

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

Reserved on: March 27, 2019

Pronounced on: April 01, 2019

(i) + **CRL.A. 526/2016 & Crl.M.A. 1347/2017**

SURESH KUMAR LAKRA

Through: Mr. Sudhir Nandrajog,
Senior Advocate with Mr.
Manish Tiwari & Mr. Anil
Kumar, Advocates

(ii)+ **CRL.A. 523/2016**

PIYUSH GOEL @ PIYUSH GOYAL (IN CUSTODY)

Through: Mr. Deepak Vohra,
Advocate

(iii) + **CRL.A. 520/2016 & Crl.M.A. 1346/2017**

JAIBIR SINGH SEHRAWAT @ JAIBIR SHERAWAT

Through: Mr. Mahavir Singh, Senior
Advocate with Mr. Anil
Kumar, Advocate

(iv) + **CRL.A. 499/2016**

MUKESH GUPTA

Through: Mr. Ganesh Khanna &
Dr. Sushil Gupta, Advocates

(v)+ **CRL.A. 495/2016 & Crl.M.(B) 257/2017**

UMESH PARASHAR

Through: Mr. Mahavir Singh, Senior
Advocate with Mr. Anil
Kumar, Advocate

(vi) **CRL.A. 480/2016 & Crl.M.A. 15869/2016**

VIRENDER PAL

Through: Mr. Mahavir Singh, Senior
Advocate with Mr. Anil
Kumar, Advocate
.... Appellants

Versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Ms. Rajdipa Behura, Special
Public Prosecutor for CBI
with Ms.Damini K. & Mr.
Philoman Kani, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. The above captioned six appeals arise out of trial court's judgment of 7th May, 2018, vide which appellants- *Jaibir Singh Sherawat, Piyush Goel, Virender Pal, Umesh Prashar, Mukesh Gupta and Suresh Kumar Lakra* have been held guilty for the offences under Sections 7, 12 & 13(1) (d) r/w Section 13(2) of *Prevention of Corruption Act, 1988*

(henceforth referred to as the 'PC Act') and Section 120B IPC. Vide impugned order of 9th May, 2019, these six appellants have been sentenced as under:-

S. No	Name of accused	Offences punishable	Sentence Awarded	Fine imposed	Sentence in default of fine
1.	Jaibir Singh Sehwat @ Jaibir Sehwat	u/s 120B IPC r/w Sec. 7,12 & 13(1) (d) & Sec. 13(2) of PC Act	5 Years	₹20,000/-	02 months
		u/S 7 of PC Act	5 Years	₹20,000/-	02 months
		u/S 13(1) (d) r/w Sec. 13(2) of PC Act	5 years	₹20,000/-	02 months
2.	Piyush Goel	u/s 120B IPC r/w Sec. 7,12 & 13(1) (d) & Sec. 13(2) of PC Act.	5 Years	₹50,000/-	05 months
		u/S 12 of PC Act	5 Years	₹50,000/-	05 months
3.	Virender Pal	u/s 120B IPC r/w Sec. 7,12 & 13(1) (d) & Sec. 13(2) of PC Act	3 Years	₹10,000/-	01 month
		u/S 7 of PC Act	3 Years	₹10,000/-	01 month

		u/S 13(1) (d) r/w Sec. 13(2) of PC Act	3 years	₹10,000/-	01 month
4.	Umesh Prashar	u/s 120B IPC r/w Sec. 7,12 & 13(1) (d) & Sec. 13(2) of PC Act.	03 Years	₹1,00,000/-	06 months
5.	Mukesh Gupta	u/s 120B IPC r/w Sec. 7,12 & 13(1) (d) & Sec. 13(2) of PC Act	03 Years	₹1,00,000/-	06 months
6.	Suresh Kumar Lakra	u/s 120B IPC r/w Sec. 7,12 & 13(1) (d) & Sec. 13(2) of PC Act	5 Years	₹20,000/-	02 months
		u/S 7 of PC Act	5 Years	₹20,000/-	02 months
		u/S 13(1) (d) r/w Sec.13(2) of PC Act	5 years	₹20,000/-	02 months

2. The factual background of this case, emerging from the impugned judgment, is as under:-

“This FIR was registered on the allegations that during the period Nov.-Dec., 2008, certain officials of Municipal Corporation Delhi (MCD) (i.e. A-1 to A-4) while working in MCD, Karol Bagh Zone, New Delhi, entered into a criminal conspiracy amongst themselves and with one Mukesh (A-6), a middleman and Piyush

Goel (A-5). In furtherance of said conspiracy, the officials of MCD demanded and accepted illegal gratification to the tune of Rs.17 lakhs from Piyush Goel (A-6).

