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

Judgment reserved on: 09.02.2015
% **Judgment delivered on: 26.02.2016**

\+ **CRL.A. 436/2008**

DIWAN CHAND PRUTHI ..... Appellant

Through: Mr. Sandeep Sethi, Senior Advocate along with Mr. Manish Vashisht, Mr.Sameer Vashisht & Ms. Reena Yadav, Advocates.

versus

C.B.I. ..... Respondent

Through: Mr. K. Raghavacharyulu and Ms.Arunima Pal, Advocates.

AND

\+ **CRL.A. 446/2008**

LALA RAM ..... Appellant

Through: Mr. Mukul Gupta, Senior Advocate along with Mr. Vibhor Garg, Mr.Tanmay Mehta & Mr. Sumit Kumar Mishra, Advocates.

versus

C.B.I. ..... Respondent

Through: Mr. K. Raghavacharyulu and Ms.Arunima Pal, Advocates.

AND

\+ **CRL.A. 453/2008**

BHAG CHAND ..... Appellant

Through: Mr. Ashok Mathur, Advocate.

versus

C.B.I. ..... Respondent

Through: Mr. K. Raghavacharyulu and Ms.Arunima Pal, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The present appeals are directed against the common judgment dated 21.04.2008 passed by Sh. Vinod Goel, Special Judge, C.B.I. in C.C. No. 122/99 (RC No. 54 (A)/95-DLI), wherein the three appellants were convicted of the offences under Section 120-B Indian Penal Code ('IPC' for short) read with Section 13(1)(d) and Section 13(2) of the Prevention of Corruption Act, 1988 ('PC Act' for short). Appellant Lala Ram was also convicted under Section 13(1)(d) read with Section 13(2) of the PC Act. Vide order on sentence dated 26.04.2008, Appellant Lala Ram was directed to undergo rigorous imprisonment for a period of three years and to pay fine of Rs. 15,000/- and in default thereof, to undergo simple imprisonment for a period of seven days for offence punishable under Section 120-B IPC. He was further directed to undergo rigorous imprisonment for a period of three years and to pay fine of Rs. 15,000/- and in default thereof, to undergo

simple imprisonment for a period of seven days, for offence punishable under Section 13(2) of the Act. Both the sentences were directed to run concurrently for Appellant Lala Ram.

2. Appellant Diwan Chand Pruthi was sentenced to three years rigorous imprisonment for the offence punishable under Section 120-B IPC with a fine of Rs. 15,000/- and in default of payment of fine, to undergo simple imprisonment for seven days.

3. Appellant Bhag Chand was sentenced to rigorous imprisonment for one year for the offence punishable under Section 120-B IPC with a fine of Rs. 5,000/- and in default of payment of fine, to undergo simple imprisonment for seven days.

4. The appellant Diwan Chand Pruthi is the Chairman, Cepham Organics; appellant Lala Ram is a regular mazdoor in MTNL, MDF Kidwai Bhawan, and appellant Bhag Chand is Office Assistant of Cepham Organics.

5. The charge-sheet in the present case arose out of FIR no. RC No. 54 (A)/95-DLI (Ex. PW4/G), registered on basis of a written complaint dated 30.06.1995 by Sh. Ved Prakash, Inspector, CBI, ACB-I, New Delhi (Ex. PW4/H).

6. It was alleged that appellant Lala Ram in 1994 traced a spare telephone line with STD/ISD facility in the MDF Room, and entered into a criminal conspiracy with appellant Diwan Chand and appellant Bhag Chand, by providing them an illegal telephone connection with ISD/STD facility. In furtherance of this conspiracy, the said spare telephone number 3716165,

with STD/ISD facility, was diverted by appellant Lala Ram, on the disconnected line of telephone number 3713201 of Cepham Organics. In return, a payment of Rs. 25,000/- per month in two equal installments of Rs.12,500/- on 10th and 25th day of every month was made to appellant Lala Ram.

7. It is the case of the prosecution that – on 30.06.1995 a surprise inspection was conducted by Sh. Ved Prakash, Inspector, CBI jointly with MTNL Vigilance staff. Two separate teams, simultaneously, conducted an inspection at the office of M/s Cepham Organics Pvt. Ltd. at Connaught Place and Kidwai Bhawan, MTNL. It is alleged that at the time of the raid, a telephone call was allegedly made by appellant Lala Ram from MDF, Kidwai Bhawan Exchange, which was received by Shobha Dutta (PW16) – a member of the raiding team. Appellant Lala Ram allegedly left a telephonic message for appellant Bhag Chand to disconnect the telephone line of number 3716165. The said telephone number 3716165 was misused till the day of surprise check i.e. 30.06.1995. Due to the aforesaid conspiracy, a wrongful loss of Rs. 24,92,695/- was caused to MNTL, and wrongful gain was made by the appellants and the Cepham Organics. In short, the allegation against the three appellants in the charge-sheet was that in furtherance of a criminal conspiracy, Appellant Lala Ram diverted telephone number 3716165 with STD/ISD facility to the disconnected telephone number 3713201, installed at M-134, Connaught Place – office premises of Cepham Organics Ltd, for a monthly payment of Rs. 25,000/- made by Appellant Diwan Chand and Bhag Chand.

8. Following further investigation, a charge-sheet was filed alleging that the accused persons had committed offences punishable under Sections 120-B r/w 420 & 201 IPC and Sections 13(2) r/w 13 (1)(d) PC Act and Sections 25 and 27 of Telegraph Act. The charge-sheet was filed against 5 accused persons. The competent authority accorded the sanction vide Ex. PW-2/A dated 29.04.1997 for prosecution of Appellant Lala Ram – a public servant working as a regular mazdoor at MTNL.

9. On 22.09.1997, the 5 accused persons were summoned by the Trial Court. Thereafter, the Trial Court vide order dated 25.02.2000 discharged accused no. 5 Samir Pruthi of the charges, and the Court framed charges against the remaining four accused persons – Appellant Diwan Chand Pruthi, Appellant Lala Ram, Appellant Bhag Chand and Kapil C. Bhasin. The accused persons pleaded not guilty, and claimed for trial on 23.03.2000. The accused no. 4, Kapil C. Bhasin, was discharged by this Court vide order dated 10.10.2002.

10. The following witnesses were examined by the prosecution to establish its case:

i. PW-1: Sh. S.L. Mukhi, Principal Scientific Officer, CFSL, New Delhi

ii. PW-2: Sh. D.P. Singh, Sub-Divisional Engineer (Admin.) Office of Telecommunication, Chief General Manager, Kidwai Bhawan, New Delhi

iii. PW-3: Sh. B.S. Rawat, Mining Foreman, DSIDC (Independent Witness)

iv. PW-4: Sh. R.S. Tokas, Inspector, CISF, RAPS, Kota (Rajasthan)

v. PW-5: Sh. C.S. Rajwar, UDC, DGS&D, Parliament Street, New Delhi (Independent Witness)

vi. PW-6: Sh. Azad Singh, Inspector, CBI, ACB, New Delhi

vii. PW-7: Sh. Pratap Singh Rawat, Security Officer, SPG (Independent Witness)

viii. PW-8: Sh. Gajendra Sharma, Mining Foreman, DSIDC (Independent Witness)

ix. PW-9: Sh. K.K. Nayyar, Assistant Vigilance Officer, MTNL

x. PW-10: Sh. S.C. Duggal, Sub Divisional Engineer, MTNL

xi. PW-11: Sh. D.K. Sharma, SDE, Office of GM (West-I), MTNL

xii. PW-12: Smt. Shashi Bajaj, employee of M/s. Cepham Organics Ltd.

xiii. PW-13: Sh. Krishan Kumar, AGM (Planning), MTNL

xiv. PW-14: Smt. Anuradha Diwan, employee of M/s. Cepham Organics Ltd.

xv. PW-15: Ms. Rita Chopra, employee of Cepham Organics Ltd.

xvi. PW-16: Ms. Shobha Dutta, Inspector, CBI

xvii. PW-17: Sh. S.R. Singh, Inspector, CBI

xviii. PW-18: Sh. Devdutt Bansiwal, SDE, MTNL

xix. PW-19: Sh. Rajinder Kumar, SDO, Telephone

xx. PW-20: Sh. Ashok Kumar, Jt. Administrator(Technical), USO Fund, Dot, New Delhi

xxi. PW-21: Sh. O.P. Midha, SDE, MTNL

xxii. PW-22: Sh. R.S. Yadav, JTO, MTNL

xxiii. PW-23: Sh. J.C. Sharma, AG-II, PA to DM, FCI

xxiv. PW-24: Sh. S.L. Khurana, AGM (Planning), Office of GM(Centre), CGO Complex, New Delhi

xxv. PW-25: Sh. Subhash Chand Sharma, GM (Marketing), Nector Life Science Ltd. Bombay

xxvi. PW-26: Sh. Tara Shah Sishodia, Sr. Telephone Operator

xxvii. PW-27: Sh. M.L. Kochhar, Divisional Engineer, MTNL

xxviii. PW-28: Sh. Jagpal Singh Dhaka, senior TOA, MTNL

xxix. PW-29: Sh. R.P. Pathak, Telephone Operator, Telephone Exchange, Pitampura

xxx. PW-30: Sh. R.V.S. Lohmar, Inspector, CBI (IO)

11. The accused made their statements under Section 313 Cr.P.C. when the entire case of the prosecution was put to them, including all the incriminating evidence led by the prosecution. The accused No. 1 Lala Ram in his statement under section 313 Cr.P.C. admitted that he was working as

Regular Mazdoor in MTNL during the period from December, 1994 to 30.6.1995. In his statement under section 313 Cr.P.C., the accused No. 2 Diwan Chand Pruthi admitted that during the period December, 1994 to 30.6.1995, he was the Chairman of M/s Cepham Organics Limited. The accused No. 3 Bhag Chand in his statement under section 313 Cr.P.C. admitted that during the period December, 1994 to 30.6.1995 he was working as Office Assistant with M/s Cepham Organics Limited. Accused No. 1 examined one DW Jaswant Singh on 6.9.2005. However, accused No. 2 Diwan Chand Pruthi did not examine any witness though availed several opportunities and he closed his defence evidence on 19.12.2005. As noticed above, all the appellants stand convicted by the Trial Court.

12. Mr. Mukul Gupta, Senior Advocate, advanced submissions for appellant Lala Ram; Mr. Sandeep Sethi, Senior Advocate, for appellant Diwan Chand Pruthi; and Mr. Ashok Mathur for appellant Bhag Chand. While specific arguments have been advanced by learned senior counsels/ counsel in respect of the respective appellants for whom they appear, several arguments advanced by the learned counsels are common. They have been recorded accordingly.

13. Mr. Gupta, for appellant Lala Ram, submits that the appellant is only a mazdoor in MTNL, and at the lowest rung in the hierarchy. He alone was not competent to perform the alleged acts. Appellant Lala Ram is being made a scapegoat as he is the only person from MTNL who was named an accused in the present case.

14. Mr. Gupta further submits that PW-18, Sh. Devdutt Bansiwal, SDE, FRS (retd.), MTNL in his testimony has explained the entire procedure for opening, disconnecting and re-connecting a telephone line, disconnected on account of non-payment of bills. The entire procedure requires involvement of various officials of MTNL at different levels. Therefore, the appellant – only a mazdoor, alone could not have performed the alleged acts. There is no role of a regular mazdoor in the entire procedure of re-connecting a telephone line. He further submits that PW-18 in his cross-examination stated that a telephone line, which has been made non-functional on account of permanent disconnection, can only be made operational from the Switch Room, and not from MDF, and appellant Lala Ram was working as a regular mazdoor at MDF.

