

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

Judgment reserved on: 24.02.2015

Judgment delivered on: 03.08.2015

% **Crl.A. 731/2008**

DALEEP SINGH CHANDRAWAT Petitioner
Through: Mr. C.L. Gupta & Mr. Navdeep
Solanki, Advocates.

versus

STATE Respondent
Through: Mr. Lovkesh Sawhney, APP.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

JUDGMENT

VIPIN SANGHI, J.

1. This appeal is directed against the judgment dated 06.08.2008 passed by the learned Additional Sessions Judge in S.C. No. 124/2006, arising out of FIR No. 186/2000 registered under Section 3 and Section 9 of the Official Secrets Act, 1923 (hereinafter referred as 'the Act') convicting the Appellant for the said offences, and the order on sentence dated 06.08.2008, sentencing him for the period already undergone i.e. 7 years and 8 months.

2. The case of the prosecution, as noticed by the trial court, is that information was received that one Dalip Singh Chandrawat posted in Joint Cipher Bureau, Ministry of Defence in conspiracy with one Shah @ Sharma

Nath – a Kathmandu, Nepal based Pak Intelligence Official, was working in an unauthorized manner and communicating information relating to defense matters to known and unknown foreign agents, which were calculated to, or intended to directly or indirectly affect the sovereignty, integrity, safety of the country. It was further disclosed that the appellant, through different courier companies or by personal meetings, communicated different documents to the said entities. On 13.03.2000, the appellant had brought secret documents from his office which he was likely to pass on, through courier services, or by meeting the Pak Intelligence Official. On receipt of information about the appellant, surveillance was maintained by the staff of the committee Espionage section of Special Branch, consisting of SI B.B. Chand, SI Risal Singh (PW-4) and ASI Charan Singh.

3. On 14.03.2000 at about 11:30 am, the appellant came out of quarter no. 463, Laxmi Bai Nagar carrying a Khakhi envelope in his right hand and kept the same in the dickey of scooter No. DL 9 SF 1894. He then went to Sant Nagar and parked his scooter in front of Sky Net World Express Pvt. Ltd. (hereinafter referred as ‘Courier Company’) and was followed by the surveillance team. Appellant took out the Khakhi envelope and entered the office of above mentioned courier company to book the same for “47-C Someshwar Kathmandu, Nepal from Dalip Singh Chandrawat 463, Laxmi Bai Nagar, New Delhi 110023”. At about 12:00 p.m., while the appellant was handing over the envelope to Manohar Singh (PW-1) – an employee of the courier company, the police officials entered, apprehended the appellant and took the envelope. Upon opening the envelope it was found to contain another plain envelope. On opening the plain envelope, 99 sheets which

were photocopy of Cryptographic Regulations SOX-07000 marked "Secret" were recovered. The contents of the envelope were signed by the witnesses, and taken into police possession. SI B.B. Chand prepared the rukka and got the case registered at the police station Lajpat Nagar through ASI Charan Singh, on which the FIR was registered and the investigation was taken up by Inspector Madanjit Singh Randhawa (PW-12). The original FIR was sealed and special information was sent to the senior officers of the police and the learned CMM, Delhi through Special messenger Ct. Bhagwat Pd. (PW-10), and after recording the statement of witnesses, the appellant was arrested on the same day and taken to police remand till 29.03.2000.

4. The appellant in his statement to police disclosed that in 1992 he joined the Joint Cipher Bureau, Sena Bhawan, Ministry of Defense as Chief Compilation officer on deputation basis. Around April, 1994 he came into contact of Shah, through Markandey Mishra (PW-6), and started passing documents to him which continued till 1996. In the year 1996, he was introduced to one Hero at INA Market by Shah. Around July/August 1998, Shah introduced him to Hassan, working in Pakistan High Commission Kathmandu, who later assumed the name of Sharma Nath. The appellant visited Kathmandu around 1998, where Hassan enquired from him about his posting back to Joint Cipher Bureau. Around February 1999, the appellant rejoined the same department and started passing the documents to Hassan @ Sharma Nath through Hero, and through Courier Agencies. In the year 1999, he got SESD containing 25 pages which had come to him through Anurag Verma, Deputy Director, photocopies of which were also passed on in March, 1999. He also passed on a Telephone Directory of Ministry of

Defense and Organizational Chart of CCB from the file: "Creation of Post". The appellant further disclosed that the said Pak official had given his Kathmandu Telephone number, which was written in a small diary, kept in a brief case in an almirah of his office, and also stated that he could also point out the entry made in the register, in which record of photocopies made, were being maintained.

