In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Appeal No.S-670-SB of 2011 (O&M)

.....

Date of Decision:30.7.2018

Smt. Madhu Bala

...Appellant

Vs.

State of Haryana

...Respondent

.....

(2) Criminal Appeal No.S-730-SB of 2011 (O&M)

.....

Raj Rani

...Appellant

Vs.

State of Haryana

...Respondent

.....

(3) Criminal Appeal No.S-755-SB of 2011 (O&M)

.....

Om Parkash

...Appellant

Vs.

State of Haryana

...Respondent

.....

(4) Criminal Appeal No.S-781-SB of 2011 (O&M)

.....

Baljeet Singh

...Appellant

Vs.

State of Haryana

...Respondent

.....

(5) Criminal Appeal No.S-813-SB of 2011 (O&M)

.....

Jogi Ram and another

...Appellants

Vs.

State of Haryana

...Respondent

.....

(6) Criminal Appeal No.S-832-SB of 2011 (O&M)

.....

Jagmohan

...Appellant

Vs.

State of Haryana

...Respondent

.....

(7) Criminal Appeal No.S-843-SB of 2011 (O&M)

.....

Harish Chander Girdhar and another

...Appellants

Vs.

State of Haryana

...Respondent

.....

(8) Criminal Appeal No.S-1446-SB of 2011 (O&M)

.....

Balraj

...Appellant

Vs.

State of Haryana

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Vikram Chaudhri, Senior Advocate with
Mr. Arshbir Singh, Advocate for the appellant
in Cr. A. No.S-670-SB of 2011.

Mr. A.P.S. Deol, Senior Advocate with
Mr. Vishal Rattan Lamba, Advocate for the appellants
in Cr. A. Nos.S-730-SB, 832-SB of 2011.

Mr. Vinod Ghai, Senior Advocate with
Mr. Ashwani Bhardwaj, Advocate for the appellants
in Cr. A. Nos.S-755-SB, 813-SB and 843-SB of 2011.

Mr. Ashwani Bhardwaj, Advocate
for the appellant in Cr. A. No.S-781-SB of 2011.

None for the appellant in CRA No.S-1446-SB of 2011.

Mr. Vikas Chopra, Deputy Advocate General, Haryana
for the respondent-State.

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Inderjit Singh, J.

This order will dispose of above-mentioned 8 appeals as these have arisen from same judgment of conviction and order of sentence.

All the above appeals have been filed by the appellants against State of Haryana challenging the impugned judgment of conviction and order of sentence dated 25.02.2011 passed by learned Additional Sessions Judge (Exercising the powers of Special Judge under the P.C. Act), Hisar, (hereinafter referred to as `the Special Judge, Hisar'), whereby they were held guilty and convicted for the offences under Sections 7 and 13(2) of Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act') and sentenced to undergo rigorous imprisonment for a period of five years each and to pay fine of ₹10,000/- each and in default thereof to further undergo rigorous imprisonment for a period of six months each for the offence under Section 7 of the PC Act. They have also been sentenced to undergo rigorous imprisonment for a period of seven years each and to pay fine of ₹10,000/- each and in default thereof to further undergo rigorous imprisonment for a period of six months each for the offence under Section 13(2) of the PC Act. Both the sentences were ordered to run concurrently.

Challan had been presented against Baljeet Singh, Balraj, Harish Chander Girdhar, Devi Lal, Jogi Ram, Subhash Chand, Jagmohan, Raj Rani, Om Parkash and Madhu Bala in FIR No.507 dated 17.10.2006 registered for the offences under Sections 7 and 13 of the PC Act at Police Station Civil Lines, Hisar.

