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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI****RESERVED ON – 14.03.2024.**

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**PRONOUNCED ON – 22.03.2024.**

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CRL.L.P. 185/2018, CRL.M.A. 14255/2023, CRL.M.A. 14256/2023,  
CRL.M.A.4631/2024, CRL.M.A. 4632/2024

CENTRAL BUREAU OF INVESTIGATION ..... Petitioner

Through: Mr. Sanjay Jain, Sr. Adv. (Sr. Special Public Prosecutor) with Mr. Neeraj Jain, Mr. Ripu Daman Bhardwaj & Mr. Rishi Raj Sharma (Special Public Prosecutors), Mr. Anupam Mishra, Ms. Noor Rampal, Mr. Yuvraj Sharma, Mr. Nishank Tripathi, Ms. Harshita Sukhija, Ms. Palak Jain, Ms. Shreeja Rawat, Mr. Gaurav Kumar Arya, Advs. with Mr. Manoj Kumar, DSP-CBI.  
versus

A RAJA &amp; ORS

..... Respondents

Through: Mr. Manu Sharma, Mr. Balaji Subramanian, Mr. Karl Rustomkhan, Mr. Kartikey Masta, Mr. Gyanendra Kumar, Advs. for **R-1 & 16.**

Mr. Siddharth Luthra, Senior. Adv. with Mr. Kartikeye Dang, Mr. Sahir Seth, Mr. Arjun Varma, Mr. Aashul Agarwal, Mr. Tusharjeet Singh, Advs. for **R-2.**

Mr. Mukul Rohtagi, Sr. Adv. with Mr. Vijay Aggarwal, Mr. Shivek Trehan, Ms. Rishika Goyal, Mr. Hardik Sharma Mr. Mukul Malik, Mr. Pankush Goyal, Ms. Barkha Rastogi, Mr. Kshitiz Garg, Mr. Puneet Dhawan, Advs. for **R-3 to 5, 13 to 15.**

Mr. Anshul Sehgal, Mr. Divyanshu Jain, Advs. for **R-6.**



Ms. Rebecca John Sr. Adv. with Ms. Tarannum Cheema, Mr. Akash Singh, Mr. Akshay N., Advs. for **R-7**.

Mr. D. P. Singh, Mr. Vikash Kukreti, Mr. Manu Mishra, Ms. Shreya Dutt, Mr. Imaan Khera, Advs. for **R-8**.

Mr. Sidharth Aggarwal Sr. Adv., with Mohit Kr. Auluck, Mr. Vivek Nagar, Advs. for **R-9 & 11**.

Mr. Hariharan, Sr. Adv. with Mohit Kr. Auluck, Mr. Vivek Nagar, Advs. for **R-10**

Ms. Manali Singhal, Mr. Santosh Sachin, Mr. Deepak Singh Rawat, Advs. for **R-12**.

Ms. Rebecca John Sr. Adv., Dr. Joseph Aristotle, Sr. Adv. with Ms. Tarannum Cheema, Ms. Priya Aristotle, Mr. Ashutosh Singh Rana, Mr. Arun Pandiyan, Mr. Akshay N., Mr. Akash S., Advs. for **R-17**.

**CORAM:**

**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

## **J U D G M E N T**

**DINESH KUMAR SHARMA, J:**

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1. The present petition has been filed seeking leave to appeal under



section 378(2) read with 386 read with 482 of the Code of Criminal Procedure, 1973<sup>1</sup> against the order dated 21.12.2017 passed by Ld Special Judge CBI Patiala House Court in CC NO. 1/11 (CBI Vs A.Raja & Ors.).

### **I.I. Brief Facts**

2. The briefly stated facts are that a Case bearing no. RC.DAL2009.A.0045 was registered under Section 120-B read with section 420/409/468/471/193 of IPC read with section 7 or in the alternative Section 11/12 and 13(2) read with section 13 (1) (d) of the Prevention of Corruption Act, 1988. The instant case was registered on 21.10.2009 against unknown officials of the Department of Telecommunications (DoT), Government of India, unknown private persons/companies, and others for the offences punishable under various provisions alleging criminal conspiracy and criminal misconduct, in respect of allotment of Letters of Intent (LOI), Unified Access Service (UAS) Licences and spectrum by the Department of Telecommunication.
3. The allegation in brief as levelled in FIR are as under:
  - (a) The entry fee for the new pan India UAS licences in the year 2008 was kept by Department of Telecommunications (DOT) as Rs.1658 Crore, at which price the Cellular Mobile Telephone Service (CMTS) licences were awarded by DOT after auction in the year 2001. These UAS licences, issued in 2008 were issued on first-come first-serve basis without any competitive bidding.
  - (b) A press release was issued by DoT on 24.9.2007, which appeared

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<sup>1</sup> herein referred to as Cr.P.C.



- in the newspapers on 25.9.2007, mentioning that the new applications for UAS licences will not be accepted by the DoT after 1.10.2007 till further orders. However applications received up to 25.09.2007 only were considered, which was also against the recommendations of Telecom Regulatory Authority of India (TRAI) that no cap should be placed on the number of Access Service Providers in any service area.
- (c) Even First-Come First-Serve policy was implemented by the DoT in a manner which resulted into wrongful gain to certain companies. Further, there are allegations that the suspect officials of DoT had selectively leaked the information to some of the applicants regarding the date of issuance of letter of intent on 10.01.2008. In the letter of intent, an arbitrary condition was incorporated that whosoever deposits the fees (as per conditions in Letters of Intent, i.e. LoIs) first, would be the first to get license. Since some of the applicants, who had this prior information, were ready with the amount and they were able to deposit the fee earlier than others. Thus, the favour was allegedly shown to some applicants by way of leaking the information about the date of issuance of the letter of intent.
- (d) Although, the FDI limit was increased from 49% to 74% in December, 2005, but there was no lock-in period or restriction imposed on the sale of equity or issuance of additional equity. As a result of this M/s. Swan Telecom Pvt. Ltd. (A-6), which paid to DoT Rs. 1537 Crore for UAS Licences of 13 circles, offloaded its 45% equity to M/s Etisalat of UAE for Rs. 4200 Crore. Similarly,



- M/s. Unitech Wireless (Group of 08 companies), which paid to DOT Rs.1658 Crore for UAS Licences of all 22 circles, offloaded its 60% equity to M/s Telenor of Norway for Rs. 6100 Crore. These stakes were sold by the said companies even before the roll out of services by them. The estimated loss to Government by grant of licences to these two companies alone comes to Rs. 7105 Crore. On pro rata basis, the estimated loss for all 122 UAS Licences issued in 2008 was more than Rs. 22000 Crore.
4. After investigation, CBI filed charge sheet in court on 02.04.2011 against twelve accused persons, that is, A-1 to A-12. The supplementary charge sheet was filed on 25.04.2011 against A-13 to A-17. The supplementary charge sheet was ordered to be tagged along with the main charge sheet vide order dated 24.05.2011.
  5. The charges in the present case were framed vide order dated 22.10.2012. The prosecution examined 153 witnesses. The statements of the accused persons were recorded under Section 313 Cr.P.C. Ten of the accused persons examined 29 witnesses in their defenses. R-1/A. Raja examined himself under Section 315 Cr.P.C. as DW-1. Sh. R. K. Chandolia/R-3 examined himself as DW-22.
  6. After the defense evidence, the prosecution moved an application dated 06.08.2014 for the summoning of five additional witnesses which was allowed vide order dated 19.11.2014. The court after hearing the arguments in detail which continued for around two years finally passed a detailed judgment running into 1552 pages whereby all the accused persons were acquitted.
  7. The CBI aggrieved by this is challenging the impugned judgment. The



CBI has sought leave to appeal against the judgment of the acquittal dated 21.12.2017.

## **II. Submissions of Petitioner/Appellant**

8. Sh. Sanjay Jain, learned senior counsel/Sr. Special Public Prosecutor submitted that the primary allegation recorded in the charge sheet are following:

“(i) Prior relationship of MoC&IT & his P.S. & the Secretary-Telecom with the certain beneficiaries i.e. license allottees.

(ii) Cut-off date of receipt of applications was unilaterally changed by MoC&IT against recommendation/advice.

(iii) First-cum-first serve policy was implemented / tinkered with to cause undue gain to certain companies.

(iv) Licenses were issued on First-cum-first basis without competitive bidding.

