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

RESERVED ON : 12th FEBRUARY, 2016
DECIDED ON : 12th MAY, 2016

\+ **CRL.A.797/2013, CRL.M.B.1300/2013 & CRL.M.A.No.16906/2014**

SAJJAD HAIDER ..... Appellant

Through : Ms.Suman Chauhan, Advocate.

versus

THE STATE (GOVT. OF NCT, DELHI) ..... Respondent

Through : Mr.Amit Gupta, APP.

AND
\+ **CRL.A.1556/2013**

STATE ..... Appellant

Through : Mr.Amit Gupta, APP.

versus

SAJJAD HAIDER @ MOHD.PARVEZ & ANR. ..... Respondents

Through : Ms.Suman Chauhan, Advocate for Respondent No.1.
Mr.Chandan Mishra, Advocate with Mr.Gaurav Dubey & Mr.Rajesh Pandit, Advocates for Respondent No.2

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Both these appeals being interconnected are taken up together for disposal.

2. Appellant – Sajjad Haider @ Mohd.Parvez in Crl.A.797/2013 is aggrieved by a judgment dated 29.01.2013 of learned Addl. Sessions Judge in Sessions Case No.02/2011 arising out of FIR No.43/10 PS Special Cell by which he was held guilty for committing offences punishable under Sections 419/420/467/468/471 IPC and Section 14 of Foreigners Act. By an order dated 31.01.2013, he was awarded various prison terms with fine. All the sentences were to operate concurrently.

3. The State has also filed Crl.A.1556/2013 to challenge the said judgment whereby Sajjad Haider @ Mohd.Parvez (herein referred to as 'the appellant') was acquitted of the charge under Sections 3 and 9 Officials Secrets Act and 120B IPC and Jainuddin Ansari was acquitted of all the charges.

4. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 14.09.2010 at about 03.00 p.m. an information was received from Central Intelligence Agency ('CIA' in short) that a Pakistani spy residing in the area of Samalkha, Delhi, on fake / forged documents of Indian nationality in the name of Mohd.Parvez was involved in supplying confidential documents / information related to Indian Armed Forces to his Pakistani mentors and would come to NSG Camp, red light, Samalkha at about 06.00 p.m. and was in possession of certain secret / confidential documents related to the Indian Armed Forces. The said information was discussed with senior officers and on their direction a raiding party was constituted under the supervision of Insp.Sanjay Dutt.

5. Further case of the prosecution is that at about 06.00 p.m. at the spot the appellant was seen coming on foot towards the red light from Kapashera side. On identification of the secret informer, the appellant was apprehended. He was carrying a small black colour handbag in his right hand. Initially he disclosed his name as Mohd.Parvez s/o Mohd.Haneef but on further questioning, he disclosed his real identity as Sajjad Haider @ Mohd.Parvez s/o Late Mohd. Ali Haider r/o House No.6, Gali No.1, Mohalla Pindi Rajputtan, Naqshbandi Chowk, PS Kot Lakhpat, Lahore, Pakistan. He further informed that at present, he was residing at house No.595, Smalkha, Delhi.

6. On checking the contents of the bag, one white paper envelope containing 18 pages of photocopies of documents was recovered. These documents were related to Indian Armed Forces containing confidential information about 'Review of modernization of T-72, MI Tanks', 'Likely future equipment profile 2017 and beyond' etc. The envelope was addressed to Suleman Mohammad, Post Box No.3279, Dubai, UAE from Mohd. Parvez, House No.43/2, Okhla Phase-II, New Delhi. Besides this, one Indian driving licence No. C-1690/08 in the name of Parvez issued from Dehradoon (Uttrakhand); one Indian PAN Card bearing No.BDTPP7539Q in the name of Mohd.Parvez; two account opening forms of State Bank of India which were partly filled up; photocopy of Rent Agreement dated 10.08.2010 between Naveen Bhardwaj and Mohd.Parvez; photocopy of ration card, saving bank passbook of Naveen and photocopy of PAN Card were also recovered from the said bag. All these documents were seized by a seizure memo. The Investigating Officer prepared rukka and lodged First Information Report through HC Uday Veer. Further investigation was taken