It was also alleged that the said officials of MCD and middlemen, are running a racket to extract money from various building owners in Karol Bagh, New Delhi area in lieu of inaction against illegal construction etc. The modus-operandi adopted is in that they permit unauthorized construction, allow illegal commercial activities in residential areas, facilitate de-sealing of earlier sealed properties etc., in lieu of illegal gratification. They serve genuine & bogus show cause notices on various building owners and raise vague queries in order to cast an impression that the property is vulnerable to sealing and demolition by the MCD. They also resort to bogus sealing to threaten & terrorise the owners of buildings. Thus, by threatening the party they negotiate the bribe amount which is demanded and collected by the MCD officials either directly or through middlemen. The bribe amount is subsequently distributed amongst themselves.

It was alleged that during the period Nov.-Dec., 2008, Jaibir Sherawat, Umesh Parashar, Virender Pal in conspiracy with each other, demanded directly as well as through Mukesh, a bribe of Rs.37 lakh from one Piyush Goel to allow unauthorized construction at property bearing No.13/28, WEA, Karol Bagh, New Delhi. Out of Rs.37 lakhs, amount of Rs.17 lakhs was demanded and accepted by the them as illegal gratification for the lower floor. The remaining amount of Rs.20 lakhs was demanded for the shops at the upper floor @Rs.1 lakh per shop.

Investigation has revealed that the property no. 13/28, WEA, Karol Bagh, New Delhi was sold by Dr. Deepak Oberoid and Mrs. Jyoti Oberoi during Feb., 2006 to four buyers including S.K.Gupta & Sons, HUF through its Karta S.K.Gupta each having ownership of 1/4th undivided shares. At the time of sale, the garage measuring 10' X 15' at the ground floor was under tenancy. The 3/4th of undivided property i.e. the except the portion in the name of S.K.Gupta and

sons (HUF) was further purchased by M/s Prime Education Instructions Pvt. Ltd., during June, 2008. S.K.Gupta (PW31) alongwith Piyush Goel (A-5) alongwith and others are Directions in the company.

Investigation has further revealed that the house tax assessment of the property was carried out for the first time during the year 1960. As per the assessment, the existing structure of the building at that time was as under:-

- a. Ground Floor:-It comprised of two portions each having of two bed rooms, one store, one kitchen, one bathroom/WC, used for residential purpose. One small garage at ground floor was under tenancy for commercial purpose.
- b. First floor:- Same as that at ground floor, except the garage.
- c. 2nd Floor:- Barasati consisting of two rooms.

As per the house tax return, for the financial year 2005-06, the property was being used for residential purpose. The assessee had shown the covered area as 141 Sq.Mt. at the second floor and the first floor and 128 Sq.Mt. at the second floor. However, in the self assessments for the financial years 2006-07 onwards, filed by the new assessee, it is declared that the ground floor was being used for commercial purpose and the first floor was also being used for commercial purpose but was lying vacant. During investigation, the ground and first floor of the 'property' was found to consist of shops with shutters on the entire plot area and not the residential premises. The structural valuation of the existing structure at the 'property' has been carried out by the Experts of MCD. However, the report is still awaited.

Investigation has revealed that the property has been reconstructed by Piyush Goel (A-5) during the year 2008-09 and it was under construction during the period October, 2008 to April, 2009, which was in the knowledge of the accused public servants.

Utility of the property has changed from residential premises to commercial during this period.

Investigation has further revealed that as per the Master Plan-2012 passed on 07.02.2007, some areas of the Delhi including the Karol Bagh Zone have been notified as Special Area. The redevelopment scheme for such areas is to be notified by the MCD within three years i.e. up to Feb., 2010. Till that time the status quo of the buildings in these areas should be maintained. No fresh building activities in these areas are permitted without the permission of the competent authority. For the fresh construction at the property in question, no permission was sought from the competent authority and it was unauthorizedly reconstructed.

Investigation has also revealed that during the year 2007, properties in certain areas of Delhi were permitted to get registered for mixed land use if some commercial activity were already been carried out i.e. prior to Feb., 2007, on their ground floor. However, the remaining floors could be used for residential purpose only. During August, 2007, the 'Property' owner declared that it was under mixed land use and the ground floor was being used for mobile accessories shop. However, the commercial use of the property commenced only during the year 2009, when the shops at the ground floor was sold and then they become operational. The conversion charges for mixed land use including Rs.1,000/- as registration fee were also deposited. As assessee had deposited only Rs.1000 as registration charges, it signifies that as per declaration the entire ground floor comprised of one commercial unit and not 22 shops as found functional during investigation. Thus, the declaration was deliberately made false so that the premises could to commercial use later on.