(v) Officials of DoT leaked information to the chosen few (beneficiaries) regarding the date of issuance of Lol on 10.01.2008. They knew the condition that whosoever is first to deposit the license fee (as per conditions of LOIs), would be the first to get a license. Since some of the applicants, had prior information, they were ready with the amount and were able to deposit the fee earlier than others, resulting in a reshuffling of priority thereby undue advantage to the chosen few.

(vi) Distribution of LoIs from the Four Counters: Certain Applicants were ready with demand drafts due to prior information resulting in a change of priority.

(vii) Non-revision of the Entry fee for PAN India UAS (Unified



Access Services) license fee was kept at Rs. 1658 Cr., the price fetched in 2001, causing a loss of about Rs. 22,000 Cr. to the public exchequer.

(viii) M/ s. Swan Telecom Pvt. Ltd. (A-6), which paid to DoT Rs. 1537 Crore for UAS Licences of 13 circles, offloaded its 45% equity to M/s Etisalat of UAE for Rs. 4200 Crore. Similarly, M/s. Unitech Wireless (Group of 08 companies), which paid to DOT Rs. 1658 Crore for UAS Licences of all 22 circles, offloaded its 60% equity to M/s Telenor of Norway for Rs. 6100 Crore. These stakes were sold by the said companies even before the roll out of services by them.

(ix) Pursuant to above, benefit illegal gratification was received by Kalaignar TV of Rs. 200 Cr. which was returned immediately after Supreme Court order of investigation.”

9. Learned senior counsel submits that the impugned judgment is bad in law and facts as the Ld. Trial Court ignored material evidence and circumstances. It was submitted that the irrelevant material was taken into consideration and conclusions drawn were illogical on the basis of surmises and conjectures. Learned senior counsel submitted that defence witnesses have been given undue weightage and the credible witnesses have been disbelieved.
10. Learned senior counsel submitted that for the purpose of the grant of leave to appeal following glaring circumstances/errors are being highlighted. Learned senior counsel made it clear that at this stage only some of the material irregularities are being highlighted and the prosecution deserves its right to argue it in further detail if the leave to



appeal is granted. Learned senior counsel highlighted the following material irregularities:

- i.) Association/Familiarity between the Accused (Govt. Officials) and Telecom License Applicants M/s. Swan Telecom (DB Group) and M/s. Unitech Wireless (Unitech Group).
- ii.) Fixation of cut-off date by officials to convey undue benefit to M/s. Unitech Wireless (Unitech group),
- iii.) Violation of "First Come First Serve Policy" & distribution of LOI by Setting up Four Counters to upset priority of applicants.
- iv.) Non-revision of entry fee,
- v.) Pecuniary benefit received (Money Trail), transfer of Rs. 200 Crore & its return of money immediately after Hon'ble Supreme Court ordered investigation vide order dated 16.12.2010.

**A. Association/ previous familiarity between the Accused persons:-**

11. Learned senior counsel submitted that in May 2007 A. Raja (A-1) became MOC&IT and RK Chandolia (A-3) became his PS. On 01.01.2008, Siddharatha Behura (A-2) was appointed as Secretary, Telecomm. It was stated that Earlier, when A-1 was MoEF (Minister for Environment and Forest), A-2 was Additional Secretary and A-3 was his PS. It was further submitted that PW-7 who was Additional PS to MoC&IT specifically stated that during his tenure as MoEF, A-1 had given environmental clearances to real estate projects of M/s. DB Realty (DB Group), M/s. Unitech, and many others, and A-1 used to regularly meet the officials of these companies. However, Ld. Trial Court disbelieved A-7 on flimsy grounds i.e., there was no entry in Visitor Register; PW-7 is a man of political inclinations, and no MoEF





record placed by the Prosecution.

12. Learned senior counsel submitted that A-3 had rented out his residential house at Safdarjung Development Area, New Delhi to M/s. Associated Hotels Pvt. Ltd. vide Rent Agreement dated 03.03.2009, which is a sister concern of M/s. DB Realty Ltd. However Ld. Trial Court brushed aside the evidence on this point on the ground that this is Ordinary relationship of landlord & tenant, not indicative of conspiracy in itself.
13. Learned senior counsel further submitted that relations between A-1 through Green House Promoters (P) Ltd., was rejected on the premise, *'Mere familiarity does not mean conspiratorial familiarity'*. Learned senior counsel submitted that the Ld. Trial Court has fallen into error by rejecting the evidence pertaining relation/association between A-1 and DB Group from before, saying that it may be possible that some officials of DB Group might have got acquainted with family members of A-1 during the process of due diligence of M/s. Green House.
14. Learned senior counsel further submitted that the credible evidence of PW-7 that A-1 used to meet A-17 regularly and other DMK Ministers was rejected on the ground that *"This is in the realm of speculation only"*. Learned senior counsel submitted that the observation of the Ld. Trial Court is erroneous.

**B. Fixation of cut-off date by officials to convey undue benefit to M/s. Unitech Wireless (Unitech group)**

15. Learned senior counsel submitted that on 24.09.2007 a Press Release was issued fixing the 'Cut-Off Date' as 01-10-2007 for receiving UASL, at the behest of A-1, disregarding the note given by DoT



officials to the contrary. Learned senior counsel submitted that A-3 handled the processing and communication between A-1 & DoT. It was submitted that the ultimate beneficiary was M/s. Unitech, since their applications were filed on 24.09.2007 and immediately thereafter, the instructions were received by DoT officials from A-1/A-3 to not accept any more Applications, which led to releasing of the Press Release.

16. Learned senior counsel further submitted that on 26-10-2007, A-1 & DoT approached MLJ (Ministry of Law and Justice) for opinion, which gave its opinion on 01.11.2007 that the matter be referred to EGoM (Empowered Group of Ministers). However, it was not done. It was further submitted that despite the advice by DoT officials, no review of the availability of Spectrum (circle-wise) was done. It was further submitted that A-1 vide his communication dated 02.11.2007 to PMO made a wrongful representation of the entire scenario on the process being followed.
17. Learned senior counsel in this regard invited the attention of the court to the testimony of PW- 36 (D.S. Mathur), PW – 60 (A.K. Srivastava), DW-22 (R.K. Chandolia), DW-1 (A. Raja). Learned senior counsel also invited the attention of the court to the document Ex. – PW 36/E.
18. Learned senior counsel submitted that the Ld. Trial Court rejected the prosecution case regarding criminal conspiracy to the effect that there was a change of cut-off date to benefit private entities.

**C. Violation of ‘First Come First Served Policy’ & distribution of LOI by Setting up Four Counters to upset the priority of applicants:-**

19. Learned senior counsel submitted that the Rule for UAS License or in



general at DoT is "First Come First Serve" – for determination of "priority" and "processing" of Applications. It was submitted that however, A-1 made changes in the Draft LOI - stating that the 'date of payment of fee' would be the priority date. Learned counsel submitted that this was objected to by DoT officials. However, A-1 sent a letter to PMO on 26.12.2007 which was a wrongful representation of the entire scenario of the process being followed.

20. Learned senior counsel submitted that A-1, A-2 & A-3 gave directions to DoT officials that correspondence exchanged with PMO are policy directives vide instructions dated 07.01.2008. Learned counsel submitted that opinion of Ld. SG was taken on 07.01.2008 on Draft Press Release, the last para of the opinion reads; *"However, if more than one applicant complies with LOI condition on the same date, the inter-se seniority would be decided by the date of application"*. Learned counsel submitted that however this last para was deleted by A-1 & A-2 and a Press Release was issued at 13:47 hrs. on 10.01.2008. It was submitted that the Distribution method was tinkered with by setting-up 'Four counters'. The 'Four counters' opened at 3:30 pm and the stipulation of allotment was – whoever pays first would be served first thereby reshuffling of the 'priority'. Learned senior counsel submitted that the parties with prior knowledge of this policy, kept their DDs ready and were benefitted.
21. Learned senior counsel submitted that there are four limbs of prosecution case namely – (i) Policy tinkered with, (ii) LOI's para 3 was changed (iii) setting up four counters (iv) allocation process tailored to suit favoured entities who had prior information. In this



regard, reliance was placed upon the testimony of PW-62 (A.S. Verma), PW-60 (A.K. Srivastava), PW-36 (D.S. Mathur), PW-110 (Nitin Jain), PW-11 (Nripendra Misra – Chairman, TRAI). Learned senior counsel submitted that however, Ld. Trial Court preferred the version given by DW-1 and inter alia held that there was adherence to the first come first policy. Learned senior counsel submitted that there are contradictions in the impugned judgment. Attention was invited to para. 758 to 769. Learned sr. counsel submitted that the court made observation that the policy was not followed, however, it rejected the case of the prosecution that manipulation of policy originated at the instance of A-1.