over by Insp.Rahul Kumar Singh. The accused was arrested and his disclosure statement was recorded. Pursuant to that, raid was conducted at House No.595, Samalkha village, New Delhi, from where some documents were recovered and seized vide seizure memo (Ex.PW-7/B). One vehicle make Tavera bearing registration No. UP 16 R-9409 along with certain documents was also recovered. Supplementary disclosure statement (Ex.PW-10/D) was recorded. Statements of the witnesses conversant with the facts were recorded. Certain recoveries were effected during investigation. Upon completion of investigation, a charge-sheet was filed against the appellant.

7. It is relevant to note that subsequently one Jainuddin Ansari was also arrested. Supplementary charge-sheet was filed against him. However, by the impugned judgment, he was acquitted of the charges.

8. In order to establish its case the prosecution examined thirty-two witnesses. In 313 Cr.P.C. statement, the accused persons pleaded false implication and denied their involvement in the crime. The trial resulted in appellant's conviction as aforesaid. Being aggrieved and dissatisfied, both the appellant and State have filed the above appeals.

9. I have heard the learned counsel for the parties and have examined the file minutely.

10. Admitted position is that the appellant is a Pakistan national. In 313 Cr.P.C. statement, he admitted himself to be a Pakistan national. He further admitted to have entered into India without any document for the purpose of job. He also admitted that when he was produced before the Court of learned Chief Metropolitan Magistrate, at the time of seeking remand, with the permission of the Court (Ex.PW32/C), he had conversation

with his wife on phone in Lahore. He was on regular touch with his wife living in Pakistan. Admittedly, appellant's real name is Sajjad Haider and he was living in India under the changed identity as Mohd. Parvez.

11. Various documents were recovered from appellant's possession at the time of his apprehension. PW-3 (SI Dharmender Kumar) deposed that on getting secret information from Central Intelligence Agency on 14.09.2010 at about 03.00 p.m. it was discussed with senior officers and recorded in Daily Diary vide DD No.11 (Ex.PW-3/A). The raiding team apprehended the appellant at around 06.00 p.m. when he was seen coming on foot from Kapashera side towards red light on old Gurgaon road. The appellant was carrying a small black colour handbag in his right hand. On cursory interrogation, he disclosed his name as Mohd.Parvez s/o Mohd.Haneef r/o House No.595, Samalkha village, Delhi, but later on he revealed his real name as Sajjad Haider @ Mohd.Parvez s/o Late Mohd. Ali Haider r/o House No.6, Gali No.1, Mohalla Pindi Rajputtan, Naqshbandi Chowk, PS Kot, Lakhpat, Lahore, Pakistan. On search of the hand bag make 'tony bag', 18 pages of photocopies of documents related to Indian Armed Forces were found in a white colour paper envelope (Ex.P1). It was addressed to one Suleman Mohammad Post Box No.3279, Dubai. From the bag, one PAN Card (Ex.P4), Driving Licence (Ex.P8), Copy of the Rent Agreement (Ex.P2), Copy of Ration Card (Ex.P3), Bank Passbook (Ex.P5), one account opening form of SBI Bank (Ex.P6), original PAN card (Ex.P7), photocopies of documents running into 18 pages (Ex.P9) and bag (Ex.P10) were also recovered and seized vide seizure memo (Ex.PW-3/C).

12. The witness further deposed that he prepared rukka (Ex.PW-3/D) and handed over to PW-8 (HC Uday Veer) for lodging FIR. On arrival

of PW-32 (Insp.Rahul Kumar Singh), he handed over the recovered articles and documents to him. Site plan (Ex.PW-3/E) was prepared. He further deposed that thereafter, the appellant took the police party to a place where Tavera vehicle was lying parked near the roadside at old Kapashera. The accused revealed that its key was lying in his rented House No.595, Samalkha. Thereafter, the accused led the police team to his rented premises. Tavera car was seized.