5. On his disclosure, room no. 205 D1, Sena Bhawan was searched and from the brief case of the appellant one telephone diary containing 32 pages recovered. At page no. 31, telephone number 484465/8660 was written and it was stated that it was the telephone number of Sharma Nath written in code, and the correct number was 373354/9771. Apart from this, one Telephone diary containing 34 sheets, and one black diary containing 44 pages were also recovered. In the black diary, task assigned to the appellant was written. Three diaries and copy of the aforesaid register were also taken into police possession vide pointing-out-cum seizure memo (Ex. PW-3/D).

6. Thereafter, on the disclosure of the appellant, a house search of Flat no. C-58, DDA Flats, Shaeed Bhagat Singh Enclave behind Shivaji Enclave (College) – belonging to one Parkasho, was conducted, from where the following were recovered: (1) photocopy of telephone directory 1988 of Defense Research and Development Organisation marked "Restricted", (2) an envelope marked by Mail courier to HQ Vayu Bhawan C/o ACAS ENGA, and (3) one Khakhi envelope marked "Secret". All the recovered documents were taken in police possession. On 14.03.2000, Parkasho was also taken in custody for interrogation.

7. The charge under Section 3 and 9 of the Official Secret Act, 1923 was framed against the appellant by the Learned CMM. The appellant pleaded 'not guilty' and claimed for trial.

8. Pursuant to an order of this Court dated 28.03.2008, this case stood transferred from the Court of the CMM to the Court of Sessions, and all the evidence already recorded in the Court of CMM was to be considered as evidence by the Court of Sessions. The prosecution examined various witnesses to prove their case before the Court of Learned CMM, as well as the Learned ASJ.

9. Thereafter, the statement of the appellant was recorded under Section 313, Cr.P.C. The appellant denied all allegations and stated that he was innocent. He further stated that he was arrested outside Safdarjung Hospital and he was the victim of a conspiracy hatched by his superior Mr. Khare. The Appellant examined himself as DW-1 in support of his defence.

10. The learned Additional Sessions Judge convicted the appellant and sentenced him in the terms noted hereinabove.

11. Learned counsel for the appellant submits that the statements of both the public witnesses have material contradictions with respect to the recovery proceedings. Manohar Singh (PW-1) in his cross-examination deposed that *"The envelope was taken into custody by one Sardarji namely Mr. Randhawa while the accused was in the process of handing the envelope to me."* On the other hand, Naresh Kumar (PW-2) in his cross examination stated that S.I. B.B. Chand was the first person to take the packet from the hand of appellant. He stated that *"D.S. Chandrawat was in the process of*

handing over the packet to Manohar Singh and other employee of the shop. B.B. Chand was the first person to take the packet from the hand of D.S. Chandrawat.”. Thus, it is not established, by whom the recovery was made.

12. The next submission of the learned counsel is that the documents were never sealed. In this regard, he drew the attention of this court to the testimonies of Manohar Singh (PW-1) and Naresh Kumar (PW-2). Manohar Singh (PW-1), in his cross-examination, stated that *“The documents were not sealed in the pulanda and were taken into possession as it is.”*. Naresh Kumar (PW-2) supports the statement of Manohar Singh (PW-1) in this regard, as he stated that *“In my presence, the documents were not sealed and were taken in possession as it is.”*. Learned counsel submits that this proves that although the documents were taken into possession, they were not sealed, thus, making the recovered documents susceptible to tampering.

13. Learned counsel submits that Lachi Ram Chauhan (PW-3) had deposed that there is a photocopy machine in the CCO Office, where the appellant was working. He had also deposed that photocopies cannot be obtained without permission from Mr. Kewal Singh (PW-6). Kewal Singh (PW-6) deposed that whenever secret documents are to be photocopied, a written permission is to be obtained by the person from the Director. He further states that in the photocopy register (Ex. PW-6/A), the photocopied documents are shown as ‘official’ in the subject, and in this case no written permission was received. Therefore, a contradiction exists between the testimonies of Lachi Ram (PW-3) and Kewal Singh (PW-6), as to who was the authority to give permission for the photocopy of the documents in question.