15. Mr. Gupta submits that PW-21 O.P. Midha deposed regarding the procedure for installing STD/ISD facility on a telephone connection. PW-21 stated that "*After applying for STD/ISD facility on a new connection, verification of premises is done by Field staff….. It is correct that installation work is done in the premises by the Line man*". He submits that from the statement of PW-21, no role is ascribed to a mazdoor for installing STD/ISD facility. Further, PW-2, Sh. D.P. Singh deposed that "*The duties of regular mazdoor are quite wide (sic) such as bringing files, assisting the technical persons, and he does all the work assigned to him by his superior officer*". Mr. Gupta submits PW-2 in his testimony stated the role/duty of a regular mazdoor, the duties did not include installing of new STD/ISD connection, or re-connecting a telephone line. Thus, appellant Lala Ram

could not have performed the alleged acts – being beyond the scope of his duty.

16. Mr. Gupta further submits that PW-24 Sh. S.L. Khurana stated that the jumper of telephone line of number 3716165 was opened on 13.03.1990. The conspiracy in the present case is alleged to have started in December, 1994. He submits that there is no evidence to establish as to whom the said telephone number was allotted to, or what the status of the said telephone number was between 1990 and December, 1994. There is no evidence on record to establish that the said telephone number was vacant or unallocated before December, 1994, for the conspiracy to be hatched.

17. Learned counsels appearing for the appellants submit that the prosecution alleged that appellant Lala Ram made a call for appellant Bhag Chand on the day of the surprise check to disconnect the telephone line of number 3716165. The alleged call was answered by PW-16, Shobha Dutta. They submit that there is no evidence on record to establish that appellant Lala Ram made the alleged call. They submit that merely because the person who made the call identified himself as Lala Ram, it does not establish that the appellant himself made the said call. Any person could have impersonated the appellant Lala Ram, and made the said call. There is no recording of the conversation, nor a voice sample was collected and compared. They submit that in absence of any evidence to establish that the appellant Lala Ram made the call, it cannot be held that he made the call, only on the basis of statement of PW-16 and, thus, the Trial Court erred in holding that the appellant Lala Ram made the call.

18. They submit that PW-16, Shobha Dutta, who answered the alleged call, allegedly made by appellant Lala Ram, did not identify the voice of the appellant as she heard the voice for the first time on the day of the surprise check i.e. 30.06.1995. PW-16 has stated that "*It is correct that prior to the said incident I have never heard the voice of Lala Ram*". Thus, as PW-16 had not heard the voice of appellant Lala Ram earlier, she could not identify it and relied only on the fact that the person on other side of the call claimed himself to be Lala Ram. They submit that CBI has failed to prove that appellant Lala Ram made the alleged call for appellant Bhag Chand, which was answered by PW-16, Shobha Dutta. The prosecution has failed to corroborate the evidence of PW-16 that the call was made by Lala Ram. They further submit that CBI made no investigations to find out the number from which the call was made, and no recording of the call was done.

19. Ld. Counsels appearing for the appellants further submit that PW-3 Sh. BS Rawat deposed that "*There a physical verification was conducted by the capable staff. All the staff present was physically verified in the office. At that time, Lala Ram and some others had gone for taking (sic) tea*". Further, PW-17 Sh. S.R. Singh and PW-22 Sh. R.S. Yadav deposed to the same effect, that appellant Lala Ram had taken a tea break at the time the alleged call was made. Further, DW-1 Sh. Jaswant Singh, who was also a daily wage worker in MTNL, deposed in his examination-in-chief to the following effect:

> "*On 30.6.95 at about 11.30 am, I had gone to bring tea from the Canteen situated on the 5th floor where Lala Ram also met me. Thereafter we had tea there and we* remained *for about 45 minutes in the Canteen. There is no telephone in the canteen.*

Lala Ram did not make any telephone call in my presence during that period."

20. They submit that according to PW-3, 17, 22 and DW-1, the appellant Lala Ram had gone for a tea break at the time the alleged call was made, thus, it is impossible for him to have made the call from MDF when he was in the canteen having tea. Reliance has been placed on ***Sangili Vs. State of Tamil Nadu***, (2014) 10 SCC 264 in support of this submission.

21. Learned counsels for appellants submit that the Joint Surprise Check memo (Ex. PW4/A) states that PW-16 Shobha Dutta received the telephone call on the number 3326090. Whereas, PW-16 in her examination-in-chief dated 30.01.2004 has not stated the telephone number of the phone on which she received the call. They submit that the telephone number on which the call was received has not been proved in evidence. This casts a shadow of doubt, whether the alleged call was, in fact, made or not.

22. Learned counsels for appellants submit that PW-17, Sh. S.R. Singh, deposed that PW-9 Sh. K.K. Nayyar called to inform him that appellant Lala Ram of MDF section made a call for appellant Bhag Chand. Further, PW-9 Sh. K.K. Nayyar has very categorically deposed that "*I did not use any of those telephones lying there for any purposes including the disconnected one*". Thus, the statements of the two prosecution witnesses are contradictory.

23. Mr. Sethi, for appellant Diwan Chand Pruthi submits that PW-9, K.K. Nayyar, had stated that "*A video reel was made by CBI on the date of raid*". However, CBI has not produced this video recording on record. Mr. Sethi

submits that the video recording could have established that PW-16 Shobha Dutta received the alleged call, but CBI has withheld the same. Further, CBI has not been able to explain and establish what happened at the site during the surprise check. Thus, adverse inference has to be drawn against the CBI/prosecution.

24. Learned counsels for the appellants submit that none of the prosecution witnesses have deposed that appellant Diwan Chand Pruthi was making a monthly payment of Rs 25,000/- to appellant Lala Ram. He submits that for the offence to be brought under the ambit of Section 13 of PC Act, accused Lala Ram should have received an 'illegal' gratification. However, there was no recovery of any illegal gratification from the appellant Lala Ram or from the house of the appellant Lala Ram, nor was any evidence brought on record to prove that illegal gratification had been received by him. They further submit that the prosecution had the burden of proof to establish there was demand and acceptance of Rs. 25,000/- as illegal gratification. However, the prosecution has failed to discharge the said burden, as there is no evidence to prove that the appellant Lala Ram accepted the illegal gratification, or that appellant Bhag Chand gave the same. Reliance is placed on ***C Sukumaran Vs State of Kerala***, (2015) 11 SCC 314 in support of this submission.

25. Further, Learned counsels for the appellants submit that the CBI had charged accused no. 5. Mr. Samir Pruthi and accused no. 4, Mr. Kapil Bhasin. They were charged for destruction of receipts/IOU's relating to the alleged illegal gratification of Rs. 25,000/-. The Trial Court discharged Mr. Samir Pruthi as accused vide order dated 25.02.2000, while this Court

discharged Mr. Kapil Bhasin vide order dated 10.10.2002. They submit that since the Courts have discharged both the accused, there is no evidence to prove the payment of illegal gratification to the appellant Lala Ram.

26. Learned counsel for the appellants submit that appellant Bhag Chand in his disclosure statement (Ex. PW-4/D) has disclosed that after receiving the money he would sign on a slip "*recd and signed*". He further stated that he could lead the CBI team for recovery of the slips. However, these slips were never recovered by the CBI team. As there was no recovery pursuant to the disclosure statement of appellant Bhag Chand, Section 27 of Indian Evidence Act, 1872 (Evidence Act) cannot be invoked by the prosecution. They further submit that the only incriminating evidence on record against appellant Lala Ram is the disclosure statement of appellant Bhag Chand (Ex. PW-4/D), which has been rightly held to be inadmissible evidence by the Trial Court, on grounds of being barred in accordance with Sections 25 and 26 of Evidence Act. Thus, the same cannot be used against the accused persons.

27. Learned counsels for the appellants submit that the appellant Lala Ram made a disclosure statement before the CBI officials, wherein he stated that the telephone line had been diverted from number 3716165 to 3713201, but the Trial Court held that the said disclosure statement is inadmissible evidence, and thus, cannot be relied upon. He submits that other than the disclosure statement no evidence was produced to establish the diversion of telephone number 3716165 to 3713201. They referred to the statement of PW-24, Sh. RS Yadav, wherein he stated that "*the vertical record only tells the particular pillar to which pair 38Q/1 was going and that pillar feeds the*

M block of Connaught Place and it does specify the particular building or office where the pair is connected". Even PW-24 only states that the connection was in M block Connaught Place. He does not specify the building. Thus, the diversion is highly doubtful.

28. Mr. Sethi submits that appellant Diwan Chand Pruthi was made an accused solely on the basis of the disclosure statement of appellant Bhag Chand (Ex. PW4/D). The disclosure statement of appellant Bhag Chand states that the appellant Diwan Chand Pruthi hatched a conspiracy in order to get the STD/ISD line. Mr. Sethi submits that since the disclosure statement has been held to be inadmissible evidence, there is no evidence against appellant Diwan Chand Pruthi.

29. Learned counsels for the appellants further submit that the prosecution alleged that a conspiracy was hatched between the three appellants/accused persons. The prosecution has not been able to produce any evidence on record to show that there was meeting of minds and a conspiracy hatched, and that the alleged acts were in furtherance of a common intention. They submit that the entire case of the prosecution is based on circumstantial evidence, and there is no direct evidence to bring home the guilt of the three accused/appellants. They rely on ***K.R. Purushottam Vs. State of Kerala***, (2005) 12 SCC 631, in support of this submission.

30. Further, reliance is placed on ***State Vs. Nalini***, (1999) 5 SCC 253, for the same purpose. They submit that in ***Nalini*** (supra), the Supreme Court held that Section 10 of Evidence Act is an exception to Section 30 of

Evidence Act. Section 10 is based on the legal principle that a statement of co-conspirator is only binding on the other co-conspirators as long as it is made during subsistence of common intention. There can be two objections to the admissibility of evidence under Section 10, and they are (1) the conspirator whose evidence is sought to be admitted against other co-conspirator is not confronted, or cross-examined in Court by the co-conspirator, and (2) prosecution merely proves the existence of reasonable ground of the conspiracy. The Supreme Court further held that the prosecution has to produce independent witnesses to establish the existence of a conspiracy and to corroborate the statement of the co-conspirator. They submit that, in the present case, the prosecution has not satisfied both the objections, as the appellant Lala Ram was not cross-examined, and there is no corroboration of the alleged telephone call made by appellant Lala Ram.

31. Mr. Mathur submits that the Trial Court has convicted appellant Bhag Chand on basis of conduct of appellant Lala Ram. The Trial Court relied upon the alleged phone call by the appellant Lala Ram to the appellant Bhag Chand and, thus, held the appellant Bhag Chand as a co-conspirator under Section 10 of Evidence Act, holding him guilty under Section 120-B of IPC. He further submits that the prosecution has failed to prove the alleged call made by Lala Ram for Bhag Chand. In absence of evidence establishing the alleged call, the appellant Bhag Chand cannot be convicted. Furthermore, no witness was produced by prosecution to prove the alleged call. Thus, the sole basis for conviction of appellant Bhag Chand has not been established.

32. Mr. Sethi, appearing for the accused Diwan Chand Pruthi, submits that according to prosecution witnesses PW-16 Shobha Dutta, she had made

some test calls to USA and Latur, Maharashtra on the day of the surprise check. However, there is no mention of these test calls made by Shobha Dutta in the Joint Surprise Check memo (Ex. PW4/A), nor does PW-16 mention about these tests calls in her examination-in-chief. If PW-16 had actually made the test calls, the same would have been reflected, at least, in the Joint Surprise Check memo (Ex. PW4/A), or the statement of PW-16. Further, he submits that the CBI has failed to prove, who the subscribers/allottees of the phone numbers in USA and Latur, Maharashtra were. There is no evidence on record to prove that the calls were actually made from phone number 3716165.