The brief facts of the prosecution case as noted down in the judgment passed by learned Special Judge, Hisar, are as under:-

> "The case of the prosecution as unfolded during the trial by PW.7 Ramesh Verma, is that he was Editor of "Health Today" Newspaper and resident of Dhani Kishan Dutt near 12th quarter road, Hisar. He used to conduct sting operations regarding corruption in the Govt. offices. Ram Avtar was working for his newspaper as a part time correspondent in the year 2006. He told him that he had purchased a plot bearing No.85, situated in Mela Ground, Hisar and had already submitted an application for transfer of this plot in the office of Estate Officer, HUDA, Hisar on 17.3.2006 and the target date fixed by HUDA for issuance of permission to transfer this plot was 5.4.2006 but despite the expiry of target date i.e. 5.4.2006, the plot was not

being transferred in his name by HUDA officials despite repeated visits by him in the office of Estate Officer, HUDA, Hisar. He further told him that no work in HUDA office could be got done without paying bribe. He requested him (Ramesh Verma) that by way of sting operation he should expose the working of HUDA officials. Thereafter a team of four Press Correspondents consisting of himself (Ramesh Venna), Rakesh Verma, Parmod Vashisth, Bureau Chief, Dainik Bhasker, Hisar and Kumar Mukesh, Correspondent of Dainik Bhasker, Hisar was constituted by them and it was decided that out of them, three persons who were not known to the HUDA officials, would visit HUDA office, Hisar.

3. Further the case of the prosecution is that on 20.4.2006, he (Ramesh Verma) and Rakesh Verma alongwith two hidden cameras went to the office of Estate Officer, HUDA, Hisar at about 3.20 p.m. and inquired at its single window that they wanted to know the status of transfer of plot No.85. Mela Ground, Hisar. The lady clerk sitting at the single window of the office told them that they should meet the other Clerk namely Mrs. Raj Rani posted in the office. Then they went to Mrs. Raj Rani and asked her about the status of transfer of plot No.85, Mela Ground, Hisar, upon which she told them that the said area was allotted to her only on that day and the status of this case could be inquired by them from the dealing clerk Sh.

Jagmohan, who was sitting in front of her on a separate table. Then they met Jagmohan who told them after some time that he did not know about the status of the plot. When he (Ramesh Verma) insisted that a long time had passed since the application for transfer was submitted and he should do the needful. He also asked him (dealing clerk) that the target date had already expired, whereupon he told him that target date was being seen by him but when they were earning a lot of money by the sale of the plot then they should take care of him also and there was no harm in giving bribe to the concerned Clerks. Thereafter, he demanded a sum of Rs.2200/- in all from him and said that he would get the entire work regarding the transfer of the plot done from all other officials by paying them their respective share of bribe. Thereupon he told him that he had demanded a huge amount but he (Jagmohan) said that there were several share holders in the amount. He (PW Ramesh Verma) told him that he should tell his own share and he should not insist upon the shares of other concerned officials. Then he (Jagmohan) took him (PW Ramesh Verma) in the adjoining cabin and demanded a sum of Rs.1000/- for himself. He asked him that the amount was too much but he did not agree and said that the amount was reasonable. Thereafter, he gave five currency notes of the denomination of Rs.100/- each as bribe and Jagmohan kept the amount in the pocket of his pant and told him (PW Ramesh Verma) that Smt. Raj Rani, Clerk was also to be paid separately.

4. Thereafter, they both went to the seat of Raj Rani, Clerk and she demanded a sum of Rs.400/- as bribe from him for doing the work related to her. She also took him (PW Ramesh Verma) in the cabin and when he insisted that the amount claimed by her was on higher side, she agreed to do the work related to her seat after receiving Rs.300/- and thereafter he paid three currency notes of the denomination of Rs.100/- each, (total Rs.300/-) to Raj Rani as bribe. Then he came out of the cabin and asked Jagmohan Clerk as to whether the work would be done or not. Jagmohan told him that for this work JE Maanju was also to be paid Rs.200/-. Then Jagmohan took them to the cabin of JE Maanju and asked him to receive the fee of the file relating to transfer of plot. Upon which JE Maanju demanded a sum of Rs.200/- as bribe from him (Ramesh Verma) and he paid two currency notes of the denomination of Rs.100/- each as bribe which he kept in the pocket of his shirt. Thereafter, Raj Rani told him that on that day Superintendent was not present in the office and they should come again on the following day i.e. 21.4.2006.