14. It is further submitted that the trial court has not dealt with the issue of verification of address and the telephone numbers written on the envelope, which was crucial in the present case. Learned counsel submits that upon the disclosure made by the appellant, room no. 205 D1, Sena Bhawan was searched and from the brief case of the appellant one telephone diary containing 32 pages was recovered. On page no.31, telephone number 484465/8660 was written, and it was stated that it was the telephone number of Sharma Nath written in code, and that the correct number was 373354/9771. The appellant in his statement under Section 315, Cr.P.C. deposed that the address on the envelope (Ex. PW-1/B) does not exist, and the telephone number so quoted belongs to a lady Radhika Kharka in Maharajganj, Nepal. This information was received from postal services department, Ministry of Information, Government of Nepal vide letter no. 121/064-10-11/25-01-2008 (Ex. DW-1/A). It is further stated by him that the address (47C New Someshwar, Kathmandu, Nepal) does not exist, and the same has been confirmed from Kathmandu Metropolitan City Office vide letter reference no. 370 dated 28/1/08 (Ex. DW-1/B). In his cross-examination, Madanjit Singh Randhawa (PW-12) deposed that he undertook the investigation to find out the resident of the address in question, and found that the said address was a safe house of Pakistan Intelligence in Nepal. He further deposed that the same was done through undisclosed sources, and not through any official means. He also stated that he did not make any effort to examine any independent witness or official witness to ascertain the genuineness of the address and telephone number appearing on the envelope. Thus, it has not been established that the documents were in

the process of being sent to a Pakistani agent in Kathmandu, Nepal or an enemy State.

15. Lastly, learned counsel submits that even if it is assumed that the appellant was passing over the secret information, in the present case, the offence can only be brought under 'Attempt', since the envelope was going to be communicated, but it was seized in the process of being handed over to the courier company. It is submitted that in the present case, only offence under Section 9 would be attracted, and not under Section 3(1)(c) of the Act.

16. On the other hand, Mr. Sawhney, learned APP, appearing for the State submitted that Manohar Singh (PW-1) and Naresh Kumar (PW-2) had no enmity against the appellant and that the offences are clearly made out.

17. The learned APP submits that the recovery of the secret/confidential documents is proved by the statements of Manohar Singh (PW-1), Naresh Kumar (PW-2) and Madanjit Singh Randhawa (PW-12). Manohar Singh (PW-1) deposed that he had signed on all the 99 pages (Ex. PW-1/A) and two envelopes (Ex. PW-1/B and Ex. PW-1/C) recovered from the appellant. He also proves the seizure of documents by the police vide seizure memo (Ex. PW-1/D). He stated that *"The 99 sheets and envelope were signed by me, Sardarji, B.B. Chand and Naresh. The documents were not sealed in the pulanda and were taken into possession as it is."* Naresh Kumar (PW-2) has also deposed on the same lines. He stated that *"All the 99 sheets were got signed from me and the Fard was prepared. I also signed the envelop. All this was got done by B.B. Chand. The Fard was also prepared by him. The sheets were signed by me, Manohar Singh, B.B. Chand and one Sardarji*

whose name I cannot tell.” Madanjit Singh Randhawa (PW-12) deposed that he saw the handing over of the khakhi envelope by the Appellant to Manohar Singh (PW-1), and while he was handing over the envelope, it was taken in possession of the police. He narrated the entire search and seizure proceedings. He stated that “Both the envelopes and each of the 99 sheets were got signed by Manohar Singh, Naresh Kumar and myself as witness. At the time SI B.B. Chand was working as IO, who signed the documents in that capacity. These two envelopes and 99 sheets were taken into police possession vide memo Ex.PW1/D by SI B.B. Chand. I can identify the handwriting (sic.) and signatures of SI B.B. Chand as he has worked under me for so many years, who has since expired. Ex.PW1/D is in his handwriting and bears his signatures at point A. My signature is at point B. The envelopes are Ex.PW1/B and Ex.PW1/C. Both bears signatures of B.B. Chand at point A and mine at point B. The 99 sheets are collectively Ex.PW1/A and bears signatures of B.B. Chand at point A and as of mine at point B on each sheet.”

