

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

Reserved on: October 16, 2014

Pronounced on: November 20, 2014

+ Crl.M.C. No.2455/12 & Crl.M.A.No. 8318/2014

ANKUR CHAWLA

....Petitioner

Through: Mr.Kapil Sibal, Sr.Advocate, with
Mr. Amit Mahajan, Mr.Amit
Sharma, Ms.Kalyani Lal,
Mr.Bhanoo Sood, Mr.Karan
Kumar Gogna & Mr.Yogesh
Kumar Dahiya, Advs.

versus

CENTRAL BUREAU OF INVESTIGATION & ORS.

....Respondents

Through: Mr.R.V.Sinha, Standing Counsel
for CBI & Mr.Satyendera Kumar,
Advocate

Crl. Rev.P.385/2012 & Crl.M.A.No. 8308/2014

VIKAS SHUKLA

....Petitioner

Through: Mr.N.Hariharan Sr.Advocate, with
Mr.Puneet Mittal, Adv.

versus

CENTRAL BUREAU OF INVESTIGATION & ORS.

....Respondents

Through: Mr.R.V.Sinha, Standing Counsel
for CBI & Mr.Satyendera Kumar,
Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

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J U D G M E N T

1. In the above captioned two petitions, the challenge is to common impugned order of 22nd May, 2012 vide which petitioners have been

called upon to face the trial in CC No. 30/2012 -RC No. 3(A)/2009-CBI/ACU-IX New Delhi the matter of *State (CBI) vs. R Vasudevan & Ors.*

2. The precise Charge against petitioners is that during the period of October/November, 2009 petitioners herein had abetted co-accused- *R.Vasudevan* to accept illegal gratification of Rupees Ten Lacs for passing favourable order in favour of Atul Maheshwari (since expired) in Amar Ujala case. Petitioner-*Vikas Shukla* is said to have delivered Rupees Ten Lacs to co-accused *Manoj Kumar Banthia* on the directions of petitioner-*Ankur Chawla* at Room No. 606, Hotel Sheraton, New Delhi. Petitioner-*Ankur Chawla* is said to have conspired in commission of offence under Section 12 of Prevention of Corruption Act, 1988.

3. The factual background of this case as spelt out in the impugned judgment needs to be noticed for a proper understanding of this case. The facts of this case, as culled out from the impugned order, are as under:-

"2. It has been alleged in the FIR that accused Manoj Kumar Banthia on being approached by accused Ankur Chawla for one of parties in dispute of Amar Ujala Group, got in touch with accused R.Vasudevan for getting a favourable order in the matter pending before accused R. Vasudevan. It is also alleged that accused R.Vasudevan, Chairman, Company Law Board had demanded and agreed to accept an illegal gratification of Rs. 7,00,000/- (Rupees seven lacs only) from accused Manoj Kumar Banthia, Company secretary for showing favour in the matter. It is also alleged that accused Manoj Kumar Banthia, in turn demanded Rs. 10 lakhs from accused Ankur Chawla who approached accused Manoj Kumar Banthia for this purpose and was appearing before CLB on behalf of one of the parties in the Amar Ujala matter.

3. Further investigation by CBI had revealed that as part of conspiracy it was decided amongst accused no. 3 Ankur Chawla, Manoj Banthia and R. Vasudevan that the illegal gratification of Rs.10 lacs was to be paid to accused Manoj Kumar Banthia who would then pay Rs.7 lacs to accused R.Vasudevan, at his residence in Andrews Ganj, New Delhi for showing favour to the party being represented by accused Ankur Chawla in this matter.

4. Further investigation by CBI also revealed that accused R.Vasudevan had joined service on 12.05.1976 as Sr. Technical Assistant in the Department of Company Affairs, Chennai. After his voluntary retirement taken on 04.08.2009 he had joined as Member, Company Law Board w.e.f 05.08.2009. His duties as such, were to decide the cases, filed by parties in the Company Law Board, relating to disputes between Directors of Companies. He was also looking into the disputed matter relating to permission for change of registered office from one state to another and compounding of offences under the Companies Act, 1956. Investigation has revealed that he knew accused Manoj Kumar Banthia, Chartered Accountant and Company Secretary, of Kolkata for the last five years when accused R.Vasudevan was the Director in the Ministry of Company Affairs and accused Manoj Kumar Banthia used to visit his office for official purpose.

