

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 22<sup>nd</sup> November, 2013*

+ **CRL.M.C. 2384/2011 & Crl. M.A. No.8693/2011**

A K GANJU ..... Petitioner

Represented by: Mr. Vineet Malhotra and  
Mr. Vishal Gohri, Advocates.

Versus

CBI ..... Respondent

Represented by: Ms. Sonia Mathur and  
Mr. Sushil Kumar Dubey,  
Advocates.

**AND**

+ **CRL.M.C. 3011/2011**

NARESH SHARMA ..... Petitioner

Represented by: Mr. Dhruv Rohtagi, Advocate.

Versus

CBI ..... Respondent

Represented by: Ms. Sonia Mathur and  
Mr. Sushil Kumar Dubey,  
Advocates.

**AND**

+ **CRL.M.C. 3800/2011 & Crl. M.A. No.18063/2011**

R.S. GEHLOT ..... Petitioner

Represented by: Mr. Arun Bhardwaj, Senior  
Advocate

with Mr. Karn Bhardwaj, Mr. Vineet  
Malhotra, Mr. K.S. Yadav and  
Mr. Vishal Malhotra, Advocates.

Versus

CBI

..... Respondent

Represented by: Ms. Sonia Mathur and  
Mr. Sushil Kumar Dubey,  
Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KAIT**

**SURESH KAIT, J.**

1. Vide the present petitions, the petitioners are seeking the following reliefs:-

- “1. *Quash the FIR No. RC DA-I-2000-A-0041 dated 24.08.2000 filed under Sections 120-B IPC read with Section 13(2) read with Section 13(1) (d) of Prevention of Corruption Act, 1988.*
2. *Quash the Chargesheet in CC No 44/2011/30.04.2011/2001.*
3. *Quash the order on charge dated 21.05.2011 and charge framed vide order dated 31.05.2011 and the entire proceedings pending in the court of Shri A.K.Mendiratta, Special Judge (PC Act), CBI-B, Central District, Tis Hazari Court, Delhi.”*

2. The FIR, chargesheet and impugned orders are same in these petitions, therefore, this Court has decided to dispose of the petitions by this common judgment.

3. As per the chargesheet, Raj Singh Gehlot (builder/owner/purchaser and petitioner in CrI.M.C. No.3800/2011) entered into a criminal conspiracy with B.R. Malhotra, AE, Municipal Corporation of Delhi (hereinafter to be referred as 'MCD') and Naresh Kumar Sharma, JE, MCD (petitioner in CrI. M.C. No.3011/2011), who facilitated in issuing the wrong completion certificate, illegal coverage and unauthorized construction in property No.39, Paschimi Marg, Vasant Vihar, New Delhi. For the aforesaid purpose, Architect A.K. Ganju (petitioner in CrI. M.C. No. 2384/2011) submitted the faulty completion drawings. The said property was further sold off by the builder/petitioner Raj Singh Gehlot with illegally constructed area. Accordingly, RC DA-I-2000-A-0041 was registered on 24.08.2000 by the Central Bureau of Investigation (hereinafter to be referred as 'CBI').

4. As per the case of the prosecution, plot No.39, Paschimi Marg, Vasant Vihar, New Delhi was originally allotted to Sh. B.R. Shourie (since deceased) and his wife Smt.Kamla Shourie by the Delhi Development Authority (hereinafter to be referred as 'DDA') in the year 1968, who sold this property to petitioner Raj Singh Gehlot in the year 1989 vide a separate Sale Agreement and a registered General Power of Attorney (for short 'GPA') in favour of Smt.Sheela Gehlot for a consideration of Rs.1.05 crores.

5. Further alleged that on 31.07.1989, an application was moved to DDA under the purported signature of Sh.B.R.Shourie for demolishing the old building and constructing a new building of two and a half

storey, however, petitioners claimed that the same was submitted for three and a half storeys. Accordingly, a proposed site plan prepared by petitioner A.K. Ganju (approved Architect) was also submitted to DDA. On 24.11.1989, DDA sanctioned the site plan and approved the construction of new building with coverage of 2989.14 square feet on the ground, first and second floor and 989 square feet on the third floor. In December 1989, Vasant Vihar area was de-notified from DDA and handed over to the MCD.

6. It is further case of the prosecution that petitioner Raj Singh Gehlot started construction in the said plot, which was supervised by petitioner A.K. Ganju. In the absence of other evidence, the building was registered by House Tax Department. MCD relied upon for determining the starting date of construction as January, 1991. 'C' form de-notifying covering of underground civil lines/drains was issued on 18.05.1989 on the recommendations of the then JE Sh. B.S. Yadav, an approver of the competent authority. The completion certificate (CC) was issued on 19.12.1991 by the then ADC which was based upon the NOC report dated 26.11.1991 given by petitioner Naresh Sharma, JE, MCD and B.R. Malhotra, AE, MCD.

7. It is also case of the prosecution that application for issue of completion certificate was submitted on 04.11.1991 and the signature of Sh.B.R. Shourie and Smt. Kamla Shourie had been forged. The completion drawings and stability certificate were issued by petitioner A.K. Ganju along with two photographs of the complete building. It is also alleged that the then JE and AE had inspected the building and on

their recommendations, a compoundable fee of Rs.2,55,603/- was imposed on the builder/petitioner Raj Singh Gehlot for compoundable violations and infringements in the building. The NOC form recorded that there were seven dwelling units in the building with a basement to be used only as a store.

8. It is further case of the prosecution that records of House Tax Department of MCD revealed that the construction was completed in February, 1992 and the building was assessed for house tax on 22.02.1992, wherein the total covered area was recorded as 26258 square feet each in the ground, first, second and third floors. It is also alleged that petitioner Raj Singh Gehlot had sold all the dwelling units and the basement portions during the year 1992-93 to various parties by executing Sale Agreements and GPAs.

9. The building was booked for unauthorized construction on 12.02.1997 by the then JE Sh. Sushil Kumar, accordingly, and show-cause notices were issued. On 27.02.1997, the demolition orders were passed by the Competent Authority and pursuant thereto some servant quarters in the terrace floor were demolished on 09.06.1997.

10. Show-cause notices were issued to the owners/Mr. and Mrs.Shourie for excess coverage at basement, ground, first, second and third floors on the basis of direction issued by this Court in a PIL regarding illegal construction in part of buildings of Vasant Vihar and the building in question was one of them. On 12.02.1997, aforesaid building was booked for unauthorized construction by Sushil Kumar, JE as it had non-compoundable excess coverage of 7594.4 square feet

and further one extra dwelling unit beyond the sanctioned floors, i.e., 4<sup>th</sup> and 5<sup>th</sup> floors with illegal projections, multi utilisations of basement and non-compoundable FAR 87.67.

11. Role of petitioner A.K. Ganju (petitioner in Crl. M.C. No. 2384/2011) is that he had submitted faulty completion drawings of the property, thus, facilitated in issuing of wrong completion certificate by concealing the illegal coverage and unauthorized constructions on the property in question, which was further sold off by the builder. He supervised the construction done by the builder. To this effect, statement of Sh. M.M. Dass (Superintending Engineer) was recorded, who stated that completion plan prepared by Architect A.K. Ganju did not tally with the photographs submitted with the plan and unauthorized construction existed in basement, ground, first and second floors even on the date of issuance of the completion certificate. Infringements in the front setback and side setback were not properly shown by the Architect in the plan. Completion drawings have concealed certain infringements which were seen in the photographs. Completion plan prepared by petitioner A.K. Ganju did not tally with the photographs submitted with the plan. As per the statements of occupants of the building, i.e., PW16, Sanjeev Saran, PW17, Ms. Jyothi Stefvans, PW18, Dr. Vinod Sehgal and PW19, Indu Bala, building is in the same condition as it was at the time of purchase, i.e., in 1992-93 and that no structural changes were made. As per the statement of Rohit Shourie son of Late Sh.B.R. Shourie, property was sold in 1989 to petitioner Raj Singh Gehlot vide GPA

and registered Sale Deed executed on 06.11.1989. Proposed approval application was moved on 31.07.1989 and signatures of his father were forged thereon. Similarly, on the application dated 04.11.1991 for completion certificate, signatures of his parents were forged. No verification from the original allottees was made by the then JE and AE before grant of completion certificate.

12. Allegations against petitioner Naresh Sharma (petitioner in Crl. M.C. No. 3011/2011) and Mr.B.R. Malhotra are that petitioner Naresh Sharma was JE in MCD Office, South Zone from 09.07.1991 to 26.11.1991. Mr. B.R. Malhotra was AE in South Zone MCD Office from 01.09.1991 to 22.01.1992. There was unauthorized construction existed on the date of issuance of NOC/Completion Certificate even in the basement, first, second and third floors excluding 4<sup>th</sup> and 5<sup>th</sup> floors. The non-compoundable areas in building in question are as under:-

|              |                     |
|--------------|---------------------|
| Basement     | 528.71 square feet  |
| Ground Floor | 1382.05 square feet |
| First Floor  | 1148.08 square feet |
| Second Floor | 1148.08 square feet |
| Third Floor  | 3257.48 square feet |

13. Late Sh. B.L.Shourie (original owner) sold the building in question in the year 1989, to petitioner Raj Singh Gehlot vide GPA executed on 06.11.1989. Rohit Shourie son of late Sh. B.L.Shourie has stated that neither application dated 31.07.1989 for proposed plan on the plot nor application dated 04.11.1991 for completion certificate

was signed by his father and that upon both the aforesaid documents signatures of his father have been forged.