33. PW-7 Pratap Singh Rawat, an independent witness, stated that "*I do not know the telephone number to which SI Shobha Dutta dialed and phone at Latur, Maharashtra nor the said number was incorporated in the Inspection report in my presence and to my knowledge. Same is my answer about the telephone to USA which was attended by answering machine, even that was not incorporated in the inspection report*". Mr. Sethi submits that the above deposition of PW-7 Pratap Singh Rawat raises a doubt on the creditability of Joint Surprise Check memo (Ex. PW4/A), and the test calls made by CBI officials.

34. Mr. Sethi further submits that it could not be proved as to who made the call from Cepham Organics office in Connaught Place to Kidwai Bhawan to confirm the telephone number. PW-7 Pratap Singh Rawat has stated in his examination-in-chief that he was made to talk to someone from the EPBAX board of company to confirm the telephone number. However, PW-7 in his cross-examination stated that "*None of the calls which were*

made by me personally". He submits that it has not been established on the record, on which number the said test call was made from the EPBAX board of the company. Further, PW-20 Ashok Kumar stated that he could not tell where the said telephone was installed, nor could he tell who made the calls from the said telephone.

35. Mr. Sethi submits that the Ld. Trial Court has found the three appellants to be involved in a criminal conspiracy on the basis of statement of PW-14, Smt. Anuradha Diwan. However, the statement of PW-14 was not put to the appellant Diwan Chand Pruthi while his statement under section 313 Cr. PC was recorded. Further, the telephone bills of MTNL (Ex. PW9/F1 to F4) – another piece of incriminating evidence, were not put to the three accused persons.

36. Mr. Sethi finally submits that the independent witnesses who accompanied the CBI team to Cepham Office did not support its case. PW-5, C.S. Rajwar, deposed about the arrest of Lala Ram, and his presence in the Cepham Office, Connaught Place. Further, another independent witness PW-8 Gajendra Sharma deposed that "*To my knowledge no telephone was received in the Kidwai Bhawan Exchange from anywhere*". PW-8 was later declared a hostile witness. He further submits that the prosecution has failed to prove the entire chain of events with the help of circumstantial evidence. Thus, the appellants should to be acquitted.

37. The appellants have also placed reliance on the following decisions:

i. ***State of Maharshtra Vs. Dnyaneshwar Laxman Rao Wankhede***, 2009 (15) SCC 200;

ii. ***Abdul Sufan Vs. The State of Tripura***, 2010 CriLJ 805;

iii. ***Dr. Mahender Singh Dahiya Vs. State (CBI)***, 2003 CriLJ 1908;

iv. ***Sharad Birchchand Sarda Vs. State of Maharashtra***, 1984 (4) SCC 116;

v. ***Haresh Mohandas Rajput Vs. State of Maharashtra***, 2011 (12) SCC 56;

vi. ***Khilli Ram Vs. State of Rajasthan***, 1985 (1) SCC 28;

vii. ***Sukhjit Singh Vs. State of Punjab***, 2014 (10) SCC 270.

viii. ***Shabban Vs. CBI***, (2014) 146 DRJ 653.

38. Ld. Counsel for the respondent/CBI fully supports the impugned judgment.

39. Ld. Counsel submits that one search party went to Kidwai Bhawan, Janpath, and another search party went to Cepham Office in Connaught Place. A Surprise Check memo (Ex. PW-3/A) was prepared at Kidwai Bhawan itself. He submits that PW-22 Shri. R.S. Yadav stated in his cross-examination dated 16.08.2004, that the search party reached MDF, Kidwai Bhawan at around 11:00 AM or 11:30 AM after leaving from the CBI Office. He further submits that MDF (Main Distribution Frame) is on the 9th Floor of Kidwai Bhawan, and the canteen is on the 5th Floor of the same building.

40. Ld. Counsel further submits that on the day of the surprise check a Surprise Check memo was prepared at Cepham Office vide Ex. PW-4/A. According to Surprise Check memo (Ex. PW-4/A), one telephone diary and three visiting card albums were taken into possession from the table of the PA to the Chairman of the firm. These contained ISD/STD telephone numbers. The telephone instrument of telephone number 3716165 was also taken into possession. He submits that the call details of the aforesaid number establish that calls were made to numbers mentioned in the dairy of the Chairman of the firm.

41. Ld. Counsel submits that PW-9 K.K. Nayyar has supported the case of the prosecution in his examination-in-chief, and cross-examination. His statement was consistent. He submits that PW-9 deposed that "*While Smt. Shobha Dutta, SI of CBI was sitting on the EPBAX board of the company, one telephone call from Lala Ram from Exchange of Kidwai Bhawan was received informing that CBI had raided the Kidwai Bhawan Exchange, MDF room and told that line of telephone no. 3716165 should be disconnected. This message of Lala Ram was for Mr. Bhagchand of Cepham Organics*". He submits that PW-9 deposed that PW-16 Shobha Dutta made test calls to confirm the availability of STD/ISD on the telephone line.

42. Ld. Counsel further points to the statement of PW-21 O.P. Midha. PW-21 corroborated the statement of PW-9 K.K. Nayyar that – PW-16 made test calls to confirm the availability of ISD/STD facility on the telephone line. PW-21 also stated that appellant Lala Ram made a call for appellant Bhag Chand informing him about the raid by CBI at Kidwai Bhawan, and to disconnect the telephone line of number 3716165. He submits that PW-21

admitted his signatures on the Joint Surprise Check memo (Ex. PW-4/A), and admitted that telephone instruments and visiting cards were seized in his presence. He submits that PW-21 supported the case of prosecution fully, and corroborated the other evidence on record.

43. Ld. Counsel submits that PW-12 Shashi Bajaj was working as an Office Assistant with Cepham Organics. He submits that PW-12 turned hostile, and was cross-examined. He stated that "*it might be possible that I had given an envelope containing some amount which I handed over to Shri Bhag Chand. But I did not know the amount which I handed over to Bhag Chand. I also did not know the amount as mentioned in my statement. It is correct that after some days again Bhag Chand came to me. And gave me a slip and I handed over an envelope containing money to Shri Bhag Chand but I do not know the amount*". He submits that even thought the witness turned hostile, he stated that money was given to Bhag Chand.

44. Ld. Counsel submits that PW-15 Rita Chopra was the cashier in Cepham Organics in the year 1995. PW-15 in her examination-in-chief stated and admitted that there were three entries in day book (Ex. PW-15/A). The entries were dated 12.12.1994, 10.01.1995 and 25.01.1995 and each of these entries was for an amount of Rs.12,500. PW-15 deposed one of the entries was in the name of Chairman of the company, and the other two entries in the name of one Sanjiv. He submits that the entries of a sum of Rs.12,500, on 10th and 25th of January, establish that an illegal gratification of an amount of Rs. 25,000 per month was given. The amount, on one occasion, was withdrawn in the name of the Chairman of the company.

45. Ld. Counsel submits that the accused no.2/Diwan Chand Pruthi made his statement under Section 313 Cr. PC on 25.07.2005. Later, on examination of PW-18 Shri Dev Dutt, Diwan Chand Pruthi made another statement under Section 313 on 06.09.2005. In the latter statement, he gave a detailed reply to questions 2, 3 and 4. He stated that "*The material collected in the form of diary and visiting card loses its significance because the CBI has made false case against me*". He submits that the accused no.2 admitted that the dairy and the visiting cards were recovered from his office on the day of the surprise check.

46. Ld. Counsel submits that appellant Bhag Chand in his statement under Section 313 Cr PC stated that "*The false case has been framed against me. I was not beneficiary in any manner nor I had conspired with anybody to commit the offence in questions*". He submits that the appellant in this statement did not say that the said offence has not been committed; he only states that he was not a part of the said offence, implying that the offence was committed. He further points to the statement of appellant Lala Ram, wherein he stated that "*I have been falsely implicated by the senior MTNL officials in order to save their own skin*".

47. Ld. Counsel submits that PW-16 Shobha Dutta supported the case of the prosecution in her examination-in-chief dated 30.01.2004. He submits that she deposed that she received a call from one Lala Ram on the day of the surprise check in the Cepham Office. The said call was for Bhag Chand informing him about the raid at Kidwai Bhawan, and to disconnect the telephone line with the STD/ISD facility. She further deposed that the person calling specified that he was calling from MDF, Kidwai Bhawan. She

further deposed that "*Bhag Chand was interrogated who confirm this fact of diverting line of telephone at the premises of Cepham Organics to which he confirmed that it was correct that an illegal diversion has been done in the premises of Cepham Organics by Lala Ram... ... ...*".

48. In rejoinder, the appellants have placed reliance on:

i. ***Nilesh Dinkar Paradkar Vs. State of Maharashtra***, 2011 (4) SCC 143;

ii. ***Raj Kumar Singh Alias Raju Alias Batya Vs. State of Rajasthan***, 2013 (5) SCC 722.

49. I have heard the submissions of the appellants and the respondent, and perused the evidence on record, the impugned judgment and the cases relied upon. The following questions need to be answered in the present case:-

(a) Whether telephone number 3716165 was diverted to disconnected telephone no.3713201 installed in the premises No. M134, CP, New Delhi.

(b) If so, whether the same was transferred in pursuant to a conspiracy? If so was the object of the conspiracy achieved or was it continuing at the time the raid was carried out by CBI team?

(c) Whether appellant DC Pruthi was involved in the conspiracy?

(d) Whether Bhag Chand was involved in the conspiracy?

(e) Whether Lala Ram was involved in the conspiracy?

50. I shall now deal with the first question drawn up earlier, i.e., ***Whether telephone number 3716165 was diverted to disconnected telephone no.3713201 installed in the premises No. M134, CP, New Delhi.*** Inspector Sh. Ved Prakash vide complaint Ex. PW-4/H dated 30.06.1995 informed the Superintendent of Police, CBI that a reliable information was received that a telephone line of number 3716165 had been diverted in an unauthorized manner to the premises of Cepham Organics, 34 M-Block, Connaught Place. The number was diverted with the connivance of three appellants herein, resulting into the wrongful loss to MTNL and wrongful gain to Cepham Organics. Further, the complaint states that a joint surprise check was conducted at the premises of Cepham Organics and MDF Room, Kidwai Bhawan, MTNL simultaneously. It was discovered that a line was extended to the premises of Cepham Organics on the disconnected number 3713201 and, in furtherance of the same, a payment of Rs. 25,000 per month was made by appellant Diwan Chand Pruthi through appellant Bhag Chand to appellant Lala Ram. Consequently, FIR vide Ex. PW-4/G, was registered at PS CBI ACB-1, New Delhi dated 30.06.1995.

51. On 30.06.1995, simultaneously, two surprise checks were conducted. One at Kidwai Bhawan, MTNL and the other at Cepham Organics Office at Connaught Place. A Joint Surprise Check Memo vide Ex. PW4/A was prepared at Cepham Organics Office by Inspector Ved Prakash, and a Joint Surprise Check memo vide Ex. PW-3/A was prepared at Kidwai Bhawan, MTNL. Ex. PW4/A was prepared in the presence of all the officers/ persons who were present at the office during the time of the surprise check, the

same has been signed by them. The said document narrates the entire raid proceedings as they took place.