13. During further investigation on 17.09.2010 the accused led the police party to M/S.IST Computers located at old Kapashera road, Vikram market and disclosed that it was the spot from where he used to access internet and send E-mails to his mentors. Certain documents were seized from the said shop vide seizure memo (Ex.PW-3/F). The accused further led the police team to the office of Western Union, Nehru Market, Gurgaon and disclosed that he had collected ₹22,000/- and ₹20,000/- from the said office.

14. PW-8 (ASI Uday Veer), another member of raiding team has deposed on similar lines. He also proved the apprehension of the accused and recovery of various articles from his possession. Similar is the testimony of PW-10 (SI Dilip Kumar).

15. PW-32 (Insp.Rahul Kumar Singh) had taken over the investigation of this case on 14.09.2010. He also corroborated the version given by PW-3 (SI Dharmender Kumar), PW-8 (ASI Uday Veer) and PW-10 (SI Dilip Kumar). All these witnesses were cross-examined at length. However, no material infirmities could be extracted in their cross-examination to discredit their version.

16. Material testimony is that of PW-7 (Naveen Bhardwaj) whose father was owner of House No.595, Samalkha (Haryana). He deposed that

in August, 2010 they had let out one room on the ground floor to accused Sajjad Haider @ Mohd.Parvez on a monthly rent of ₹1,300/-. Identifying the accused in the Court to whom the said room was rented, he testified that the accused lived there along with a lady to whom he described his wife and a daughter. At the time of letting out, the accused had shown his Driving Licence (Ex.P8) and PAN Card (Ex.P7) as proof of his identity. Rent Agreement (Ex.PW-7/A) was executed. He further deposed that the accused had obtained a ration card at the said tenanted premises. He had also requested him to make an endorsement on the copy of the ration card to enable him to open a bank account and to obtain passport. At his request, he had made endorsement on the copy of the Ration Card for opening the bank account (Ex.P3). He also gave introduction to the bank at the time of opening of the bank account at State Bank of India, Kapashera as he was maintaining saving bank account in the said branch. He had given photocopy of his passbook (Ex.P5). He further deposed that the police had conducted search of the tenanted room and had seized number of documents and other articles besides cash about ₹20,000/- / ₹22,000/- vide seizure memo (Ex.PW-7/B) which contained his signatures. The accused was a driver by profession and used to drive Tavera. The said vehicle was seized vide seizure memo (Ex.PW-7/C) bearing his signatures at point 'A'. In the cross-examination, he denied the suggestion that the police had not visited his house along with accused any time. Apparently, material facts deposed by this independent witness remained unchallenged and uncontroverted in the cross-examination. The testimony of this independent witness lends-credence to the statements of the police officials that the accused used to reside at House No.595, Samalkha, under a disguised identity. This witness had no prior animosity with the accused to make a false statement about the recovery of various articles from his possession.

17. The prosecution further examined PW-9 (Sanjay Kumar) registered owner of Tavera vehicle No.UP 16R-9409. He deposed that this vehicle was attached with one Yoginder Singh, Contractor and was being driven by his driver Appu. Appu had gone to his native place to attend marriage of his relative. On 11.09.2010, Yoginder Singh required the vehicle. On his informing that his driver was not available, he sent the accused to his house on 12.09.2010 to take the vehicle. Identifying the accused to be the said individual, he elaborated that the vehicle was handed over to him. PW-17 (Yoginder Kumar) has corroborated his testimony. He also deposed that the accused Mohd.Parvez was introduced to him by a driver from Garhwal. The accused was having a driving licence issued from Dehradoon, Uttrakhand and a PAN Card. He requested him for the job of a driver. The accused told him that he was from Uttrakhand and his name was Parvez. Believing him, he posted the accused at Tavera vehicle UP 16R 9409. He further deposed that the accused was having a mobile phone bearing No.8802151848. In the cross-examination, he deposed that the accused had approached him in 2010 about 6 – 7 months prior to his arrest. Again, this witness had no ulterior motive to falsely claim the accused to be driver on the Tavera vehicle which was recovered at the appellant's instance. No suggestion was put to this witness in the cross-examination that he had not worked as a driver on the said vehicle.