14. The allegations against petitioner Raj Singh Gehlot (petitioner in Crl. M.C. No. 3800/2011) and builder/owner of the property in question are that he illegally and unauthorizedly constructed the property in question in conspiracy with other accused persons. The original owner of the property sold the property to him by registered Sale Agreement and a registered GPA dated 06.11.1989. An application for approval of construction was filed on 31.07.1989 under the forged signatures of Sh. B.R. Shourie (original owner). An application dated 04.11.1991 for completion certificate was also filed with forged signatures of the aforesaid original owner. Records of House Tax Department, MCD shows that the construction was completed in February, 1992 showing covered area of the building as 2625 square feet each in ground, first and second floors. Thus, petitioner Raj Singh Gehlot in conspiracy with AE, JE and Architect falsely got the completion certificate concealing the illegal coverage and unauthorized construction on the basis of faulty completion drawings prepared by the Architect. In the year 1992-93, he sold off dwelling units and basement to various parties and he has been the direct beneficiary. Sh. Rohit Shourie, son of late Sh.B.R. Shourie (original owner) has established the forged signature on the applications for approval dated 31.07.1989 and completion certificate dated 04.11.1991. Occupants of the building in question, i.e., PW16 to

PW19 have stated in their statements that the building was in the same condition as they bought during the year 1992-93.

15. Learned counsel appearing on behalf of the petitioners submitted that as per the chargesheet, the building was constructed in the year 1991 and the completion certificate was issued on 19.12.1991. The FIR No.RCDA-I-2000-A-0041 was registered much later, i.e., on 24.08.2000, after about nine years. It is alleged that there was unauthorized construction in the said plot and MCD officers had dishonestly not taken legal action for the said unauthorized construction. After registration of the aforesaid FIR, CBI wrote to MCD vide its letter dated 25.04.2011 asking it to submit the report to CBI about unauthorised construction after inspecting the property. Accordingly, by letter dated 16.05.2011, Sh. M. M. Dass (Superintending Engineer), MCD wrote to CBI annexing the chart showing details of covered areas at different floors with respect to the sanctioned covered areas and the extent of area that can be compounded at that point of time with respect to norms applicable during 1989-91 and another chart showing the extent of area that can be compounded as per the relaxed norms made applicable with effect from 23.07.1998. Also annexed a chart showing the permissible setbacks as per the approved layout plan and as per the norms applicable during 1989-91 and to the extent the setbacks are infringed relating to permissible setbacks remained unaltered even when relaxed norms came into force in the year 1998.

16. Further stated that there was no FAR concept for plotted residential development at the time of sanction of building plans in the year 1989, however, MPD-2001 came in force from 01.08.1990 and as such ground coverage and FAR for this size of the plot was permissible as per the norms as on 01.08.1990. Relaxed norms of 1998 reads as under:-

|                                                           | <u>As per 89-90 norms</u>                       | <u>As per 98 norms</u> |
|-----------------------------------------------------------|-------------------------------------------------|------------------------|
| Ground Coverage:                                          | 40% of plot area i.e. 3018.60 sq. ft.           | 40% of plot area       |
| First Floor:                                              | 40% of plot area i.e. 3018.60 sq. ft.           | 40% of plot area       |
| IInd Floor:                                               | 40% of plot area i.e. 3018.60 sq. ft.           | 40% of plot area       |
| IIrd Floor:                                               | 1000 sq. ft.                                    | 40% of plot area       |
| <i>With effect from 01.08.1990 and upto December 1991</i> |                                                 |                        |
| IIIrd Floor:                                              | 20% of plot of area i.e.1509.30 sq.ft.          |                        |
| Permissible FAR                                           | 140                                             | 160                    |
| Existing FAR                                              | 2459.59                                         | 249.95                 |
| Compoundable FAR                                          | 21.89 upto 13.12.1990<br>10.94 after 13.12.1990 | 1.92                   |
| None Compoundable FAR                                     | 87.7 upto 13.12.1990<br>98.64 after 13.12.1990  | 87.67                  |

*Note: The compoundable area constructed upto 13.12.1990 was 20% subject to maximum of 450 sq. ft. on each floor. Further construction raised after 13.12.1990 and upto the period of consideration i.e. 31.12.1991, the compoundable area was 10%, notification dated 13.12.1990 is enclosed.*

d) *No. of dwelling units*

|              | <i>As per 89-90 norms</i>    |            | <i>As per 98-norms</i>       |            | <i>Existing use &amp; Number</i> |
|--------------|------------------------------|------------|------------------------------|------------|----------------------------------|
| <i>Floor</i> | <i>No. of dwelling units</i> | <i>Use</i> | <i>No. of dwelling units</i> | <i>Use</i> |                                  |

|                     |            |                         |            |                         |                                                      |
|---------------------|------------|-------------------------|------------|-------------------------|------------------------------------------------------|
| <i>Basement</i>     | <i>Nil</i> | <i>Domestic Storage</i> | <i>Nil</i> | <i>Domestic Storage</i> | <i>Partly office partly vacant with two kitchen</i>  |
| <i>Ground Floor</i> | <i>2</i>   | <i>Residential</i>      | <i>2</i>   | <i>Residential</i>      | <i>Office with kitchen + two dwelling units</i>      |
| <i>First Floor</i>  | <i>2</i>   | <i>Residential</i>      | <i>2</i>   | <i>Residential</i>      | <i>Office with kitchen + two dwelling units</i>      |
| <i>IInd Floor</i>   | <i>2</i>   | <i>Residential</i>      | <i>2</i>   | <i>Residential</i>      | <i>Front portion locked one unit in rear portion</i> |
| <i>IIIrd Floor</i>  | <i>1</i>   | <i>Residential</i>      | <i>2</i>   | <i>Residential</i>      | <i>Two dwelling units</i>                            |
| <i>IVth Floor</i>   | <i>Nil</i> | <i>-----</i>            | <i>NIL</i> | <i>-----</i>            | <i>Room + Lobby lying vacant</i>                     |

- e) *Height of Building:* *In the year 1989, height of the building was permitted as per Unified Building Bye-laws 1983 as per bye-laws No. 12.7 as under:-*

*“The maximum height of building shall not exceed 1.5 times the width of road abutting plus the front open spaces. The height sanctioned as per the sanctioned plans is 13.71 m, whereas height constructed upto IIIrd floor is 14.59 m which is within permissible limit. The height achieved is 19.62m including mumty and machine room etc. at IVth floor, which is unauthorized.*

*After the modification in MPD-2001 dated 23.07.1998, the maximum height permissible is 15M. The existing height of the building is 19.62m. The structure after IIIrd floor except mumty is unauthorized.*

- f) *Basement:* *In residential building, the basement is permissible to the extent of ground coverage only for domestic*

*storage/household storage. There is no change in the norms as applicable in 1989-90 and as on 1998. The area details of permissible / sanctioned / existing / compoundable / non-compoundable are given in Annexure 'A'. The basement was sanctioned for household storage whereas the same is being used as office by way of partitioning. The setback portion has been raised by 5'-0" above the level of central line of front road in front set back as well as side set backs, which is not permissible. The existing height of the basement above ground is 4'-0" and is in order.*

- |                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|--------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>g)      <i>Parking:</i></p> <p style="margin-left: 100px;"><i>The</i></p> <p style="margin-left: 100px;"><i>Against</i></p> | <p><i>As per the sanctioned plans no parking plan is available. As per the present norms 10.93 ECS are required, the provision of which do not exist at site, because of raised level of front &amp; side set backs. available space for parking is 123.29 sq. mt. 251.39 sq. mt. Required.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p>h)      <i>Permissible use:</i></p>                                                                                         | <p><i>As mentioned in the para 'd'.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>i)      <i>Any other major deviation not covered above</i></p>                                                              | <p><i>i) There are number of temporary structures at IVth floor and machine room at Vth Floor</i></p> <p><i>ii) Entry to basement is from side set back. The set back has been infringed completely at entry point.</i></p> <p><i>iii) Entry to G.F. is through a passage from left side &amp; two toilets have been constructed over this passage.</i></p> <p><i>iv) There are many projections at different floor of more than 39.6 inches which are beyond compoundable limit.</i></p> <p><i>v) Front portion of IInd floor was locked and inspection could not be carried out.</i></p> <p><i>vi) In right side set back in certain portion the roof of the basement is extended upto boundary wall of the plot.</i></p> |

*Documents relied upon for arriving at the above inference.*

1. *The original sanctioned plan provided by C.B.I.*
2. *The plans of existing building drawn by the technical team of M.C.D.*
3. *Unified Building Bye-laws 193.*
4. *Notified dated 13.12.1990.*
5. *M.P.D. 2001 with modifications made vide notification dated 23.07.1998  
(Copy annexed)*

| <i>Role of team members</i>                             | <i>Name of the official</i>                                                                           | <i>Designation</i>                                                                                                  | <i>Signatures</i> |
|---------------------------------------------------------|-------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|-------------------|
| <i>Team leader</i>                                      | <i>Sh. M.M. Dass</i>                                                                                  | <i>Superintending Engineer</i>                                                                                      |                   |
| <i>Checked by</i>                                       | <i>Sh. Pushkar Sharma</i>                                                                             | <i>Executive Engineer</i>                                                                                           |                   |
| <i>Report prepared by</i>                               | <i>Sh. V.P. Gupta<br/>&amp;<br/>Sh. M.R. Mittal</i>                                                   | <i>Assistant Engineer<br/><br/>Assistant Engineer</i>                                                               |                   |
| <i>Existing Building measured and drawings prepared</i> | <i>Sh. Ram Phal<br/>Sh. V.P. Bhardwaj<br/>Sh. S.S. Mittal<br/>Sh. C.L. Sawhni<br/>Sh. B.R. Khanna</i> | <i>Survey Officer<br/>Architect Assistant<br/>Draftsman Grade I<br/>Architect Assistant<br/>Architect Assistant</i> |                   |

17. Learned counsel further submitted that the entire case of CBI is that there was unauthorized construction and, therefore, it should be presumed that there was collusion between the Architect, MCD Officers and Engineers and some pecuniary advantages were made to the owner, as a result of the said unauthorized construction.

18. He submitted that the entire case of CBI is based on the presumption that there was illegal and unauthorized construction in the year 1991. The action of CBI is wholly without jurisdiction as offences under the MCD Act are not notified by the Central Government under Section 3 of The Delhi Special Police Establishment Act, 1946 (hereinafter to be referred as 'DSPE Act'). CBI is empowered to investigate only the offence notified by the Central Government under Section 5 of DSPE Act. The MCD Act is a special Act and application of any other Act is excluded.