22. Learned senior counsel submitted that the Ld. Trial Court in Para 798-800 discussed the case of the prosecution that A-1 had changed the policy regarding priority from the date of application to the time of compliance. However, Ld. Trial Court reached on erroneous conclusion against the material on record on its own hypothesis.
23. Learned senior counsel submitted that Ld. Trial court ignored the credible evidence of PW-42 (Shah Nawaz Alam). Learned senior counsel submitted that the Ld. Trial Court has wrongly disbelieved the testimony of the then Ld. Solicitor General who was examined as PW-102. Learned senior counsel further submitted that by setting up Four Counters the priority was changed and there was also a change of policy which meant the deposit of DDs for issuance of LOIs subverting the 'First Come First Serve' policy.
24. Learned senior counsel has invited the attention of the court to the relevant para of the judgments where the Ld. Trial Court has reached



on a conclusion on mere surmises and conjectures. Learned senior counsel further submitted that PW-67 (Ms. Preeti Malhotra) in her testimony clearly indicate prior knowledge about the change of policy. However, the Ld. Court despite noting the same reached on an irrational conclusion.

**D. Non-revision of entry fee**

25. Learned senior counsel submitted that A-1 recorded a note on 04.12.2007 regarding not revising the entry fee. Learned senior counsel has invited the attention of the court to the Note dated 30.11.2007 by Ms. Manju Madhwan, Member (Finance) PW-86. The attention was also drawn to the letter dated 02.11.2007 from Hon'ble Prime Minister to A-1 seeking revision of entry fee. The attention was also invited to the testimony of PW-36 (D. S. Mathur). Learned senior counsel submitted that the Ld. Trial Court wrongfully supplied reason justifying non-revision & putting blame on prosecution witnesses. Learned senior counsel submitted that DW-1 was blindly followed.
26. Learned senior counsel has invited the attention of the court to para 1609 of the impugned judgment whereby the valid arguments placed by the CBI were rejected summarily by the Ld. Trial Court in para 1610. It has further been submitted that similarly the examination of PW-78 (D. Subba Rao – Finance Secy.) has been recorded in para 1614 but Ld. Trial court rejected the testimony of PW-78 (D. Subba Rao – Finance Secy.) in para 1624 and termed it as of no use to the prosecution.
27. Learned senior counsel also invited the attention of the court to para 1633 of the impugned judgment whereby the Ld. Trial Court inter alia



held that there was no material on record to indicate any insistent assertion or objective analysis by anyone for the need of revision of the entry fee and it was all general talk.

**E. Pecuniary benefit received (Money Trail).**

28. Learned senior counsel submitted that there are certain relevant dates which are as follows:

23.08.2004	M/s. Green House was incorporated by one, Sadhick Batcha and his wife, S. Reha Banu, as the initial Directors.
12.02.2007	Wife, Brother and Nephew of A. Raja (A-1) became Directors in M/s. Green House
May 2007	A. Raja (A-1) became MOC&IT
02.07.2007	2 <sup>nd</sup> Nephew of A. Raja (A-1) became Director in M/s. Green House
02.02.2008	Wife of A. Raja (A-1) resigned as Director in M/s. Green House

30.07.2008	M/s. Green House engaged M/s. Protiviti Consulting for accounting & management assistance for a fee of Rs. 12 lakh
Aug 2008	M/s. Protiviti submitted a Financial Due Diligence Report regarding M/s. Green House & same was made available to M/s. DB Realty (DB Group / M/s. Swan Telecom)
29.09.2008	M/s. DB Realty through its subsidiary M/s. Eterna Developers transferred Rs. 1.25 crore to M/s. Green House as advance for land purchase.
29.11.2008	The advance of Rs. 1.25 crore was returned, and the proposed investment was not taken up.
Dec 2008	<b>Money Trail - Route-II (Indirect Route) started</b>

29. Learned senior counsel submitted that above said money trail was recorded by the Ld. Trial Court in para 367 of the impugned judgment. Though the Ld. Trial Court recorded this allegation in para 367-370.



However, it summarily rejected the allegation and inter alia held that mere familiarity does not mean conspiratorial familiarity. Learned senior counsel submitted that transaction of Rs. 200 Cr. started on 23.12.2008 and ended on 11.08.2009. It was submitted that the money trail was originated from M/s. Dynamix Realty to M/s. Kusegaon Fruits to M/s. Cineyug Films and to M/s Kalaingar TV. Learned senior counsel submitted that the money was returned after the order of Hon'ble Supreme Court on 16.12.2010 and A-1 was summoned by CBI, between the period of 20.12.2010 to 28.02.2011.

30. Learned senior counsel submitted that the Ld. Trial Court rejected the evidence of PW-151 (DSP S. K. Sinha) and in para 1670 rejected the entire case on the ground that mere movement of money at fast or meandering speed does not make a transaction corrupt. Learned senior counsel submitted that the conclusion of the Ld. Trial Court that the return of money after registration of the case was only in the realm of conjectures and remote possibilities is totally erroneous. The attention was invited to para 1717, 1718, and 1719 of the impugned judgment.
31. Learned senior counsel submitted that at the stage of leave to appeal the court is only required to see whether any arguable points have been raised by the prosecution. Learned senior counsel submitted that in *State of Maharashtra vs. Sujoy Mangesh Poyarekar*<sup>2</sup> the Apex Court inter alia held that at the stage of grant of leave the High Court is required to apply its mind to consider whether a prima facie case has been made out or arguable points have been raised. Learned senior counsel submitted that it was further inter alia held at this stage the

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<sup>2</sup> (2008) 9 SCC 475



High Court is not required to examine whether the order of acquittal would or would not be set aside.

32. Learned senior counsel has further relied upon *Brijesh Singh vs State of UP and Others*<sup>3</sup>. Learned senior counsel submitted that the Apex Court in this case inter alia held that the High Court at the stage of leave to appeal must set forth its reasons, indicating at least in brief, an application of mind to the nature of the evidence and the findings which have been arrived at.

### **III. Submissions of Respondents**

#### **Submissions on behalf of Respondent No. 1/A. Raja**

33. Sh. Manu Sharma, learned counsel for respondent no. 1 submitted that his submissions are confined to the point that whether CBI has made out a case for grant of leave to appeal. Learned counsel submitted that the Ld. Trial Court has delivered a detailed judgment with an exhaustive analysis of the material and most liberal view has been taken of all the witnesses and no evidence has been discarded for hyper-technical reasons. Learned counsel submitted that by no stretch of the imagination, the impugned judgment be called 'prima facie perverse'. Learned counsel therefore submitted that the leave to appeal may not be granted. In regard to the fixation of entry fees, learned counsel submitted that CBI has not even contended that the fixation of entry fees was a result of conspiracy. It was further submitted that ten companies got licenses at the same entry fees and therefore it is an absurd theory that there will be a conspiracy with two of them to benefit all ten. Learned counsel submitted that the licenses issued just

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<sup>3</sup> (2021) 8 SCC 392





one year earlier were also at the same price.

34. Learned counsel further submitted that the Learned Senior Public Prosecutor quoted the judgment of the Ld. Trial Court and gave a misleading view. Similarly, learned counsel submitted that the stray sentences from the Telecom Regulatory Authority of India<sup>4</sup> recommendation were relied upon by CBI without placing proper context. It was submitted that TRAI's own communications to CBI were suppressed in this regard.
35. Learned counsel submitted that TRAI in its letter dated 26.05.2008 [Ex PW-11/W] recommended the same entry fee as was taken from the fourth cellular operator for grant of CMSP/UAS license in the year 2001. Learned counsel submitted that further TRAI in its letter dated 20.08.2011 [Ex PW-131/DB] inter alia stated that it is against this background that TRAI did not recommend in August 2007, auction methodology nor did it recommend any increases in the entry fees for new players by way of indexation or otherwise.
36. Learned counsel has invited the attention of the court to the testimony of PW-36 and Ex PW 36/C-2 to emphasis the point that there was a detailed discussion in the DoT on TRAI recommendations. The attention was also invited to DoT file Ex PW36/A-3 and Ex PW-36/DP. Learned counsel submitted that even the Hon'ble Prime Minister in Lok Sabha on 24.02.2011 stated that there was nothing wrong in the telecom policy. The reference was made to Ex PW-66/DA. The attention was also invited to the Tenth Five Year Plan, Ex PW-36/DG-1 & DG-2 to emphasis that revenue generation should not

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<sup>4</sup> Herein referred to as TRAI.



be a major determinant of the macro policy governing the sector. Learned counsel submitted that in fact the policy was that Spectrum policy needs to be promotional in nature and revenue considerations play a second role.