18. Another crucial witness to establish the appellant's guilt is PW-16 (Rinku Devi) with whom the accused used to stay at House No.595, village Samalkha. She testified that previously she was married to Harish

Chander Mandal who used to run a small dhaba at Okhla. She was also working there. Identifying the accused as Parvez, she deposed that he used to come at the said dhaba. She had parted company from her husband as he used to give her beating and had started living with Parvez (the appellant). She started living with him at Kapashera. The accused introduced her as his wife. He had told her that he belonged to Darbhanga (Bihar). Police had arrested him from Kapashera. She further disclosed that the accused used to drive some vehicle. He had told her not to disclose his profession to anyone. The accused had given her a mobile phone. She did not know where the accused used to talk on telephone. In the cross-examination, nothing was suggested if this witness did not reside with the accused and she was introduced as his wife. No explanation was offered by the accused as to why he misrepresented PW-16 (Rinku Devi) and claimed himself 'Parvez' from Darbhanga (Bihar).

19. The documents recovered from the appellant's possession were found forged and fabricated. PW-20 (Amit Kumar Gupta) deposed that pursuant to notice under Section 91 Cr.P.C. dated 18.10.2010 information was sought from their office as to whether driving licence No.C-1690/03 in the name of Parvez s/o Mohd. Haneef was issued from their authority Dehradoon. After checking the record, response (Ex.PW-20/B) was given and it was clarified that the said driving licence was not issued from their authority. As per record, the said licence had been issued in the name of one Chander Mohan Chand s/o Sh.Shyam Lal for driving motorcycle only. The relevant entry is Ex.PW-20/C. The accused did not explain as to from where and in what manner, he procured a forged and fabricated driving licence bearing No.C-1690/03.

20. Similarly, PW-21 (Vikram Bhadur Singh) proved response (Ex.PW-21/A) to a letter sending information regarding genuineness of driving licence bearing No.C-1391/06. He deposed that this licence was issued in the name of one Chander Shekher Yadav s/o Shiv Babu Yadav vide Ex.PW-21/B. In the cross-examination, he disclosed that this licence was renewed on 01.10.2002 – 30.09.2012.

21. PW-24 (Kapil Kapoor), Assistant Vice President in M/s.National Securities Depository Ltd. proved the response (Ex.PW-24/A). Pursuant to the letter dated 06.12.2010, he informed that they had supplied the original documents to the police pertaining to PAN Card No. BDTPP7539Q. Application for issuance of PAN Card (Ex.PW-24/B) was submitted along with rent receipt (Ex.PW-24/C) and copy of School Leaving Certificate (Ex.PW-24/D).

22. PW-13 (Gopal Gaikwad) deposed that they had let out one room on the 2nd floor of House No.A-439, Transit Camp, Govind Puri, Kalkaji, New Delhi, to the accused on a monthly rent of ₹1,000/-. The accused while taking the accommodation on rent had disclosed that he was a resident of Bihar. Rent note was executed between the accused and his mother and he had put signatures thereon. It was also signed by the accused at point 'A'. The said Rent Agreement was Ex.PW-13/A. The accused remained there for about a month as a tenant.

23. PW-18 (Rahman Ali) also identified the accused who had disclosed his name as Parvez and he used to visit his dhaba to take meal in the year 2009. He elaborated that the accused sometimes used to stay at night in his dhaba. He had told him to be belonging to Bihar. His statement remained unchallenged.