19. Learned counsel further submitted that the ingredients of Section 13(1) (d) of PC Act are missing in this case. The entire case is based on surmises and conjectures as there is no allegation of any demand, acceptance or giving of any bribe, much less there is no evidence to the same. To establish an offence under Section 13(1) (d) of PC Act, it is *sine-qua-non* that there has to be evidence of demand, acceptance and giving of bribe. As there is no evidence of any unauthorized and/or illegal construction at the time when the completion certificate was granted, therefore, no charge could have been framed against the petitioners.

20. The Constitution and the powers of the Special Police to be established under the said Act are provided in Section 2 of DSPE Act, which reads as under:-

***“2. Constitution and powers of special police establishment — (1) Notwithstanding anything in the Police Act, 1861 (5 of 1861), the Central Government may constitute a special police force to be called the Delhi Special Police Establishment for the investigation in any Union Territory of offences notified under Section 3.”***

21. Section 3 of DSPE Act provides the class and category of the offences to be investigated by the Special Police to be established under the provisions of the said Act. The same reads as under:-

***“3. Offences to be investigated by special police establishment — The Central Government may, by notification in the official Gazette, specify the offences or***

*classes of offences which are to be investigated by the Delhi Special Police Establishment.”*

22. Learned counsel further submitted that a perusal of the aforesaid Sections makes it absolutely clear that the CBI, which is a creation of the special Statute, is bound by the provisions of the Statute. It cannot exceed or go beyond the powers which have been vested in it in terms of the Statute which has created the said Special Police.

23. To strengthen his arguments, learned counsel has relied upon a case of ***Eknath Shankarrao Mukkavar Vs. State of Maharashtra, AIR 1977 SC 1177***, wherein it has been held as under:-

*“By Section 3 of the Delhi Special Police Establishment Act, the Central Government may by notification in the official gazette specify the offences or class of offences which are to be investigated by the Delhi Special Police Establishment. It is only when such a notification is made by the Central Government that the Delhi Special Police Establishment is empowered to investigate the specified offences.”*

24. Also relied upon a case of ***Central Bureau of Investigation Vs. State of Rajasthan & Ors., (1996) 9 SCC 735***, wherein it is held as under:-

*“26. The member of DSPE is a member of police force constituted under DSPE Act by the Central Government. Under DSPE Act, a member of DSPE can exercise the power of investigation in the offence or offences as specified in Section 3 of DSPE Act within Union Territory. For exercising power of investigation outside Union Territory, even in respect of offences specified*

*under Section [3](#) of DSPE Act, a notification extending jurisdiction in the State or States outside Union Territory is required to be issued by the Central Government with the consent of such State Government or Governments. Unless such notification under Section [5](#) of DSPE Act is issued, a member of DSPE cannot investigate and exercise jurisdiction under DSPE Act in respect of offence or offences specified in Section [3](#) in a State outside the Union Territory. It has already been indicated that notifications under Sections [3](#) and [5](#) have been issued by the Central Government authorising members of DSPE to investigate various offences including offences under FERA in a number of States outside Union Territory including the State of Rajasthan.*

*27. In our view, such notifications under Sections [3](#) and [5](#) of DSPE Act are necessary for the purpose of exercising powers by a member of DSPE in respect of offence or offences and in respect of areas outside the Union Territory. It may however be noted here that by a general notification, members of DSPE may be authorised to exercise power of investigation in respect of offence or offences and in areas as specified in the notification under Sections [3](#) and [5](#). As already indicated. Although officers of Enforcement Directorate are clothed with the powers and duties to enforce implementation of the provisions of FERA, the Central Government has been authorised to impose on other officers including a police officer, power and authority to discharge such of the duties and functions as may be specified by it. It is nobody's case that any notification has been issued under FERA authorising the member of DSPE to discharge the duties and functions of an officer of Enforcement Directorate. In our view, in the absence of such notification under FERA, a member of DSPE, despite the aforesaid notifications under Sections [3](#) and [5](#) of DSPE Act, cannot be held to be an*

*officer under FERA and therefore is not competent to investigate into the offences under FERA.”*

25. He further relied upon a case of ***M.Balakrishna Reddy Vs. Director, CBI, New Delhi ,2008(4) SCC 409***, wherein it is held as under:-

*“A closer scrutiny of the relevant provisions of the Delhi Act also adds credence to the view which we are inclined to take. Section 3 refers to 'notification' and requires the Central Government to issue notification specifying offences or class of offences to be investigated by Special Police Establishment.”*

26. Learned counsel further submitted that a Division Bench of this Court in the case of ***Management of the Advance Insurance Co. Ltd. Vs. Shri Gurudasmal, Supdt. Of Police & Ors., AIR 1969 DELHI 330***, while considering the power of the CBI, held that Section 3 is a conditional legislation and that the CBI is only empowered to investigate those offences which are notified by the Central Government in exercise of powers under Section 3 of DSPE Act. The relevant portion of the same reads as under:-

*“(4) In so far as Section 3 of the Act enables the Central Government to specify the offences or classes of offences to be Investigated by the Delhi Special Police Establishment this amounts to delegation of legislative policy to the Central Government by Parliament. As there are no guide-lines or standards laid down by Parliament for the exercise of this policy by the Central Government, Section 3 'and, Therefore, the whole of the Act is void on account of the excessive delegation of legislative policy.*

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*Point No. (4):--*

*26. The scheme of the Act of 1946 is that it would apply to only such offences as would be notified under Section 3 of the Act by the Central Government. Without such a notification, the Act would not have any real application at all. It is urged for the petitioner that the authority given to the Central Government is unfettered and unchannalised. It is pointed out that the original preamble of the Act of 1946 contained the words "for the investigation of certain offences committed in connection with matters concerning Departments of the Central Government." But, these words were omitted by the Amendment of 1952. Thereafter, there was no indication by the legislature as to what offences were to be notified by the Central Government under Section 3. The effect is that the Central Government can notify all possible offences there under and thus enjoy an arbitrary and unfettered power. This delegation, contends the petitioner, is excessive and, Therefore, unconstitutional.*

*27. In reply the learned Counsel for the respondents pointed out firstly that Section 3 is an instance of conditional legislation as distinguished from delegated legislation and that secondly even if it is delegated legislation it is not excessive. In appreciating the precise, nature of Section 3, it is to be remembered that the Act of 1946 creates a Special Police Force in addition to the ordinary police force which already existed. The ordinary police force had several functions to discharge under the Police Act of 1861. Out of these several functions, only one function, viz., investigation of offences is conferred on this Special Police Force. Even this function is not to extend to all the offences which the ordinary police force is to investigate but only to those*

*offences which are notified by the Central Government under Section 3.. It will be seen, Therefore, that even in the Union Territories the investigation by the Special Police is limited only to the notified offences and that the Special Police is not concerned with any other functions of the ordinary police. As far as the States are concerned, the extension of the jurisdiction and powers of the police is dependent entirely on the consent of the State Government under Section 6. Such a consent can presumably be withdrawn by a State Government. The jurisdiction of the Special Police will not continue after the withdrawal of the consent. The power of the Central Government is, Therefore, limited at both ends, viz., in conferring the initial jurisdiction and powers and in extending them to the States.*

*28. ....That is to say, it is for the Central Government to decide what offences should be investigated by the Special Police in the Union Territories and for the State Governments to decide what offences should be investigated by this Special Police in their respective States by giving consent to such investigation under Section 6 of the Act.....*

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*30. We are, therefore, of the view that firstly Section 3 of the Act of 1946 is an instance of conditional legislation. Secondly, even if it is assumed to be delegated legislation, the safeguards and limitations on the power of the Central Government to be exercised under Section 3 are to be found in the fact that the ordinary police already existed to investigate the ordinary offences and, Therefore, the offences to be notified by the Central Government would only be such offences as cannot be well investigated by the ordinary police ..... ”.*

27. Learned counsel further submitted that the entire case of CBI is based on the presumption that there has been unauthorized construction and violation of the MCD Bye-laws. It is submitted that CBI, which is a creation of the Statute is only authorized to investigate offences notified by the Central Government under Section 3 of DSPE Act. The MCD Act is a Special Act and the offences under the MCD Act are not the offences in respect of which any notification has been issued by the Central Government authorizing CBI to investigate any violation thereof. Thus, the action of CBI is wholly without jurisdiction.

28. He further submitted that MCD Act is a separate and special Code which deals with offences committed under The Delhi Municipal Corporation Act, 1957 (hereinafter to be referred as 'DMC Act'). Sections 343, 344 and 345 of the DMC Act deal with unauthorized construction, orders of demolition, orders of stoppage of building works and power of the Commissioner to require alteration of works. Section 345A of DMC Act provides the power to see unauthorized construction. As per allegations of CBI, MCD officers colluded with the petitioners and did not stop the work in terms of Section 344 of DMC Act.

29. It is further submitted that the DMC Act provides for prosecution for any violation of its provisions. Section 467 of DMC Act prohibits and bars any other court to take cognizance of or proceed with trial except on a complaint from the Commissioner or anyone

authorized by him. Section 468 of the DMC Act provides that the said offences under the DMC Act are compoundable.

30. Section 467 of DMC Act, reads and provides as under:-

*“467. Prosecutions- Save as otherwise provided in this Act, no court shall proceed to the trial of any offence—*

- (a) under sub-section (5) of section 313 or section 332 or sub-section (1) of section 333 or subsection (1) of section 334 or section 343 or section 344 or section 345 or section 347 except on the complaint of or upon information received from, such officer of the Corporation, not being below the rank of a Deputy Commissioner, as may be appointed by the Administrator;*
- (b) under sub-section (1) of section 317 or sub-section (1) of section 320 or sub-section (1) of section 321 or sub-section (1) of section 325 or section 339, if any such offence was committed in relation to any street which is a public street, except on the complaint of, or upon information received from, such officer of the Corporation, not being below the rank of a Deputy Commissioner as may be appointed by the Administrator;*
- (c) other than those specified in clauses (a) and (b), except on the complaint of, or upon information received from, the Commissioner, or a person authorised by him by a general or special order in this behalf.”*

31. It is submitted that the MCD Act is a complete Code in itself and bars any other agency or court from taking cognizance of any violation of the MCD Act. Therefore, CBI has no power to usurp the

functions of the Commissioner under the DMC Act and to investigate the matter of unauthorized construction in violation of MCD Bye-laws.