5. Investigation has further revealed that accused Manoj Kumar Banthia is a practicing Company Secretary and had started his practice in the name of M/s Manoj Banthia and Associates in Kolkata. He is also associated with M/s Vinod Kothari and Company, Kolkata on assignment basis. He was regularly appearing before Company Law Board at Delhi and at Kolkata. He came in contact with accused R.Vasudevan in 2004-05 as he often came to New Delhi in connection with his official work. During those days, whenever he visited New Delhi, he made courtesy visits on accused R.Vasudevan at his office in Shastri Bhawan, New Delhi. As a result of which he had developed good relations with accused R. Vasudevan. In the year 2005, accused

R.Vasudevan was transferred to Chennai as Regional Director, Ministry of Corporate Affairs.

6. Investigation has revealed that accused Ankur Chawla, after completing LLB in 1998 joined M/s Kranjawala and company as a retainer. He worked with this firm for eight years i.e. till August, 2006.

7. Investigation has revealed that accused no.4 Atul Maheshwari was the Managing Director of M/s Amar Ujala Publication Pvt. (since dead) Ltd. Investigation further revealed that accused Harsh Lodha is a qualified chartered Accountant. He had met accused Ankur Chawla in connection with a litigation, related to MP Birla Group. Accused Harsh Vardhan Lodha introduced accused Manoj Kumar Banthia to accused Ankur Chawla.

8. Investigation has revealed that accused Vikas Shukla has been working as Administrator in the law firm owned by accused Ankur Chawla, namely M/s Chambers of Ankur Chawla at C-188, Defence Colony, New Delhi.

9. Investigation has further revealed that on receipt of a secret information from a reliable source that accused Manoj Kumar Banthia, the then Company Secretary was indulging in corrupt practices and had influence in the office of Company Law Board, New Delhi. The special Unit of CBI at Kolkata had mounted electronic surveillance, after obtaining authorization from the competent authority, on telephones of accused Manoj Kumar Banthia.

10 Investigation has also revealed that the Special Unit, CBI, Kolkata sought permission from the competent authority for intercepting conversations/messages on Mobile no. 9830868717, 9433292201 and 9433469267 of accused Manoj Kumar Banthia. Special Unit, Kolkata, on receipt of the authorization intercepted conversations made from and to the said telephones on a computer system. The telephonic calls were then copied on to Compact Discs. Out of the intercepted calls, 21 telephonic calls were found relevant, by the SU/CBI/Kolkata, which related to the Amar Ujala matter pending before the accused R.Vasudevan. These telephonic

calls were copied on to a compact discs containing the said 21 relevant calls collected from SU/CBI/KOLKATA and were taken on record.

11. Investigation has also revealed that during the period from 01.08.2009 to 30.11.2009 the other accused persons (except accused Manoj Kumar Banthia, whose phones were under surveillance) were using the following mobile phones and interacting with accused Manoj Kumar Banthia:-

<i>Sl.No.</i>	<i>Name of user</i>	<i>Mobile no. & name of service provider</i>
<i>1.</i>	<i>Accused Ankur Chawla</i>	<i>9810116660 (Airtel), 9310116660 (Reliance)</i>
<i>2.</i>	<i>Accused R. Vasudevan</i>	<i>9717818819 (Airtel), 9840936600 (Airtel)</i>
<i>3.</i>	<i>Accused Atul Maheshwari</i>	<i>9971411118 (Airtel)</i>
<i>4.</i>	<i>Accused Vikas Shukla</i>	<i>9910647444 (Airtel)</i>
<i>5.</i>	<i>Accused Harsh Lodha</i>	<i>09831031161 (Airtel)</i>

12. Investigation has revealed that in the year 2009 Sh. Ashok Aggarwal, the Chairman and his son/Sh.Manu Anand, Director apprehended that accused Atul Maheshwari would remove both of them and would get an independent Chairman deputed in the company.