18. Mr. Sahwney submits that although the pulanda was not made at the spot of recovery, the signature of Manohar Singh (PW-1) and Naresh Kumar (PW-2) – the independent witnesses, apart from the signatures of S.I. BB Chand and I.O. MS Randhawa (PW-12) on each page of the recovered documents show that sufficient safeguards were indeed taken by the prosecution. Thus, the recovery stands proved.

19. Learned APP submits that the testimony of Kewal Singh (PW-6) further establishes the prosecution case. He deposed that the appellant took the police party to room no. 209 and pointed out towards the photocopy

machine and the register, where the entry of making 150 photocopies were made by the appellant. Thus, the recovery and seizure of the register also stands proved.

20. Mr. Sahwney submits that the appellant had accessibility to the documents in question, which stands proved by the statement of Sh. Prabodh Kumar (PW-9). He deposed that while he was working on the documents in question, the appellant approached him to give the same to him so that he can prepare translations thereof at a later stage. He stated that *“While the draft was being prepared by me, the accused came to me and wanted to have a look at whatever I was preparing so that he could easily translate the same at a later stage. I gave the draft being preparing by me to the accused for this purpose.”*. Prabodh Kumar (PW-9) produced the master copy of the secret document bearing the stamp of library. On comparing both the copies, he stated that *“The contents of Ex. PW1/A are more or less the same as the original SOX 07000 (1) cryptographical part-1 today produced by me.”*

21. Learned APP relies on the report of Lt. Col. Ramesh Sharma (PW-5) to prove the nature of the 99 pages document. Lt. Col. Ramesh Sharma (PW-5) received a letter dated 31.03.2000 (Ex. PW-5/A) from Joint Secretary Training & CAO MOD along with a letter dated 30.03.2000 (Ex. PW-5/C) and two documents for opinion (Ex. PW-1/A and Ex. PW-5/B). He gave his report (Ex. PW-5/D) on the 99 pages document (Ex. PW-1/A), but returned the telephone directory (Ex. PW5/-B) to Ministry of Defense for obtaining the opinion of DRDO. He opined that the nature of the 99 page document as ‘secret’. Thus, it stands proved that the documents which were in the process of being passed on by the appellant, were secret documents.

22. I have carefully considered the submissions of learned Counsels on either side, and perused the record and evidence laid in the case.

23. As far as the submission of the learned counsel for the appellant regarding the contradiction in the testimonies of Manohar Singh (PW-1) and Naresh Kumar (PW-2) is concerned, I find no merit in the same. Manohar Singh (PW-1) had deposed as follows:

“On 14.03.2000 at about 12.10pm the accused present in the court came to me and handed over a packet to me. While he was just doing so the police arrived at the spot and checked the papers contained in the envelope which was khakhi/brown colour. On checking the envelope, it was found that there was another envelope in which 99 papers were kept and on which the word (sic.) secret was mentioned.”

He further deposed in his cross-examination that:

“Police officials came to the shop after about five minutes of D.S. Chandrawat who came there with envelope. The envelope was taken into custody by one Sardarji namely Mr. Randhawa while the accused was in the process of handing the envelope to me.”

Naresh Kumar (PW-2) has deposed as follows:

“I have seen the accused person in court once on 14.3.2000 when he had come with one packet for Nepal. He was handing over this packet to Manohar who is also an employee with me. All the bookings are made to me or Manohar. When he was handing over the packet, 4/5 police officers came and took the same from him. The envelope which was of brown colour was opened and a brown colour envelope was found in (sic.) the same. When it was opened, it was found containing certain photostat papers which were 99 in number.”