32. In the entire chargesheet, there are no allegations of any kind, whatsoever, of any demand, acceptance or giving of any bribe by anybody to anyone.

33. On the issue noted above, the petitioners have relied upon a case of **A. Subair Vs. State of Kerala, 2009 (6) SCC 587**, wherein it is held as under:-

*“14. Insofar as Section 13(1)(d) of the Act is concerned, its essential ingredients are:*

*(i) that he should have been a public servant;*

*(ii) that he should have used corrupt or illegal means or otherwise abused his position as such public servant; and*

*(iii) that he should have obtained a valuable thing or pecuniary advantage for himself or for any other person.*

*15. In the case of C.K. Damodaran Nair v. Government of India, this Court had an occasion to consider the word "obtained" used in Section 5(1)(d) of the Prevention of Corruption Act, 1947 (now Section 13(1)(d) of Act, 1988), and it was held:*

*12. The position will, however, be different so far as an offence under Section 5(1)(d) read with Section 5(2) of the Act is concerned. For such an offence prosecution has to prove that the accused "obtained" the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption*

*under Section 4(1) of the Act as it is available only in respect of offences under Section 5(1)(a) and (b) - and not under Section 5(1)(c), (d) or (e) of the Act. "Obtain" means to secure or gain (something) as the result of request or effort (Shorter Oxford Dictionary). In case of obtainment the initiative vests in the person who receives and in that context a demand or request from him will be a primary requisite for an offence under Section 5(1)(d) of the Act unlike an offence under Section [161](#) IPC, which, as noticed above, can be, established by proof of either "acceptance" or "obtainment".*

34. Learned counsel further submitted that the legal position is no more *res integra* that primary requisite of an offence punishable under Section [13\(1\) \(d\)](#) of the PC Act is proof of a demand or request of a valuable thing or pecuniary advantage from the public servant. In other words, in the absence of proof of demand or request from the public servant for a valuable thing or pecuniary advantage, the offence under Section [13\(1\) \(d\)](#) of the PC Act cannot be held to be established.

35. The Supreme Court has reiterated the same view in its latest decision in ***Narendra Champaklal Trivedi Vs. State of Gujarat*** with ***Harijibhat Devjibhai Chaudhan Vs. State of Gujrat, (2012) 7 SCC 80***, wherein it is held as under:-

*“It is the settled principle of law that mere recovery of the tainted money is not sufficient to record a conviction unless there is evidence that bribe had been demanded or money was paid voluntarily as a bribe. Thus, the only issue that remains to be addressed is whether there was demand of bribe and acceptance of the same. Be it noted, in the absence of any evidence of demand and acceptance of the amount as illegal gratification, recovery would not alone be a ground to convict the*

*accused. This has been so stated in T. Subramanian v. The State of Tamil Nadu AIR 2006 SC 836.”*

36. In the case of **Subhash Parbat Sonvane Vs. State of Gujarat (2002) 5 SCC 86**, wherein it is held as under:-

*“6. In Section 7 and 13(1)(a) and (b) of the Act the Legislature has specifically used the words 'accepts' or 'obtains'. As against this there is departure in the language used in Clause (1)(d) of Section 13 and it has omitted the word 'accepts' and has emphasized the word 'obtains'. Further, the ingredient of Sub-clause (i) is that by corrupt or illegal means, a public servant obtains any valuable thing or pecuniary advantage; under Clause (ii), he obtains such thing by abusing his position as public servant and Sub-clause (iii) contemplates that while holding office as the public servant he obtains for any person any valuable thing or pecuniary advantage without any public interest. Therefore, for convicting the person under Section 13(1)(d), there must be evidence on record that accused 'obtained' for himself or for any other person any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or he obtained for any person any valuable thing of pecuniary advantage without any public interest.”*

37. Learned counsel further submitted that there is no statement of any witness which refers to or which alleges that there has been active collusion and conspiracy between the petitioner, the builder and the MCD officers. To constitute an offence of conspiracy, meeting of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition that existence of conspiracy is to be deduced from the circumstances and each circumstance should be established by reliable evidence and the circumstances must form a

chain of events from which the only irresistible conclusion would be against the persons.

38. In the present case, there is nothing to connect the petitioners *inter se* and there are no allegations which could form a chain of any conspiracy.

39. To strengthen his arguments, learned counsel has relied upon a case of ***K.R. Purushothaman Vs. State of Kerala (2005) 12 SCC 631***, wherein it is held as under:-

*“To constitute a conspiracy, meeting of mind of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of conspiracy. Neither it is necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implications. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its object are usually deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy. While appreciating the evidence of the conspiracy, it is incumbent on the Court to keep in mind the well-known rule governing circumstantial evidence viz., each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn, and no other hypothesis against the guilt is possible. The criminal conspiracy is an independent offence in Indian Penal Code. The unlawful agreement is sine qua non for constituting offence under Indian Penal*

*Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the Plan would not per se constitute conspiracy. The offence of conspiracy shall continue till the termination of agreement.”*

40. It is submitted that as per the allegations, the alleged unauthorized construction was carried out in the year 1991 and the completion certificate was issued in 1991 whereas, as per CBI, inspection was carried out in 2001. There is no evidence to show that there was any illegal or unauthorized construction in 1991 when the completion certificate was granted.

41. Further submitted that as per allegations, construction of basement and three floors were permissible in 1991 when completion certificate was granted, and on 12.02.1997 even as per the documents relied upon by the CBI, i.e., notice dated 12.02.1997 issued by the MCD to the owners, there were only basement, first, second and third floors. It is contrary to the allegations in the chargesheet that there was any construction over and above three floors which was permissible.

42. Learned counsel has argued that there is no evidence of any kind, whatsoever against the petitioners and that the charges ought not to have been framed against them. For the purpose of framing of charges, the Court has to sift and weigh the evidence with a view to examine whether any *prima facie* case is made out against the accused persons as charge can be framed only if there is grave suspicion of being involved in the offence against the persons.

43. To strengthen his arguments, learned counsel has relied upon a case of ***Union of India Vs. Prafulla Kumar Samal & Anr., 1979 (3) SCC***

“10. ....

(1) .....

(2) .....

(3) .....

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

(emphasis supplied).

44. Same view has been reiterated by the Supreme Court in the case of ***Dilawar Balu Kurane Vs. State of Maharashtra, 2002 (2) SCC 135***, wherein it is held as under:-

“12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the

*accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial [See **Union of India v. Prafulla Kumar Samal and Anr.** 1979CriLJ154].”*

45. In the case of **Ashok Kumar Nayyar Vs. The State, 2007 (2) JCC 1489I**, wherein it is held as under:-

*“15. The facts on record which are part of the chargesheet, therefore, present a conflicting picture – all the statements of independent witnesses do not support the version of the informant. It was only the statement of the informant that the incident alleged by her occurred, according to the facts described in the FIR and the chargesheet. It is well settled in Prafulla Kumar Samal's case that the Court has to sift the evidence and determine whether a grave suspicion about commission of offence exists on the basis of the materials. Kurane's case is an authority for the proposition that if there are two versions or two inferences can be reasonably drawn, the version favourable to the accused has to be accepted by the Court so long as it is a reasonable one.*

*16. No doubt some judgments such as State of Maharashtra Etc. Vs. Som Nath Thapa Etc. JT 1996(4) SC 615 have indicated that in charges of rape etc. the*

*Court should avoid embarking on detailed consideration of the probative value of materials. The decision in Rajbir Singh's case is also to that effect. However, in my opinion these do not detract from the basic time tested norm that the Court has to form a reasonable opinion about existence of grave suspicion, regarding commission of the offence. Equally if two versions are possible, the one supporting the accused has to be preferred. In this case the entire materials before the Court are in the form of statements. There is a clear conflict about the facts alleged. Besides the informant there is no one speaking about the incident as alleged by her. The police constable who was admittedly on the spot, stated that there was no quarrel as described by her and the two independent witnesses again admittedly present, gave a completely different picture pointing to the informant starting a quarrel with them. They clearly state that the petitioner did not threaten, assault or abuse the informant.*

*17. In these circumstances, after careful consideration of the materials I am of the opinion that there is a reasonable version which supports the petitioner. The materials on record also do not point to a grave suspicion to warrant the charges, framed in the impugned order.”*

46. While concluding his submissions, learned counsel has submitted that in view of the law laid down by the Supreme Court and the facts of the present case, it is clear that the CBI has no power to investigate the matter as the offences under the DMC Act are not notified by the Central Government under Section 3 of DSPE Act, which is a pre-requisite. Even otherwise, there is no evidence of any kind whatsoever and the allegations made in the chargesheet do not fulfil the requirements of Section 13(1)(d) of PC Act, therefore, the

chargesheet and the order framing charge both deserve to be quashed and set aside.