5. On 21.4.2006, he and Rakesh Verma alongwith two hidden cameras went to the office of Estate Officer, HUDA, Hisar at about 12.00 noon and met Raj Rani, Clerk. She called Subhash,

Peon and directed him to take the file of this case to the office of Sh. HC Girdhar, Superintendent and on the way, Subhash Peon told them that the share of H.C. Girdhar for doing this work should be paid to him by them, upon which they told him that they would pay his share directly to Mr. Girdhar. When they reached the office of Superintendent, HC Girdhar, he appended his signatures on the file of the plot. He asked him (PW Ramesh Verma) as to whether they were dealing in sale and purchase of properties. Upon which they told him that they were property dealers. Then he demanded a sum of Rs.300/- as bribe for his signatures. Thereupon he paid three currency notes of the denomination of Rs.100/- each to him as bribe and he kept that amount in the pocket of his shirt. When they came out from his cabin, Subhash, Peon also demanded a sum of Rs.50/- as bribe from them for carrying the file to the "office of Superintendent and back to the seat of Raj Rani. Upon which he paid a sum of Rs.50/- as bribe to him on his demand. Then he assured them that their work would be done. Thereafter they came back to their office. After waiting for many days when permission to transfer was not issued by HUDA office, on 12.5.2006 he (PW Ramesh Verma) and Rakesh Verma alongwith two hidden cameras went to the office of Estate Officer, HUDA, Hisar at about 3.00 p.m. and met Mrs. Madhu, Dispatch Clerk and inquired about the permission to transfer the plot, upon which she told them that permission to transfer had already been sent by her to the allottee and if the said letter was not received by them then they should inquire about it from the Dealing Clerk, Sardar Baljit Singh, who was available upstairs. Then they went to the seat of Sardar Baljit Singh and asked him as to whether the letter containing the permission for transfer of above said plot was received back by HUDA. At that time one Balraj, an official of HUDA office came to the seat of Sardar Baljeet Singh and they both demanded a sum of Rs.200/- in total as bribe from them for tracing out the letter containing the permission to transfer the plot. Baljit Singh asked them to pay a sum of Rs.200/- for himself and Balraj, as bribe to Balraj Singh. Thereupon he tried to pay a sum of Rs.150/- to Balraj but he did not agree and he insisted for Rs.200/- upon which he (Ramesh Verma) paid four currency notes of the denomination of Rs.50/- each as bribe to Balraj. Thereafter they came down stairs and met Mrs. Madhu, Dealing Clerk and told her that Balraj and Baljeet had assured them to trace out the original letter containing the permission for transfer of plot upon which Madhu Clerk also demanded a sum of Rs.100/- as bribe from them for doing her work. Thereupon he (PW Ramesh Verma) paid two currency notes of the denomination of Rs.50/- each which she kept in the drawer of her table and assured them that the letter containing the permission to transfer the plot would be sent to them by post. Then they came back to their office.

6. When they did not receive the letter containing permission to transfer for many days then on 4.7.2006, he (PW Ramesh Verma), Rakesh Verma with two hidden cameras alongwith Kumar Mukesh went to HUDA Office, Hisar and met Sh. Jogi Ram, Dispatch Clerk who had been posted as such in place of Mrs. Madhu Rani. He demanded a sum of Rs.200/- as bribe from them for giving the transfer permission letter by hand to them, upon which he told him that this amount of Rs.200/- was too much then he agreed to accept a sum of Rs.100/- from him which he paid by way of single currency note of Rs.100/- as bribe on his demand which was kept by him in the pocket of his shirt. Thereafter, on the same day, Devi Lal, Clerk met them in the office of HUDA and he demanded a sum of Rs.200/- from them for doing the work of his seat, upon which he paid two currency notes of the denomination of Rs.100/- each to him as bribe. Jagmohan Clerk met them and told that Superintendent, HC Girdhar was on leave and in his place, the signatures of Sh. Pal, Accounts Officer of HUDA were required and that he (Pal) would charge a sum of Rs.300/- as bribe upon which he paid three currency notes of the denomination of Rs.100/-each to Jagmohan, Clerk as bribe and after receiving the same he obtained the signatures of Mr. Pal on the file relating to transfer