In his cross examination, he deposed that “*D.S. Chandrawat was in the process of handing over the packet to Manohar Singh and other employee of the shop. B.B. Chand was the first person to take the packet from the hand of D.S. Chandrawat.*”

On perusal of the statements of Manohar Singh (PW-1) and Naresh Kumar (PW-2), it is clear that both the public witnesses are consistent with regard to the recovery of the khakhi envelope from the appellant. Manohar Singh (PW-1) has stated that after the appellant came to the Courier Company, he was apprehended with the khakhi envelope, which was seized by the police official. The so-called minor contradiction between the statements of Manohar Singh (PW-1) and Naresh Kumar (PW-2) – in relation to the person who first took the envelope from the appellant is, actually, not even a contradiction, because it is clear that the envelope was being given by the appellant to Manohar Singh (PW-1). Merely because, the said envelope may have been taken into custody – while it was about to be handed over to Manohar Singh (PW-1), by the I.O. M.S. Randhawa (PW-12) either directly or through S.I. B.B. Chand, and the packets may have passed through the hands of B.B. Chand, it does not mean that the documents were not taken into custody by the I.O. M.S. Randhawa. This also does not falsify the case of the prosecution that the appellant was in the process of handing over the documents to Manohar Singh (PW-1). In any event, it is not a material or significant contradiction in the case of the prosecution, such that it can be said to be detrimental to the case of prosecution. In this regard, reference may be made to *Shyamal Ghosh v. State of West Bengal*, AIR 2012 SC 3539, wherein the Supreme

Court observed that minor contradictions in the testimony of the witnesses cannot be held to be detrimental to the case of the prosecution. Discrepancies must be material for the testimony of a witness to be discarded. It states the following:

47.*Minor contradictions, inconsistencies or embellishments of trivial nature which do not affect the core of the prosecution case should not be taken to be a ground to reject the prosecution evidence in its entirety. It is only when such omissions amount to a contradiction creating a serious doubt about the truthfulness or creditworthiness of the witness and other witnesses also make material improvements or contradictions before the court in order to render the evidence unacceptable, that the courts may not be in a position to safely rely upon such evidence. Serious contradictions and omissions which materially affect the case of the prosecution have to be understood in clear contradiction to mere marginal variations in the statement of the witnesses. The prior may have effect in law upon the evidentiary value of the prosecution case; however, the latter would not adversely affect the case of the prosecution. Another settled rule of appreciation of evidence as already indicated is that the court should not draw any conclusion by picking up an isolated portion from the testimony of a witness without advert to the statement as a whole. Sometimes it may be feasible that admission of a fact or circumstance by the witness is only to clarify his statement or what has been placed on record. Where it is a genuine attempt on the part of a witness to bring correct facts by clarification on record, such statement must be seen in a different light to a situation where the contradiction is of such a nature that it impairs his evidence in its entirety.*

49.*Furthermore, whether such omission, variation or discrepancy is a material contradiction or not is again a question of fact which is to be determined with reference to the facts of a given case. The concept of contradiction in evidence*

under criminal jurisprudence, thus, cannot be stated in any absolute terms and has to be construed liberally so as to leave desirable discretion with the court to determine whether it is a contradiction or material contradiction which renders the entire evidence of the witness untrustworthy and affects the case of the prosecution materially.”

(Emphasis Supplied)

That the khakhi envelope was seized while being handed over by the appellant to Manohar Singh (PW-1) stands established from the statements of the public witnesses. The fact as to who handled it first, is not relevant. Further, the fact of recovery stands established as the 99 pages document (Ex. PW-1/A) was signed by both the public witnesses i.e. Manohar Singh (PW-1) and Naresh Kumar (PW-2), as well as by police officials Madanjit Singh Randhawa (PW-12) and B.B. Chand. Therefore, I find no substance in the argument of the learned counsel for the appellant that there is a material contradiction between the statements of two independent witnesses.

24. It was argued by learned counsel for the appellant that no pulanda was prepared by the police officer, and there were chances of tampering with the documents. The prosecution had to primarily establish that the documents so recovered were the ones produced in Court at the trial. Perusal of the testimony of Manohar Singh (PW-1), Naresh Kumar (PW-2) and Madanjit Singh Randhawa (PW-12) makes it clear that the documents recovered from the appellant at the courier company were indeed the documents on which the appellant was prosecuted. Both the independent witnesses have categorically stated that at the time of recovery, the pulanda was not made on the spot. I find merit in the submission of the learned APP that as each page of the 99 pages document (Ex. PW-1/A) was signed by not only the

police officials, but also by the two public witnesses, the same provided a sufficient safeguard against tampering of the recovered and seized documents. Although the documents were not sealed in a pulanda at the spot, but each page was signed at the time of recovery, thus ruling out the chances of tampering of the 99 pages document (Ex. PW-1/A). In fact, the similarity in the statement of the witnesses Manohar Singh (PW-1) and Naresh Kumar (PW-2) even with regard to details only affirms the truthfulness of their testimony.