47. Learned counsel for the petitioners has relied upon a case of ***Ashwani Kumar Batra Vs. CBI in Crl. M.C. No. 976/2009*** decided on 04.07.2011 by this Court, wherein it is held as under:-

*“21. The CBI registered FIR in which no role has been ascribed to the petitioner. The CBI investigated the matter and filed charge-sheet and in the said charge-sheet, charged the petitioner as under:-*

*“The investigation revealed that consequent upon transfer of Sh.D.K.Gupta, AE (B), Sh.A.K.Batra joined as AE (Building), MCD South Zone on 31.08.1998 and he also joined in criminal conspiracy with other accused person. In pursuance of his criminal conspiracy, Sh.A.K.Batra as AE (B) deliberately omitted to take any action against the unauthorized construction carried out on property No.E-23, Poorvi Marg, Vasant Vihar, Sh.A.K.Batra intentionally omitted the inspection of the said building at various stages as required as per the orders of the commissioner, MCD, issued during 1988. During his tenure, the construction of the said building upto 3<sup>rd</sup> floor was sanctioned & constructed upto 3<sup>rd</sup> floor. He further did not inform Executive Engineer (Co-ordination) MCD Hqrs for inspection of the building. He deliberately omitted to take action as per the orders of the commissioner, MCD with a view to cause undue favour to the owners/builders as per his conspiracy.”*

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*28. The learned senior counsel drawn the attention of this Court to the fact that the FIR was registered on 24.08.2000 and charge-sheet was filed on 17.02.2001. Ten years have already gone by; no progress has been made in the case. The case is still pending at the stage of*

*argument on charges, despite the two times intervention by the High Court, firstly, vide order dated 13.04.2009 and secondly vide order dated 03.02.2010 the trial Court was directed to file the status report, explaining why the charge has not been framed. Accordingly, concerned trial Judge filed the status report stating that the case in question stands transferred to the Court presided over by the undersigned on 15.01.2009. Further, it is submitted that there are 8 accused persons, who are represented by different advocates. Arguments on the point of charges are in process of being heard and very short dates are given for the said purpose.*

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*31. First of all, I will deal with the aforesaid objections raised by the learned counsel for CBI that the charge-sheet was filed on 16.02.2001, thereafter, the trial Court has been hearing the arguments on charge. I note that the more than 10 years already gone by. During this long period of 10 years, this Court issued directions vide order dated 03.04.2009 to hear the matter on the next date of hearing i.e. 08.07.2009 and to decide as expeditiously as possible. Again, vide order dated 03.02.2010 the trial Court was directed to file the status report asking why the charge has not been framed. Pursuant to the aforesaid directions, the concerned trial Judge has filed the status report stating that the case in question stand transferred to the Court presided over by undersigned on 15.01.2009. Further, he has submitted that there are 8 accused persons, who were represented by different advocates. Arguments on point of charge were in process of being heard and short dates were being given for the said purpose. However, next date fixed in this matter is 28.04.2010.*

*32. It is noted that more than one year has already been passed, till date the arguments on charge have not*

*been concluded either by the learned counsel for the accused persons or by the learned counsel for the CBI.”*

48. On the other hand, Ms.Sonia Mathur, learned counsel appearing on behalf of the respondent CBI has submitted that Sh. M.M. Dass, Superintending Engineer (Buildings) Headquarter, MCD in his statement has stated that:-

*“.....The total non-compoundable front set back as per the 89.90 Rules is calculated as 3' 4 ½”. The left side set back is 1'9”, right side set back is 10” and rear side is 9”. I have now seen the completion plan along with the two photographs submitted to MCD on the basis of which NOC Report was prepared by the concerned JE on 26/11/91 and CC issued on 19/12/91. After comparing the same I state that the front set back infringement as recorded during an evaluation existed even at the time of completion. The completion plan prepared by the architect A.K.Ganju is not tallying with the photographs submitted with the plan. As per the said plan the front canopies are shown as two pieces with a beam in between. But in the photograph it is seen that the canopies are continuous and the beam is totally covered, which is not permissible as per Rules. The canopies in all floors are shown in 2 pieces but the photograph clearly shows them as completely covered and in full length. The columns appearing on the 3<sup>rd</sup> floor as seen in the completion photographs are not shown in the plan.*

*Similarly, the infringements in the front set back and the side set back are not properly shown by the architect in the plan. It is evident from the columns seen in the photo that the architect and builder had the intention to make further constructions and it was the duty of the JE who prepares the NOC report to have demolished the said unauthorized columns. In my opinion, the completion drawings by the architect had*

*concealed certain infringements which are seen in the completion photographs and the JE and AE who had prepared the NOC form and issued the completion certificate had omitted to check the unauthorized and non-compoundable coverage by the builders, while issuing the C.C.”*

49. Sh. Ram Dayal, Architect has stated in its statement as under:-

*“The photographs of 1991 and the building as existed in 1999, when I measured are the same and it can be stated there has been no change in the front set back since the building was completed in 1991. This can lead to an inference that the completion plan was prepared wrongly. It is also to be noted that the completion plan and the building design is conceived in such a fashion so as to leave an empty space in the centre which can be covered after completing the front side and the same would not come in the completion photographs. Thus it can be safely concluded that the front set back of the building has never changed from the completion date till today. It is also stated after the sanction of the completion certificate certain areas were covered by the builder, as evident from the pillars erected in the 3<sup>rd</sup> floor, for the said purpose which is also seeing the photographs.”*

50. Sh.Sushil Kumar, AE, MCD has stated in its statement as under:-

*“It was evident that there was excess coverage in the said building, which also supported the allegations made in the PIL, a copy of which was available with me at that time. According to my observation the building E-39 is a Monolithic construction. I have now seen the completion certificate file of the said building and I state that the CC was issued on 19.12.1991. I also now seen two photographs of the said building available in the said file*

*attached with the NOC form. I state that the front elevations seen in the photo were existing in the same condition on the date of my inspection.”*

51. Sh. Rohit Shourie son of late Sh.B.R.Shourie in his statement has stated as under:-

*“I am presently working as Asstt. Vice President, Software Projects, Websity Infosy, Ltd. D-15/4, Okhla I, N. Delhi. My father B.R. Shori expired on 06.01.2000 at the age of 85 years. My mother Smt. Kamla Shori, aged 76 years is presently bed ridden and undergoing medical treatment for cancer. I am the eldest son of Sh. B.R. Shori and I am well acquainted with the financial and property dealings of my father. On being asked I stated that Plot No. E-39, Paschim Marg, Vasant Vihar was allotted to my father in 1968 by the DD. He had then constructed a building in the said plot in 1992. The said plot was sold by my father to Sh. Raj Singh Gehlot in 1989 for an amount of Rs.1.05 Crores. A registered GPA was executed on 06.11.1989 along with a registered agreement for sale, whereby the said plot was transferred to Sh. Raj Singh. I am having the copies of the said documents which had been handed over to me by my father before his death. I have now been shown file NO. F31(190)/71/pt of DDA which contains an application dated 31.07.1989 and a proposed plan for construction of a new building in plot 39, purportedly signed by my father. After seeing the same, I state that these signatures are not of my father and he had not visited DDA Office in 1989. Similarly, I have now seen the file of MCD regarding issue of completion certificate for building E-39, Paschim Marg, during November, 1989. After studying the same, I state that the signatures of my father and mother appearing on the application for issue of CC. Dated 04.11.1991 have been forged by someone, since the said signatures are not their genuine signature. This is also the case with their signatures*

*appearing on the completion drawings, which are again not genuine. I am well acquainted with the signatures of my father and mother and I can very well identify them at any stage. Moreover, my father and mother had never visited MCD Office in 1991. The Plot No. 39 was sold off in 1989 itself to Sh. Raj Singh and after that my father and mother had nothing to do with the plot as the physical possession of the plot had been given to Sh. Raj Singh. I do not know also might have signed on behalf of my father and mother in the aforesaid documents.”*

52. Sh.Sanjeev Saran, occupant of property in question has stated in his statement that

*“.....I had not made any addition or alteration to the said premises after the purchase and whatever has been constructed is by the builder Sh.Raj Singh Gehlot.”*

53. Ms.Jyothi Stefvans, occupant of property in question has stated in her statement that:-

*“I had made a total payment of Rs.22 Lacs and I got the physical possession of the flat measuring about 1500 Sq.ft. on 31.03.1992. I stayed in the said flat for about 5 years and at present it is vacant. The construction was completed by February, 1992 and the building is the same now, as seen by me in 1992. No changes have been made in the front side elevation since then. My flat was measured again in 1999 by another architect Sh. Ravi Dayal, who had made drawings regarding the excess coverage. I had also applied to the MCD for regularization of the excess coverage areas along with the required documents. I now see the said file and identify my application and other documents. The entire responsibility for the excess coverage is on the builder Sh. Raj Singh and the construction were completed by the beginning of 1992.*

54. Learned counsel further submitted that keeping in view the statements noted above, the petitioners had conspired *inter se* for unauthorized construction for the benefits of each other. The benefits may be in a kind or to help the other that comes under the purview of Section 13(1) (d) of PC Act read with Section 120-B IPC. Hence, the CBI is fully competent to investigate into the matter as per provisions of DSPE Act and the DMC Act does not bar prosecution of a public servant under Section 120-B IPC and Section 13(1) (d) of PC Act.

55. Case of the prosecution is that the builder, architect and public servant had conspired and in furtherance of the same, the completion certificate was issued concealing the unauthorized construction existing at the time of issuance of the said certificate. The CBI investigations relate to the offence punishable under Section 120-B IPC and Section 13(1) (d) of PC Act. Therefore, CBI is fully competent under DSPE Act to investigate the offences punishable under IPC and PC Act which are duly notified under the said Act. Chargesheet filed with regard to MCD officials after obtaining the sanction from the competent authority has not been challenged. Therefore, challenge to the jurisdiction and competency of the prosecuting agency is completely uncalled for.

56. To strengthen her arguments, learned counsel has relied upon a case of ***Dharambir & Ors. Vs. Central Bureau of Investigation, 2009 IV AD (DELHI) 447***, wherein it is held as under:-

*“27. This Court is further of the view that the petitioners’ argument that violation of DMC/DDA Act or building by-laws can never constitute offences under IPC or P.C. Act, is untenable in law because if direct or circumstantial evidence discloses ingredients of offences under IPC or P.C. Act, then the same would be attracted as is the present case.”*

57. Learned counsel further submitted that there is no requirement of specific evidence of obtaining pecuniary advantages by public servant for prosecuting under Section 13(1) (d) of PC Act, as under this Section, public servant may obtain pecuniary advantages for himself or for any other person. In the present case, the builder, i.e., petitioner Raj Singh Gehlot had obtained pecuniary advantage by selling the building. The fact of builder’s having sold the units and having derived beneficiary advantages is not disputed, therefore, there is no presumption being drawn or required to be drawn.