of the plot and Jagmohan asked them to come after some days to collect the transfer permission letter. They had recorded the above said incident in their hidden cameras. Thereafter they came back.

7. After some days, Kumar Mukesh went to the office of Estate Officer, HUDA, Hisar and obtained the original transfer permission letter from Jogi Ram, Dispatch Clerk of HUDA. On 13.7.2006 the entire sting operation was published in the Hisar Edition of "Dainik Bhasker" Newspaper. Inspector Ramesh Kumar also recorded his statement Ex.P.18 during the course of enquiry which was signed by him.

8. Further the case of the prosecution is that on dated l8.7.2006 PW6 DSP Vijay Kumar, while he was posted as inspector in CM Flying Unit, Hisar, received letter No.670 dated 20.7.2006, Ex. P13, letter No.20l1 dated 15.7.2006 alongwith newspaper dated 13.7.2006, published in "Hisar Bhasker" News item dated 14.7.2006 published in "Hisar Bhasker" and News item dated 14.7.2006 published in "Hisar Jagran", News item dated 15.7.2006 published in "Hisar Bhasker" for conducting enquiry into the matter. During enquiry, he recorded the statements of Ramesh Verma, Kumar Mukesh and Ram Avtar son of Sarjan. He also collected the record regarding plot No.85 Mela Ground Hisar, from HUDA Office, Hisar. He also collected two CDs and a file from the

office of Estate Officer, HUDA, Hisar containing pages No.1 to 72 alongwith letter No.24345 dated 22.8.2006, Ex.P14 collectively. Thereafter, he submitted his enquiry report alongwith statements of witnesses, record of HUDA Office, including CDs which were prepared by Ramesh Kumar Verma vide memo No.287 dated 31.8.2006 Ex.P15. Thereafter, he received order for registration of case against the officials of Estate Office, HUDA, Hisar. He sent ruqa Ex. P12 on 17.10.2006 to police station Civil Lines, Hisar through HC Daya Ram for registration of the case.

9. On 17.10.2006 the investigation of this case was entrusted to Sh. Sube Singh DSP. The papers regarding enquiry of sting operation, two CDs Ex.P.16 and Ex.P.17 (MOs) of sting operation and file Ex. P.14 were taken into possession 'by him vide memo Ex.P.32. During investigation he recorded the statements of Kumar Mukesh, Ramesh Kumar and Ram Avtar under section 161 Cr.P.C. on 22.10.2006.

10. On 15.11.2006 SI Sant Lal and Mukesh Kumar joined the investigation of this case with him. On that day he arrested accused Jagmohan, In their presence accused Jagmohan was interrogated who made the disclosure statement and got recovered Rs.500/-. His disclosure statement-cum-recovery, Ex.P.24 memo was prepared which was signed by the accused and attested by the witnesses. On the same day he also arrested

accused Jogi Ram who got recovered Rs.100/-. His disclosure statement-cum-recovery memo, Ex.P.25 was prepared which was signed by the accused and attested by the witnesses. He also arrested accused HC Girdhar who disclosed and got recovered Rs.300/- in the presence of above witnesses. His disclosure statement-cum-recovery memo, Ex.P.26 was prepared which was signed by the accused and attested by the witnesses.