Investigation has further revealed that the Building Department of MCD keep check on the unauthorized constructions. Primarily, it is the duty of the concerned JE to keep on unauthorized construction in area under his jurisdiction by making physical visits. He also submits Weekly Area Inspection Certificate in prescribed

proforma, which contains details of unauthorized construction noticed by him during his visits, if any. Any construction without sanction building plan or in violation of the building plan will be termed as an unauthorized construction and it can be demolished. Ongoing unauthorized construction can be demolished at any time as a preventive measure. However, buildings, where the construction has acquired shape, can be demolished only after they are booked and demolition order is passed. In such cases, a FIR under Delhi Municipal Corporation (DMC) Act, 1957, is registered by the concerned JE. Therefore, the concerned AE issues the First Show Cause Notice, which is to be immediately served by the JE. The owner is given three working days time to respond and/ or to certify the construction. If the owner fails to give convincing reply within stipulated period, the AE issued a Second Show Cause Notice (Demolition Order) giving the owner six days time to demolish the unauthorized construction himself, otherwise it could be demolished by MCD. After the demolition action is taken, the action taken is recorded on the Demolition File and Missal Band Register by the JE concerned.

The Building Department of MCD receives complaints regarding unauthorized constructions from various sources including from the general public. A monthly report on the complaints received and action taken, is prepared which is signed by the concerned AE and JE. Investigation has revealed that a complaint was received in the Building Department of Karol Bagh Zone, MCD, Delhi on 13.03.2009 and was marked to S.K.lakra (A-1) on 17.03.2009 who in turn marked the same to Jaibir Sherawat (A-2) on 20.03.2009. In the monthly report submitted on 27.04.2009, Jaibir Sherawat and S.K. Lakra deliberately concealed the fact of unauthorized construction at the 'Property' and reported that only repairing work was found at the site. In his Weekly Area Inspection report for the month of March, 2009 also, Jaibir Sherawat deliberately did not report any unauthorized construction at the 'property'. Another complaint regarding unauthorized construction

at the 'property' was received the Zone on 28.04.2009 and was marked to S.K. Lakra on 29.04.2009. An FIR No. 40731 dt. 01.05.2009 for unauthorized construction 'on completion' was issued by Jaibir Sherawat. The First Show Causes Notice No. 5181 was issued by S.K. Lakra on 01.05.2009. As per FIR and the Show Cause Notice, the unauthorized construction included re-erection of partition wall, fixing of circles on the ground floor and first floor and two rooms and toilet at the second floor. However, Jaibir Sherawat in conspiracy with S.K.Lakra and others, with ulterior motive, did not serve the notice on the owner ever after three weeks, in order to save the 'property' from the action of demolition.

During investigation it is revealed that the Special Unit, CBI, New Delhi received some source information that the accused persons were involved in corrupt and illegal activities. After obtaining orders of the competent authority, it taped telephonic conversation amongst them held during the period November, 2008 to April, 2009 on the concerned mobile phone numbers. The said taped telephonic conversations (113 in number) were collected and analysed during investigation. The conversations established that Jaibir Sherawat (A-2) had been in touch with Umesh Parashar (A-3), Virender Pal (A-4), Mukesh Gupta (A-6), Piyush Goel (A-5) and S.K. Lakra (A-1) regarding the unauthorized construction being carried out at the 'property'. He has also demanded and accepted the bribe from Piyush Goel either directly or through Virender Pal and Mukesh Gupta for allowing unauthorized construction at the 'Property'. He also asked Virender Pal (A-4) to pay 1 lakh to Umesh Parashar (A-3). The conversation also shows that Virender Pal (A-4) on the direction of his superior i.e. Jaibir Sherawat, has demanded and accepted the bribe to the tune of Rs.37.60 lakhs from Piyush Goel either directly or through Mukesh Gupta for allowing unauthorized construction at the 'Property'. Umesh Parashar (A-3) though not posted in the Building Department, Karol Bagh Zone, MCD, Delhi at that time, has created impression on Virender Pal, Mukesh Gupta and others that he was likely to be transferred soon to

Karol Bagh Zone, New Delhi. The conversation shows payment of the bribe by Piyush Goel to Virender Pal and to Umesh Parashar. His offer of bribe is of the nature of fait-accompli. The conversation shows that Mukesh Gupta (A-6) has played role of a mediator to ensure smooth transaction of bribe amount. He was in touch with Jaibir Sherawat, Umesh Parashar, Virender Pal and Piyush Goel. He was also insisting Piyush Goel to make payments to Virender Pal for the unauthorized construction being carried out by him at the 'Property'. The conversation also shows that unauthorized construction, demanded and acceptance of bribe, was in the knowledge of S.K. Lakra and he has conspired with other accused in this regard. He had asked Jaibir Sherawat to get two rooms constructed at the top floor of the 'Property', so that the action of demolition could be shown to be taken on the same in order to save the entire building from demolition. He also discussed the receipt of complaint of unauthorized construction at the 'Property'. The payment of the bribe by Piyush Goel is mentioned 'benami' in his diary, containing details of expenditures incurred towards construction of the 'Property'. These payments are corroborated from the conversation, wherein, the amount of bribe paid by Piyush Goel tallies with the amount reflected in the Daily Diary, as mentioned below:

<i>Date</i>	<i>Amount paid as per the Daily Diary</i>	<i>Amount Paid as per the taped telephonic conversation</i>
<i>20.11.2008</i>	<i>Rs.5,00,000/- Note: As per the entries, a total amount of Rs. 10.10 lakhs had been paid till date.</i>	<i>Piyush tells Mukesh that he has already paid Rs.11 lakhs to MCD people</i>
<i>11.12.2008</i>	<i>Rs.2,00,000/-</i>	<i>After the money was arranged, Piyush asked Virender Pal to come to</i>

		collect "Kharcha"
17.12.2008	Rs.1,00,000/-	Piyush asked Mukesh to arrange "one peti". He subsequently, asked Virender Pal to collect "single gaddi"
24.12.2008	Rs.1,50,000/-	Piyush asked Virender to collect "1 ½ File"
25.12.2008	Rs.1,50,000/-	Mukesh asked Piyush to send money to Parasharw
06.01.2009	Rs.2,00,000/-	Piyush tells Mukesh that he was paying Rs.2 lakhs to Virender Pal. He also asked Virender Pal to come his house to collect the money
13.01.2009	Rs.5,00,000/-	Piyush asked Virender to collect "five" from the shop
21.01.2009	Rs.1,50,000/-	Piyush asked Jaibir Sehwat to whom he would pay "1 ½".

The analysis of conversations shows that in order to disguise the demand and acceptance of bribe, the accused persons, at various places in the conversations, have used the coded word "File" to denote the amount in "Lakh".

The call details Records of the service providers for the phone numbers used by the accused persons corroborate the calls in question taped by Special Unit, CBI, New Delhi. All the phones, except those of S.K.Lakra and Bijender Singh have been seized either from the residences of the accused persons during searches or they have produced the same suo-moto during investigation. Umesh Parashar has been using the official phone number 9717788506, issued to him by MCD. The phone number 9810076110 used by Piyush Goel exists in

personal name. The telephone number 9818802431 used by Jaibir Sherawat is issued in the name of his relative/ friend Sunil Khatri. However, during the relevant period, it was under the use with Jaibir Sherawat. The phone number 9811229954 used by Mukesh Gupta exists in the name of his sister-in-law (Bhabhi) Mrs. Seema Garg, but was being used by Mukesh Gupta, during the relevant period. The phone number 9968493939 used by Virender Pal exist in the name of his mother.

Investigation did not reveal any mens-rea on part of Bijender Singh. He has few conversation only with Virender Pal. However, in none of the conversation he had demanded or accepted/ collected bribe. There is nothing in conversation which shows that he has collected the money on behalf of any other public servant for allowing unauthorized construction at the 'property'. The investigation also did not reveal that accused public servant have any bribe for allowing unauthorized construction at 7-A/36, WEA Karol Bagh, New Delhi. The entire incriminating conversation pertain to property no.13/28, WEA Karol Bagh, New Delhi.

Investigation has thus, revealed that the 'property' was not deliberately booked for unauthorized construction, by accused public servants in conspiracy with the accused private person. It was booked only after the complaint in this regard was received and the construction was completed. Even then, the Show Cause Notice was not deliberately served with ulterior motive to protect the 'Property' from the action of demolition. The fact of unauthorized construction was also deliberately concerned in the Weekly Inspection Report and the monthly report on complaints. The accused public servant have demanded and accepted bribe for allowing unauthorized construction at the 'property'. During investigation voice

samples of accused persons were taken and were sent to CFSL along with the questioned voices in the CDs containing intercepted calls. As per the report of CFSL both matched. The diary was also sent to CFSL for comparison with hand writing of Piyush Goel but as per the report the same did not tally. The sanction under Section 19 of P.C.Act was accorded to prosecute the accused person.”

3. Charges under Section 120B r/w Sections 7,12, and 13(2) r/w Section 13 (1) (d) of PC Act were framed by trial court against these six appellants. In addition, appellant- *Piyush Goel* was also put on trial for the offence under Section 12 of PC Act. Trial court had relied upon deposition of 36 witnesses, whose details find mention in the impugned judgment. Appellants in their statements recorded under Section 313 Cr.P.C. denied the prosecution case set up against them. Appellant- *Jaibir Sherawat* had got one witness i.e. *Mahipal Singh, Junior Engineer (DW1)* examined in his defence.