37. Learned counsel submitted that the Ld. Trial Court in para 1529 to 1633 considered the evidence of all the relevant PWs and rejected the case of the prosecution on the ground that selective reliance was placed on para 7.39 of the 2003 recommendations and para 2.78 of the 2007 recommendations.
38. Learned counsel submitted that the Ld. Trial Judge has taken all the relevant material into consideration. Learned counsel further submitted that the National telecom policy was framed by the Central Government. Ld. Counsel described the entire background of the telecomm policy right from 1994.
39. Learned counsel submitted that TRAI confirmed the existing entry fee and invited the attention to document Ex PW92/DE. It was submitted that between the period 2004 to 2007, 51 UAS licenses were granted based on the same UASL guidelines with same entry fee as in 2008. It was submitted that the revised UASL guidelines were issued and reference was made to TRAI regarding cap on number of service providers and review of license terms and conditions.
40. Learned counsel submitted that in April 2007 DoT decided that further processing of pending UASL applications as well as new applications will be carried out after receipt of TRAI recommendation. It was further submitted that R-1 assumed charge on 15/16.05.2007 as MoCIT. The TRAI recommendation were received on 28.08.2007 and



accepted by DoT on 17.10.2007. Learned counsel submitted that vide communication dated 26.05.2008 TRAI reiterated no increase in entry fee. The attention was also invited to D-821 which is letter from TRAI to IO dated 20.08.2011.

41. Learned counsel submitted that regarding the relationship between the accused persons the only testimony lead by the prosecution is PW-7. Learned counsel submitted that this has been rightly rejected by the Ld. Trial Court for the reasons as contained in para 355 to 365 of the impugned judgment.
42. Learned counsel submitted that the testimony of PW-7 has been rightly rejected. In regard to the relation between R-1 and Kalaignar TV. Learned counsel submitted that the arguments advanced before this court are contrary to the case in the Ld. Trial Court.
43. Learned counsel submitted that it is a settled case that the prosecution must come with a definite case. Learned counsel submitted that no evidence was lead in the Ld. Trial Court to prove the relationship between R-1 and Kalaignar TV. Attention was invited to para 1709-1710 of the impugned judgment. In respect to the relationship through Green House Promoters. Ld. Counsel submitted that the Ld. Trial Court has correctly appreciated the evidence in this regard in para 367-375. In regard to the transaction of Rs. 200 Cr. Learned counsel submitted that in order to make out a case under Section 7 PCA, it must be shown that the public servant 'accepted' or 'obtained' illegal gratification, for himself or for any other person. Reliance has been placed upon *N.*



*Vijayakumar v. State of Tamil Nadu*<sup>5</sup>.

44. Learned counsel submitted that in the present case there is no proof of demand for or by R-1 for illegal gratification of any amount from any person. It was submitted that the prosecution has not lead any evidence in this regard.
45. In regard to the fixation of the cut-off date, learned counsel submitted that the case of the prosecution has no legs to stand. It has been submitted that the Ld .Trial Court has rightly disbelieved the testimony of PW-60. The attention has been invited to para387, 395, 425, 426, 431, 438 of impugned judgment. Learned counsel submitted that Respondent no.1 has clearly explained the circumstances under which the decision was taken and version is consistent with the file movement register and has not been challenged in cross examination.
46. Learned counsel has also submitted that the CBI has failed to explain how fixation of cut-off date of 01.010.2007 would be of benefit to Unitech. Learned counsel submitted that there is not material on the record that why A-1 or A-3 should favour the Unitech. Learned counsel has placed reliance upon *State vs. Sameer*<sup>6</sup>.
47. In respect of the scope of jurisdiction to be exercised at the stage of leave to appeal, learned counsel for the respondent submitted that the order of acquittal cannot be reversed merely if a contrary view is possible. However, the re-appreciation of evidence and coming to its

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<sup>5</sup> (2021) 3 SCC 687

<sup>6</sup> 2022 SCC OnLine Del 515



own conclusion by the Appellate Court is not circumscribed by any limitation. Reliance can be placed upon *CBI v. Shyam Bihari & Ors.*<sup>7</sup>.

48. Learned counsel for the respondent consistently stated that even at this stage, the High Court is required to examine the matter at length and cannot pass cryptic order. Reliance has been placed upon *CBI v. Shyam* (*supra*). Learned counsel for the respondent further submitted that in *Jafarudheen & Ors. V. State of Kerala*<sup>8</sup>, while relying upon the *Murugesan vs. State* (*Supra*) Apex Court inter alia held that in cases where the conclusion is not a possible view then only the High Court can interfere and reverse the acquittal. In *Murugesan vs. State* (*supra*) the distinction from that of “possible view” to “erroneous view” or “wrong view” has duly been explained. Learned counsel also relied upon *Hakeem Khan v. State of M.P.* 2025 (2017) 5 SCC 719, to emphasise that the verdict of the trial court cannot be interdicted and the High Court cannot supplant over the view of the trial court. Learned counsel for the respondents has also relied upon the *State of Odisha v. Banabihari Mohapatra & Anr.*<sup>9</sup> in which the judgment of *Sadhu Saran Singh V. State of U.P.*<sup>10</sup> was quoted wherein, it was inter alia held that an appeal against acquittal has always been on an altogether different pedestal from an appeal against conviction. It was further inter alia held that the Appellate Court has interfered only when there is perversity.

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<sup>7</sup> 2023 8 SCC 197

<sup>8</sup> 2022 10 SCC 383

<sup>9</sup> 2021 15 SCC 268

<sup>10</sup> (2016) 4 SCC 357



49. Learned counsel for the respondent stated that reliance placed upon the CBI over the *Sujoy Mangesh Poyarekar* (Supra) is misconceived. Learned counsel for the respondent further submitted that the Apex Court in this case inter alia held that in deciding the question of whether requisite leave should or should not be granted, the High Court must apply its mind, considering whether a prima facie case has been made out or arguable points have been raised and not whether the order of the acquittal would or would not be set aside.
50. Learned counsel for the respondent has submitted that in *Sujoy Mangesh Poyarekar (supra)*, the judgment of *Sita Ram Vs. State of U.P.*<sup>11</sup> was cited with the approval wherein it was held that though the right of appeal is more or less a universal requirement of the guarantee of life and liberty rooted in the concept that men are fallible, judges are men and making assurance doubly sure, before irrevocable deprivation of life or liberty comes to pass, a full-scale re-examination of the facts and the law is made an integral part of fundamental fairness or procedure. However, the legislature in its wisdom has made a distinction in regard to the order of the acquittal and under Section 378 (3), it was inter alia laid down that appeal can be heard on the merits only after the leave is granted in cases of acquittal.
51. Learned counsel for the respondent has submitted that in *Sujoy Mangesh Poyarekar (supra)*, the Apex Court inter alia held that the appellate Court must consider the relevant material, sworn testimonies of prosecution witnesses and record reasons why leave sought by the State should not be granted and the order of acquittal recorded by the

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<sup>11</sup> (1979) 2 SCC 656



trial Court should not be disturbed. Learned counsel for the respondent has submitted that the leave can only be granted not only if the arguable points have been raised but at the same time, the leave can be granted only if the material on record discloses deeper scrutiny and re-appreciation, review or reconsideration of evidence and only in such cases, the appellate Court must grant leave as sought and decide the appeal on merits.