52. According to the Joint Surprise Check memo (Ex. PW-4/A), Inspector Ved Prakash, alongwith the team reached the Cepham Organics office, Connaught Place at 11:30 AM on 30.06.1995. The inspection concluded at 2:30 PM. The team reached the cabin of Mr. Bhasin, where Mr. Chaturvedi was found talking on a telephone, which he disconnected on the arrival of the CBI officials. Thereafter, a call was made to Exchange Switch Room, Kidwai Bhawan to confirm the telephone number; the number was confirmed to be 3716165. Further, the said telephone number was dialed from the EPBAX board by PW-7 Sh. P.S. Rawat to confirm the number. Once the number was confirmed to be 3716165, test calls were made from it to Latur, Maharashtra and USA to check the availability of STD/ISD facility. The test call was made to telephone number 02385-52952 to check the availability of STD facility, the call matured and, thus, STD facility was confirmed. Calls were made to the telephone numbers 0013-137470940 and 00441819091530 in the USA to check the ISD facility. ISD facility was also confirmed as a pre-recorded message of the answering machine was received. Further, Ex. PW-4/A records that the team deployed at Kidwai Bhawan found, and confirmed, that the line of telephone number 3716165 was extended to the office premises of Cepham Organics Company in Connaught Place, and the same was directed to two-three instruments. During the proceedings, a call was received by PW-16 on telephone number 3326090. PW-16 informed that the said call was made by appellant Lala Ram, for appellant Bhag Chand, instructing him to disconnect the line of

telephone number 3716165. The Joint Surprise Check memo Ex. PW-4/A further states that appellant Bhag Chand disclosed that STD/ISD facility on the disconnected line was provided by appellant Lala Ram, for which appellant Diwan Chand Pruthi paid two installments of Rs. 12,500/- each, per month. Ex. PW-4/A states that a telephone diary and three visiting card albums were taken into possession alongwith the telephone instruments. PW-4, PW-5, PW-9, PW-10 have confirmed their signatures on the Joint Surprise Check memo Ex. PW4/A.

53. Sh. K.K. Nayyar, PW-9, deposed that on 30.06.1995 he was directed by Sh. DS Dabas, Vigilance Officer MTNL to attend CBI Office. Upon reaching the CBI office, he was briefed that telephone line of one number was being misused by diverting to another telephone line. The team led by Sh. Ved Prakash went to the Cepham Organics Office, Connaught Place. On reaching the office, one Mr. Bhasin was talking on the telephone no. 3716165. Test calls were made to USA and Latur, Maharashtra from the telephone number to confirm the availability of STD/ISD facility. The telephone call to Latur, Maharashtra was made by a lady officer of CBI. While, PW-16 Shobha Dutta was sitting on the EPBAX board of the company, a telephone call was received by her from Lala Ram from the Telephone Exchange at Kidwai Bhawan. Lala Ram left a message for Bhag Chand to disconnect the telephone line of number 3716165, and informed him about the raid at Kidwai Bhawan. PW-9 was present near PW-16 when the said call was made. He stated that PW-16 Shobha Dutta made the test calls. He further stated that the telephone number 3713201 was disconnected

for non-payment of dues. He proved his signatures on the Joint Surprise Check memo Ex. PW4/A bearing at point A.

54. PW-10 SC Duggal, Sub-Divisional Engineer, MTNL, deposed that he was directed to attend the CBI Office and to assist Inspector Ved Prakash on the day of the surprise check. He deposed that the team reached the Cepham office at 11:30AM and saw that Mr. Bhasin was talking on the phone, and on seeing the officer, he kept the phone down. A call was made to Kidwai Bhawan Exchange Switch room to confirm the telephone number. It was confirmed to be 3716165, and was working on two parallel lines. He deposed that some telephone calls were made by CBI officials and a lady officer from the said number. Further, a call was made by appellant Lala Ram for appellant Bhag Chand from the Telephone Exchange, and a message was left for Bhag Chand to disconnect the telephone line. Further, he proved his signatures on the Joint Surprise Check Memo Ex. PW4/A.

55. Sh. O.P. Midha (PW-21) was another MTNL Officer who was present during the surprise check proceedings. PW-21 deposed that two teams were constituted by the CBI, and he was a part of the team led by Sh. Ved Prakash; the team went to Cepham Organics office in Connaught Place. On reaching the Cepham office, it was found that a person was making a call from the cabin of Mr. Bhasin. Thereafter, a call was made to confirm the said telephone number, and the number was confirmed to be 3716165. He stated that thereafter calls were made to confirm the availability of STD/ISD facility on the said telephone number. Further, PW-16 received a call from appellant Lala Ram (from MDF), for appellant Bhag Chand, informing him about the raid at Kidwai Bhawan and to disconnect the unauthorized

telephone line with STD/ISD facility. He proved Ex. PW4/A which bore his signature. Further, in his cross-examination, he explained the procedure for installing of a STD/ISD connection. He stated that line men do the installation work. He stated that the verification is done by Field Staff, after which the SD (Record) orders for the opening of the telephone line. Further, a regular mazdoor has no role in the entire process.

56. PW-5 Sh. C.S. Rajwar was an independent witness in the CBI team at Cepham Organics office. He deposed in his examination-in-chief that one lady SI was deputed at the EPBAX Board, she received one call from Kidwai Bhawan, which was made by appellant Lala Ram, for appellant Bhag Chand. Lala Ram left a message informing about the raid, and to disconnect the telephone line with ISD/STD facility. He also deposed that CBI officials went to Kidwai Bhawan, and arrested Lala Ram. He identified his signatures on Ex. PW4/A. The other independent witness PW-7 Sh. Pratap Singh Rawat stated that on 30.06.1995, he alongwith the CBI team went to the Cepham Organics office. He stated that the telephone number was confirmed; test calls were made; a call from Lala Ram was received by PW-16 Shobha Dutta; and confirmed his signature on Joint Surprise Check memo (Ex. PW4/A).

57. Sh. R.S. Tokas (PW-4) stated that he accompanied the CBI team to the Cepham Organics office at Connaught Place. He stated that upon reaching there, calls was made from telephone number 3716165 to confirm the number; once the number was confirmed, test calls were made to USA and Latur, Maharashtra to confirm the facility of ISD/STD on the said telephone number. He further deposed that a telephone call was received by

Lady Officer, Shobha Dutta. The said call was for Bhag Chand, by Lala Ram. He left a message to disconnect the said telephone line. Lala Ram said he was calling from Kidwai Bhawan, where the raid was being conducted by the CBI.

58. PW-16 Shobha Dutta stated that she was posted as Sub-Inspector, ACB, CBI, New Delhi on the day of the surprise check. She joined the surprise check under the leadership of Inspector Ved Prakash and went to the office of Cepham Organics. She stated that "*During the surprise check, I received a call from one person named Lala Ram and asked me whether I am speaking from Cepham Organics Pvt. Ltd. to which I replied in affirmative. He asked me to convey his message to Bhag Chand to disconnect the telephone which was provided by him to the company with ISD/STD facility. I asked as to why the telephone had to be disconnected to which he told that CBI had raided at MDF, Kidwai Bhawan from where he was calling. I informed this fact to Inspr. Ved Parkash*". Further, she stated that Bhag Chand was interrogated who disclosed and confirmed about the illegal diversion of telephone line for two installments of Rs. 12,500 each per month. She admitted her signatures on Joint Surprise Check memo. Further, in her cross-examination, she stated that that test calls were made to USA and Latur, Maharashtra. She stated that "*It is incorrect that neither I was present there nor I made any call*".

59. The prosecution witnesses consist of public servants, police officers and independent witnesses. The Supreme Court in ***Tahir Vs. State (Delhi)***, (1996) 3 SCC 338; ***Girja Prasad (Dead) by LRs Vs. State of Madhya Pradesh***, (2007) 7 SCC 625; and ***Rohtash v. State of Haryana***, (2013) 14

SCC 434, has held that the statement of a Police Officer can be relied upon, and even form the basis of conviction when it is reliable, trustworthy and preferably corroborated by other evidence on record. Thus, the statements of Police officials are admissible evidence, and can be relied upon by the Courts, as they appear to be reliable and corroborated by the independent witnesses. The accused have not claimed in their statements recorded under Section 313 Cr.P.C., that any of these witnesses – including the CBI raiding team members, had any reason to falsely frame them.

60. The abovementioned prosecution witnesses stated the events, as they happened. On 30.06.1995, they were told to attend a meeting at the CBI Office. Upon reaching the CBI office, two teams were formed – one went to Kidwai Bhawan, and the other went to Cepham Organics Office, Connaught Place. The aforesaid witnesses, viz. PW-4, PW-5, PW-7, PW-9, PW-10, PW-16 and PW-21 were a part of the team which went to Cepham Organics Office, Connaught Place. The team was led by Inspector Ved Prakash. Further, upon reaching Cepham Organics Office, they saw that a person was talking on the phone in the cabin of Mr. Bhasin, which he disconnected upon seeing the officials. Thereafter, a call was made to Kidwai Bhawan from the said telephone number 3716165 to confirm the telephone number. The number was confirmed by DET. PW-21 stated that the said telephone number was also dialed from the EPBAX Board in the company by PW-7; the number was confirmed. PW-9, Sh. K.K. Nayyar in his statement stated that the said telephone number was operational in the office of Cepham Organics. PW-10 and PW-9 stated that there were parallel lines of the said number in the two rooms, besides EPBAX Board. PW-9 and PW-10 stated

that Mr. Bhasin was talking on the phone when the CBI team entered the office, whereas according to other witnesses and the Joint Surprise Check memo (Ex. PW-4/A) a person was talking on the phone in the cabin of Mr. Bhasin. The Joint Surprise Check memo (Ex. PW-4/A) names the person as Mr. Chaturvedi. This discrepancy in the statement of the prosecution witnesses appears to be the result of a long time gap between the incident and the recording of the statement of the witness. Moreover, it is not in dispute that the cabin was that of Mr. Bhasin. Therefore, if any of the prosecution witnesses named the person occupying the cabin as Mr. Bhasin, it is not exceptionable. The fact remains that a person was occupying the cabin; was talking on the telephone number 3716165, and; he disconnected the call on seeing the raiding party. Merely because the gentleman was later identified as Mr. Chaturvedi is not destructive of the case of the prosecution, because the raiding party were strangers to the said Shri Chaturvedi. The statements were given by the prosecution witnesses after 8-9 years of the Joint Surprise Check and, thus, minor discrepancies are known to creep in. (See ***State of Rajasthan Vs. Smt. Kalki and Anr.***, (1981) 2 SCC 752)

61. Further, PW-4, PW-5, PW-7, PW-9, PW-10, PW-16 and PW-21 have stated in their testimonies that test calls were made to Latur, Maharashtra and USA to confirm the availability of STD/ISD facility on the said telephone line. They stated that the calls were made by PW-16 Shobha Dutta, who confirmed and corroborated the same. Ex.PW20/A corroborates the statement of PW16 with regard to the making of test calls to Latur, Maharashtra and to USA.

62. The Joint Surprise Check memo (Ex. PW-3/A) stated that the surprise check was conducted at MDF, Kidwai Bhawan, New Delhi (1st Floor) at KBN annex. Further, the physical verification (testing) of the wiring of telephone number 3716165 was conducted by Sh. Devdutt Bansal (PW-18) in presence of Sh. D.K. Sharma (PW-11). Ex. PW-3/A explained that the telephone line was coming from the Switch Room and it terminated on N.E. exchange number 85-0-23, it extended to ET-1603 and further to local pair 38Q/1, which was leading to M-Block in Connaught Place. The cable pairs were found to be exchanged. It further states that a call was received from Sh. K.K. Nayyar (PW-9), who was at Cepham Organics office. PW-9 informed that one Lala Ram had made a call informing that CBI had raided Kidwai Bhawan and also to disconnect the wiring. On inquiry, PW-11 stated that Lala Ram was on duty but was not present in the MDF section, as he had left for a tea break; Lala Ram was found with one Umrao Singh. On questioning, appellant Lala Ram revealed that a telephone number 3716165 was extended to telephone number 3713201, which was earlier functional at Cepham Organics office. Lala Ram stated that the telephone number was extended by him to pair 38Q/1 at MDF. Ex. PW-3/A further stated that appellant Lala Ram gave a demonstration as to how he extended the telephone line. The search started at 11:30 AM and concluded at 2:30 PM. The witnesses present at Kidwai Bhawan were PW-3, 8, 13, 18, 20, 22, 27 and PW-17. They confirmed the Joint Surprise Check memo by identifying their signatures on the same.