25. On the aspect of the documents being photocopied, Lachi Ram Chauhan (PW-3) deposed that the photocopies could be obtained without the permission of Mr. Kewal Singh (PW-6). Kewal Singh (PW-6) stated that whenever secret documents are to be photocopied, a written permission is to be obtained by the concerned person from the Director. For any other documents, an oral permission may suffice. Perusal of the photocopy register (Ex. PW-6/A) reveals that on 22.11.1999, photocopying was done of 150 pages marked 'official', and not "secret" documents. The aforesaid entry (XY-1) was made by the appellant – which stands established from his signature at point 'XY-3' of the photocopy register (Ex. PW-6/A). Thus, it is clear that the said entry was made by the appellant himself. The appellant could have described the documents as "official" in the photocopy register, and photocopied the secret documents without prior permission. In the present case, no permission at all was taken by the appellant before photocopying the documents. Pertinently, the appellant has not been able to say, as to which were the documents that he had prepared photocopies of, if not the secret documents in question. It was for him to show that he had

photocopied other documents, which were not secret documents and, therefore, it was not essential for him to obtain prior permission from the higher ups in his office. He has failed to establish so. Therefore, the submission of the learned counsel for the appellant that there is no record of the secret documents being photocopies by him, does not inspire confidence. Thus, there is no contradiction between the statements of Kewal Singh (PW-6) and Lachi Ram Chauhan (PW-3), as the permission for photocopy of the secret documents was to be obtained from the Director, while permission for any document could be taken from Kewal Singh (PW-6). However, no such permission was obtained by the appellant.

26. It stands established that the appellant had access to the 99 pages document (Ex. PW-1/A). In this regard, the testimony of Sh. Prabodh Kumar (PW-9) is relevant. He stated:

“While the draft was being prepared by me, the accused came to me and wanted to have a look at whatever I was preparing so that he could easily translate the same at a later stage. I gave the draft being preparing by me to the accused for this purpose.”

Prabodh Kumar (PW-9) produced the master copy of the secret documents bearing the stamp of library. On comparing both the copies, he stated that *“The contents of Ex. PW1/A are more or less the same as the original SOX 07000 (1) cryptographical part-1 today produced by me.”* His deposition reveals that while he was working on the documents in question, appellant approached him to give the aforesaid documents so that he can prepare the translation for the same at a later stage. Accordingly, the documents were given to the appellant. Prabodh Kumar (PW-9) also verified that the contents

of the documents in question are more or less the same as that of the original. Thus, it clearly stands established that the appellant had accessibility to the 99 pages document (Ex. PW-1/A) in question.

27. With regard to the nature of the 99 page document (Ex. PW-1/A), Lt. Col. Ramesh Sharma (PW-5), proved his report (Ex. PW-5/D). The report (Ex. PW-5/D) stated the following:

“3. SOX 07000(i) Cryptographic Regulations.

- (a) It is ‘SECRET, accountable’ document issued by the Joint Cipher Bureau for distribution upto Divisional Headquarter. The year of printing is 1964.*
- (b) The information contained in the document, if disclosed to an unauthorised person is likely to be prejudicial to the sovereignty and security of the country.*
- (c) The information contained in the document is directly useful to the enemy.*
- (d) The document is connected with the defence matters of the country.”*

The report reveals that the documents in question, being supplied by the appellant, were indeed ‘secret’ documents. He clearly opined that the 99 page document (Ex. PW-1/A) are ‘Secret, accountable’ and the information contained in the document, if disclosed to an unauthorized person is likely to be prejudicial to the sovereignty and security of the country. It further affirms that the information is directly useful to the enemy and the documents refer to the defense matters of the country. Therefore, it clearly stands established that the nature of the documents in question were ‘secret’.