52. Learned counsel for the respondents have laid great emphasis on the point that even in *Sujoy Mangesh Poyarekar (supra)*, case, the reliance was placed upon *Chandrappa & Ors. vs. State of Karnataka (Supra)*, in which the general principles regarding the power of the appellate Court in dealing with an appeal against an order of acquittal were laid down.
53. Learned counsel for the respondents have cited numerous judgments of the jurisdiction of the Court while entertaining an order of acquittal. However, I consider that those judgments are not relevant at this stage as this Court as of now is not hearing the appeal. Learned counsel for the respondents have also cited numerous judgments where leave to appeal was refused. However, the same are also distinguishable on the facts and circumstances of the case.
54. Sh. Manu Sharma, learned counsel for the respondent No.1, has submitted that the prosecution can succeed by substantially proving the story it alleged. Learned counsel reiterated that the prosecution has stood its own legs and it cannot take advantage of the weakness of the defense. The reliance has been placed upon *Bhagiragh Vs. State of*



*M.P.*<sup>12</sup>. Learned counsel submitted that there is no evidence of demand of illegal gratification therefore, no inferential deduction of culpability/guilt of a public servant under Section 7 and 13(1)(d) read with Section 13 (2) of Prevention of Corruption Act, 1988 can be laid down. Reliance has been placed upon *Neeraj Dutta v. State (Government of NCT of Delhi)*<sup>13</sup>. Learned counsel has also submitted that Section 20 of the Act deals with the legal presumption that can be drawn only if it is proved during the trial the accused had accepted or agreed to accept any gratification. The reliance has been placed upon *Neeraj Dutta* (supra) so as to buttress his point that there is no evidence as to the demand or acceptance of illegal gratification.

#### **Submissions of Respondent No. 2/ Siddharth Behura**

55. Mr. Siddharth Luthra, learned senior counsel for respondent no.2/Siddharth Behura submitted that while dealing with an appeal against acquittal under Section 378 Cr. P.C. the court has to bear in mind that the acquittal of the accused further strengthens the presumption of innocence.
56. Learned senior counsel has also submitted that the appellate court is required to consider that whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record. Learned senior counsel submitted that if the advantage with the learned trial court is that the testimony is recorded by him and therefore the trial judge is in a better position to appreciate the evidence. Reliance has been placed upon *H.D. Sundara v. State of*

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<sup>12</sup> (1976) 1 SCC 20

<sup>13</sup> 2023 4 SCC 731





***Karnataka***<sup>14</sup>.

57. Learned senior counsel submitted that leave to appeal can be granted only if there is any perversity in the order of the learned trial court or a substantial error in the view taken by the trial court. Learned senior counsel submitted that leave can also be granted if the acquittal was illegal, unwarranted or contrary to law. Learned senior counsel submitted that there is no material on the record to grant leave in the present case.
58. Learned senior counsel submitted that respondent no.2 in his capacity as the Secretary (Telecom), Government of India did no wrong, and all allegations qua him are false, imaginary, and baseless. Learned counsel submitted that the submissions made by the CBI are fallacious and ill-founded.
59. Learned senior counsel submitted that the order of the acquittal can only be set aside if the approach of the lower court is vitiated with the manifest illegality or the decision is perverse and the trial court has committed a manifest error of law and ignored material evidence on record. Reliance has been placed upon *State of Goa Vs. Sanjay Thakran and Another*<sup>15</sup>, *Sawant Singh and other Vs. State of Rajasthan*<sup>16</sup>, "*State of Rajasthan Vs. Sohanlal*<sup>17</sup>.
60. Learned senior counsel submitted that the provision regarding leave to appeal is in order to ensure that no frivolous appeals are filed and it is a provision so as to ensure an equity. Learned senior counsel submitted

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<sup>14</sup> (2023) 9 SCC 581

<sup>15</sup> (2007) 3 SCC 755

<sup>16</sup> AIR 1961 SC 715

<sup>17</sup> (2004) 5 SCC 573



that leave to appeal can be granted only when there is an absolute assurance of the guilt on the basis of evidence on record. It has been further submitted that while deciding the issue regarding leave to appeal the High court is required to pass a speaking order showing application of mind. Reliance has been placed upon *State of Rajasthan vs. Chanda Alias Chandkori and others*<sup>18</sup>, *Goyal Enterprises vs. State of Jharkhand*<sup>19</sup>, *State of Punjab vs. Bhag Singh*<sup>20</sup> and *State of Orissa vs. Dhaniram Luhar*<sup>21</sup>.

61. Learned senior counsel submitted that the order of the learned trial court does not call for any interference. In regard to the 'prior acquaintance', learned senior counsel invited the attention of the court to para 366 of the judgment and submitted that the finding of the learned trial court is just and proper in this regard. Learned senior counsel also invited the attention of the court to pages 3 and 9 of the testimony of **PW 7 Aseerwatham Achary** recorded on 19.12.2011 to buttress his point. Learned senior further counsel submitted that there is no documentary or oral evidence that Respondent No.2 ever knew the alleged beneficiaries.
62. Learned senior counsel also invited the attention of the court to the statement of respondent no.2 recorded under Section 313 Cr.P.C. where he has categorically stated that he had not seen, met, known or heard of Shahid Balwa, Vinod Goenka and Sanjay Chandra. Learned senior counsel submitted that the testimony of PW7 has rightly been

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<sup>18</sup> (2007) 11 SCC 402

<sup>19</sup> (2008) 13 SCC 570

<sup>20</sup> (2004) 1 SCC 547

<sup>21</sup> (2004) 5 SCC 568



disbelieved by the learned trial court. The attention has been invited to para 1742 of the impugned judgment in this regard.

63. Learned senior counsel submitted that respondent no.2 was appointed Secretary in the MoCIT through a due administrative process and was in full knowledge of the then Hon'ble PM with whom he had worked for a duration longer than he worked with R-1. Learned senior counsel submitted that respondent no.2 earlier also worked with Dr. Manmohan Singh, from May 1992 to October 1994. Learned senior counsel submitted that any appointment of Additional Secretary and above is done by the 'Appointment Committee of Cabinet' (ACC) which is chaired by the Prime Minister and the Cabinet Secretary as Secretary to the Cabinet recommends the names and same is approved by the Prime Minister. The career profile and reason for the appointment of respondent no.2 have been proved by DW5/Mr. S. Basu, Under Secretary, DOPT, North Block and DW6/Mr. Lalit Sharma, Under Secretary, Department of Industrial Policy & Promotion (DIPP), Govt. of India.
64. Learned senior counsel submitted that respondent no.2 was appointed as Secretary MoCIT on 31.12.2007 and prior to this even he was not aware of his order of appointment nor his concurrence was sought for appointment as Secretary (T). Learned senior counsel submitted that it was the conscious decision of the then Prime Minister to appoint respondent no.2 as Secretary (T) and any theory of previous familiarity of conspiracy is liable to be rejected out rightly. Learned senior counsel also referred to question no.1718 of the statement under Section 313 Cr.P.C. in this regard.



65. In regard to the change in the first come-first serve Policy, the learned senior counsel submitted that the learned trial court has rightly disbelieved PW-60 A. K. Srivastava in this regard. Learned senior counsel submitted that in fact Mr. A. K. Srivastava has improved upon his earlier statement under Section 161 Cr.P.C. dated 06.12.2010 after the arrest of respondent no.2. It has been further submitted that the alleged meeting on 07.01.2008 as stated by PW60 has rightly been contradicted by PW77 K. Sridhara, Member (T) in his evidence recorded on 10.12.2012.
66. Learned senior counsel submitted that note of PW60 Ex.PW60/L did not mention about any such meeting or any such oral direction given to him in any meeting wherein he was directed to put up a note accordingly. Learned senior counsel referred to the Manual of Office Procedure and Conduct Rules to which PW60 was bound. Learned senior counsel invited the attention of the court to the testimony of PW-60/A. K. Srivastava recorded on 12.09.2012 and 14.09.2012.
67. Learned senior counsel submitted that in fact, the story of the alleged meeting dated 07.01.2008 was concocted after the arrest of respondent no.2 as the prosecution did not have any material at all against respondent no.2. Learned senior counsel submitted that the purpose of getting such an improvement from PW-60 AK Srivastava by CBI was to show that prior to D-7 being put up to Respondent No.2 on 07.01.2008, he became aware that no decision on changed FCFS had been taken in DoT but FCFS as contained in letter of 26.12.2007 written by MoCIT to PM was to be treated as policy directive on licensing matters. Learned senior counsel submitted that in fact



respondent no.2 had gone by the note, Ex.PW60L/23 as approved by M(T), wherein it is recorded that the said policy had been decided in DoT and a letter written to the PM on 26.12.2007 which were well before Respondent No.2 joined the Department. Learned senior counsel submitted that in this regard question no.1150 was put which was denied by R-2.