24. The accused had withdrawn certain amount sent to him from Saudi Arabia. PW-11 (Vinod Sharma) informed that they had received a notice under Section 91 Cr.P.C. from Special Cell about details of transactions No.9828424250, 9498526980, 9855547924 and 4247195816 made from October, 2009 till date. Pursuant to the said notice, they had supplied information vide letter (Ex.PW-11/A). Details of the transactions for the requisite period was attached vide document (Ex.PW-11/B). They had supplied the photocopy of the transaction proof done by sub-agents (Ex.PW-11/C). Ex.PW-11/B was obtained from their US Office and it was maintained in due course of business. PW-15 (Bhraham Prakash Yadav) running business under the name and style of Western Union Money Transfer at his shop No.25, Nehru Market, Agarsen Chowk, Gurgaon, Haryana deposed that on 25.09.2010, he had handed over two MTR receipts and identity proof of Mohd. Parvez to the Investigating Officer. He further deposed that on 22.06.2010 Mohd.Parvez had collected the payment of ₹22,000/-. He had also collected the payment of ₹20,000/- on the same day. He had signed MTR receipts at the time of collecting the payments. Both these payments were received from Saudi Arabia. He identified the appellant to be Mohd.Parvez to whom the payments were made. Both the receipts were Ex.PW-15/A and Ex.PW-15/B. He further stated that at the time of collecting the payment, the accused had furnished photocopy of PAN Card and driving licence (Ex.PW-15/C) as I.D. proof. Police had seized the original receipts and I.D. proof vide memo (Ex.PW-3/H) bearing his signatures at point 'A'. The accused did not offer any explanation as to for what purpose the said payments were collected by him. He also did not disclose the name of the sender and the purpose for which it was sent to him.

25. PW-32 (Insp.Rahul Kumar Singh) deposed that at the pointing out of the accused, one mobile phone having mobile No.9555742965, seven SIM cards, one slip of Western Union Money Transfer, one envelope having two photographs, one railway ticket, one original Rent Agreement, another Rent Agreement pertaining to A-439, Kalkaji, Transit Camp, one photocopy of another Rent Agreement executed between him and Yoginder, one driving licence, cash ₹22,000/-, one PAN Card letter and two receipts of Western Union Money Transfer were recovered. One voter I.D. Card of some other person and some other documents were recovered vide seizure memo (Ex.PW-7/B). The accused disclosed that he had obtained SIM Cards in fake names. PW-23 (Dinesh Shukla) deposed that he was residing at House No.E-40/84, DSIDC Shed, Janta Jiwan Camp, Okhla phase-II since 1994 along with his family. About three years before, he had given on rent the said premises to one Subrati Ansari. He never got issued mobile No.9910615823 in his name. He did not know as to who Mukesh Kumar was and the premises in question were never let out to him. On seeing photocopy mark PW-23/A the witness told the Investigating Officer that he did not know the person whose photograph was affixed over it. He had handed over the photocopy of his Election I. Card (Ex.PW-23/A) to the Investigating Officer.

26. During investigation, it was found that the accused used to have access to cyber cafe from where he used to send E-mails to his mentors. This information was discovered in the disclosure statement given by the accused. Prosecution examined PW-14 (Shatrughan Kumar Yadav). He deposed that he along with Arvind Kumar used to run a cyber cafe at shop No.6, Vikrant Market, Kapashera, opposite Yes Bank, in the name and style

of I.S.T. Computer Centre. They used to maintain a register (Ex.P11) of the visitors to Cyber Cafe House and obtain their signatures. He further deposed that on 08.05.2010 and 09.05.2010 the accused Parvez had visited the cyber cafe and used the internet. He had made the entry in the register on the said dates in his handwriting and also had put his signatures. The said entries are Ex.PW-14/A and Ex.PW-14/B respectively. He identified the accused before the Court to be the said individual. The said register was seized by the police vide seizure memo (Ex.PW-3/F). In the cross-examination, the witness fairly admitted that he did not know which site the accused used to access.