63. The statements of the aforesaid prosecution witnesses and the Joint Surprise Check memo (Ex. PW-4/A) help to draw a picture of the events, as

they took place, on the day of the surprise check at Cepham Organics. The statements of these witnesses corroborate Ex. PW-4/A and, thus, establish that a surprise check was conducted at the Cepham Organics office on 30.06.1995, and an unauthorized telephone connection no. 3716165 was found to be connected, live and working with STD/ISD facility.

64. The telephone bills of number 37176165 (Ex. D-32) show the call details for the period between 07.12.1994 to 15.01.1995. Perusal of these bills establishes that the said telephone number was used to make STD/ISD calls. It is also stands established from the Joint Surprise Check memo (Ex. PW-4/A) that a diary and three visiting cards album were seized from the Cepham Organics office. Further, it is noted that some of the numbers dialed from telephone number 3716165 are the numbers mentioned in the diary of appellant Diwan Chand Pruthi, which was seized from his office on the day of the surprise check i.e. 30.06.1995. Further, Ex. D-35 is a document which shows the call details of calls made from telephone number 3716165 between 15.01.1995 to 15.03.1995, which also shows that the same numbers were dialed in this period as well, and STD/ISD facility was being used. Further, Ex. PW-20/A is the Meter Observation Summary for 30.06.1995 i.e. the day of surprise check. On perusal of the same, it is noted that the three telephone numbers mentioned in the Joint Surprise Check memo (Ex. PW-4/A), which the CBI officials called to confirm the STD/ISD facility, are reflected in Meter Observation Summary of 30.06.1995 (Ex. PW-20/A). Thus, it establishes that test calls were made by CBI officials to confirm the availability of the STD/ISD facility from the telephone number 3716165.

65. I shall now advert to question number 2 i.e., ***If so, whether the same was diverted pursuant to a conspiracy? If so was the object of the conspiracy achieved, or was it continuing at the time the raid was carried out by CBI team?***

66. Section 120 A, IPC defines criminal conspiracy to mean – when two or more persons agree to do, or cause to be done (a) an illegal act, or (b) an act, which not illegal by illegal means, such an agreement will be termed as a criminal conspiracy. In ***K.R. Purushottam*** (supra), the Supreme Court held as follows:

> *11. ... ... In Major E.G. Barsay v. State of Bombay, 1961 CriLJ 828, Subba Rao J., speaking for the Court has said:*
>
> > *"The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts."*
>
> *12. In State v. Nalini and Ors., 1999 CriLJ 3124 it is observed by S.S.M. Quadri J. at paragraph 677:*
>
> > *"In reaching the stage of meeting of minds, two or more persons share information about doing an illegal act or a legal act by illegal means.* ***This is the first stage where each is said to have knowledge of a plan for committing an illegal act or a legal act by illegal means.*** *Among those sharing the information some or all may form an intention to do an illegal act or a legal act by illegal means.* ***Those who do form the requisite***

> ***intention would be parties to the agreement and would be conspirators but those who drop out cannot be roped in as collaborators on the basis of mere knowledge unless they commit acts or omissions from which a guilty common intention can be inferred. It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy. All of them cannot but be treated as conspirators.*** *Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even if some of them have not actively participated in the commission of those offences."*

13. 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 implication.* ***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 objects are usually deducted 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.*** *Criminal conspiracy is an independent offence in the Penal Code. The unlawful agreement is sine qua non for constituting offence under the 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.*"
>
> (Emphasis Supplied)

67. Thus, a criminal conspiracy comes into being when two or more persons come to an agreement to do an illegal act. It is not necessary that all the persons in the conspiracy should know everything, or that each conspirator should join the conspiracy at the same time. The conspiracy continues till the agreement is terminated either on its completion, or otherwise. The existence of a conspiracy and its objective are usually deducted from the circumstances of the case and the conduct of the accused involved in the conspiracy. The Supreme Court in ***Kehar Singh and Ors. Vs. State (Delhi Administration)***, (1988) 3 SCC 609, observed that a conspiracy is always hatched in secrecy, and it may be difficult to adduce direct evidence in such cases, and the prosecution will more often rely on circumstantial evidence. The Supreme Court in ***Nalini*** (supra) observed that all conspirators need not take active part in the conspiracy. The Supreme Court observed:

> *"583. Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.*
>
> *x x x x x x x x*

10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime."

68. According to Section 10 of Evidence Act, once a conspiracy is established by the prosecution, then any act of a co-conspirator, which is in furtherance of the conspiracy, will become the act of the other co-conspirators. Section 10 reads as follows:

"*10. Things said or done by conspirator in reference to common design.—Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.* "

69. The Supreme Court in ***Central Bureau of Investigation Vs. V.C. Shukla and Ors.***, (1998) 3 SCC 410, held:

"*40. ... ... .In dealing with this Section in Sardul Singh v. State of Bombay, 1957 CriLJ 1325, this court observed that it is recognised on well established authority that the principle underlining the reception of evidence of the* statements*, acts and writings of one co-conspirator as against the other is on the* *theory of agency. Ordinarily, a person cannot be made responsible for the acts of others unless they have been instigated by him or done with his knowledge or consent.* ***This section provides an exception to that rule, by laying down that an overt act committed by any one of the conspirators is sufficient, (on the general principles of agency) to make it the act of all.*** *But then, the opening of words of the Section makes in abundantly clear that such concept of agency can be availed of, only, after the Court is satisfied that there is reasonable ground to believe that they have conspired to commit an offence or an actionable wrong.* ***In other words, only when such a reasonable ground exists, anything said, done or written by any one of them in reference to their common intention thereafter is relevant against the others, not only for the propose of proving the existence of the conspiracy but also for proving that the other person was a party to it.*** *In Bhagwan Swarup v. State of Maharashtra 1976 CriLJ 860, this court analysed the section as follows:-*

> *"(1) There shall be a prima facie evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a co-conspirator and not in his favour.""*

(Emphasis Supplied)

70. Accordingly, the words spoken and act performed by any one of the conspirator will be relevant to prove the involvement of the other accused

persons/co-conspirators in the conspiracy, provided the Court has reasonable ground to believe that a conspiracy exists. Hence, in the present case, the conspiracy is to be established in the light of the aforesaid decision. Now as far as conspiracy is concerned, although prosecution is liable to produce independent evidence as to existence of the conspiracy for Section 10 to operate, it need not prove the same beyond reasonable doubt (See ***Nalini*** (supra)). The provision itself states *"... where there is reasonable ground to believe that two or more persons have conspired together to commit a crime....".*

71. In the aforesaid background, it is necessary to deal with the effect of the telephone call received by PW16 Ms. Shobha Dutta, at the premises of M/s. Capharm Organics Pvt. Ltd. during the raid. PW4, PW5, PW9, PW10 and PW21, all deposed that PW 16 had received a call while the raid was in progress and the caller had a message for Bhag Chand i.e. he may be asked to remove the telephone line with unauthorized ISD facility. PW 16 Ms. Shobha Dutta deposed that she informed about the fact to Inspector Ved Prakash. Inspector Ved Prakash is not a witness. However, as already indicated PW4, PW5, PW9, PW10 and PW21 deposed that PW16 had informed them about receiving a call from a person claiming to be Lala Ram, and the message was for accused Bhag Chand. Capital is sought to be made by the appellants of the fact that PW-9 stated that PW-16 informed the team, and not only the Inspector, about the call. There is no contradiction in the said testimonies. PW-16 has not stated that this information was not disclosed to any other member of the raiding team, or that it was secretly informed to Inspector Ved Prakash. She has not stated that she did not share

this information with others in the raiding team. Moreover, this call was received in the presence of the other prosecution witnesses present as a part of the raiding team, as deposed by them. Although none of them directly heard the conversation but, as the information was given to them during the course of raid by PW16, it may be considered as part of the same transaction within the meaning of Section 6 of the Evidence Act, and therefore may be considered *res gestae*. The act of caller in making the phone call and the conversation became relevant under Section 8 of the Act. After the call was disconnected, and during the course of the raid, the members of the raiding party were informed about the contents of the telephone call. The act of receiving the phone call, and disclosure of the contents of the phone call during the course of the raid would be a part of the same transaction, and therefore *res gestae*. The two acts can safely be labeled contemporaneous. Reliance may be placed upon ***Kameshwar Prasad Singh Vs Rex***, 1951 ALJ 149; ***Emperor Vs Ramchandra Rango Sawkar***, AIR 1939 Bombay 129; ***Hadu Vs The State***, AIR 1951 Orissa 53; also ***Om Singh Vs State of Rajasthan***, 1997 CriLJ 2419 (DB) (RAJ.). It is settled law that a statement of a bystander, or somebody who has perceived an occurrence or event is admissible, if it is made during or immediately after the incident and it is relevant to the facts in issue (See ***Bhaskaran Vs State of Kerala***, 1985 CriLJ 1711). The conduct of the caller and the words spoken by him when viewed along with the conduct of the caller in making the phone call-seeking disconnection of the unauthorized connection is also relevant under section 8 of the Evidence Act. Evidence of such act can always be received, whether the co-conspirator who made the call was on trial or not, to prove the existence of the conspiracy (See ***Sardul Singh Caveeshar Vs The State***

of Bombay, AIR 1957 SC 747). Thus, it stands established that a call was received by PW-16 Shobha Dutta from a person who gave his name as Lala Ram; calling from Kidwai Bhawan, MTNL Office; the caller asked for Bhag Chand – thus he knew Bhag Chand of Cepham Organics; he stated that a CBI raid had taken place in Kidwai Bhawan, and; the telephone lines of 3716165 should be disconnected which had STD/ISD connection. The telephone call received by PW16 asking her to inform Bhag Chand to disconnect the STD line gives further reasonable ground to believe existence of conspiracy between two or more persons. The conclusion is regardless of the identity of the caller being established. Only a conspirator would call to warn his co-conspirators to abort an ongoing crime. Therefore, once it is concluded that the call was made by a co-conspirator, not only conspiracy is established but what was said on telephone by one conspirator can always be used against each conspirator, *inter alia*, to establish who all were conspiring. Thus, it can safely be concluded that there are reasonable grounds to believe that the telephone line of 3716165 was diverted to Cepham Organics at M-134, Connaught Place, New Delhi, under a conspiracy to unauthorisedly misuse the said telephone line.

72. Now I will advert to question number 3, i.e., ***Whether appellant DC Pruthi was involved in the conspiracy?*** It stands established from the Joint Surprise Check memo (Ex. PW-4/A) that a diary and three visiting cards album were seized from the Cepham Organics office. Further, it is noted that some of the numbers dialed from telephone number 3716165 are the numbers mentioned in the diary of appellant Diwan Chand Pruthi, which was seized from his office on the day of the surprise check i.e. 30.06.1995.