68. Learned senior counsel submitted that the Minister is entitled to make any policy decision and a bureaucrat is duty bound to implement the same. Learned senior counsel submitted that DoT's policy of FCFS was approved by respondent no.1, MoCIT, prior to joining of Respondent No.2, as reflected clearly by PW-60 in his Note dated 07.01.2008. Learned senior counsel in regard to the 'Press release' invited the attention of the court to para 911 to 914 of the impugned judgment and submitted that the learned trial court has rightly rejected this theory. Learned senior counsel further submitted that in fact respondent no.2 withdrew the file D-7 on 07.01.2008 after M(T) had seen it and before it was sent to MoCIT because, in the intervening period, it occurred to Respondent No.2 that there could be an administrative problem in determining the *inter se* seniority of applicants if more than one applicant complied with LOI conditions on the same date.
69. Learned senior counsel submitted that with this bona fide belief, respondent no.2 put a condition that if more than one applicant complied with LOI conditions on the same day, the inter-se seniority would be determined by the date of application. Learned senior counsel submitted that the learned trial court in para 911 of the impugned judgment has rightly held that if this condition was deleted by



respondent no.1 then respondent no.2 cannot be stated to be in conspiracy with R-1. In respect of setting up four counters for the distribution of LOIs, learned senior counsel submitted that respondent no.2 had no role in the distribution of LOIs through the four counters scheme. Learned senior counsel invited the attention of the court to para 918, 928 & 957 of the impugned judgment and submitted that everything was done in this regard by PW60 A. K. Srivastava and to avoid responsibility, he introduced the role of respondent no.3 by way of oral statements, contrary to the official record. The attention was also invited to para 1771 to 1776 of the impugned judgment. The attention was also invited to the testimony of PW77 K. Sridhara recorded on 11.12.2012.

70. Learned senior counsel submitted that as per documentary evidence Respondent No.2 had signed Note Ex PW-52/A only after the same was signed by PW-77 and therefore Respondent No.2 did not see the Note on 10.01.2008. In this regard, the testimony of PW62/A.S. Verma recorded on 19.09.2012 and testimony of PW123/M.N. Manickam recorded on 14.05.2013 and the testimony of PW110/Nitin Jain recorded on 21.03.2013 was relied upon.
71. Learned senior counsel submitted that the process of setting up of four counters was initiated by a note on page 30/N recorded by PW88 R.K. Gupta and it came to R-2 only for information. Learned senior counsel also invited the attention of the court to question no. 1167 and 1174 of the statement of respondent no.2 recorded under Section 313 Cr.P.C. Learned senior counsel submitted that the order of the learned trial court that R-2 had no role in this is correct and calls for no interference.



In respect of the "Cut-Off date" & "Non-Revision of entry fee" Learned senior counsel submitted that these issues pertain to the period before R-2 even joined the telecom department.

72. Learned senior counsel submitted that the issue of the Cut-Off date was decided on 25.09.2007 and it never came up before R-2 after 01.01.2008. In respect of the money trail also, the learned senior counsel submitted that this allegation came up for the first time in the Supplementary Chargesheet dated 25.04.2011. Learned senior counsel submitted that the trial court in para 1816 to 1819 has rightly rejected the case of the prosecution in this regard. Learned senior counsel submitted that the rigors of Section 10 of the Evidence Act will not be applicable or attracted in the present case. Reliance has been placed upon *Kher Singh vs. State*<sup>22</sup>.
73. Learned senior counsel submitted that R-2 was not a conspirator and he was not aware that spectrum was inadequate even for applicants up to 25.09.2007 and also that spectrum was available only for one licensee in the Delhi service area. Learned senior counsel submitted that the file regarding the availability of spectrum was never put up before him. In this regard, the reference was made to the testimony of PW60 recorded on 12.09.2012. Learned senior counsel submitted that therefore R-2 could not have been a part of any conspiracy in this regard. It has been further submitted that the finding of the learned trial court is categorical, absolute and beyond any iota of doubt and the impugned order is well-reasoned on the correct appreciation of facts, law and available evidence on record. Learned senior counsel submitted that

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<sup>22</sup> 1988 SCC 3 609



therefore leave may not be granted. Learned senior counsel invited the attention of the court to the entire career graph of the R-2 to show that he had always been an upright officer and had discharged several important responsibilities in his career without any stigma.

74. Learned senior counsel submitted that in the Code of Criminal Procedure, 1861 in Section 407 there was no provision for appeal in case of acquittal. However, in 1872, Section 272 was introduced appeal against acquittal was introduced with the discretion of the local government. Learned senior counsel submitted that in 1882, the same provision was followed. Learned senior counsel submitted that however in 1898, the Code was amended and it was provided in addition to the discretion of the State Government to file an appeal against acquittal, Complainant was also given the right to file an appeal against acquittal to the High court upon grant of special leave to appeal. In this regard the reference was made to *Empress of India vs. Gayadin*<sup>23</sup>, *Emperor v. Ram Adhin Singh*<sup>24</sup>; *Sheo Swarup v. King-Emperor*<sup>25</sup>; *Surajpal Singh v. State*<sup>26</sup>. Learned senior counsel invited the attention of the court to the 41<sup>st</sup> Law Commission report and Joint Committee Report<sup>27</sup> dated 04.11.1972.
75. Learned senior counsel submitted that finally in 1973, Section 378 subsection 3 was introduced making it mandatory to obtain leave to file an appeal against acquittal. Learned senior counsel invited the attention of the court to the rules of Delhi High Court Rules including Rule 1(1),

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<sup>23</sup> 1881 SCC OnLine All 12

<sup>24</sup> 1931 SCC OnLine All 44

<sup>25</sup> 1934 SCC OnLine PC 42

<sup>26</sup> 1951 SCC 1207

<sup>27</sup> GIPE-146179





Part E, Chapter 25 DHC Rules, Rules 1(2) Part E, Chapter 25 DHC Rules, Rule 1(3), Part E, Chapter 25 and Rule 1(4), Part E, Chapter 25 DHC Rules.

76. Learned senior counsel also invited the attention of the court to the CBI Manual, 2005. Learned senior counsel submitted that in para 23.7 of the Manual, it was provided that while filing an appeal the department must take into account the view of the learned trial court regarding the credibility of the witness besides the other facts. Para 23.8 of the manual also provides that only in a case of real & substantial injustice, the appeal may be preferred. Learned senior counsel submitted that CBI manual is binding as held in *Vineet Narain vs. Union of India*<sup>28</sup> & *CBI vs. Ashok Kumar Aggarwal*<sup>29</sup>.
77. Learned senior counsel submitted that the order of acquittal can be set aside only if the same is illegal, perverse & without jurisdiction. Reference has been made to *CBI vs. Shyam Bihari*<sup>30</sup>, *Central Bureau of Investigation vs. Darshan Pal Singh*<sup>31</sup> & *State of Odisha vs. Debasis Dixit*<sup>32</sup>. Learned senior counsel further submitted that the presumption of innocence is strengthened upon acquittal by the Trial Court, hence the High Court ought not to interfere in the same. Reliance has been placed upon *Surajpal Singh vs. State*<sup>33</sup>; *Aher Raja Khima vs. State of Saurashtra*<sup>34</sup> & *Ghurey Lal vs. State of U.P.*<sup>35</sup>.

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<sup>28</sup> (1998) 1 SCC 226

<sup>29</sup> (2014) 14 SCC 295

<sup>30</sup> (2023) 8 SCC 197

<sup>31</sup> 2012 SCC OnLine P&H 19590

<sup>32</sup> CRLLP No. 26 of 2016; Judgment dated. 13.01.2023

<sup>33</sup> 1951 SCC 1207

<sup>34</sup> 1955 SCC OnLine SC 17

<sup>35</sup> (2008) 10 SCC 450



78. Learned senior counsel submitted that the High Court is only required to examine that the view taken by the trial court is *a possible view* which could have been taken on the basis of the evidence on record & if the view is possible, the HC should not overturn the acquittal on the ground of other possible views. Learned senior counsel submitted that the high court is required to interfere only if it comes to a finding that the only conclusion on the basis of evidence on record was, the guilt of the accused beyond a reasonable doubt. Reliance has been placed upon *H.D. Sundara vs. State of Karnataka*<sup>36</sup>, *Chandrappa & Ors. vs. State of Karnataka*<sup>37</sup>, *Babu vs. State of Kerala*<sup>38</sup>.
79. Learned senior counsel submitted that this court is required to pass a speaking order while deciding the question of leave to appeal. Learned senior counsel submitted that the present appeal is an abuse of arbitrary power and has invited the attention to the impugned judgment indicating selective use of official notes, defective investigation and evasive approach on part of CBI.
80. Learned senior counsel submitted that the learned trial court has appreciated the evidence of all the material evidence on record. Learned senior counsel submitted that in the Aid Memoire filed by the CBI, there is no material against respondent no.2.
81. Sh. Siddharth Luthra, learned senior counsel for respondent No.2 has submitted that initially in the Code of Criminal Procedure, 1872, there was no provision for appeal in case of acquittal except on behalf of the government by the public prosecutor or other officers specially and