13. Investigation has also revealed that Sh. Ashok Aggarwal, vide petition no. 104/04/ND of 2009, had prayed for injunction restraining accused Atul Maheshwari and others from interfering and/or intermediating with the management and affairs of the Amar Ujala Publications Limited.

14. Investigation has revealed that on 29.10.2009 at 13:17:54, accused Manoj Kumar Banthia had discussed the Amar Ujala matter with accused R.Vasudevan and had told him that the matter was coming up before him at 2:30 p.m.

15. Investigation has also revealed that on 29.10.2009 at 13:21:25 accused Manoj Kumar Banthia and accused Harsh Lodha had discussed this case again, accused Manoj Kumar Banthia had told accused Harsh Lodha that one Pawan Vijay had already approached accused R. Vasudevan from respondent's side and had requested the accused R.Vasudevan not to pass any interim order.

16. On 29.10.2009 at 13:28:42 accused Ankur Chawla discussed the matter with accused Manoj Kumar Banthia and clarified that accused Pawan Vijay was one of the independent Directors on the Board of Amar Ujala Group and that he might have approached as he was also an aggrieved party and was one of the respondent in the matter.

17. On 29.10.2009 at 13:40:53 accused Manoj Kumar Banthia had called accused R.Vasudevan and had explained to him the status of accused Pawan Vijay.

18. Investigation further revealed that the said petition was heard on 29.10.2009 in the Company Law Board (CLB) by accused R.Vasudevan, the then member, CLB. Investigation has also revealed that on 04.11.2009 at 22:53:53 accused no.3 Manoj Kumar Banthia and R.Vasudevan had discussed over telephone a matter pertaining to Lumtec Engineering when they both were in Hyderabad.

19. On 09.11.2009 at 22:23:13 accused Manoj Kumar Banthia again discussed Amar Ujala matter with accused R.Vasudevan and had also discussed the bribe amount.

20. Investigation also revealed that on 18.11.2009 at 17:31:18 accused Ankur Chawla and Manoj Kumar Banthia had discussed the amount of bribe. Accused Manoj Kumar Banthia had told accused Ankur Chawla that he had already indicated (to accused R.Vasudevan) '10' (Ten) for his role in the matter. Accused Ankur Chawla, had informed accused Manoj Kumar Banthia that he would arrange the same by the next day. The money was to be delivered to accused R.Vasudevan for appointing an independent Chairman in the Group. For this, they were planning to file a fresh petition also.

21 It is further the case of CBI that on 22.11.2009 at 13:34:37, accused Manoj Kumar Banthia and accused Ankur Chawla had discussed this matter over telephone. Accused Ankur Chawla had advised him to file a petition by the next day and to get it listed on Tuesday i.e. 24.11.2009. Accused Manoj Kumar Banthia told him that he would be coming to Delhi on Monday i.e. 23.11.2009. Accused Ankur Chawla, informed that he would arrange his air ticket. In this telephonic conversation, accused Manoj Banthia, the company secretary told accused Ankur Chawla he can make the arrangement himself and accused Ankur Chawla could reimburse the same.

22. Investigation has revealed that on 22.11.2009 at 13:43:12 accused Manoj Kumar Banthia had called accused R.Vasudevan, the then Member, CLB and had informed that they have sent '7' seven and he would be delivering it to him personally.

23. Investigation has revealed that accused Manoj Kumar Banthia had reached New Delhi on Monday i.e. 23.11.2009 by air and went to Hotel Sheraton, New Delhi, Saket (Marriot Hotel) and had met accused Ankur Chawla and Atul Maheshwari in the Lobby bar of the hotel, near the main reception. CCTV footage of the main reception and main porch area and 6th floor had established the meeting of these persons in the Hotel and corroborates the discussions held over telephone in this regard.

24. Investigation revealed that accused Vikas Shukla, an employee of accused Ankur Chawla visited the Hotel Sheraton, New Delhi, Saket with a cash amount of Rs. 10 lacs and delivered it to the accused Manoj Kumar Banthia in his room. CCTV footage of the hotel of main porch area, main reception and 6th floor and intercepted conversation dated 23.11.2009 held at 20:06:42 confirms the meeting of the accused persons.