58. To strengthen her arguments, learned counsel has relied upon the case of ***Subhash Parbat Sonvane*** (*supra*). Relevant portion of the same reads as under:-

*“6. In Section 7 and 13(1)(a) and (b) of the Act the Legislature has specifically used the words 'accepts' or 'obtains'. As against this there is departure in the language used in Clause (1)(d) of Section 13 and it has omitted the word 'accepts' and has emphasized the word 'obtains'. Further, the ingredient of Sub-clause (i) is that by corrupt or illegal means, a public servant obtains any valuable thing or pecuniary advantage; under Clause (ii), he obtains such thing by abusing his position as public servant and Sub-clause (iii) contemplates that while holding office as the public servant he obtains for*

*any person any valuable thing or pecuniary advantage without any public interest. Therefore, for convicting the person under Section 13(1)(d), there must be evidence on record that accused 'obtained' for himself or for any other person any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or he obtained for any person any valuable thing of pecuniary advantage without any public interest."*

59. She further submitted that conspiracy is always hatched in secrecy and direct evidence of the same is seldom available. The essence of criminal conspiracy is an agreement to do an illegal act and such agreement can be proved either by direct evidence or by indirect evidence or by circumstantial evidence or by both. The circumstances proved before, during and after the occurrence have to be considered to decide the complicity of the accused persons. Since there is seldom direct evidence of conspiracy available, the same has to be inferred from the circumstances attending the case. Some connecting link or connecting factor would be sufficient to frame charge of conspiracy as framing of charge of conspiracy and to establish the charge of conspiracy are different stages of prosecution.

60. To strengthen her arguments, she has relied upon a case of ***Pratapbhai Hamirbhai Solanki Vs. State of Gujarat & Anr., 2012 (10) SCALE 237***, wherein it is held as under:-

*"23. In the said case it has been highlighted that in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire*

*and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.*

61. She further submitted that the FIR is not the encyclopaedia where all accused persons had to be named and all facts relating to crime have to be mentioned. Mere failure to mention all minute details of crime in the FIR would not make the prosecution case doubtful. FIR is just the first information, which the investigating agency considered sufficient to start investigation. It is not substantive evidence.

62. In support of her arguments, learned counsel has relied upon a case of ***Kirender Sarkar & Ors. Vs. State of Assam, 2009 CrL.L.J.3727***, wherein it is held as under:-

*“6. The law is fairly well settled that FIR is not supposed to be an encyclopaedia of the entire events and cannot contain the minute details of the events. When essentially, material facts are disclosed in the FIR, that is sufficient. FIR is not substantive evidence and cannot be used for contradicting testimony of the eye witnesses except that may be used for the purpose of contradicting maker of the report. Though the importance of naming the accused persons in the FIR cannot be ignored, but names of the accused persons have to be named at the*

*earliest possible opportunity. The question is whether a person was impleaded by way of afterthought or not must be judged having regard to the entire factual scenario in each case. Therefore, non naming of one or few of the accused persons in the FIR is no reason to disbelieve the testimony of crucial witnesses. The evidence of PW-1 is clear and cogent. That being so, we find no merit in this appeal which is accordingly dismissed.”*

63. On delay, learned counsel has argued that mere delay in trial could not by itself be a ground for dismissing the prosecution case. Factors attributable to delay have to be seen. Unintentional, unavoidable delays or administrative factors over which prosecution has no control are reasonable cause for delay for which prosecution cannot be solely blamed.

64. She has further relied upon the case of ***Ranjan Dwivedi Vs. C.B.I., AIR 2012 SC 3217I***, wherein it is held as under:-

*“19. The reasons for the delay is one of the factors which courts would normally assess in determining as to whether a particular accused has been deprived of his or her right to speedy trial, including the party to whom the delay is attributable. Delay, which occasioned by action or inaction of the prosecution is one of the main factors which will be taken note by the courts while interjecting a criminal trial. A deliberate attempt to delay the trial, in order to hamper the accused, is weighed heavily against the prosecution. However, unintentional and unavoidable delays or administrative factors over which prosecution has no control, such as, over-crowded court dockets, absence of the presiding officers, strike by the lawyers, delay by the superior forum in notifying the designated Judge, (in the present case only), the matter pending before the other forums, including High Courts and*

*Supreme Courts and adjournment of the criminal trial at the instance of the accused, may be a good cause for the failure to complete the trial within a reasonable time. This is only illustrative and not exhaustive. Such delay or delays cannot be violative of accused's right to a speedy trial and needs to be excluded while deciding whether there is unreasonable and unexplained delay. The good cause exception to the speedy trial requirement focuses on only one factor i.e. the reason for the delay and the attending circumstances bear on the inquiry only to the extent to the sufficiency of the reason itself. Keeping this settled position in view, we have perused the note prepared by Shri Raval, learned ASG. Though, the note produced is not certified with copies of the order sheets maintained by the trial court, since they are not disputed by the other side, we have taken the information furnished therein as authentic. The note reveals that prosecution, apart from seeking 4-5 adjournments, right from 1991 till 2012, is not responsible for delay in any manner whatsoever. Therefore, in our opinion the delay in trial of the Petitioners from 1991 to 2012 is solely attributable to Petitioners and other accused persons.”*

65. On the issue of framing of charge, learned counsel has submitted that it is settled law that the competent court while considering the question of framing the charges has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out. Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court would be fully justified in framing the charge and proceeding with the trial. Further if on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the

charge. At the stage of framing the charge, the court is only to take a tentative view on the basis of material on record. If the court is of the view that the accused might have committed the offence it would be justified in framing the charge against the accused.

66. Learned counsel has relied upon a case of ***Sheoraj Singh Ahlawat & Ors. Vs. State of Uttar Pradesh & Anr., 2012 (11) SCALE 107***, wherein it is held as under:-

*“14. In State of Orissa v. Debendra Nath Pandhi [MANU/SC/1010/2004](#) : (2005) 1 SCC 568, this Court was considering whether the trial Court can at the time of framing of charges consider material filed by the accused. The question was answered in the negative by this Court in the following words:*

*18. We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced...Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. It is well-settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned Counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well settled proposition that it is for the accused*

to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention out forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the state of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.....

xxxx                      xxxx                      xxxx                      xxxx

23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material...

(Emphasis supplied)

xxxx                      xxxx                      xxxx                      xxxx

16. To the same effect is the decision of this Court in *Union of India v. Prafulla Kumar Samal and Anr.* v.[MANU/SC/0414/1978](#) : (1979) 3 SCC 4, where this Court was examining a similar question in the context of

*Section [227](#) of the Code of Criminal Procedure. The legal position was summed up as under:*

*10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:*

*(1) That the Judge while considering the question of framing the charges under Section [227](#) of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:*

*(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.*

*(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*

*(4) That in exercising his jurisdiction under Section [227](#) of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the*

*pros and cons of the matter and weigh the evidence as if he was conducting a trial.”*

67. Learned counsel further submitted that it is settled law that power of quashing the charge framed under Sections 228 of the Criminal Procedure Code, 1973 (hereinafter to be referred as ‘Cr.P.C.’) is to be exercised very sparingly and with circumspection and that too in the rarest of rare cases. It is neither necessary nor called for the court to hold a full fledged enquiry or to appreciate evidence collected by the Investigating Agency to find out whether it is a case of acquittal or conviction. Quashing of a charge is an exception to the Rule of continuous prosecution. Where the offence is even broadly satisfied, the court should be more inclined to permit continuation of prosecution rather than its quashing at the initial stage. She further submitted that power under Section 482 Cr.P.C. is to be exercised very sparingly and only in appropriate cases. In view of the present proceedings being conducted under the PC Act, which clearly bars the exercise of revisional powers, it would require exceptional circumstances to warrant interference under Section 482 Cr.P.C., since the power of superintendence was not contemplated to circumvent statutory law.

68. She further submitted that this Court may not exercise jurisdiction as has been prayed for by the petitioners as this would lead to obstruction in carrying out a criminal trial to its logical end.

69. In rejoinder, learned counsel appearing on behalf of the petitioners has submitted that in the year 1989, height of the building

was permitted as per Bye-Law No.12.7 of Unified Building Bye-Laws, 1983, which reads as under:-

*“The maximum height of building shall not exceed 1.5 times the width of road abutting plus the front open spaces. The height sanctioned as per the sanctioned plans is 13.71 m, whereas as height constructed upto 3<sup>rd</sup> floor is 14.59 m, which is within permissible limit. The height achieved is 19.62 m including mummy and machine room etc. on 4<sup>th</sup> floor, which is unauthorized.”*

70. Apart from above, it is observed in the technical note on checking of property in question under the head ‘any other measure deviation not covered above’, that “there are number of temporary structures at IV<sup>th</sup> floor and machine room at V<sup>th</sup> floor”.

71. Learned counsel submitted that as per the technical note with regard to the property in question, the height of the building was permitted as per Bye-Laws of 1983 and the authority found temporary structures at 4<sup>th</sup> floor and 5<sup>th</sup> floor. Therefore, the prosecuting authority ought to have been concerned upto 3<sup>rd</sup> floor and till then, admittedly, there was no 4<sup>th</sup> and 5<sup>th</sup> floor.

72. He further submitted that as per the chargesheet, the allegations read as under:-

*“.....The technical report also revealed that 4<sup>th</sup> and 5<sup>th</sup> floor existing in the building was totally unauthorized and illegal besides the existence of non-compoundable setbacks measuring 6 feet 7 inches, illegal projections in the building and non-compoundable floor area ratio (FAR) of 87.67. Thus, the investigation could prove that the owner and builder of E-39, Sh. Raj Singh Gehlot with the active connivance of the architect Sh. A.K. Ganju had*

*made an illegal coverage of 7594.4 Sq. Feet in the building and Sh. B.R. Malhotra, ZE and Naresh Sharma, JE wilfully and dishonestly omitted to check the faulty completion plan submitted by the architect A.K. Ganju, failed to inspect the building property and facilitated to issue the C.C. by concealing the excess coverage and other infringements. Investigation has also collected evidence that the building E-39 is a monolithic structure and the excess coverage and infringements which is observed now were existing at the time of issuing the C.C. on 19.12.91.”*

73. Learned counsel further submitted that Sh.Ram Dayal, Architect has stated in his statement that he had been visiting the building in question since 1992 as he was engaged by Sh.Sanjeev Verma, owner of the basement rear portion in the said building, for doing interior work. He further stated as under:-

*“.....It is also to be noted that the completion plan and the building design is conceived in such a fashion so as to leave an empty space in the centre which can be covered after completing the front side and the same would not come in the completion photographs. Thus it can be safely concluded that the front set back of the building has never changed from the completion date till today. It is also stated that after the sanction of the completion certificate certain areas were covered by the builder, as evident from the pillars erected in the 3<sup>rd</sup> floor, for the said purpose which is also seeing in the photographs.”*

74. One of the allottee, i.e., Ms.Jyothi Stefvans Mohtihar has stated in her statement recorded on 09.05.2001 that she had initially paid two lacs vide cheque Nos. 003322 and 003323 dated 25.11.1989 drawn on Canara Bank, Mayapuri. She had made a total payment of Rs.22 lacs

and on 31.3.1992; she got the physical possession of the flat measuring about 1500 sq. Ft. She stayed in the said flat for about five years and at present it is lying vacant. The construction was completed by February, 1992 and the building is the same now as seen by her in the year 1992.