28. On the aspect of verification of address and telephone number, perusal of the record reveals that the trial court has not dealt with this issue,

presumably, because it was not raised by the appellant. The appellant in his statement under Section 315, Cr.P.C. had stated that the address in question on the envelope (Ex. PW-1/B) does not exist and the telephone number so quoted belongs to a lady Radhika Kharka in Maharajganj, Nepal. Information was received from Government of Nepal vide letter no. 121/064-10-11/25-01-2008 (Ex. DW-1/A) and reference letter no. 370 dated 28.01.2008 (Ex. DW-1/B). The cross-examination of Madanjit Singh (PW-12) reveals that he undertook the investigation to find out the identity of the resident of the address in question, and found that the said address was a safe house of Pakistan Intelligence in Nepal. However, the same was done through undisclosed sources and not through any official means. He further deposed that he did not make any effort to examine any independent witness, or official witness, to ascertain the genuineness of the address and telephone number appearing on the envelope.

29. The letters (Ex. DW-1/A and Ex. DW-1/B) received by the appellant confirms the position that the address did not, in fact, officially exist. It is true that the investigation was slack in not confirming the identity of the user of the said telephone number. However, this lapse is not such as to deal a death blow to the case of the prosecution. In ***Dayal Singh vs. State of Uttaranchal***, (2012) 8 SCC 263, the Supreme Court held as follows:

“27. Now, we may advert to the duty of the Court in such cases. In the case of Sathi Prasad v. The State of U.P., (1972) 3 SCC 613, this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the Court to see if the evidence given in Court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this

Court in the case of Dhanaj Singh @ Shera and Ors. v. State of Punjab, (2004) 3 SCC 654, held:

“5. In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.”

28. Dealing with the cases of omission and commission, the Court in the case of Paras Yadav v. State of Bihar, AIR 1999 SC 644, enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

....

32. In the case of State of Karnataka v. K. Yarappa Reddy, 2000 SCC (Crl.) 61, this Court occasioned to consider the similar question of defective investigation as to whether any manipulation in the station house diary by the Investigating Officer could be put against the prosecution case. This Court, in Paragraph 19, held as follows:

“19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the Court be influenced by the machinations demonstrated by the Investigating Officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary

area for judicial scrutiny in a criminal trial, the conclusion of the Court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinised independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by the investigation officers. Criminal Justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case.””

(Emphasis Supplied)

In **Karan Singh vs. State of Haryana**, (2013) 12 SCC 529, the Court again dealt with the aspect of flawed investigation by the police officials. The court observed as follows:

“17. In Ram Bihari Yadav v. State of Bihar, AIR 1998 SC 1850, this Court observed, that if primacy is given to a designed or negligent investigation, or to the omissions or lapses created as a result of a faulty investigation, the faith and confidence of the people would be shaken not only in the law enforcing agency, but also in the administration of justice. A similar view has been re-iterated by this Court in Amar Singh v. Balwinder Singh, AIR 2003 SC 1164.

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

19. Omissions made on the part of the Investigating Officer, where the prosecution succeeds in proving its case beyond any reasonable doubt by way of adducing evidence, particularly that of eye-witnesses and other witnesses, would not be fatal to the case of the prosecution, for the reason that every discrepancy present in the investigation does not weigh upon the court to the extent that it necessarily results in the acquittal of accused, unless it is proved that the investigation was held in such manner that it is dubbed as “a dishonest or guided investigation”, which will exonerate the accused. (See: Sonali Mukherjee v. Union of India, (2010) 15 SCC 25; Mohd. Imran Khan v. State Government (NCT of Delhi), (2011) 10 SCC 192; Sheo Shankar Singh v. State of Jharkhand, AIR 2011 SC 1403; Gajoo v. State of Uttarakhand, (2012) 9 SCC 532; Shyamal Ghosh v. State of West Bengal, AIR 2012 SC 3539; and Hiralal Pandey v. State of U.P., AIR 2012 SC 2541).