25. Investigation has further revealed that on 23.11.2009 accused Atul Maheshwari alongwith accused Ankur Chawla met accused Manoj Kumar Banthia in the lobby bar of the

Hotel Sheraton, New Delhi, Saket (Marriot). Accused Atul Maheshwari again met accused Manoj Kumar Banthia at about 20:45 hours just before accused Manoj Kumar Banthia left for the residence of accused R.Vasudevan with a paper bag bearing the name of Sheraton New Delhi Hotel. CCTV footage of the main reception alongwith telephonic conversation have confirmed the fact.

26. Investigation further revealed that on 23.11.2009 accused Manoj Kumar Banthia had hired a taxi from the hotel at about 8:50 p.m for W-11 IInd Floor, HUDCO Place, behind Ansal Plaza, the residence of accused R.Vasudevan. He had reached the residence of accused R.Vasudevan at about 9:40 p.m with a paper bag of Sheraton New Delhi. A CBI team was already mounting surveillance on him and therefore he was arrested while coming out of the residence of accused R.Vasudevan after paying the bribe money of Rs.7 lacs. On his disclosure, the team went to the residence of accused R.Vasudevan and on pointing out by accused R.Vasudevan the bribe amount of Rs.7 lacs was recovered from an almirah in his room. Apart from that, the team also recovered Rs.48 lacs from the residence of accused R.Vasudevan. Subsequently, the CBI took accused Manoj Banthia to his hotel where Rs.3 lacs were recovered from room no. 606 of Hotel Sheraton, New Delhi (Marriot), Saket, New Delhi. Investigation revealed that Rs.1.21 Crore in cash were found in his lockers held in the name of accused R.Vasudevan and his family Smt. Kalyani Vasudevan at Chennai.”

4. With the consent of both the sides, the above captioned two petitions were heard together and since the challenge in these two petitions to the impugned order is on common grounds therefore by this common judgment these two petitions are being disposed of.

5. Extensive arguments were addressed by both the sides with meticulous reference to the chargesheet and the material on record. Voluminous written submissions have been placed on record on behalf of

petitioners and even respondent-CBI has placed on record submissions, additional submissions. The crux of the submissions advanced on behalf of petitioners is that even if the prosecution case is taken as it is, still no offence is made out against *petitioner-Ankur Chawla*, who is a lawyer by profession and his assistant i.e. *petitioner-Vikas Shukla*. It was pointed out by learned senior counsels for the petitioners that no application for appointment of independent Chairman was ever filed by petitioner *Ankur Chawla* or his clients and on the contrary an undertaking was given on behalf of Amar Ujala that its Chairman Ashok Aggarwal will not be removed from the Board of Directors and it is so recorded in the order of 29th October, 2009 passed by co-accused-*R. Vasudevan*. Thus, it is contended on behalf of petitioners that there were no occasion for petitioners to be party to giving of bribe to *co-accused- R.Vasudevan* for getting an independent chairman appointed. Learned senior counsels for petitioners had vehemently contended that in paragraph no.29 of the chargesheet it is categorically stated that there is evidence in the form of intercepted conversation between *co-accused-R.Vasudevan* and Manoj Kumar Banthia that money was received from Amar Ujala company by co-accused *Manoj Kumar Banthia* and the said conversation is of 22nd November, 2009 and it is so reflected in the order of 24th September, 2010 granting sanction for prosecution of co-accused-*R.Vasudevan*. Accordingly, it is submitted that the aforesaid intercepted conversation demolishes the prosecution case of *petitioner-Vikas Shukla* meeting co-accused on 23rd November, 2009 in Hotel Sheraton to hand over the money. It was pointed out on behalf of petitioners that the trial court has erroneously relied upon transcripts of conversation and the video footage to form an opinion that petitioners had conspired with their co-accused

for commission of the offence punishable under Sections 7 and 13 of the Prevention of Corruption Act, 1988. It was pointed out that even if the video footage is taken into consideration, still it does not justify putting petitioners on trial in this case because the video footage does not show the alleged meeting between *petitioner-Vikas Shukla* and *co-accused Manoj Kumar Banthia*.