4. In the '*First Part of The Judgment*', trial court has considered the call details, intercepted calls and voice samples by referring to an order passed by Shri Gurvinder Pal Singh, Special Judge, CBI in one of the connected cases, wherein accused persons were discharged while dealing with Call Detail Records (CDR) in question and in another case, the accused were acquitted on merits, while observing that the possibility of tampering with the intercepted calls in question cannot be ruled out. Trial

court has also taken notice of Supreme Court's decision in *Ritesh Sinha vs. State of UP & Anr.* (2013) 2 SCC 357, wherein the question of power of Investigating Officer to take voice sample of accused has been referred to a larger Bench. In the 'Second Part of the Judgment', trial court has relied upon the evidence led and has convicted and sentenced appellants as noticed herein above.

5. With the consent of learned counsel for the parties, above captioned six appeals were heard together and are being decided by this common judgment.

6. On behalf of appellants, the impugned judgment and order is assailed on the ground that the substratum of the prosecution case stands demolished, as no unauthorized construction was carried out during the period in question and so, no occasion arose for demand of any bribe by appellants /accused. Learned counsel for appellants submitted that though trial court in the '*First Part of Judgment*' had chosen not to rely upon the CDR in question but while concluding has erroneously placed reliance upon CDRs to convict the appellants with the aid of Section 120B IPC, without there being any certificate under Section 65B of Indian Evidence Act, 1872. In this regard, attention of this Court had been drawn to deposition of M.C.Kashyap, Deputy S.P., Special Unit, CBI (PW11). It was pointed out that trial court has relied upon videography of property in

question which indicates that wood work was being done on 27th May, 2009 but the said video recording is not accompanied by a certificate under Section 65B of Indian Evidence Act, 1872, which is mandatory.

7. It was further submitted that the CD containing videography was not sealed. To submit so, attention of this Court was drawn to deposition of A.D. Tiwari, Senior Scientific Officer, CFSL (PW-34). It was next submitted that the trial court has relied upon diary/ spiral note pad (*Ex. PW28/A*), which has not been duly proved on record, as the said exhibition is for the purpose of identification only. It was further pointed out by learned counsel that then diary/ note pad entries have not been put to appellants in their statement under Section 313 Cr.P.C. and so, these entries cannot be read against appellants.

8. It was next submitted that the foundation of prosecution case is that unauthorized construction being raised by appellant-builder *Piyush Goel*, which is separately punishable under The Delhi Municipal Corporation Act, 1957 (DMC Act), but no prosecution under the DMC Act was launched against the appellants. Attention of this Court was drawn to the evidence PWs 9,10, 16, 18, 19, 20 & 21 to point out that the construction in the property in question had taken place much earlier to the period under scrutiny i.e. prior to November, 2008. It was pointed out that as per deposition of *Satish Gupta (PW31)*, 1/4th undivided share in the property

in question was purchased in the year 2006 and the changes in the said property were made within five-six months of purchase of the said property. It was submitted by learned senior counsel for appellant- *Suresh Kumar Lakra* that it has come in the evidence of aforesaid witness *Satish Gupta (PW31)* that in the property in question, twenty two shops were created on the ground floor and twenty shops on the first floor within five-six months of purchase of property in February, 2006 and the conversion charges from residential to commercial were also deposited by him with the MCD.

9. Learned senior counsel for appellant- *Suresh Kumar Lakra* further submitted that as per evidence of S.K.Jain, Zonal Inspector, Property Tax Department, MCD (PW-4), the user of ground floor in the property in question was commercial in the financial year 2006-07. It was next submitted that as per deposition of M.K.Verma, Executive Engineer, MCD (PW-2) internal walls were being raised in the first floor of the property in question and this witness has admitted that as per clause 6.4.1 of MCD Building Bye Laws, 1983, re-erection of internal walls or partition is permissible. It was pointed out that the video cassette of the property in question relied upon by trial court reveals that ground floor shops were fully constructed and carpentry work on the first floor was going on in full swing. It was next submitted that as per deposition of

Mahipal Singh, Junior Engineer of North MCD (DW1) that he had inspected the subject property on earlier occasion during the period from April, 2008 till September, 2008 and thereafter, he did not find any change in construction when he had visited the property in question in June, 2009.

