accused Sh. P.R. Meena about his settlement of assessment of income tax and regarding payment of bribe amount.

(10) As per Ex. PW-19/DX, the TLO Inspector Kuldeep Singh had stated that the complainant also disclosed that Sh. Pawan

Kumar Garg, CA had earlier talked with Accused Sh. P.R. Meena about his settlement of income tax and regarding payment of bribe amount in the presence of independent witnesses,

(11) Regarding admissibility of evidence, loosened standards prevail in a conspiracy trial (Firozuddin Bashiruddin & Ors. vs. State of Kerala, Appeal (Crl.) 357-359/1998, dated 20.08.2001 (SC).

(12) For the offence of conspiracy, direct evidence is seldom available as the conspiracies are hatched in darkness and the offence of conspiracy is to be proved by circumstantial evidence.

148. Therefore, Sh. P.K. Garg is summoned under Section 319 Cr.P.C. to face the trial for the offence u/s 120B of IPC read with Section 13(1)(d) read with 13(2) of P.C. Act, 1988 of conspiring with the public servant Sh. P.R. Meena and CA Sh. Deepak Aggarwal for taking bribe of Rs.3.5 Lakhs from the complainant Sh. Krishan Kumar.

ANNOUNCED IN THE OPEN COURT
ON 18th DAY OF FEBRUARY, 2021 **(ARUN BHARDWAJ)**
Special Judge (P.C. Act)(CBI-05)
Rouse Avenue District Court,
New Delhi/18.02.2021