Further, Ex. D-35 is a document which shows the call details of calls made from telephone number 3716165 between 15.01.1995 to 15.03.1995, which also shows that the same numbers were dialed in this period as well, and STD/ISD facility was being used. Appellant Diwan Chand Pruthi gave a statement under Section 313 CrPC on 25.07.2005, and again on 06.09.2005. In the statement dated 25.07.2005, he stated:

> "*Ques 2. It is also in evidence against you that you through your co-accused Bhag Chand got diverted unauthorisedly line of telephone number 3716165 by your co-accused Lala Ram on a disconnected telephone of the firm against a monthly payment to Rs. 25,000/- to Lala Ram by you through Bhag Chand, your employee. What have you to say?*
>
> *Ans. It is incorrect.*
>
> *Ques3. It is further in evidence against you that you were using the telephone number 3716165 for making STD and ISD calls and the numbers appearing in the print out of telephone number 3716165 are matching with the numbers mentioned in the dairy mark- B,C and D which means that the above said telephone was frequently used from your office illegally. What have you to say?*
>
> *Ans. It is incorrect.* "

73. In the statement made on 06.09.2005, appellant Diwan Chand Pruthi gave a detailed reply to the aforementioned questions. He also admitted that visiting cards albums and diary was recovered from his office, thus, corroborating the Joint Surprise Check memo (Ex. PW4/A) on this aspect.

74. PW-3 Sh. B.S.Rawat an independent witness stated that after five or seven days of the surprise check, they had gone to M/s Cepham Organics Company Limited, Nehru Place, for surprise check and he joined the team

where Memo Ex.PW-3/B was prepared bearing his signatures at point 'A' on all four pages and the documents mentioned in this memo bearing serial No. 1 to 20 were seized by CBI Officer in his presence and he signed as a witness. Vide Ex.PW3/B, Serial No. 9, personal file of accused Bhag Chand containing 41 pages was seized by CBI Officer. Page No. 28 is the original Inter-Office Memo of M/s Cepham issued by Chairman, Diwan Chand Pruthi (accused No. 2) to G.M.(HRD) dated 10.9.1994 which reads as under:-

> "*Henceforth Mr. Bhagchand will look after my jobs exclusively and will report to Mr. C O Danniel. Please ensure compliance with immediate effect.*
>
> *Sd/-*
>
> *(DEWAN C PRUTHI)*"

75. In the cross-examination of PW3 Sh. B.S.Rawat and PW-30 Sh. R.V.S.Lohmor, neither accused No. 2 nor accused No. 3 disputed these facts, i.e. the search at office of M/s Cepham Organics Limited or seizure of personal file of accused No. 3 or order of accused No. 2 making Bhag Chand accused No. 3 to do his job exclusively. In his statement u/s 313 Cr.P.C., accused No. 3 Bhag Chand has also admitted that he was working as Office Assistant with M/s Cepham Organics Limited. PW14 Smt. Anuradha Diwan stated that during April, 1995, she was working with M/s Cepham Organics Limited, Connaught Place, New Delhi, as PA to G.M. (Finance) and his Chairman was D.C.Pruthi (accused No. 2) and Bhag Chand (accused No. 3) was Office Assistant. She further stated that whenever P.A. to Chairman was on leave, she used to work as his P.A. She

further stated that D.C.Pruthi (accused No.2) used to direct her to ask Bhag Chand to connect ISD/STD line in spite of the fact that he was having a direct line in his office having ISD/STD facility.

76. Though PW14 Smt. Anuradha Diwan was declared a hostile yet it has come in her statement that accused No.2 Diwan Chand Pruthi used to direct her to ask Bhag Chand to connect STD/ISD line inspite of the fact that he was having direct line in his office having STD/ISD facility. A strong inference can be drawn from this statement of PW-14 Smt. Anuradha Diwan that there was criminal conspiracy involving accused No. 2 Diwan Chand Pruthi and Bhag Chand when she stated that despite having a direct line in his office having STD and ISD facility, accused No. 2 used to direct her to ask Bhag Chand to connect ISD/STD line and from the personal file of accused No. 3 Bhag Chand maintained in the office of M/s Cepham Organics Limited, it is evident that Bhag Chand was working as an Office Assistant to do the exclusive job of accused No. 2 Diwan Chand Pruthi.

77. Further, the act of accused No. 2 making accused No. 3 as his office assistant to do his job exclusively and deposition of PW14 Smt. Anuradha Diwan that despite having STD/ISD facility in his room, the accused No. 2 used to ask her to direct Bhag Chand accused No. 3 to connect STD/ISD line clearly shows complicity of the accused in the criminal conspiracy.

78. Diwan Chand Pruthi has not explained in his statement under section 313 Cr PC as to why, and which line – with STD/ISD facility, he used to ask Bhag Chand to connect, when he already had another telephone line working in his office with STD/ISD facility. Clearly PW14 indicates

existence of a conspiracy. PW3 also proved a special staff memo PW3/B whereby Bhag Chand was designated special assistant of DC Pruthi.

79. Now I will advert to question number 4, i.e., ***Whether appellant Bhag Chand was involved in the conspiracy?***

80. Ex. PW3/B conferred the status of office assistant although he is only senior secondary passed. The reasoning contained in para 76 above – which also establishes the participation of Diwan Chand Pruthi in the conspiracy applies with equal force to the case of the appellant Bhag Chand.

81. Though PW14 Smt. Anuradha Diwan was declared hostile, yet it has come in her statement that accused No.2 Diwan Chand Pruthi used to direct her to ask Bhag Chand to connect STD/ISD line inspite of the fact that he was having direct line in his office having STD/ISD facility. A strong inference can be drawn from this statement of PW-14 Smt. Anuradha Diwan that there was criminal conspiracy involving accused No. 2 Diwan Chand Pruthi and Bhag Chand when she stated that despite having a direct line in his office having STD and ISD facility, accused No. 2 used to direct her to ask Bhag Chand to connect ISD/STD line. Moreover, from the personal file of accused No. 3 Bhag Chand maintained in the office of M/s Cepham Organics Limited, it is evident that Bhag Chand was working as an Office Assistant to do the exclusive job of accused No. 2 Diwan Chand Pruthi.

82. Bhag Chand has not disputed the evidence of his being asked by Diwan Chand Pruthi to connect the STD/ISD line, nor disclosed which line he used to connect in the office of Diwan Chand Pruthi when so ordered by Diwan Chand Pruthi. The telephone call received by PW16 Shobha Dutta

from a person who gave his name as Lala Ram, asking for Bhag Chand, and who stated that a CBI raid had taken place in Kidwai Bhawan, and that the telephone lines of 3716165 should be disconnected which had STD/ISD connection nails Bhag Chand as a conspirator.

83. I now proceed to examine ***Whether the appellant Lala Ram was involved in the conspiracy?***

84. There is overwhelming evidence to clinch the issue beyond all reasonable doubt that it was none other than the appellant Lala Ram who had made the call from MDF Kidwai Bhawan, which had been received by PW-16 – wherein he disclosed his identity as Lala Ram calling from MDF Kidwai Bhawan, and asked for Bhag Chand, and informed that a raid had been conducted by the CBI at Kidwai Bhawan, and that Bhag Chand should disconnect the STD/ ISD line of telephone number 3716165.

85. Firstly, the caller had no reason to incorrectly describe his identity, as he was not aware of the fact that the CBI team was also present at the office of Cepham Organics. The caller did not know he was talking to an officer of the CBI. Lala Ram has not stated in his statement under Section 313 Cr.P.C. that any person was inimical to him, and had reason to impersonate him. Secondly, Lala Ram was, as a matter of fact, at Kidwai Bhawan when the said call was made and received by PW-16. PW-16 could not have imagined that there is an employee of the MTNL working in the MDF Section at Kidwai Bhawan of MTNL with the name Lala Ram. The statement of the caller that a CBI raid had taken place at Kidwai Bhawan was true, beyond any shadow of doubt, which a person inside Kidwai

Bhawan would be aware of. PW-17 Mr. S.R. Singh, Inspector, CBI was a part of the team which conducted the surprise check at Kidwai Bhawan. He deposed that "*Meanwhile I received a telephone call from Sh. K.K. Nair, an official of MTNL who was a party member of CBI team at office of C-Pharma Organics and Sh. Nair informed me that one Sh. Lala Ram of MDF Section has made a call to the office of C-Pharma informing that CBI raid has been conducted in MDF section and the telephone wires in the office of C-Pharma organics be removed*".

86. The mileage sought to be derived by the appellant Lala Ram from the testimony of PW-9 KK Nayyar - who stated that "*I had not telephone to anyone but in my presence some testing calls were made by CBI officials*", and that a video recording was done, has no merit. Pertinently, no other prosecution witnesses stated, and even the Joint Surprise Check memo (Ex. PW-4/A) does not record, that any video recording had been made during the surprise check. PW-9 did not see the video recording after the raid; he also did not name the person who made the video. PW-9 gave his statement after 8-9 years of the incident. His solitary statement apparently is a result of a faded memory, or he got confused with some other raid proceedings he may have taken part in, wherein a video recording may have been made. So far as the apparent contradiction in the statement of PW-17 and PW-9 – insofar as PW-17 claimed to have received a call from PW-9, informing that Lala Ram had made a call to Cepham Organics, while PW-9 stated that he had not made the call is concerned, once again this minor discrepancy is immaterial and does not shake the case of the prosecution at its foundation. Pertinently, PW-9 does not say that no such call was made to PW-17 by

anyone else from the raiding party, or that he did not speak to PW-17 about the call made by Lala Ram. Once again, it appears to be a case of fading memory of PW-9, as it was on the basis of the information received by PW-17 from PW-9, that the CBI team at Kidwai Bhawan identified Lala Ram as the person responsible for the diversion of the telephone line, and located the whereabouts of Lala Ram.

87. The appellant Lala Ram claimed that he was not in MDF, Kidwai Bhawan, but he had gone to the canteen for a tea break-thus, making it impossible for him to make the call from MDF, Kidwai Bhawan. PW-3, 17, 22 and DW-1 in their statements have stated that appellant Lala Ram had gone for a tea break at the time the alleged call was made. However, MDF is on the 9th floor in Kidwai Bhawan, and the canteen is on the 5th floor. Therefore, it was not difficult for the appellant Lala Ram to go from one floor to another to make the said call, or go to another floor after making a call. This argument of the appellant Lala Ram, that he had gone for tea, and, therefore could not have made the call, does not appeal to the Court. Appellant Lala Ram could have made the call from anywhere in Kidwai Bhawan. It was not necessary that he made the call from the MDF section itself. The message appellant Lala Ram gave to PW-16 was that he was Lala Ram of MDF section – the purpose of which was to identify himself, so that Bhag Chand could relate to the said Lala Ram; DW-1 in his examination-in-chief stated that "*On 30.6.1995 at about 11:30 am, I had gone to bring tea from the canteen situated on the 5th floor where Lala Ram also met me. Thereafter we had tea there and we remained for about 45 minutes in the Canteen. There is no telephone in the canteen. Lala Ram did not make any*

telephone call in my presence during that period". DW-1 stated that he met appellant Lala Ram in the canteen at around 11:30 am and the latter was already present there. According to the Ex. PW-3/A, the CBI officials started the inspection at 11:30 am; therefore, they must have entered the Kidwai Bhawan building before 11:30 am. PW-17 stated that "*On inquiry I found that he had left the MDF section before the CBI team had entered the MDF Section*". The possibility that appellant Lala Ram realized that the CBI officials had entered the Kidwai Bhawan building, and made the call immediately to Cepham Organics for Bhag Chand, and thereafter left for the canteen-just before the CBI team arrived in the MDF Section, cannot be ruled out. It is not the statement of DW-1 that appellant Lala Ram went to the canteen with him from the MDF Section. Thus, the possibility of him making the call before coming to the canteen cannot be ruled out on the basis of his statement.

88. I find no reason to believe that PW-16 Shobha Dutta wrongly or intentionally named the appellant Lala Ram. Since, she did not know appellant Lala Ram before the said call, there is no reason for her to know that a person named Lala Ram works at MDF, Kidwai Bhawan. Similarly, no plausible reason has been provided for PW-16 to wrongly name the appellant Lala Ram as the caller, as she has no enmity against him. When PW-16 did not know of the existence of a Lala Ram in MDF section, she could not wrongly or intentionally name him. Thus, this arguments stand rejected.