11. On the same day accused Devi Lal was also arrested and interrogated in the presence of above said witnesses, who made disclosure statement and got recovered Rs.200/-. His disclosure statement-cum-recovery memo, Ex.P.27 was prepared which was signed by the accused and attested by the witnesses.

12. On the same day i.e. on 15.11.2006 accused Baljeet was also arrested and interrogated in the presence of above said witnesses. He also made disclosure statement and got recovered Rs.100/-. His disclosure statement-cum-recovery memo, Ex.P28 was prepared which was signed by the accused and attested by the witnesses.

13. On the same day accused Subhash was also arrested and interrogated. He also disclosed and got recovered Rs.50/-. His disclosure statement-cum-recovery memo, Ex.P.29 was prepared which was signed by the accused and attested by the witnesses.

14. On the same day i.e. 15.11.2006 accused Balraj was also arrested and interrogated, who disclosed and got recovered Rs.I00/-. His disclosure statement-cum-recovery memo, Ex.P.30 was prepared which was signed by the accused and attested by the witnesses.

15. He recorded the statements of Kumar Mukesh and SI Sant Lal under section 161 Cr. P.C. All the currency notes i.e. Rs.1350/- recovered from the above named accused were put in an envelope. Thereafter, the above said accused were put in lock-up and case property was deposited with the MHC.

16. On 16.11.2006 ASI Ghan Shyam Devi and Ramesh Verma joined the investigation of this case with him. On that day he arrested accused Raj Rani who suffered disclosure statement Ex.P.10 and got recovered currency notes of Rs.300/-. Her disclosure statement-cum-recovery memo, Ex.P.10 was prepared which was signed by the accused and attested by the witnesses. He also recorded the statements of witnesses under section 161 Cr. P.C., deposited the case property with MHC and put the accused in lock-up. On 7.12.2006, Kumar Mukesh and SI Ami Lal joined the investigation of this case with him. Accused Om Parkash Maanju, JE was also arrested and interrogated in the presence of above said witnesses. He made disclosure statement and got recovered Rs.200/-. His disclosure statement-cum-recovery memo, Ex.P.31 was prepared which

was signed by the accused and attested by the witnesses. Statements of witnesses under section 161 Cr.P.C were recorded and the case property was deposited with MHC and the accused was put in lock-up.

17. On 16.1.2007 HC Sat Narain joined the investigation of this case with him and in his presence accused Madhu Bala, who was on anticipatory bail from the Hon'ble High Court, joined the investigation of this case. During interrogation she suffered disclosure statement and got recovered Rs.100/-. Her disclosure statement-cum-recovery memo, Ex.P.32 was prepared. On receipt of sanction order he handed over the file to SHO PS Civil Lines, Hisar for preparing report under section 173 Cr. P.C."

After completion of investigation, the charge-sheet was presented in the trial Court. On presentation of challan, the trial Court finding *prima facie* case against the accused, framed charges for the offences under Sections 7 and 13(1)(d) of the PC Act, to which they pleaded not guilty and claimed trial.

To prove its case, the prosecution examined PW-1 Ishwar Singh Superintendent, PW-2 Jagdish Kumar Deputy Superintendent, PW-3 Ms. Ghanshyam ASI, PW-4 Inspector Ramphal, PW-5 SI Kanta Devi, PW-6 DSP Vijay Kumar, PW-7 Ramesh Verma, PW-8 Ram Avtar, PW-9 Kumar Mukesh, PW-10 DSP Sube Singh, PW-11 Veena, Clerk, office of Administrator, HUDA.