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<sup>36</sup> (2023) 9 SCC 581

<sup>37</sup> (2007) 4 SCC 415

<sup>38</sup> (2010) 9 SCC



generally appointed this behalf. Learned senior counsel has submitted that the provision was altered only to the effect that an appeal against acquittal shall be filed only in respect of certain carefully selected cases. Learned senior counsel has cited the judgment of *Empress of India v. Gayadin*<sup>39</sup>, wherein it was held that the power given to the Central Government by Section 72 of the Cr. PC are of an exceptional and unusual character and should be most sparingly enforced in respect of pure decisions of facts. Learned senior counsel has submitted that the appeal against the acquittal was allowed only in cases where, through the incompetence, stupidity or perversity of a subordinate tribunal, such unreasonable or distorted conclusions have been drawn from the evidence as to produce a positive miscarriage of justice. Learned senior counsel has submitted that therefore if we look back into the legislative history appeal against the acquittal is permissible only in exceptional cases.

82. Learned senior counsel has invited the attention of the Court to ‘Section 417’ of the Criminal Code of Procedure, 1882 wherein the Local Government was empowered to direct the public prosecutor to present an appeal in the High Court against an order of acquittal. Learned senior counsel has submitted that in the Parliamentary debate held on 02.03.1882, a motion was moved for omission of Section 417. However, the motion was defeated as it was assured that the power conferred by the law on the government had not been abused. Learned senior counsel for the respondent No.2 cited the judgment in *Queen-*

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<sup>39</sup> 1881 SCC OnLine Allahabad 12



*Empres v. Prag Dat*<sup>40</sup>, wherein the Court inter alia held that in appeal either against acquittal or conviction, the appellant has to satisfy the Court that there does exist some good and strong ground apparent upon the record for interfering with the deliberate determination by a judge.

83. Learned senior counsel referred to the abstract of the proceedings on the council of Governor General of India, Laws and Regulations, 1882, wherein it was mentioned by Hon'ble Maharaj Jyotender Mohan Tagore that this provision was initially not in the Indian Court. It was pointed out that the trial court had the best means of coming to the right decisions as to whether an accused person was guilty or not. It was argued that a person who was pronounced innocent, it would not be just to allow an appeal against such acquittal. It was argued that this power would employ a want of sufficient confidence in the magistracy which could not be conducive to the administration of justice in the criminal courts of this country.
84. Learned senior counsel has cited *Emperor vs. Ramadhin Singh*<sup>41</sup>, wherein it was inter alia held that an appeal from an acquittal is an extraordinary remedy and the right to appeal received a statutory recognition for the first time in the year 1872. Learned senior counsel has submitted that in this case there was a change in the judicial outlook as it was inter alia held that the rules and limitations affecting appeal from acquittal are on a par with those relating to appeals from convictions. Learned senior counsel has submitted that *Empress of India v. Gayadin (surpa)* was also diluted. However, learned senior

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<sup>40</sup> 1889 SCC OnLine Allahabad 12

<sup>41</sup> 1931 SCC OnLine Allahabad 44



counsel submitted that the Court in *Surajpal Singh V. State*<sup>42</sup> for the first time inter alia held that the presumption of innocence is strengthened as the trial court had the he advantage of seeing the witnesses and hearing their evidence. Learned senior counsel submitted that in *Aher Raja Khima v. State of Saurashtra*<sup>43</sup>, the court explained the doctrine of “compelling reasons”.

85. Learned senior counsel has submitted that Section 378 (3) Cr. PC as it stands today was recommended by the Joint Committee in its Report dated 11.04.1972 as the committee was given to understand that in some cases, this executive power to file the appeal against an order of acquittal was exercised arbitrarily and therefore in order to check against the arbitrary action in this regard, the committee provided appeal to be entertained only if the High Court grants leave.
86. Learned senior counsel for the respondent No.2 has relied upon the judgment of *Emperor V. Ram Adhin Singh* (Supra), wherein it was inter alia held as under:

*18. “In an appeal from an order of acquittal it ought to be remembered that there is always a presumption in favour of the innocence of the accused. This presumption very materially affects the question of onus, which except within a limited range of cases lies upon the Crown, and where the finding of the subordinate tribunal is in favour of the accused, the burden lies upon the prosecution to prove that the finding, reached by the Court below, was not justified by the evidence. Where the evidence against the accused is too scanty or insufficient to support the charge, the finding of the Court below cannot be displaced. Again, where the case is somewhere on the border line or very near it and it was possible for the Court, upon a balance of probabilities, to hold a*

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<sup>42</sup> 1951 SCC 1207

<sup>43</sup> 1955 SCC OnLine SC 17



*person guilty or not guilty, the reversal of the order of acquittal is not only undesirable and. inexpedient but is calculated to cause a miscarriage of justice. Where however the balance of evidence is distinctly against the accused or where material evidence has been misappreciated, overlooked or ignored, this Court is bound to step in as much in the interest of the administration of justice as of the public generally. Certain principles, therefore have been laid' down by this Court indicating the course which should be followed for the adjudication of the Government appeals. In *Empress v. Gayadin* [1882] 4 All. 148 Straight, J., is reported to have observed:*

*“It is not because a Judge or a Magistrate has taken a view of a case in which Government does not coincide, and has acquitted accused persons, that an appeal from his decision must necessarily prevail, or that this Court should be called upon to disturb the ordinary course of justice, by putting in force the arbitrary powers conferred on it by Section 272. The doing so should be limited to those instances in which the lower Court has so obstinately blundered and gone wrong as to produce a result mischievous at once to the administration of justice and the interests of the public.”*

87. Reliance was also placed upon *Surajpal Singh V. State (Supra)*, in this case, an additional test was laid down that the order of acquittal can only be reversed only for very substantial and compelling reasons. Learned senior counsel submitted that the Court while passing an order in the question of leave to appeal is required to pass a speaking order indicating reasons in such case. The reliance has also been placed upon *State of Himachal Pradesh v. Manoj Kumar alias Chhotu*<sup>44</sup>. Learned senior counsel further relied upon *State of Madhya Pradesh v. Giriraj Dubey*<sup>45</sup> to emphasize that the High Court is required to oblige to assign reasons. Learned senior counsel has submitted that in *State of*

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<sup>44</sup> (2008) 13 SCC 654

<sup>45</sup> (2013) 15 SCC 257



*Madhya Pradesh v. Giriraj Dubey (supra)* with judgment *Sujoy Mangesh Poyarekar* (Supra) was discussed in detail and it was inter alia held that the material on the record must disclose the necessity of deeper scrutiny and re-appreciation, review or reconsideration of evidence for grant of leave to appeal.

88. Learned senior counsel submitted that besides these, there has to be strong and compelling reasons. However, there can be a slight difference in detailing such reasons, in cases where the leave to appeal is granted or leave to appeal is refused. In cases where the leave to appeal is refused, in fact, all the windows are closed. Therefore, the court at this stage cannot pass cryptic and unreasoned orders. Learned senior counsel relied upon the *State of Punjab v. Bhag Singh*<sup>46</sup>, wherein the High Court refused to grant leave without giving any reasons at all. In this case, the Apex Court inter alia held that the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind.
89. Learned senior counsel has also relied upon *CBI v. Shyam Bihari & Ors.* (supra). Learned senior counsel relied upon *CBI v. Darshan Pal Singh*<sup>47</sup>, wherein it was held that the impugned judgment of acquittal contains cogent and valid reasons, and cannot be set aside. It was further inter alia held that such an order of acquittal can be set aside only if the same is illegal, perverse and without jurisdiction. Learned senior counsel has submitted that while filing an appeal against an order of acquittal, the government should exercise this jurisdiction with

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<sup>46</sup> 2004 1 SCC 547

<sup>47</sup> 2012 SCC OnLine P & H 19590



circumspection, only in cases of public importance or where there has been a miscarriage of justice or in a case of a very grave nature. Reliance has been placed upon the *State of Odisha (vigilance) v. Debasis Dixit*<sup>48</sup>.