10. It was next submitted that any action for unauthorized construction has to be initiated by the JE and not by petitioner- *Suresh Kumar Lakra*, who at the relevant time was working as AE. It was submitted on behalf of appellants that there is no evidence on record to connect appellants with the offence in question. It was also submitted that mobile of appellant- *Suresh Kumar Lakra* was not seized during investigation in this case and the sanction to prosecute him is invalid because there is non-application of mind, as the report of the Hand Writing Expert and the Voice Expert from CFSL was not placed before the sanctioning authority.

11. Learned counsel for appellants submitted that as per evidence of Investigating Officer (PW-36), he has prepared the transcript after identification of voice of appellants by independent witnesses, but the so called independent witnesses i.e. PW-2, PW-6 and PW-29 in their evidence have not identified the voice of appellants-accused. It was pointed out that as per the report of D.K. Tanwar, Voice Identification Expert (PW-25), it was on the basis of transcript, that a particular voice

was stated to be spoken by a person and since there is no proper identification of voice of appellant-accused, therefore, prosecution case which entirely rests upon intercepted calls fails.

12. Learned counsel for appellants further pointed out that the observations of Mr. M.K. Verma, Executive Engineer of MCD, (PW-2) regarding certain additions and alteration being carried out in the building in question, stands contradicted from the video recording and this nullifies the impugned judgment. Attention of this Court was drawn to impugned judgment wherein it is recorded that the trial court had played the cassette and had found that the ground floor shops are ready and carpentry work is in full gear on first floor. It was also pointed out that as per evidence of Sudesh Kumar Jain, Zonal , Property Tax Deptt, MCD (PW-4), the user of ground floor of property in question was commercial and first floor is indicated as commercial vacant. It was pointed out by learned counsel for appellants that witness Pawan Kumar, custodian of record of MCD, (PW-5) has deposed that he was unable to identify the voice of persons who are in conversation with each other in CD (Mark-Q1). It was next pointed out that complaint regarding unauthorized construction was received in the MCD office on 27th April, 2009 and Show Cause Notices were prepared on 1st May, 2009 and sent to Pawan Kumar, custodian of record of MCD, (PW-5) for sending it to the

defaulters and the said Show Cause Notices were handed over by Pawan Kumar (PW-5) to Investigating Officer of this case.

13. The precise submission on behalf of appellants is that since the user of premises in question was commercial, therefore, no charge of unauthorized construction could be raised, as erection of partition etc. had taken place way back in the year 2006-07 and in this regard, attention of this Court has been drawn to evidence of S.K.Jain, Zonal Inspector, Property Tax Department, MCD (PW-4). Regarding the video cassette (Ex.PW34/C), it was pointed out that this cassette was produced before the Court in an unsealed condition. To submit so, attention of this Court is drawn to evidence of A.D.Tiwari, Senior Scientific Officer (PW-34). It was also submitted that evidence of *M.K.Verma*, Executive Engineer, MCD (PW-2) stands contradicted by evidence of Satish Gupta (PW-31) and Mahipal Singh, Junior Engineer, MCD (DW-1) and shop buyers PW-9, PW-10, PW-16, PW-18, PW-19, PW-20 and PW-21.

14. Learned counsel for appellants-*Jaibir Singh Sehrawat*, *Virender Pal*, *Umesh Parashar* and *Mukesh Gupta* had adopted the submissions already advanced by learned senior counsel for appellant- *Suresh Kumar Lakra*. In addition, counsel for appellant-*Umesh Parashar* submitted that this appellant was not posted in the area in question and so, his prosecution and conviction is bad in law. It was pointed out that the only

evidence which has been relied upon by the trial court against appellant – *Umesh Parashar* is the tape recorded conversation, which is inadmissible. It was submitted that the trial court has erred in convicting appellant *Umesh Parashar*, as the CDRs are not supported by certificate under Section 65B of Indian Evidence Act, 1872 and it has been so noticed in the impugned judgment. Attention of this Court was drawn to deposition of *D.K. Tanwar*, Senior Scientific Officer (PW25) to point out that as per this witness, no comprehensive examination was carried and no report was given in respect of tampering, addition or manipulation etc. in this case and that the report given by this witness is on the basis of transcription. It was pointed out that as per deposition of Investigating Officer (PW-36), the identification of voice was got done from an independent witnesses *Manoj Kumar Verma (PW-2)*; *Anil Dalal (PW-6)* and *Vijay Dutt (PW-29)* and thereafter, transcript was prepared as per their identification but no Memo of Transcript was prepared and that the aforesaid so called independent witnesses have not supported the prosecution case on this aspect. So, it was submitted that conviction of appellant *Umesh Parashar* on the basis of CDRs, which are inadmissible, is unwarranted.