75. Sh. M.M. Dass, Superintending Engineer (Buildings) has stated in his statement as under:-

*“.....The building is having a basement, ground floor, Ist floor, IInd floor, IIIrd floor, part construction of the IVth floor and a machine room in the Vth floor, the area of the permissible dwelling units are 7 but as on date the actual dwelling units are 8 and other than this the basement, part of ground floor and Ist floor are being used for commercial purpose with two kitchen in basement, one at ground floor and one at the Ist floor. The sanctioned height of the building is 13.71 meter. The permissible height as on today is 15 meters and the existing height of the building is 19.62meters, which is 4.62 meters beyond the compoundable limit..... The completion plan prepared by the architect A.K.Ganju is not tallying with the photographs submitted with the plan. As per the said plan the front canopies are shown as two pieces with a beam in between. But in the photograph it is seen that the canopies are continuous and the beam is totally covered, which is not permissible as per Rules. The canopies in all floors are shown in 2 pieces but the photograph clearly shows them as completely covered and in full length.....”*

76. The abovenoted statement of Sh. M.M. Dass was recorded on 31.05.2001 by CBI, wherein he opined that the completion drawings by the Architect had concealed certain infringements which are seen in

the completion photographs and the JE and AE who had prepared the NOC form and issued the completion certificate had omitted to check the unauthorized and non-compoundable coverage by the builder, while issuing the C.C.

77. Sh.R.K. Sharma, Assistant Engineer in his statement recorded on 27.04.2001, has stated as under:-

*“.....Now I have seen the court case file of South Zone pertaining to Appellate Tribunal order dated 5.5.98. It is seen on 12.2.97 a notice u/s 343,344 of DMC Act has been issued to B.R.Shourie and Smt. Kamla Shourie, for excess coverage in bldg. No.39, Pashchim Marg, in the basement, ground, first, second and 3<sup>rd</sup> floors...”*

78. Dr.Vinod Sehgal, Chief Medical Officer, CGHS, Pandara Road, New Delhi, has stated in his statement as under:-

*“I am presently working as above on 15.5.1990, I had booked a flat in the proposed building No.39, Pashchimi Marg, Vasant Vihar, alongwith my wife Dr. Ms. Neelam Sehgal, from M/s. Raj Singh & Co. L-4, Green Park Extn., New Delhi we had paid a sum of Rs.50,000/- vide Cheque No.100840 drawon on BOI, Asaf Ali Raod to Mr.Raj Singh, against a receipt on 13.2.1991.....It was also assured the building was made according to the plan and bye-laws of MCD.”*

79. He further stated that he had visited the construction site during 1991 and 1992 and the construction was completed by February, 1992, when he paid the last instalment.

80. Smt. Indu Bala in her statement has stated as under:-

*“...we had purchased a flat in the IInd Floor, rear side of building E-39, Paschim Marg, Vasant Vihar on 11.6.1992 from Sh. Raj Singh Gehlot and Ms. Anita Gehlot for Rs.17 lacs..... No plan or sketch of the building was given to us by Sh. Raj Singh but since a copy of the completion certificate from MCD was given we believed that the said flat was totally constructed according to the building rules.”*

81. Learned counsel submitted that all the transactions as stated above were during the period 1989–1992, however, the CBI had lodged a case against the petitioners in the year 2000. Therefore, there was a gap of about eight to nine years. Moreover, CBI had failed to establish which unauthorized construction was done in which year and who were the officers posted with whom the conspiracy was hatched by the petitioners.

82. He stated that the chargesheet is filed on the presumptions and assumptions, therefore, if all the statements go un-rebutted during trial, even then no case is made out against the petitioners.

83. I have heard the learned counsel for the parties.

84. As per the case of the prosecution, plot No.39, Paschimi Marg, Vasant Vihar, New Delhi was originally allotted to Sh.B.R.Shourie (since deceased) and his wife Smt. Kamla Shourie by DDA in the year 1968, who sold this property to petitioner Raj Singh Gehlot in the year 1989 vide a separate sale agreement and a registered GPA executed on

06.11.1989 in favour of Smt.Sheela Gehlot for a consideration of Rs.1.05 crores.

85. It is further alleged that Raj Singh Gehlot, petitioner in Crl.M.C. No. 3800/2011 entered into a criminal conspiracy with Mr.B.R. Malhotra, AE and Naresh Kumar Sharma, JE, petitioner in Crl. M.C. No.3011/2011, who facilitated in issuing the wrong completion certificate, illegal coverage and unauthorized constructions in the property mentioned above. For the aforesaid purpose, Architect A.K.Ganju, petitioner in Crl. M.C. No. 2384/2011 had submitted the faulty completion drawings. The said property was further sold off by petitioner Raj Singh Gehlot with illegally constructed area.

86. On 31.07.1989, an application was moved in DDA under the purported signature of late Sh.B.R.Shourie for demolishing the old building and constructing a new building of two and a half storey. Accordingly, a proposed site plan was prepared by petitioner A.K. Ganju, who also submitted the same to DDA. Petitioner Raj Singh Gehlot started construction in the said plot, which was supervised by petitioner A.K. Ganju.

87. The aforesaid building was registered in the House Tax Department of MCD. The completion certificate was issued on 19.12.1991 by the then ADC based upon NOC report dated 26.11.1991 given by the petitioner Naresh Sharma, JE and Mr.B.R. Malhotra, AE, MCD.

88. It is further alleged that the application for issuance of completion certificate was submitted on 04.11.1991 and signature of late Sh.B.R.Shourie and Smt.Kamla Shourie had been forged. The completion drawings and stability certificate were issued by petitioner A.K. Ganju alongwith two photographs of the complete building.

89. As alleged, petitioner Raj Singh Gehlot in conspiracy with AE and JE mentioned above and the petitioner/Architect A.K. Ganju falsely got the completion certificate concealing the illegal coverage and unauthorized construction on the basis of faulty completion drawings prepared by the Architect.

90. As per the statement of Sh.M.M.Dass, Superintending Engineer, the completion plan prepared by petitioner/Architect A.K. Ganju did not tally with the photographs submitted with the plan as unauthorized construction existed in the basement, ground, first and second floors even on the date of issuance of the completion certificate. Infringement in the front setback and side setback were not properly shown by petitioner A.K. Ganju in the plan. Completion drawings have concealed certain infringements which were seen in the photographs.

91. Sh.M.M.Dass, aforementioned Superintending Engineer wrote to CBI annexing the chart showing details of covered areas at different floors with respect to the sanctioned covered areas and the extent of areas that could be compounded at that point of time with respect to norms applicable during 1989-91. Another chart showing the extent of area that could be compounded as per the relaxed norms made

applicable with effect from 23.07.1998. Also annexed a chart showing the permissible setbacks as per the approved lay out plan and as per the norms applicable during 1989-91 and to the extent the setbacks were infringed relating to permissible setbacks remained unaltered even when relaxed norms came in force in the year 1998.

92. The case of the CBI at best is that as per the statement of Sh.M.M.Dass, Superintending Engineer, the encroachments in the front setback and the side setback were not properly shown by the Architect in the plan. It is evident from the columns seen in the photo that the Architect and the Builder had the intention to make further constructions.

93. As per the statement of Sh. Ram Dayal, Architect, as noted by him, the completion plan and the building design is conceived in such a manner so as to leave an empty space in the centre which can be covered after completing the front side and the same would not come in the completion photographs. He further stated that the front set back of the building has never changed from the completion date till today. He also stated that after sanction of the completion certificate, certain areas were covered by the builder, as is evident from the pillars erected in the 3<sup>rd</sup> floor.

94. Sh.Sushil Kumar, AE, MCD, in his statement has stated that as observed by him, the building in question is a monolithic construction. He never seen the completion certificate file of the said building and stated that the CC was issued on 19.12.1991. He specifically stated that

the front elevations seen in the photographs were existed in the same condition on the date of his inspection.

95. However, it is not in dispute that the above named JE and AE had inspected the building and on their recommendations, a compoundable fee of Rs.2,55,603/- was imposed on builder/petitioner Raj Singh Gehlot for compoundable violations and infringements in the building. As per NOC, there were seven dwelling units in the building with a basement to be used only as a store.

96. As per the records of House Tax Department, the construction was completed in February, 1992 and the building was assessed for house tax on 26.02.1992, wherein the total covered area was recorded as 26258 square feet each in the ground, first, second and third floors. Thus, the said building was registered with House Tax Department after due verification.

97. It is also not in dispute that petitioner Raj Singh Gehlot had sold off all the dwelling units and the basement portion during the year 1992-93 to various parties by executing separate sale agreements and GPAs.

98. Admittedly, the aforesaid building was booked for unauthorized construction on 12.02.1997 by the then JE Sh. Sushil Kumar and show-cause notices were issued. On 27.02.1997, the demolition orders were passed by the competent authority and pursuant thereto some servant quarters in terrace floor were demolished on 09.06.1997. Therefore, it is established that whatever unauthorized and non-

compoundable construction existed in the building in question, was demolished much prior to the case registered by the CBI. However, if any illegal construction was made thereafter and noted by the CBI, for that the petitioners cannot be held liable to suffer the consequences of the case.