6. To assail the impugned order, the emphasis of learned senior counsels for petitioners was on the transcripts of compact discs (hereinafter referred to in short as 'CDs') in question being prepared from original compact discs being ruled out. It was pointed out that the transcripts of CDs were filed with the chargesheet on 4th October, 2010 whereas all the CDs were received from Kolkata on 18th December, 2009. It was submitted on behalf of petitioners that the only inference which can be drawn is that the transcripts were prepared from CDs which are not relied upon and even the hard drive is not relied upon by the prosecution and so the transcripts cannot be treated as secondary evidence. To submit so, attention of this Court was drawn to respondent's reply of 17th January, 2012 stating that hard drive was not seized and is not relied upon. It was vehemently urged on behalf of petitioners that it is positive case of prosecution that voice samples were taken on 30th November, 2009 on the basis of transcripts which were made from seven working CDs received back from Kolkata with the report on 19th December, 2009.

7. Learned senior counsels for the petitioners had vehemently contended that as per prosecution case seven working CDs were prepared from fifteen CDs which were not in the required format and thus it is

clear that the seven working CDs are the edited electronic record on the basis of which voice samples were drawn. Thus, it is submitted that the voice samples and the seven working CDs cannot be taken into consideration to put petitioners on trial. Much emphasis was laid by learned senior counsels for petitioners that the mandatory certificate under Section 65B of the Indian Evidence Act, 1872 has not been filed with the charge-sheet nor any supplementary chargesheet has been filed to place on record the CFSL record in respect of the CDs in question. It was asserted on behalf of petitioners that the CDs in question have to be excluded from consideration and upon doing so, it becomes evident that there is no incriminating material on record to put petitioners on trial. To contend so, reliance was placed on Apex Court's decision in *Anvar P.V. vs. P.K.Basheer and Ors.* 2014 SCC Online SC 732.

8. It was highlighted by learned counsels for petitioners that to connect petitioner-Ankur Chawla with the offence in question, prosecution has relied upon video footage of Hotel Sheraton about which trial court vide order of 2nd May, 2012 has noted as under:-

“Video was also played in the Court. However, the relevant portion mentioned in the Charge Sheet where it is mentioned that accused Ankur Chawla, accused Manoj Kumar Banthia and accused Atul Maheshwari had met in the lobby of the hotel in question, cannot be traced in the CD.”

9. So, it was pointed out that aforesaid video CD has to be excluded from consideration but the trial court has failed to do so. Lastly, it was submitted on behalf of petitioners that a mere suspicion cannot be the basis to draw inference to conspiracy against petitioners and if a strong suspicion exists, then only it can be said that a prima facie case is made

out. It is asserted that there is no admissible evidence on record to put petitioners on trial. To assert so, reliance was placed upon Apex Court decision in *Subramaniam Swami vs. A. Raja* (2012) 9 SCC 257. It was also submitted that impugned order has not considered that once audio and video CDs are excluded from consideration for want of mandatory certificate under Section 65B of the Indian Evidence Act, 1872 then there is no incriminating material on record and so impugned order deserves to be quashed and petitioners ought to be discharged in this case.

10. On behalf of respondent-CBI, learned standing counsel for CBI had staunchly supported the impugned order and asserted that for the offence of criminal conspiracy there cannot be direct evidence and that audio and video CDs are sufficient to prima facie establish the complicity of petitioners in commission of the offence in question and there is a certificate under Section 65 of the Indian Evidence Act, 1872 and thus Apex Court's decision in *Anvar P.V.* (supra) is of no avail to petitioners. It was pointed out that on 18th December, 2009 the fifteen CDs in packet 'A' and other seven CDs in packet 'B' were received from CBI-SU-Kolkata and twenty one relied upon calls are contained in CD No.14 in packet 'A' which corresponded to CD No.7 in packet 'B'. It was also pointed out that seven working CDs in packet 'B' were the basis of preparing the transcripts of the twenty one calls in the CDs in question and the seven CDs in packet 'B' are duly authenticated and certified under Section 65B of the Indian Evidence Act, 1872. Thus, it was submitted on behalf of respondent-CBI that the above referred electronic record and the statement of witnesses recorded makes out a prima facie case to try petitioners alongwith other co-accused for the offence in