15. Learned senior counsel for appellant- *Piyush Goel* adopted the submissions already advanced on behalf of remaining appellants and

further submitted that the oral deposition of PW-2 regarding site inspection is inconclusive, as this witness (PW-2) does not categorically remember if he had reported that the work in progress in regard to erection of wooden gypsum and zinc sheets was being carried out and after inspection, he did not file any report. It was submitted that this witness has admitted in his cross-examination that erection and re-erection of partition walls does not require any permission under the Building Bye Laws in question. It was submitted that the trial court has erred in convicting appellant *Piyush Goel*, as the diary/ note pad was sent to CFSL for comparison with the specimen handwriting of *Piyush Goel* and as per the report, the said handwriting did not tally and this aspect has not been noticed by the trial court in impugned judgment.

16. It was also pointed out that the diary/ spiral note pad which purportedly incriminates appellant- *Piyush Goel* was not put to him in his statement under Section 313 Cr.P.C. It was further pointed out that the evidence of supplier of building material - i.e. *Anil Gupta (PW-7)* is vague, as it does not specify as to where the building material was supplied by him and that the bills/ invoice (*PW7/A1-27*) were not put to appellant at the time of recording his statement under Section 313 Cr.P.C. It was next pointed out that as per the CFSL Expert (*PW-35*), the voice recording report is not conclusive, as it states that incriminating voice is

the probable voice of appellant-accused persons. It was submitted that neither the hard disk nor mirror image thereof, has been produced and as per evidence of M.C.Kashyap, Deputy S.P., Special Unit, CBI (PW-11), during the process of segregation of calls, no independent witness was joined and this witness is not sure as to within how much time, the process of segregation of calls was concluded. It was pointed out that this witness (PW-11) did not remember as to whether segregation of calls was concluded within a week or fortnight or month. Finally, counsel for appellants submitted that the impugned judgment and order on sentence deserves to be set aside and appellants be acquitted.

17. On the other hand, learned Special Public Prosecutor for CBI supported the impugned judgment and submitted that the conviction and sentence awarded to appellant is duly supported by evidence on record. It was submitted that complaint regarding unauthorized construction in the property in question was made in the concerned office of MCD but appellant- *Jaibir Singh Sherawat* had submitted weekly Certificate regarding therebeing no unauthorized construction. It is pointed out that in the concerned register, entry regarding unauthorized construction has been mentioned but notice was not issued by the concerned appellants to the defaulters. It was also submitted by learned Special Public Prosecutor that certificate under Section 65B of Indian Evidence Act, 1872 has been

given by M.C.Kashyap, Deputy S.P., Special Unit, CBI (PW11) in respect of intercepted calls and the specimen voice of appellant-accused and it had tallied with the intercepted calls. To submit so, attention of this Court was drawn to the evidence of D.K. Tanwar, Voice Identification Expert (PW-25). It was submitted that certificate under Section 65B of Indian Evidence Act, 1872 regarding the video cassette was not essential, as the original video cassette was seized. It was also submitted that completion of construction in the year 2006 itself is not believable, as Anil Gupta, Supplier of Building Material (PW-7), had sent the construction material to appellant- *Piyush Goel*.

18. It was further submitted that is quite improbable that not a single shop was sold by the builder from the year 2006 to 2008. Reliance was also placed upon decision of 1st May, 2006 of a Coordinate Bench of this Court in W.P.(C) 16512/2004, titled as *M.K. Thakar & Ors. Vs. DDA & Ors.* to submit that Clause 6.4.1 of Building Bye Laws of MCD does not permit erection of various independent shops in a property, as it amounts to alteration in the building, which requires a prior sanction.

19. It is further submitted that though mobile phone of appellant- *Suresh Kumar Lakra* was not seized but the intercepted call details connects him with the offence for which he has been convicted. It was also submitted that though report of the Handwriting Expert and Voice

Expert were not placed before the sanctioning authority but this by itself would not render the sanction invalid, as the reports of these experts is of corroborative value only. Regarding note-pad/ spiral diary, it was submitted by learned Special Public Prosecutor that it is of corroborative value and since the prosecution case stands duly proved from the evidence of M.K.Verma, Executive Engineer, MCD (PW-2), intercepted call records and the other evidence on record, therefore, conviction and sentence awarded to the appellants deserve to be maintained.

20. Upon hearing and on careful perusal of the evidence on record as well as decision cited, I find that trial court in the impugned judgment has noticed that the intercepted calls were segregated and the question of admissibility of intercepted calls was already considered by another Special Judge in connected cases and benefit of doubt was extended by observing that possibility of tampering of the intercepted calls is not ruled out and that the question of powers of Investigating Officer to take voice sample of accused already stands referred to the larger Bench of the Supreme Court.