89. The appellants have placed reliance on ***Nilesh Dinkar Paradkar*** (supra). In this case, the Police tapped the phone and recorded the

conversation of the accused person. On tapping of the telephone, the Police learnt about the conspiracy the accused persons were hatching. The Police officers arrested all the accused persons. The voice test identification was conducted and the Trial Court held the voice to be of the appellant, and the other co-accused. The Supreme Court held that voice identification is prone to tampering, doctoring, editing and, therefore, is not wholly reliable. The conviction of an accused cannot be based purely on the basis of the voice identification. Thus, Supreme Court acquitted the appellant. However, in the present case, there was no voice recording, or voice test identification. The case of the prosecution is not based on any voice recording. Appellant Lala Ram called Cepham Organics office at the time when the CBI officials were present, and were conducting the surprise check. His call was received by PW-16 and he conversed with her. He gave his own identity and place from where he was calling; the person he wished the message to be conveyed; the message itself and the factum of the CBI raid taking place at Kidwai Bhawan. Appellant Lala Ram himself stated that the call was for appellant Bhag Chand informing him about the raid, and to disconnect the unauthorized telephone line. This conversation was undertaken by the appellant Lala Ram with PW-16 being unmindful of the fact that he was speaking to a police/CBI officer. Thus, ***Nilesh Dinkar Paradkar*** (supra) is of no avail as there could no tampering, doctoring, or editing. During the raid, a call was received from appellant Lala Ram for the appellant Bhag Chand.

90. The joint inspection memo dated 30.06.1995 (Ex.PW3/A) prepared at the MDF Section of MTNL, while referring to Lala Ram clearly records

that, *"He also practically demonstrated how he has extended the telephone No. 3716165 to the line of the disconnected number 3713201 in the presence of independent witnesses*".

91. PW3 B.S.Rawat, who is an independent witness, deposed that Lala Ram confessed before Inspector S.R.Singh that he had diverted the telephone line and the technical staff also verified the diversion of lines and found that the telephone lines were diverted. A demonstration was given on diversion. C.S.Rajwar (PW-5) also deposed in his examination-in-chief that he was present along with the raiding party at the office of Cepham organics Ltd. when a telephone call was received by a lady Sub Inspector and the caller had identified himself as Lala Ram. The witness deposed that the caller also informed about his location at Kidwai Bhawan, whereupon CBI officials went to Kidwai Bhawan and arrested Lala Ram. He identified Lala Ram in court. The witness further deposed that Lala Ram disclosed how the wires etc. were fitted for providing this unauthorized telephone connection in the office of Cepham Organics. In his cross-examination, the witness further deposed that he had met accused Lala Ram for the first time at the office of Cepham Organics where he had been brought by CBI at about 12.30 p.m. or 1.00 p.m. that day. PW8 Gajender Sharma was declared hostile and cross-examined by the learned public prosecutor. He deposed in his cross-examination that Lala Ram entered the telephone exchange and on interrogation, Lala Ram admitted that he had unauthorizedly diverted the lines of telephone No. 3716165 on the disconnected telephone of Cepham Organics and Lala Ram gave a live demonstration as to how he had diverted the lines.

92. PW11 D.K.Sharma also deposed that he was asked about Lala Ram who was not present in the office at that time and during the course of the raid. Lala Ram entered the MDF room. Lala Ram was taken to one side by CBI officials. Lala Ram demonstrated in the presence of the witness how he diverted the telephone number on a disconnected telephone. He also identified accused Lala Ram in Court. It is interesting to note that all these witnesses have deposed that Lala Ram was confronted after information was received from office of the Cepham Organics that a call had been received from one Lala Ram asking Bhag Chand to disconnect the illegal telephone connection. Lala Ram demonstrated how he had diverted the telephone line in question. None of these witnesses were cross-examined by the accused Lala Ram on this aspect. There was no challenge to their testimony about the live demonstration given by the accused Lala Ram, as to how the line had been physically diverted by him. Clearly, a statement made by Lala Ram to the CBI officials about his involvement would be hit by Section 25 of the Evidence Act. Only that part of his disclosure statement which might have led to any discovery can be used or proved against Lala Ram. However, statements made by the witnesses about the live demonstration by Lala Ram is not a statement within the meaning of Section 25 of the Evidence Act, and would amount to conduct made relevant by Section 8 of the Evidence Act and, therefore, admissible in evidence.

93. In ***State (NCT of Delhi) v. Navjot Sandhu,*** (2005) 11 SCC 742, the Supreme Court held as under:

> *"206. We have already noticed the distinction highlighted in Prakash Chand v. State (Delhi Admn.) (1979) 3 SCC 90*

> *between the conduct of an accused which is admissible under Section 8 and the statement made to a police officer in the course of an investigation which is hit by Section 162 Cr.P.C. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where stolen articles or weapons used in the commission of the offence were hidden, would be admissible as "conduct" under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct, falls within the purview of Section 27, as pointed out in Prakash Chand case. In H.P.Admn. V. Om Prakash (1972) 1 SCC 249, this Court held that:*
>
> > *"Even apart from the admissibility of the information under Section 27, the evidence of the investigation officer and the panchas that the accused had taken them to PW11 (from whom he purchased the weapon) and pointed him out and as corroborated by PW11 himself would be admissible under Section 8 of the Evidence Act as conduct of the accused.""*

94. In ***Sangili*** (supra), relied upon by the appellant Lala Ram, the deceased received a call from the accused, and left the house, and did not return home on that day. The call was initially answered by the father of the deceased. A complaint was filed as the deceased did not return home and was missing. The accused was thereafter arrested. On the basis of the confessional statement of the accused, some recoveries were made by the Police, and FIR was registered under Section 302 IPC. The father of the deceased stated that he had not seen or met the accused before and, thus, was unable to say whether the accused made the said call, as he could not recognize the voice. The Supreme Court held that no one had seen the accused and deceased leave the house together. The Supreme Court held that

certain pieces in chain of events were missing, and the accused could not be held guilty due to recoveries made pursuant to his statement.

95. ***Sangili*** (supra) is of no avail to the appellants, as the chain of events has been established by the prosecution in the present case, and no piece is missing. The CBI learnt about the illegal diversion of telephone number 3716165; they conducted a surprise check at the MTNL office at Kidwai Bhawan and Cepham Organics office in Connaught Place simultaneously; appellant Lala Ram after learning about the raid called to inform Bhag Chand of the same, and conveyed that he should disconnect the diverted telephone line; the phone call was answered by PW-16, who informed, *inter alia*, Inspector Ved Prakash about the call and the message left by Lala Ram for Bhag Chand; PW-9 informed the CBI officials at Kidwai Bhawan about the same; Lala Ram was confronted by the CBI officials at Kidwai Bhawan, and he made a confession and gave a demonstration of how he diverted the telephone connection. Thus, there is a complete chain of events, and each event leads to another. Hence, the reliance of the appellants on ***Sangili*** (supra) is of no avail.

96. Counsel for the appellant Lala Ram claimed that a Regular Mazdoor working in MTNL does not have any role in connecting, disconnecting or re-connecting a telephone line. He made reference to the statements of PW-18, PW-21 and PW-2. Sh. Devdutt Bansiwal, PW-18, deposed as follows:

> "*For disconnection on account of non-payment of the bills, the procedure is that the DNP list from Account Officer comes directly to the FRS i.e. DNP Operator for disconnection of first 15 days outgoing. SDE/FRS (DNP Operator) sends the same list to the SDE/Switch Room for disconnection. If the payment is not*

made within that period of 15 days then information is sent for disconnection of incoming calls also in consent with Account Officer. If the payment is received within six months the Account Officer send a list for reconnection of the telephone to SDE/FRS (DNP Operator) and the DNP Operators sends the list to the Switch Room and the Switch Room after opening the line sends the jumper letter with reading to SDE/FRS (DNP Operator). If the amount is not received in six months, then the line is permanently disconnected from MDF."

97. Further, PW-21, OP Midha deposed as follows:

"*After applying for STD/ISD facility on a new connection, verification of the premises is done by Field Staff. SD (Record) is the Incharge of MDF who orders for opening the line from the switch room after physical verification by the field staff. Divisional Engineer is the Incharge of Switch room. At that time concerned Accounts Officer was competent to order for disconnection in case of non-payment. It is correct that installation work is done in the premises by Line man.*"

98. PW-2 D.P. Singh stated that "*The duties of regular mazdoor are quite wide (sic.) such as bringing files, assisting the technical persons, and he does all work assigned to him by his superior officer*".

99. Appellant Lala Ram was a regular mazdoor in MTNL. Merely because the job of disconnecting/ reconnecting or changing the telephone lines did not fall within the domain of the appellant Lala Ram, it does not follow that the appellant Lala Ram could have had no role to play in the conspiracy. Obviously, the connection of the telephone number/ line 3716165 to the non-functional telephone line (earlier used for telephone number 3713201) – whether done by the appellant Lala Ram, or by any other employee/ person, was illegal. Such an action could not have been

authorisedly done by any one. Thus, it makes no difference, whether or not the appellant Lala Ram had the authority to disconnect/ reconnect/change the telephone lines in the telephone exchange. When a person is aware of the conspiracy, and he aids and acts in furtherance of the conspiracy, and has a common intention for the execution of the conspiracy, he would be held liable for the same.

100. Reliance placed on ***Shabban*** (supra) is of no avail to the appellants. In ***Shabban*** (supra), a surprise check was conducted at F-118/8, Batla House in New Delhi by CBI officials with MTNL officials and independent witnesses. Two telephone numbers were found to be installed at the premises with ISD/STD facility. It was found that the two telephone numbers were sanctioned in the names of two persons residing in 337, B-1, Batla House and D-40, Batla House respectively, but the telephone numbers were directed to F-118/8, Batla House in connivance with employees of MTNL. MTNL employees were found providing STD/ISD facility to various persons at cheap rates causing loss to MTNL. It was further revealed that the two telephone numbers were sanctioned on deposit of Rs 30,000 for each connections in Tatkal category. Two applications with fictitious names were prepared, and the STD/ISD facility telephones were installed at the premises of F-18/8 Batla House, causing huge losses to MTNL. The Trial Court convicted the accused persons. This Court reversed the judgment and acquitted the accused persons. This Court held that the installation of telephones at a different place than the application forms would not constitute the offence under section 420 read with Section 120-B IPC. This Court further held that A-1 was providing telephone services to persons in

Gulf countries and Saudi Arabia from the house, which belonged to his sister. However, there was no evidence to connect the A-1 to the premises. Further, the CBI could not establish the losses suffered by MTNL, as no bills were provided by them. This Court held that there were huge gaps in the case of the prosecution and, consequently, the case against the accused was not proved beyond reasonable doubt. Thus, they were acquitted.

101. ***Shabban*** (supra) is a case decided on its own facts. It is well-settled that what can be relied upon is the legal proposition settled by the judgment which emerges as the ratio of the judgment. Each case turns on its own facts. In the present case, the facts are not identical. The accused Lala Ram diverted a telephone connection with ISD/STD facility to the office of Cepham Organics of which accused Diwan Chand Pruthi was the Director. The CBI conducted a surprise check at the premises of Cepham Organics and MTNL simultaneously. In the surprise check, they found an unauthorised diversion of a telephone connection with STD/ISD facility to the office of Cepham Organics. The present case is also of conspiracy, but there are not any gaps, as in the case of ***Shabban*** (supra). The CBI has established the connection of the three accused persons in the conspiracy at hand. The CBI has also established that the phone calls made from the illegally used number, were to the numbers mentioned in the diary of Diwan Chand Pruthi, which was seized by CBI on the day of the surprise check. The role of each of the three accused persons is clear, and stands established. Thus, there are no gaps in the present case and ***Shabban*** (supra) is of no avail.