question and at the stage of framing of charge a roving enquiry is impermissible and to find out as to whether a prima facie case is made out or not, there cannot be a mini trial and the prosecution case has to be taken on the face of it and once it is done, then it becomes evident that there is sufficient material on record to put petitioners on trial. To assert so, reliance is placed upon decisions in *Amit Kapoor vs. Ramesh Chander & Anr.* 2012 (9) SCC 460; *Sheoraj Singh Ahlawat & Ors. Vs. State of Uttar Pradesh & Anr.* 2013 (11) SCC 476; *State of Karnataka vs. M. Devendrappa & Anr.* 2002 (3) SCC 89; *Shri Anur Kumar Jain vs. Central Bureau of Investigation Order and Judgment dated 29.03.2011 in W.P.(Crl.) No. 80/2010 (D.B.)*; *K. K. Belusamy vs. N. Palanisamy* 2011 (11) SCC 275; *Dharambir vs. CBI* 2008 (148) DLT 289 and *Ashok Tshering Bhutia vs. State of Sikkim* 2011 (4) SCC 402. Finally, it was submitted that there is no illegality or infirmity in the impugned order and these petitions deserves to be dismissed.

11. The parameters governing framing of a charge in a criminal case have been succinctly dealt with by Apex Court in *Amit Kapoor* (supra). The pertinent observations made in *Amit Kapoor* (supra) are as under:-

“19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage.”

12. At the outset, I would like to make it clear that this Court is conscious of the parameters within which the legality of the impugned

order is to be judged. No doubt, neither a roving enquiry nor a mini trial is required to be held at the charge stage but to find out whether a prima facie case is made out or not, this Court is well within its rights to call upon respondent-CBI to show as to whether material relied upon is admissible in evidence or not. Needless to say, reliability of the material relied upon by the prosecution is not to be examined at the charge stage.

13. During the course of hearings patiently afforded to both the sides, the contents of the CDs in question were highlighted to point out that a prima facie case is made out and even the trial court has copiously referred to the contents of the audio CDs while being oblivious to the very admissibility of these CDs.

14. A bare perusal of the impugned order reveals that by referring to the contents of audio CDs in question, trial court has opined that criminal conspiracy was hatched by petitioners with other co-accused. At this stage, it would be pertinent to take note of the observations made by trial court against petitioners in the impugned order which are as under:-

“The transcript of intercepted conversation i.e. D-21, clearly shows that accused Ankur Chawla was in regular touch with accused Manoj Kumar Banthia for getting a favourable order from accused R.Vasudevan in the Amar Ujala matter for whom he was a counsel. This fact is also clarified by accused Harsh Vardhan Lodha in his conversation with accused Manoj Kumar Banthia where he states that accused Ankur Chawla is the counsel for Amar Ujala Group and thereafter, he narrates the facts of the case and also explains as what kind of order he wants from accused R.Vasudevan. Therefore, whether accused Ankur Chawla had received any legal remuneration in this regard or not is neither relevant for abetting the crime nor for the purpose of proving conspiracy.

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The authenticity of the video footage can be challenged at the stage of trial, however, it will be pertinent to mention that this footage of video recording dated 23.11.2009 was prepared and was handed over vide order dated 12.10.2011 passed by Ld. Predecessor of this Court in the presence of all the Ld. Defence Counsels.

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I do not agree with this contention also since it is not only the intercepted conversation on the basis of which a grave suspicion arises against the accused. There is also prima facie evidence such as video footage of the hotel where the accused had held a meeting at the hotel against the accused that accused Ankur Chawla and that he had arranged and had sent illegal gratification money to the room of accused Manoj Kumar Banthia through accused Vikas Shukla which is evident from the conversation of accused Manoj Kumar Banthia and accused Vikas Shukla. And when the money was paid by accused Manoj Kumar Banthia on behalf of accused Ankur Chawla to accused R.Vasudevan, raid was conducted and the money was recovered at the spot resulting in arrest of accused R.Vasudevan and accused Manoj Kumar Banthia. Therefore, this case does not rest on the intercepted conversation alone and prima facie independent evidence is available on the file which is enough to frame charge at this stage.