21. In the afore-referred background, the evidence of M.C.Kashyap, Deputy S.P., Special Unit, CBI (PW-11), who has segregated the intercepted calls, has to be considered. It has come in the evidence of this witness (PW-11) that while segregating, he had not prepared any

Memorandum and he is unable to tell as to whether the process of segregation was concluded within a week or fortnight or month. The evidence of this witness is required to be considered in the light of evidence of D.K. Tanwar, Voice Identification Expert (PW-25), who had tallied the specimen voice of appellants-accused with the recorded conversation and has concluded that it is probably the voice of appellant-accused persons. This witness is not categorical in his opinion. It has come in the evidence of D.K. Tanwar, Voice Identification Expert (PW-25) that no comprehensive examination was carried out nor any report was given in respect of tampering, editing or manipulation etc. in the instant case. Relevantly, independent witnesses have not supported the prosecution case regarding the giving of voice sample by appellant-accused. Reliance placed by the trial court upon video cassette in question was unwarranted, as such video cassettes were found to be in unsealed condition. It is so evident from the deposition of A.D. Tiwari, Senior Scientific Officer, CFSL (PW-34). In this background, coupled with the evidence of D.K. Tanwar, Voice Identification Expert (PW-25), I find that appellants have been erroneously convicted with the aid of Section 120B IPC while relying upon the electronic evidence, which has been found by me to be inadmissible in light of afore-going narration.

22. The ingredients of offence of criminal conspiracy, as re-capitulated by Supreme Court in *State v. Anup Kumar Srivastava*, (2017) 15 SCC 560 are as under:-

“26. Similarly, the law on the issue emerges to the effect that conspiracy is an agreement between two or more persons to do an illegal act or an act which is not illegal by illegal means. The object behind the conspiracy is to achieve the ultimate aim of conspiracy. For a charge of conspiracy means knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or services in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do.”

23. In the face of evidence on record, I find that the conviction of appellants-accused with the aid of Section 120B IPC for the offence in question cannot be sustained. So far as conviction of appellants-accused for the offences under Sections 7 and 13(1)(d) r/w Sec. 13(2) of PC Act is concerned, I find that there was no occasion for appellants-accused to

permit unauthorized construction in the property in question, as prosecution's witness- M.K.Verma, Executive Engineer, MCD (PW-2) has clarified in his evidence that he had observed that some additions and alterations were being made on the first floor of the premises in question and this observation was clarified by him to mean that internal walls were being constructed on the first floor. It has also come in the evidence of M.K.Verma, Executive Engineer, MCD (PW-2) that as per area notification, no punitive action could be taken in respect of unauthorized construction which existed prior to 7th February, 2007 and that repairs in terms of Clause-6.4.1 of Building Bye Laws of MCD, 1983 were allowed for the relevant period as per abovesaid Notification. This witness- M.K.Verma, Executive Engineer, MCD (PW-2) contradicts himself to state in cross-examination that at the time of inspection, he had found that the work of erection of wooden gypsum and zinc sheets etc. was in progress but he did not file any report after the said inspection.

24. Upon considering the evidence of this witness (PW-2) in its entirety, this Court finds it to be inconsistent and it stands negated from the deposition of independent witnesses PW-9, PW-10, PW-16, PW-18, PW-19, PW-20 and PW-21. From the evidence of afore-referred independent witnesses, it becomes clear that the unauthorized construction existed prior to the date of inspection in the year 2009. Trial

Court has erred in discarding the evidence of Mahipal Singh, Junior Engineer, MCD (DW-1), as this witness has deposed that he had not found any unauthorized construction in the property in question and nothing worthwhile has come out in cross-examination of this witness.

25. It needs to be clarified that the alteration being made in the property in question, as referred to by M.K.Verma, Executive Engineer, MCD (PW-2) in his evidence, were internal partitions, wood work etc., which is permissible under Clause-6.4.1 of Building Bye Laws of MCD. Reliance placed by respondent's counsel upon decision in *M.K. Thakar (Supra)*, is of no avail as in the instant case, unauthorized construction already existed prior to 7th February, 2007, whereas in the said decision, it was not so. Default in sending notices to the defaulters cannot be attributed to appellants, as it was duty of Pawan Kumar (PW-5) to send them. Scrutiny of prosecution case reveals that it lacks credence and requires corroboration by scientific evidence, which is lacking. In the face of afore-referred infirmities in the prosecution case, this Court finds that the conviction and sentence awarded to appellants deserves to be set aside.

26. Consequentially, the judgment of 7th May, 2018 and order on sentence of 9th May, 2019 are accordingly set aside and appellants are hereby acquitted. Fine, if deposited, be refunded forthwith.

27. The above captioned six appeals and applications stand accordingly disposed of.

**(SUNIL GAUR)
JUDGE**

APRIL 01, 2019

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