PW-1 Ishwar Singh, Superintendent, Office of Chief Administrator, HUDA, Panchkula, mainly proved sanction order Ex.P.1. PW-2 Jagdish Kumar, Deputy Superintendent, Estate Office, HUDA, Hisar brought the posting order of the accused and also proved the duties of the accused and the Committee constituted to deal with the transfer of the plot cases etc. PW-3 ASI Ghanshyam mainly associated with DSP Sube Singh in conducting the investigation of this case and also deposed that Raj Rani got recovered ₹300/- as per her disclosure statement. PW-4 Inspector Ramphal mainly deposed regarding preparing of report under Section 173 Cr.P.C. PW-5 SI Kanta Devi mainly deposed regarding registration of FIR on receiving Ruqa Ex.P.12. PW-6 DSP Vijay Kumar and PW-10 DSP Sube Singh mainly deposed regarding the investigation of this case conducted by them. PW-7 Ramesh Verma, Editor, PW-8 Ram Avtar, PW-9 Kumar Mukesh supported the prosecution version, which has already been given in detail while narrating the facts of this case. PW-11 Veena, Clerk, Office of Administrator, HUDA brought the original record and proved the sanction granted for prosecution of accused Balraj, Chowkidar and Subhash, Peon.

At the close of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. They denied the correctness of the evidence and pleaded their false implication. In defence, accused examined DW-1 Sushil Kumar, Clerk, who brought the summoned record and proved attested copy of letter dated 18.8.2006 sent by Estate Officer, HUDA, Hisar to Administrator, HUDA, Hisar, Ex.D.2. He also brought the original file of plot No.85 MGA Hisar. He deposed that as per receipt dated 3.7.2006, a sum of ₹600/- was paid on 3.7.2006 and another sum of ₹35,798/- was paid on 30.6.2006 for transfer of this plot. The above said amount was paid through drafts. Initial transfer fee was paid on 17.3.2006 vide receipt No.17185 through draft dated 10.3.2006.

The learned trial Court vide the impugned judgment dated 25.2.2011, after appreciating the evidence convicted and sentenced the accused-appellants, as stated above.

At the time of arguments, learned senior counsel for the appellants argued that the case of prosecution is mainly based on the sting operation recorded in the CDs Ex.P.16 and Ex.P.17 by Ramesh Verma and his team. These CDs have not been proved as per Indian Evidence Act, 1872 (hereinafter referred to as `the Evidence Act') and are inadmissible in evidence. If these CDs are not relied upon then the whole case of the prosecution goes. Learned senior counsel for the appellants further argued that there is discrepancy regarding the number of CDs and there is no cogent evidence on record as to what was the source of the CDs, from which the CDs were prepared. There is no evidence that who prepared the CDs or whether these CDs were prepared correctly or tampered with. There is no certificate of any type which is required under Sections 65-A and 65-B of the Evidence Act. Learned senior counsel for the appellants further argued that no voice sample was taken to compare the voice in CDs. Neither any voice sample was sent to the FSL nor CDs were sent to the FSL to prepare report that these were not tampered with. Neither hidden cameras were produced nor any DVD recorder was produced from which the CDs were prepared. Learned senior counsel for the appellants further argued that even there is no evidence from which computer these have been prepared. Learned senior counsel further argued that the CDs were not sealed when these were taken into Police possession. Learned senior counsel for the appellants further argued that PW-7 Ramesh Verma with his own member correspondents were conducting the investigation/sting operation without bringing these facts to the knowledge of the Police for 2-3 months. The oral statements of these PWs cannot be believed as the CDs were not proved as per law and these statements were not corroborated or supported by any documentary evidence. Learned senior counsel further argued that recovery of ₹300/- shown as per the disclosure statement of Raj Rani also cannot be held as corroborative piece of evidence as there was no mark on these currency notes. These currency notes are easily available with everybody and these currency notes cannot be connected with the present accused. There is neither any evidence as to whether these were having any specific mark on these notes nor their numbers had been mentioned anywhere in the case.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by bringing cogent evidence on record. The PWs have consistently deposed regarding the prosecution version. The oral statements are duly supported by the CDs produced in this case. He argued that the witnesses being reliable witnesses no ground is made out to disbelieve the PWs. He further argued that the findings are correct as per evidence and law and the appeals should be dismissed.