This conversation as mentioned above clearly indicate the accused Ankur Chawla had abetted accused Manoj Kumar Banthia in hatching the conspiracy hatched and for approaching the accused No.1 for payment of bribe for getting a favourable orders in favour of his client.”

15. Qua petitioner-Vikas Shukla, the findings returned in the impugned order are as under:-

“Ld. Authorized APP for CBI alongwith IO has also pointed out to D-45. As per D-45, phone number i.e. 9910647444 was registered in the name of accused Ankur Chawla. It, therefore, shows that though accused Vikas Shukla had a telephone number registered in his own name, he had not used his own telephone for communicating to accused Manoj Kumar Banthia, but had instead used telephone number 9910647444 belonging to accused Ankur Chawla to communicate to accused Manoj Kumar Banthia that he is bringing money for to him on behalf of accused Ankur Chawla. Therefore, if accused Vikas Shukla was using the telephone number of accused Ankur Chawla for communicating to co-accused (instead of using his own phone number), this will also indicate that he had knowledge and was working in close association with accused Ankur Chawla while dealing with accused Manoj Kumar Banthia.

Furthermore, the Investigating Officer has also pointed out to D-45 which are call detail records pertaining to phone number 9910647444. According to the same this phone number belonged to accused Ankur Chawla from which accused Vikas Shukla had called up on the phone number of accused Manoj Kumar Banthia which is reflected in D-45 i.e. in the call detail record of telephone number 9910647444.”

16. To test the correctness of the aforesaid observations of the trial court, it has to be kept in mind that any electronic record is admissible in evidence only when it is in accordance with the procedure prescribed under Section 65B of the Indian Evidence Act, 1872. It is so said in view of the pertinent observations made by three Judge Bench of Apex Court in *Anvar P.V.* (supra) which are as under:-

“15.It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

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22. The evidence relating to electronic record, as noted herein before, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this court in Navjot Sandhu case (supra), does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record is inadmissible.”

17. In the instant case, the impugned order is silent about there being any certificate under Section 65B of the Indian Evidence Act, 1872 in respect of the audio and video CDs and even during the course of hearing, it was asserted on behalf of respondent-*CBI* that aforesaid mandatory certificate of 18th December, 2009 is there, but respondent-*CBI* has failed to show that such a certificate has been filed alongwith the chargesheet. Attention of this Court was not drawn to statement of any witness to show that inference of criminal conspiracy can be drawn against petitioners. Pertinently, although this Court is not required to look into photocopy of certificate under Section 65B of the Indian Evidence Act, 1872 furnished in respect of fifteen CDs in packet 'A' but there is no such certificate in respect of the seven CDs in packet 'B' which is solely relied upon by the prosecution. Thus, aforesaid certificate (which is not on record) is of no avail. So, there is no point in now permitting the prosecution to place the original of such certificate on record. It was also not shown during the course of the hearing that when the CDs were prepared but since this case was registered on 23rd November, 2009 therefore these CDs must have been prepared soon thereafter and the certificate under Section 65B of the Indian Evidence Act, 1872 has to be of the date when the CDs were prepared but the photocopy of the aforesaid certificate shows that it was prepared on 18th December, 2009 and is thus of no avail.

18. Since audio and video CDs in question are clearly inadmissible in evidence, therefore trial court has erroneously relied upon them to conclude that a strong suspicion arises regarding petitioners criminally conspiring with co-accused to commit the offence in question. Thus, there

is no material on the basis of which, it can be reasonably said that there is strong suspicion of the complicity of the petitioners in commission of the offence in question. In the considered opinion of this Court, a prima facie case is not made out against petitioners and so they cannot be put on trial with the aid of Section 12 of the Prevention of Corruption Act or by resort to Section 120-B of IPC.

19. Consequently, impugned order is quashed qua petitioners only while clarifying that any observation in this judgment shall have no bearing on merits qua co-accused. Before parting with this judgment, I place on record my deep appreciation for the able assistance rendered by learned senior counsels for petitioners and Mr.R.V.Sinha, learned standing counsel for CBI in deciding these petitions.

(SUNIL GAUR)
JUDGE

NOVEMBER 20, 2014
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