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

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

(Emphasis Supplied)

In my opinion, the failure to establish the identity of the person to whom the documents were being dispatched through courier and communicated, does not deal a fatal blow to the case of prosecution. I find no force in the submission of the learned counsel for appellant that non

verification of the address and telephone number is a material irregularity in the investigation by the police. This is so because the commission of the charged offences is complete even before the secret documents of the kind dealt with under Section 3 of the Act, is complete without the necessity to establish the identity of the recipient/intended recipient.

30. Section 3 and Section 9 of the Act read as follows:

“3. Penalties for spying.

(1) If any person for any purpose prejudicial to the safety or interests of the State-

(a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or

(b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly; or indirectly, useful to an enemy or

(c) obtains collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States; he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code, to fourteen years and in other case to three years.

(2) On a prosecution for an offence punishable under this section, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State, such sketch, plan, model, article, note, document, information, code or pass word shall be presumed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the State.

9. Attempts, incitements, etc.

Any person who attempts to commit or abets the commission of an offence under this Act shall be punishable with the same punishment, and be liable to be proceeded against in the same manner as if he had committed such offence.”

(Emphasis Supplied)

31. It is evident that the appellant obtained, and was in possession of the secret documents prior to being apprehended. The making of the photocopy of the documents, i.e. their obtainment in question has also been established by the photocopy register (Ex. PW-6/A) where the relevant entry is ‘XY-1’. It bears the signatures of the appellant at point ‘XY-3’ and the same has

been confirmed by Lachi Ram Chauhan (PW-3). The recovery of the documents and the act of passing on, of the secret information, is also established as per the statements of Manohar Singh (PW-1), Naresh Kumar (PW-2) and Madanjit Singh Randhawa (PW-12). It has also been proved from the report (Ex. PW-5/D) of Lt. Col. Ramesh Sharma (PW-5) that the documents were 'secret' in nature. The appellant has not explained as to how he came into possession of the secret documents. He has not explained as to for which "official" documents he had made the entry in the photocopy register, if not the secret documents in question, particularly when the secret documents were recovered while being delivered by him to the courier agency. It was for him to establish that the photocopies of the secret documents were made by him for a valid purpose. He has, however, not explained the same. It was for him to explain why he had taken the secret documents in the sealed envelope for being couriered to the address written on the envelope, and also to explain whose address it was. He has failed to come out with the said information, which was within his special knowledge.

32. Under Section 3 of the Act, if any person obtains, collects, records or publishes or communicates to any other person, *inter alia*, any secret or other document or information which, *inter alia*, might be, directly or indirectly useful to an enemy or which relates to a matter, the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the state or friendly relation with a foreign state – he shall be punishable with the imprisonment as set out in the said provision.

33. Section 3(1) opens with the words “*If any person for any purpose prejudicial to the safety or interest of the State*”. Section 3(2), in effect, provides that if it appears from the circumstance of the case, or the conduct of the accused, or his known character as proved, that the making/obtainment of secret documents is not valid, it shall be presumed that the obtainment of the document was for a purpose prejudicial to the safety or interest of the State. Thus, the law raises a statutory presumption against the accused – that he has obtained the document for a purpose prejudicial to the safety or interest of the State, if it is established from his conduct that he has, *inter alia*, obtained the secret documents, without lawful authority. It was for the appellant to rebut the statutory presumption, which he has miserably failed to do.

34. Consequently, in the light of the above discussion, this Court finds that the appellant is guilty of the offences under Section 3 (1)(c) read with Section 9 of the Official Secrets Act, 1923.

35. A person who is vested with responsibility and authority to function in an office which, on day to day basis, deals with the matters of defence of the country discharges functions involving trust of the nation. I find the conduct of the appellant was unpatriotic towards the nation. It is unfortunate that such a person worked in the office that was in-charge of national security. In this view, I find that the learned ASJ has taken a rather lenient view, by sentencing the appellant for the period already undergone i.e. 7 years and 8 months for the offences under Sections 3(1)(c) and 9 of the Act, although the punishment prescribed is to the extent of 14 years. Hence, I do not find any infirmity in the impugned judgment of the learned special

judge. Accordingly, the conviction of the accused is upheld. The order of sentence is also upheld.

36. For all the aforesaid reasons, I find no merit in this appeal and the same is, accordingly, dismissed.

VIPIN SANGHI, J

AUGUST 03, 2015