I have heard learned senior counsel for the appellants as well learned State counsel and have gone through the record.

From the record, I find that first of all the first sting operation was conducted by the complainant on 20.4.2006 and they continued with their sting operation till 4.7.2006, i.e., for more than two months, but neither they informed the Police nor associated the Police or the Vigilance Department. Even after 4.7.2006, the matter was not reported to the Police when the sting operation was complete. Then as per evidence on 13.7.2006 the entire sting operation was published in the Hisar edition of "Dainik Bhasker" newspaper. Even then the FIR was not registered. The FIR in the present case was registered on 17.10.2006. Even after the publication of the news, the matter was not reported to the Police by the complainant. The whole case of the prosecution is based on two CDs Ex.P.16 and Ex.P.17 but these CDs have not been proved as per law. These CDs were not sealed when these were taken into Police possession. No voice sample of the accused had been taken nor got it compared from FSL. These CDs were also not sent to the FSL to know the genuineness of the CDs. There is no cogent evidence on record to show that these CDs were not tampered with. No source of the CDs had been produced on the record as to from which computer these CDs were prepared. There is no evidence as to who prepared the CDs and as to why the hidden cameras, DVD recorder or computer hard-disc etc. were not produced before the trial Court. Mere producing of two CDs in the Court cannot be relied upon as these have not been proved as per law. There is every possibility of tampering with the

CDs. Otherwise also, there are only two CDs and the operation was conducted on so many days and not on two days, which means that prosecution has to prove as to how and from which source these CDs were prepared and also that these CDs were not tampered with. Further prosecution was duty bound to explain as to why the voice in these CDs was not got compared with voices of the accused persons from the FSL. Non-examination of the CDs from FSL for the purpose of tampering also creates a reasonable doubt in the prosecution version. A perusal of the evidence shows that there is also discrepancy regarding preparation of the CDs as some witnesses say that 3-4 CDs were prepared. There is also discrepancy regarding mode through which how the CDs were prepared. As per Section 65-A of the Evidence Act special provisions as to evidence relating to electronic record may be proved in accordance with the provisions of Section 65-B of the Evidence Act, which provides as under:-

> **"65-B. Admissibility of electronic records. —** (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the

original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: —

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, —

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, —

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation. —For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]"

In view of the above provisions under Section 65-B of the Evidence Act, a certificate to prove the CDs or the statement in evidence by virtue of Section a certificate under Section 65-B(4) of the Evidence Act is required. Admittedly in the present case, there is no such certificate. As already discussed no source of the CDs, hidden cameras, DVDs, computers etc. had been produced on the record from which these CDs have been prepared. Therefore, the base of the case i.e. CDs which are the only corroborative piece of evidence is not proved by the prosecution as per law which creates a reasonable doubt in the prosecution version. The oral statements of the witnesses regarding the sting operation without informing the Police or the investigating agency etc. without any cogent corroborative piece of evidence cannot be relied upon to convict these persons. Therefore, a reasonable doubt exists in the prosecution case and benefit of doubt always goes to the accused.

Learned senior counsel for the appellants placed reliance on the judgment of the Hon'ble Supreme Court in Anvar P.V. v. P.K. Basheer and others, (2014) 10 SCC 473, in which it has been held as under:-

> "15. Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:
>
> (a) There must be a certificate which identifies the electronic record containing the statement;
>
> (b) The certificate must describe the manner in which the electronic record was produced;
>
> (c) The certificate must furnish the particulars of the device involved in the production of that record;
>
> (d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and
>
> (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.
>
> 16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD),

Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

17. Only if the electronic record is duly produced in terms of Section 65B of the Evidence Act, the question would arise as to the genuineness thereof and in that situation, resort can be made to Section 45-A – opinion of examiner of electronic evidence.

18. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65-B of the Evidence Act are not complied with, as the law now stands in India.