27. During investigation, the accused was found to be in constant touch with his wife and others on mobiles. PW-27 (Shishir Malhotra), Nodal Officer in Aircel Company deposed that certified copies of CDRs of mobile No.8802830081, 8802153159 and 8802151848 for the period of 01.01.2010 to 26.09.2010 were supplied under Section 65B of Indian Evidence Act. He also furnished the certified copy of the consumer application form of the said mobile phones and also had supplied details of the mobile user's location. The certified copies of the CDRs were Ex.PW-27/C to Ex.PW-27/E. He also furnished original customer application form of mobile Nos. 8802151848 and 8802830081 on 03.12.2010. The original application form was Ex.PW-27/F. PW-29 (Hussain M.Zaidi), Nodal Officer, Idea Cellular Ltd., furnished call details of mobile No.8958351977 (Ex.PW-29/A). He had also furnished certified copy of the customer application form (Ex.PW-29/C). He had handed over certified copy of the identification proof (Ex.PW-29/D). He had also given to the police the details of SIM No.89915609115606013363 (Ex.PW-29/E). All these exhibits

were handed over vide memo Ex.PW-29/F. PW-30 (Ved Prakash), Nodal Officer, Reliance Communications also furnished call details Ex.PW-30/A of mobile No.9555742965. He also furnished call details (Ex.PW-30/B) containing three pages of International Long Distance details of No. 923228705603, 923334978809 and 923213341703. Photocopy of the customer application (Ex.PW-30/C) pertaining to mobile No.9555742965, its I.D. proof (Ex.PW-30/D) and photocopy of company agreement form (Ex.PW-30/E) were also furnished to the police vide covering letter (Ex.PW-30/G). PW-31 (Vishal Gaurav), Nodal Officer, Bharti Airtel Ltd., had furnished the call details of mobile No.9910615823 vide Ex.PW-31/A; of mobile No.9910670643 vide Ex.PW-31/B; of mobile No.9810866968 vide Ex.PW-31/C; of mobile No.9910617612 vide Ex.PW-31/D. Certified copies of the customer application forms with supporting documents and I.D. proof of these mobile numbers (Ex.PW-31/F to Ex.PW-31/M) were furnished vide covering letter (Ex.PW-31/N).

28. On scrutinising the call details records of these telephone numbers it stands established that the appellant used to remain in touch with his wife and many other individuals in Pakistan and other countries. The accused did not explain as to whom these telephone numbers to whom he made telephone calls regularly belonged and what was the object / purpose of his having conversation with them. He also did not elaborate as to for what purpose the telephone calls were being made to them. All these facts were within the special knowledge of the appellant and he was legally bound to disclose it under Section 106 Evidence Act. The appellant maintained complete silence and did not disclose whatsoever, as to with whom, he used to remain in touch during the relevant period, and if so, on what account.

Adverse inference is to be drawn against the appellant for withholding this material information. It is also not informed as to for what purpose the appellant used to visit Cyber Cafe. Nothing was disclosed as to which specific site was accessed on 08/09.05.2010 and what was its specific purpose.

29. The prosecution further examined PW-28 (Devak Ram), Assistant Director (Documents), FSL Rohini, Delhi, who proved his report (Ex.PW-28/A). The questioned documents Q1 to Q26 were compared with specimen writings / signatures mark S1 to S16 of the accused. The expert was of the view that the person who wrote red enclosed writings and signatures S1 to S16 also wrote the red enclosed writings and signatures similarly stamped and marked Q1 to Q11 and Q13 to Q16. Detailed reasons were narrated to arrive at the said conclusion. It further lends-credence to the ocular testimony given by the witnesses.