99. Pursuant to court directions issued in a PIL regarding illegal construction in part of buildings of Vasant Vihar, the CBI registered case vide RCDA-1-2000-A-0041 on 24.08.2000. It is also admitted by the CBI that on the said date and in the same zone, i.e., the South Zone, number of FIRs/RCs were registered. Majority of the RCs were sent for closure on non-finding of the evidence in those cases. It is pertinent to mention here that one of the chargesheet filed against A.K. Batra, i.e., an officer of MCD has been quashed by this Court vide order dated 04.07.2011. The same has attained finality, which proves that the CBI registered the cases without any material. In the present case also there is no investigation and the CBI has simply relied upon the report submitted by the MCD Officers Committee.

100. It is not in dispute that there was no FAR concept for plotted residential development at the time of sanction of building plans in the year 1989, however, MPD 2001 came in force with effect from 01.08.1990. Thus, such ground coverage and FAR for this size of plot was permissible as per the norms applicable on 01.08.1990.

101. As per Bye-Law No.12.7 of the Unified Building Bye-Laws, 1993, in the year 1989, the maximum height of the building was not permissible to exceed 1.5 times the width of road abutting plus the

front open space. Admittedly, the height sanctioned as per the sanctioned plan is 13.71 meter, whereas height constructed upto third floor is 14.59 meter, which is within permissible limit. The CBI found the height of the building as 19.62 meter including mumty and machine room etc. on IV<sup>th</sup> floor, whereas the case against the petitioners is limited to the unauthorized construction upto third floor, as admitted by the CBI during the course of arguments. As per the technical note, there were number of temporary structures at IV<sup>th</sup> floor and machine room at V<sup>th</sup> floor. However, that has nothing to do as far as the petitioners are concerned.

102. One of the allottee, PW, Ms. Jyothi Stefvans Mohtihar, stated in her statement recorded on 09.05.2001 that the construction was completed by February, 1992 and the building is the same now as seen by her in the year 1992. But, the case of C.B.I. is that the building in question was constructed upto 3<sup>rd</sup> floor till 1991-92. The chargesheet was filed against the petitioners for unauthorised construction upto 5<sup>th</sup> floor. Thus, her statement is contrary to the case of CBI.

103. PW, R.K.Sharma, Assistant Engineer, in his statement dated 27.04.2001 stated that on seeing the court file of South Zone pertaining to Appellate Tribunal order dated 05.05.1998, it is seen that on 12.02.1997 a notice under Section 343/344 of DMC Act was issued to Sh. B.R.Shourie and Smt.Kamla Shourie, not to Raj Singh Gehlot, for excess coverage in building in question in basement, ground, first, second and third floors.

104. PW18, Dr.Vinod Sehgal, stated that he had visited the construction site during 1991-92 and the construction was completed by February, 1992 when he paid the last instalment. His statement is also contrary to the case of C.B.I.

105. Alleged unauthorized construction was carried out in the year 1991 and the completion certificate was issued in 1991 itself. The case against the petitioners was registered on 24.08.2000 after about a gap of eight to nine years and the inspection was carried out in the year 2001. There is no evidence to show that there was any illegal or unauthorized construction in the year 1991 when the completion certificate was granted. The construction of basement and three floors was permissible in 1991 when completion certificate was granted and on 12.02.1997, i.e., when the notice was issued by the MCD to the owners, there were only basement, first, second and third floors. Thus, it is contrary to the allegations in the chargesheet that there was any construction over and above three floors which was permissible.

106. Under Section 3 of DSPE Act, 1946, CBI is only empowered to investigate the offence notified by the Central Government under Section 5 of DSPE Act. It is not in dispute that the charges against the petitioners are in pursuance of the violation under the MCD Act. On direction of the CBI, a committee of the officers of the MCD was constituted, who submitted their report regarding unauthorized construction and violations of the MCD Act. Accordingly, CBI filed the chargesheet relying upon the said report.

107. CBI is a creation of the Special Statute and bound by the provisions of the same. By Section 3 of DSPE Act, the Central Government may by notification in the official gazette specify the offences or class of offences which are to be investigated by the Delhi Special Police Establishment. It is only when such a notification is made by the Central Government that the Delhi Special Police Establishment is empowered to investigate the specified offences.

108. It is not in dispute that under Section 3 of DSPE Act, offences committed under the MCD Act are not included.

109. The argument of the CBI is that the charges are framed against the petitioners for the offences punishable under the Indian Penal Code and under Prevention of Corruption Act, and not of the offences mentioned under the MCD Act.

110. It is also admitted by the CBI that qua the unauthorized constructions, action was taken under the MCD Act and accordingly unauthorized portion was demolished on 09.06.1997. Thereafter, no proceedings have been initiated against the builder and the Architect.

111. The MCD Act is a separate and special Code which deals with the offences committed under the MCD Act, 1957. Sections 343-345 of the DMC Act deal with unauthorized construction, orders of demolition, orders of stoppage of building work and power of the Commissioner to require alteration of works. Section 345A of DMC Act provides for powers to deal unauthorized constructions. Any violation of the provisions of the DMC Act provides for prosecution

and Section 467 of DMC Act prohibits and bars any other Court to take cognizance of or proceed with trial except on a complaint from the Commissioner or anyone authorized by him. Section 468 of the DMC Act provides that the said offences under the DMC Act are compoundable. Accordingly, MCD Code is a complete Code in itself and bars any other agency or Court from taking cognizance of any violation of the MCD Code. Therefore, the CBI or any Authority has no power to usurp the functions of the petitioners under the DMC Act and to investigate the matter of unauthorized construction in violation of MCD Bye-laws, unless it is notified by the Central Government.

112. It is also not disputed that no departmental enquiry or proceedings were initiated against petitioner Naresh Sharma. If, said Naresh Sharma entered into conspiracy and benefited the builder then what prevented the MCD not to take any departmental action against him.

113. If it is not established that there has been any violation under the MCD Act, then relatable offences committed under the IPC or PC Act are hardly established.

114. As regards the charge under Section 13(1)(d) of the PC Act, the violator should have obtained a valuable thing or pecuniary advantage for himself or for any other person. In the present case, in chargesheet, there are no allegations of any kind, whatsoever, of any demand, acceptance or giving of any bribe by anybody to anyone. For such an offence, the prosecution has to establish that the accused has obtained the valuable thing or pecuniary advantage by corrupt or illegal means

or by otherwise abusing his position as a public servant and that too without the aid of statutory presumption available to him. In other words, in the absence of proof of demand or request from the public servant for a valuable thing or pecuniary advantage, the offence under Section 13(1) (d) of the PC Act cannot be held to be established.

115. In the case of ***Subhash Parbat Sonvane*** (*supra*), it is held that in Sections 7 and 13(1) (a) and (b) of the Act the Legislature has specifically used the words 'accepts' or 'obtains'. As against this there is departure in the language used in Clause (1) (d) of Section 13 and it has omitted the word 'accepts' and has emphasized the word 'obtains'. The ingredient of Sub-clause (i) is that by corrupt or illegal means, a public servant obtains any valuable thing or pecuniary advantage; under Clause (ii) he obtains such thing by abusing his position as public servant and Sub-clause (iii) contemplates that while holding office as the public servant he obtains for any person any valuable thing or pecuniary advantage without any public interest. Therefore, for convicting the person under Section 13(1)(d), there must be evidence on record that accused obtained for himself or for any other person any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or he obtained for any person any valuable thing of pecuniary advantage without any public interest.

116. Case of the CBI is that there was conspiracy between the Builder, Architect and the officers of the MCD. However, there is no statement of any witness which refers to or which alleges that there

was active collusion and conspiracy between the aforementioned persons. To constitute an offence of conspiracy, meeting of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition that existence of conspiracy is to be deduced from the circumstances and each circumstance should be established by reliable evidence and the circumstances must form a chain of events from which the only irresistible conclusion would be against those persons. The criminal conspiracy is an independent offence in the Indian Penal Code. The unlawful agreement is a *sine-qua-non* for constituting an offence under the Indian Penal Code and not an accomplishment. In the case in hand, there is nothing to connect the petitioners *inter se* and there are no allegations which could form a chain of any conspiracy.

117. For the purpose of framing of charges, the Court has to sift and weigh the evidence with a view to examine whether any *prima facie* case is made out against the accused persons. Charge can be framed only if there is grave suspicion of being involved in the offence against the persons.

118. The alleged transactions had taken place during the period 1989–1992, however, the CBI had lodged a case against the petitioners in the year 2000. Therefore, there was a gap of about eight to nine years. Moreover, CBI has failed to establish which unauthorized construction was done in which year and who were the officers posted and with whom the conspiracy was hatched and by which of the petitioner. On perusal of the record it is apparently clear that there is

no evidence against any of the petitioners. Chargesheet is vague. Witnesses do not support the case of prosecution. However, Id. Trial Court has ignored all these facts while passing the order on charge.

119. In case of ***Prafulla Kumar Samal (supra)*** the Apex Court enunciated one of the principle that the test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to sum suspicion but not grave suspicion against the accused he will be fully within his right to discharge the accused. The case in hand falls in this principle.

120. In the case of ***Niranjan Singh K.S. Punjabi Vs. Jitendra Bhimraj Bijjaya (1990) 4 SCC 76*** the Apex Court held that if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

121. Moreover, the present case falls in first and third principles laid down by the Apex Court in the case of ***State of Haryana and others Vs. Ch. Bhajan Lal and ors., AIR 1992 SC 604.***

122. Keeping in view the above discussion, RC-DA-1-2000-A-0041 dated 24.08.2000 and emanating proceedings therefrom are hereby quashed against the petitioners.

123. Consequently, chargesheet in above noted RC and order of charge dated 21.05.2011 are hereby quashed qua the petitioners.

124. The petitions are allowed with no order as to costs.

125. With the disposal of the main petitions, all pending applications also stand disposed of accordingly.

**SURESH KAIT, J.**

**NOVEMBER 22, 2013**

sb/RS