102. Learned counsels for the appellants contended that the Joint Surprise Check memo (Ex. PW-4/A) mentions that PW-16 Shobha Dutta received a call on the number 3326090 from appellant Lala Ram, whereas in her statement she does not mention the said number. It was contended that the number on which the call was received has not been proved on record. The appellants have not shown how the said failure of the prosecution – to establish the number of the telephone, on which the call was received from Lala Ram, prejudices the case of the prosecution. This is for the reason that it stands established by PW-16 that she received a call from a person who described himself as Lala Ram, and after conversation with him, PW-9 had called up PW-17 and informed him of the call received from Lala Ram of MDF Section. Since PW-16 was not regularly working in the office of Cepham Organics, and the call was received on the EPABX system, she would not have remembered the said number while making her statement. But Ex.PW-4/A records the proceedings in detail as they transpired and were recorded contemporaneously. It records the telephone number on which Lala Ram's call was received. The appellants have not been able to raise any doubt on the authenticity of Ex.PW-4/A. Thus, there is no merit in this submission.

103. Learned counsels for the appellants submitted that the telephone number 3716165 was operational from 1990 and, under the alleged conspiracy, the telephone number was directed to Cepham Organics office only in December, 1994. The CBI did not provide the details as to whom the number belonged to, before December 1994, or what the status of the said number was. In my view, this contention of the appellants is absolutely

inconsequential. The case of the prosecution was that the telephone line 3716165 was a spare line till it was illegally diverted to Cepham Organics. Thus, there was no necessity for the prosecution to establish its so-called user prior to its diversion to Cepham Organics.

104. Learned counsels for the appellants contend that the prosecution has not proved that the amount of Rs. 25,000/- was demanded by, or paid to/ accepted by appellant Lala Ram, as there is no evidence to establish the same. They contended that there was no recovery of any illegal gratification from appellant Lala Ram, or from his house. Thus, he cannot be punished under Section 13 of PC Act. In this regard reliance is placed on ***Khilli Ram*** (supra). No doubt, there is no recovery of bribe from the appellant Lala Ram. However, the facts of the present case are entirely different. This is because the conspiracy between the three appellants stands established in the present case. In the present case, the appellants had entered into a criminal conspiracy to illegally use the telephone line 3716165 with STD/ISD facility to cause wrongful gain to the company Cepham Organics of which Dewan Chand Pruthi was the Director, and to cause wrongful loss to MTNL. The appellant Lala Ram by his conduct obtained for Cepham Organics of the appellant Dewan Chand Pruthi pecuniary advantage without any public interest. To establish the offence of criminal misconduct under Section 13(1)(d)(iii) of the P.C. Act, it is not necessary for the prosecution to establish that there was a demand followed by acceptance of illegal gratification.

105. The respondent has relied on the statement of PW-15, Rita Chopra. She stated that "*I used to maintain Day book of the company. The entries in*

Day book Ex. PW15/A on dt. 12.12.94 at point A, on dt. 10.1.95 at point A, on dt. 25.1.95 at point A for an amount of Rs. 12500/- are in my hand. The first entry of Rs.12500/- is in the name of Chairman and the other two entries of Rs. 12500/- each are in the name of Sh. Sanjiv". It was for Diwan Chand Pruthi to explain satisfactorily the purpose of the said withdrawals. He has failed to give any explanation of the same. A strong inference of a criminal conspiracy can be drawn from the statement of PW-14 Anuradha Diwan, wherein she stated that appellant Diwan Chand Pruthi directed her to ask appellant Bhag Chand to connect the ISD/STD call, despite having a telephone line with ISD/STD facility in his office.

106. In a case of criminal conspiracy, where direct evidence is seldom available, the conviction of the accused is on the basis of circumstantial evidence which completes the chain of events. In the present case, with the help of circumstantial evidence, it is established by the prosecution that appellant Lala Ram illegally diverted the telephone line of number 3716165 on another disconnected line. As to why he did the same, if not for monetary gain to himself, was for the appellant Lala Ram to explain. He has not done so. In ***C Sukumaran*** (supra), the accused/appellant, who was the station writer at Fort Police Station, Thiruvananthapuram, demanded Rs. 1500/- from the complainant for releasing certain articles which were taken into custody by the police. After a complaint was registered, a trap was laid and the accused/appellant was arrested for the offences punishable under Sections 7 and 13 (1)(d) of PC Act. The Trial Court convicted the accused under the aforesaid sections. The High Court partly allowed the appeal. While convicting the accused under Section 13 (1) (d) of PC Act, the

appellant was acquitted of the offence under Section 7 of PC Act, as there was insufficient evidence to establish that the accused demanded the illegal gratification. The Supreme Court held that the prosecution had failed to prove beyond reasonable doubt that the accused/appellant had accepted the illegal gratification from the complainant. Thus, the accused was acquitted under Section 13 (1) (d) of PC Act as well. In the present case, the counsels for the appellants contend that the burden to prove the demand and acceptance of illegal gratification was on the prosecution, and the same has not been discharged. As a result, the appellants should be acquitted for offence under Section 13 (1) (d) of PC Act. However, the present case is one of a criminal misconduct covered by Section 13(1)(d)(iii) of the PC Act, and of a conspiracy. From the afore stated decisions of the Supreme Court, it is clear that in a criminal conspiracy direct evidence is seldom available, and conviction is based on circumstantial evidence, as long as a chain of events is drawn and established by the prosecution. In my view, the prosecution has established the chain of events and, consequently, a criminal conspiracy has been established. The prosecution has further established that accused Diwan Chand Pruthi obtained for his company Cepham Organics pecuniary advantage without public interest under a criminal conspiracy with accused Lala Ram and accused Bhag Chand. Thus, charge under Section 13(1)(d)(iii) of PC Act of criminal misconduct against appellant Lala Ram stands established.

107. On the aspect of the disclosure statement of appellant Bhag Chand and the confession of appellant Lala Ram before the CBI Officials in the MDF Room, the appellants submitted that the Trial Court had rightly held

these statements of the two appellants to be not admissible evidence under sections 25, 26, or 27 of the Evidence Act. They contended as the appellants have been convicted on the basis of inadmissible evidence. In my view the trial court has not acted on the basis of the disclosure statements and therefore there is no force in the said contention.

108. In ***Nalini*** (supra), the Supreme Court observed that there can be two objections to the admissibility of evidence under Section 10. The two objections are (1) the conspirator whose evidence is sought to be admitted against co-conspirator is not confronted or cross-examined in Court by the other co-conspirators, and (2) prosecution merely proves the existence of reasonable ground of the conspiracy. The Supreme Court further held that the prosecution has to produce independent witnesses to establish the existence of a conspiracy and to corroborate the statement of the co-conspirator. In the present case, the appellants contended that the two aforesaid conditions were not satisfied by the prosecution. Firstly, appellant Lala Ram was not cross-examined in Court by the other appellants. Thus, the objection to admissibility of the statement of Lala Ram should be sustained. In my view, since the statement of appellant Lala Ram was held to be inadmissible in view of Sections 25 and 26 of the Evidence Act, there was no reason for appellant Lala Ram to be cross-examined in the Court by the other appellants/co-conspirators. Secondly, the appellants submitted that the call made by appellant Lala Ram for appellant Bhag Chand at the time of the surprise check is not corroborated with help of evidence. This submission stands rejected as it is already established that appellant Lala

Ram made the call on the day of the surprise check to disconnect the unauthorised line of telephone number 3716165.

109. In ***Sukhjit Singh*** (supra), the Supreme Court held that all the incriminating evidence is to be brought before the accused persons under Section 313 Cr PC. In ***Sharad Birdhichand Sarda*** (supra), the Supreme Court held that the evidence which is not put to the accused under 313 Cr PC must be completely excluded from consideration. The appellant, in the present case, contend that the entire incriminating evidence was not put to them under Section 313 Cr PC. On perusal of the 313 CrPC statements of all the appellants, it is evident that all the incriminating evidence was put to them as questions regarding the conspiracy, the call by appellant Lala Ram, the payment of Rs. 25,000 per month, etc were put to them. Thus, there is no force in the argument of the appellants that all the incriminating evidence was not put before them. ***Raj Kumar*** (supra) is also of avail to the appellants.

110. In ***Abdul Sufan*** (supra), the Gauhati High Court observed as follows:

> *"11. In a criminal jurisprudence, the case of the prosecution should rest on its own strength and not in the absence of explanation plausible defense by the accused. While dealing with serious question of guilt or innocence of persons charged with crime, the following general rules have been laid down for the guidance of courts:- (i) The onus of proving everything essential to the establishment of the charge against the accused, lies on the prosecution; (2) The evidence must be such as to exclude to moral certainty every reasonable doubt of the guilt of the accused; (iii) In matters of doubt it is safer to acquit* than *to condemn; for it is better that several guilty persons should escape than that one innocent person suffer; (iv) There must be*

a clear and unequivocal proof of the corpus delicti; (v) The hypothesis of guilt should be consistent with all the facts proved. With due respect, we may add that it is not the duty of courts to make up the loopholes of the prosecution howsoever suspicious the involvement of the accused in the crime. In other words, this Court cannot take over the duty of the prosecution. We understand that a reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based on reason and common sense."

111. The High Court held that a reasonable doubt should be based on reason and common sense. The 'doubt' cannot be imaginary, trivial or merely possible doubt. In ***Mahender Singh Dhaiya*** (supra), this Court held that the case of the prosecution should stand on its own feet, and cannot take advantage of the defence of the accused. In ***Haresh Mohandas Rajput*** (supra), Supreme Court observed as follows:

"*15. In **Sharad Birdhichand Sarda v. State of Maharashtra** AIR 1984 SC 1622, this Court observed that it is well settled that the **prosecution's case must stand or fall on its own legs and cannot derive any strength from the weakness of the defence put up by the accused. However, a false defence may be called into aid only to lend assurance to the court where various links in the chain of circumstantial evidence are in themselves complete.** The circumstances from which the conclusion of guilt is to be drawn should be fully established. The same should be of a conclusive nature and exclude all possible hypothesis except the one to be proved. The facts so established must be consistent with the hypothesis of the guilt of the accused and the chain of evidence must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and must show that in all human probability, the act must have been done by the accused.*

16. The Court also discussed the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone and held as under:

> *(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established;*
>
> *(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;*
>
> *(3) The circumstances should be of a conclusive nature and tendency;*
>
> *(4) They should exclude every possible hypothesis except the one to be proved; and*
>
> *(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."*

112. The prosecution, in the present case, has proved its case beyond reasonable doubt. The same is based on evidence, reason and common sense. The case of the prosecution stands on its own feet and does not take advantage of the defence of the accused persons/appellants.

113. Lastly, the appellants have relied upon ***Dnyaneshwar Laxman Rao Wankhede*** (supra). The Supreme Court held that where there are two possible views, then the Court should adopt the view which is in favour of the accused person. However, two views are not possible in the present case.

114. In view of the aforesaid discussion, it stands established beyond all reasonable doubt that the appellants entered into a criminal conspiracy in furtherance of their common intention. I find no perversity in the impugned judgment. The same is, accordingly, upheld. All the appellants are found guilty under Section 120B, IPC. Appellant Lala Ram is also convicted under Section 13(1)(d) read with Section 13(2) of this Act. Accordingly, the appeals are dismissed. The appellants are directed to surrender forthwith.

(VIPIN SANGHI)
JUDGE

FEBRUARY 26, 2016