19. It is relevant to note that Section 69 of the Police and Criminal Evidence Act, 1984 (PACE) dealing with evidence on computer records in the United Kingdom was repealed by Section 60 of the Youth Justice and Criminal Evidence Act, 1999. Computer evidence hence must follow the common law rule, where a presumption exists that the computer producing

the evidential output was recording properly at the material time. The presumption can be rebutted if evidence to the contrary is adduced. In the United States of America, under Federal Rule of Evidence, reliability of records normally go to the weight of evidence and not to admissibility.

20. Proof of electronic record is a special provision introduced by the IT Act amending various provisions under the Evidence Act. The very caption of Section 65-A of the Evidence Act, read with Sections 59 and 65-B is sufficient to hold that the special provisions on evidence relating to electronic record shall be governed by the procedure prescribed under Section 65-B of the Evidence Act. That is a complete code in itself. Being a special law, the general law under Sections 63 and 65 has to yield.

21. In *State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru1*, (2005) 11 SCC 600, a two-Judge Bench of this Court had an occasion to consider an issue on production of electronic record as evidence. While considering the printouts of the computerized records of the calls pertaining to the cellphones, it was held at Paragraph-150 as follows:

> "150. According to Section 63, "secondary evidence" means and includes, among other things, "copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies

compared with such copies”. Section 65 enables secondary evidence of the contents of a document to be adduced if the original is of such a nature as not to be easily movable. It is not in dispute that the information contained in the call records is stored in huge servers which cannot be easily moved and produced in the court. That is what the High Court has also observed at para 276. Hence, printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service-providing company can be led in evidence through a witness who can identify the signatures of the certifying officer or otherwise speak of the facts based on his personal knowledge. Irrespective of the compliance with the requirements of Section 65-B, which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely, Sections 63 and 65. It may be that the certificate containing the details in sub-section (4) of Section 65-B is not filed in the instant case, but that does not mean that secondary evidence cannot be given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely, Sections 63 and 65.”

It may be seen that it was a case where a responsible official had duly certified the document at the time of production itself. The signatures in the certificate were also identified. That is apparently in compliance with the procedure prescribed under Section 65-B of the Evidence Act. However, it was held that irrespective of the compliance with the requirements of Section 65-B, which is a special provision dealing with admissibility of the electronic record, there is no bar in adducing secondary evidence, under Sections 63 and 65, of an electronic record.

22. The evidence relating to electronic record, as noted herein before, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65-A and 65-B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this court in *Navjot Sandhu case* (supra), does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in

evidence unless the requirements under Section 65-B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.

23. The appellant admittedly has not produced any certificate in terms of Section 65-B in respect of the CDs, Exhibits-P-4, P-8, P-9, P-10, P-12, P-13, P-15, P-20 and P-22. Therefore, the same cannot be admitted in evidence. Thus, the whole case set up regarding the corrupt practice using songs, announcements and speeches fall to the ground."

I have gone through the law laid down in this judgment, which fully applies to the facts of this case.

In view of the above discussion, by giving benefit of doubt to the accused-appellants, these criminal appeals are allowed, the impugned judgment of conviction and order of sentence dated 25.2.2011 passed by learned Additional Sessions Judge, Hisar (exercising the powers of Special Judge under P.C. Act), are set aside and the appellants are acquitted of the charges as framed against them.

The sentence of imprisonment of the appellants was suspended vide orders dated 26.11.2011 passed by this Court in all appeals except Cr. Appeal No.S-1446-SB of 2011, in which sentence of imprisonment of the appellant-Balraj, was suspended vide order dated 2.8.2012, and they were released on bail. As they are on bail, therefore, their bail bonds and surety bonds shall stand discharged.

July 30, 2018. **(Inderjit Singh)**
Judge

hsp

NOTE: Whether speaking/reasoned: Yes
Whether reportable: No