30. On scanning the testimonies of the police officials as well as independent public witnesses, it stands established that the appellant continued to stay in India under fake identity though his real name was Sajjad Haider and he was a Pak national. He falsely pretended that his name was Parvez. He further claimed falsely that he was from Darbhanga, Bihar. No material has came on record to ascertain if the accused had ever lived in Darbhanga, Bihar. Number of fake / forged documents were found in his possession and on verification, these were found to be forged. The appellant did not explain as to when and how he had procured the forged and fabricated documents. These forged documents were also used by him to get employment as driver on Tavera vehicle. He also opened a saving account in State Bank of India. He also got rented accommodation by

showing these documents as identity proof. He even produced these documents as his identity at the time of getting payment of ₹22,000/- and ₹20,000/- received by him from Saudi Arabia. No explanation whatsoever is forthcoming. The appellant did not disclose as to when he had entered India and what was his specific object. He did not elaborate as to where he used to live after gaining entry in India clandestinely and what job or work was carried out by him before getting employment as a driver on Tavera vehicle.

31. Trial Court believing the testimony of the prosecution witnesses found the appellant guilty of committing various offences. It is unclear as to why the recovery of 18 pages (Ex.P9) of photocopies of documents related to Indian Armed Forces from the appellant was not believed. It is true that in the secret information recorded vide DD No.11 (Ex.PW-3/A) there was mention that the information was received from Central Intelligence Agency. The Trial Court was of the view that since there was no such agency in India with the name of Central Intelligence Agency and the information recorded in DD No.11 (Ex.PW-3/A) was incorrect, the recovery of secret documents from the appellant's possession was doubtful. It was further suspected that in the absence of any independent public witness at the time of recovery, the testimonies of the police officials could not be taken on its face value. I find no reasons to disbelieve the testimonies of police officials in this regard particularly when various documents recovered from the accused on verification were found forged and fabricated. Independent public witnesses have corroborated the evidence of the police officials in this regard. There was no occasion for the police officials to

plant photocopies of the secret documents (Ex.P9) which were not available to the public at large.

32. Minor contradictions, inconsistencies or embellishments of trivial nature which do not affect the core of the prosecution case should not be taken to be a ground to reject the prosecution evidence in its entirety. It is only when such omissions amount to a contradiction creating a serious doubt about the truthfulness or creditworthiness of the witness and other witnesses also make material improvements or contradictions before the court in order to render the evidence unacceptable, that the courts may not be in a position to safely rely upon such evidence. Serious contradictions and omissions which materially affect the case of the prosecution have to be understood in clear contra-distinction to mere marginal variations in the statement of the witnesses.

33. It has come on record that documents were sent to the concerned authorities to ascertain if these were secret documents pertaining to the Indian Armed Forces. PW-22 (S.Chander Shekhar), Lt. Colonel, General Staff Office, Grade-I, appeared on behalf of Vice Chief of the Army Staff, Directorate General of Military Intelligence and deposed that on 21.09.2010, they had received a letter from Delhi Police, Special Cell along with certain documents titled as confidential 'Review of Modernization of T-72, MI Tanks' running into 18 pages to seek their opinion. The said letter was Ex.PW-22/A. After examining the request, they had sent a reply (Ex.PW-22/B) giving their opinion on six points as sought by them. He further deposed that the documents (Ex.P9) on which the information was sought were also annexed with the letter. In the cross-examination, he clarified that any document containing information which if falls in the

hands of an enemy country, may prejudice the interest and security of the nation. He further deposed that document (Ex.P9) was being handled by Directorate General of Mechanize Forces. On receipt of letter from Delhi Police, a departmental enquiry was ordered to find out how that document had reached in the hands of the unauthorized person. The document (Ex.P9) was part of military record and the same could not be created by any individual. He further deposed that he was competent to give the information and had sent the reply after examining the documents. On perusal of the response given by PW-22 (S.Chander Shekhar), it stands established that the document in question was a secret document and its possession could be termed as unauthorized possession. It further reveal that it was a classified document and information / contained in the documents was directly and indirectly connected with the security and defence of the country. The information contained in the recovered documents was directly or indirectly useful to an enemy country / terrorist and it was covered under the provisions of the Official Secrets Act, 1923.

34. Stay of the appellant in India is a mystery. It is unclear as to since when he was operating in India. His contention that he had gained entry in India to have a job inspires no confidence. He did not explain as to what sincere efforts were made by him to get employment after arriving in India. Contrary to that, it has been proved that during the short period, he obtained forged and fabricated documents, various SIM cards; he used to be in regular touch with his wife and others outside India. He even used to access internet. He also received ₹22,000/- and ₹20,000/- from Saudi Arabia without explaining as to who was the sender and what was its purpose. It is also a mystery as to how the persons sending money to him

were aware of his stay at a particular location in India and why money was sent in his fictitious or fake name Parvez. Appellant's wife was well aware of his stay in India. Not only that he even allegedly performed marriage with PW-16 (Rinku Devi) claiming himself to be Parvez resident of Darbhanga, Bihar.

35. In 313 Cr.P.C. statement the appellant did not give plausible explanation to the incriminating circumstances proved against him. Material facts which were within his special knowledge were not revealed and he maintained complete silence.

36. From the materials on record and the attending circumstances, it stands proved beyond doubt that these secret documents were found from the possession of the appellant at the time of his apprehension. The report of the handwriting expert further confirms it. There were no sound reasons for the Trial Court to suspect recovery of these documents on flimsy grounds particularly when the testimonies of the police officials were believed regarding recovery of other forged and fabricated documents. Since the appellant was found in possession of secret documents as proved by PW-22 (S.Chander Shekhar), his acquittal under Sections 3 & 9 of the Official Secrets Act by the Trial Court was un-warranted.

37. It is evident that the appellant obtained and was in possession of the secret documents prior to being apprehended. The appellant has not explained as to how he came into possession of the secret documents. It was for him to establish that the photocopies of the secret documents contained in the envelope were meant for whom and to explain whose address it was. He has failed to come out with the said information, which was within his special knowledge.

38. In '*Daleep Singh Chandrawat vs. State*', MANU/DE/2214/2015 in Crl.A.731/2008 decided on 03.08.2015, this Court held :

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

39. Regarding accused - Jainuddin Ansari's acquittal, I find no illegality or material irregularity in the impugned judgment. No incriminating document was found from his possession. The Trial Court categorically observed that only evidence adduced on record by the prosecution against him was report of the handwriting expert which per se was not sufficient to connect him with the crime. Since the prosecution was unable to establish his involvement in the crime, his acquittal for the reasons detailed in the impugned judgment deserves no intervention.

40. In the light of above discussion, appeal preferred by the appellant (Crl.A.797/2013) to challenge his conviction and sentence by a judgment dated 29.01.2013 is devoid of merits and is dismissed.

41. State's appeal (Crl.A.1556/2013) is allowed against the appellant - Sajjad Haider @ Mohd.Parvez to the extent that his acquittal for commission of offence under Sections 3/9 Official Secrets Act is set aside. The appellant is convicted under Sections 3/9 Officials Secrets Act.

42. Regarding sentence under Sections 3/9 Official Secrets Act, considering the gravity of the offence whereby the appellant procured sensitive documents belonging to Indian Armed Forces which clearly compromised the security of the country, the appellant is sentenced to undergo RI for ten years under Sections 3/9 Official Secrets Act.

43. The period already undergone by the appellant in this case shall be counted and set off under Section 428 Cr.P.C. The substantive sentences shall run concurrently.

44. State's appeal against accused – Jainuddin Ansari is dismissed.

45. The appeals stand disposed of accordingly. Pending applications also stand disposed of.

46. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail immediately for information / compliance.

(S.P.GARG)
JUDGE

MAY 12, 2016 / *tr*