90. Learned senior counsel further relied upon *State v. Laxman*<sup>49</sup> wherein it was held that if two views are plausible, the appellate court should not reverse a judgment of acquittal by the trial court, merely because another view is possible. Learned senior counsel further submitted that it is also a settled proposition that if there is a possibility of another view being reasonably plausible, then the view which favours the accused should be adopted unless the High Court returns a definite conclusion that the findings recorded by the trial court are perverse and against the weight of the evidence on record.
91. Learned counsel further relied upon *State v. Anil Bhardwaj*<sup>50</sup> and *State V. Vicky*<sup>51</sup> to substantiate his points that the order of acquittal can be set aside only when there are strong and compelling reasons. Learned senior counsel has submitted that in the present case, the learned Trial Court has rightly given credence to the defence witnesses and placed reliance upon *Dudh Nath Pandey v. State of Uttar Pradesh* (supra).
92. Learned senior counsel has submitted that in *State (Govt. of NCT of Delhi) v. Jitender Kumar and Anr.*<sup>52</sup>. Leave to appeal was rejected by the Division Bench of this Court. The Division Bench also placed

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<sup>48</sup> CRLLP No.26 of 2015 decided on 13.01.2023

<sup>49</sup> 2019 SCC OnLine Del 11973

<sup>50</sup> 2013 SCC OnLine Del 3251

<sup>51</sup> 2019 SCC OnLine Del 10331

<sup>52</sup> CRL.L.P 364/2017 decided on 06.07.2017





reliance upon *State v. Wasim & Anr.*<sup>53</sup> and inter alia held that the story of the prosecution is totally unreliable. Learned counsel submitted that in the present case also, the prosecution witnesses were totally unreliable and there is no ground to interfere in the well-reasoned judgment of the learned trial Court.

93. Learned senior counsel also referred to the CBI Manual 23.3 of Chapter 23 of the CBI Manual and submitted that in *Vineet Narain v. UOI*<sup>54</sup>, it was inter alia held that the CBI manual based on statutory provisions of the Cr.P.C. provides essential guidelines for the function and the CBI should adhere scrupulously to the provisions of the manual in relation to its investigating functions like raids, seizures and arrests. Learned senior counsel submitted that this view is reiterated by the Supreme Court in the *CBI v. Ashok Kumar Aggarwal*<sup>55</sup>.

#### **Submissions of Respondent No. 3/ R.K. Chandolia**

94. Mr. Vijay Aggarwal, learned counsel for respondent no.3 has submitted that the learned trial court has passed the well-reasoned order after correct appreciation of the evidence. Learned counsel has submitted that in the present case day-to-day trial spanning over a period of 7 years was conducted. Learned counsel has read in detail the relevant para 344 to 366, para 367-376, Para 1284-1286, Para 377-546, Para 915-961, Para 1529-1543, Para 1634-1643 from the impugned judgment.
95. Learned counsel has submitted that respondent no.3 had also filed detailed written submissions at the time of final arguments covering all

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<sup>53</sup> (2017) SCC OnLine Del 8502

<sup>54</sup> 1998 1 SCC 226

<sup>55</sup> (2014) 14 SCC 295



the above circumstances raised by the CBI. Learned counsel has placed on record detailed arguments comparing the submissions made by the CBI seeking leave to appeal and the evidence on record to show that the learned trial court had correctly appreciated the evidence on record and as such the judgment under challenge suffers from no infirmity or perversity. Learned counsel referred in detail to the relevant paras of the judgment and the final written submissions filed by him before the learned trial court.

96. Learned counsel also submitted that all incriminating circumstances were not put to the accused persons/ Respondent and the defence taken by the Respondent was not rebutted by the prosecution, which was obligatory on the part of the prosecution. Reliance has been upon *Parminder Kaur v. State of Punjab*<sup>56</sup>, *Jai Prakash Tiwari v. State of Madhya Pradesh*<sup>57</sup>, *Reena Hazarika v. State of Assam*<sup>58</sup>. Learned counsel submitted that if an accused takes a defence after the prosecution evidence is closed, the Court is duty bound under Section 313(4) to consider the same. Learned counsel submitted that he has already filed a detailed reply dated 28.02.2019 to the subject appeal raising several grounds on which the present leave to appeal deserves to be dismissed. Learned counsel submitted that the Impugned judgement has been passed after conducting day to day trial and the impugned judgment suffers from no infirmity.
97. Learned counsel submitted that the main accused came to the witness box and CBI did not put its entire case to them. It was further submitted

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<sup>56</sup> (2020) 8 SCC 811

<sup>57</sup> (2022) SCC OnLine SC 966

<sup>58</sup> (2019) 13 SCC 289



that there was an enormous delay in the recording of statement U/s 161 CrPC. It was further stated CBI has erroneously urged that the learned Trial Court erred in dealing with alleged incriminating evidence independently of one another and not as a whole. Learned counsel submitted that there are certain other relevant and material findings which have been concealed by the CBI on the basis of which the present leave to appeal is liable to be dismissed. Learned counsel also invited the attention of the court to the lacuna in the prosecution case. Learned counsel further submitted that the respondent examined himself as DW22 and the prosecution did not rebut his statement.

98. Learned counsel also made detailed arguments on the concept of 'perverse'. In respect of the law on the scope of leave to appeal under Section 378(3) CPC, learned counsel submitted that at this stage the court is not only required to see whether any prima facie arguable points have been raised, the court is also required to see that there is a presumption of innocence which is further enforced by the order of acquittal. Learned counsel submitted that the High Court can interfere only when the impugned judgment is found palpably perverse. Learned counsel submitted that this court cannot substitute its own view with the view taken by the trial court and the high court cannot interfere with the judgment, if two views are possible and the trial court appears to have taken one view. Learned counsel submitted that the High Court is required to see that there are compelling and substantial reasons. Learned counsel submitted that the high court even at this stage is required to sift and weigh the evidence to find out that whether any case of leave to appeal is made out. Reference has been made to



*Chandrappa & Ors. vs. State of Karnataka* (Supra), *State vs. Durga Prasad & Ors Govt*<sup>59</sup>, *State of Rajasthan vs. Babu Meena*<sup>60</sup>, *State vs. Ram Singh*<sup>61</sup> & *State vs. Lalit Ratawal*<sup>62</sup>.

99. Mr. Vijay Aggarwal, learned counsel has argued in detail about the law on the scope of leave to appeal and submitted that the same arguments can be adopted for R-4, R-5, R-13 and R-14. Learned counsel submitted that in the case of acquittal, there is a clear departure from the basic rule that there is an undeniable right of appeal against the final order of the court. Reliance has been placed upon *Sita Ram & Ors vs. the state of Uttar Pradesh*<sup>63</sup>, *Ramesh & Ors. vs. State of Haryana*<sup>64</sup>. Learned counsel submitted that an appeal against acquittal is to be considered on a higher pedestal as compared to any other appeal provided for in the Code.
100. Learned counsel submitted that leave can only be granted for sufficient and good reasons where there is a grave miscarriage of justice. Reliance has been placed upon *State vs. Sameer @ Allaudin*<sup>65</sup>. Learned counsel has also referred to the CBI Manual, 2005 and 2020 which contains specific rules pertaining to the preparation of a report by the prosecutor in charge of a case immediately after a judgment of acquittal or discharge is passed by the trial court. Learned counsel also referred to Chapter 25 of the Delhi High Court Rules. Learned counsel cited the instances where leave to appeal against the order of acquittal

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<sup>59</sup> Appeal No. 2450 of 1986

<sup>60</sup> 2013 4 SCC 206

<sup>61</sup> CrI. LP No. 111/2011

<sup>62</sup> LP No. 61/2015

<sup>63</sup> CrI. Appeal no.246 of 1978

<sup>64</sup> (2017) 1 SC 529

<sup>65</sup> CrI LP No. 55/2021



has been rejected by the high court and placed reliance upon *State vs. Ram Singh*<sup>66</sup>, *State vs. Lalit Ratawal*<sup>67</sup>, *State vs. Amjad Khan & Ors*<sup>68</sup>, *State (Govt. of Delhi) vs. Rajbir Singh & ors.*<sup>69</sup>, *State vs. Sanjay Kashyap @ Omi & Ors.*<sup>70</sup>, *State vs. Lakhan*<sup>71</sup>, *State vs. Maqbool Khan*<sup>72</sup>.

101. Learned counsel submitted that the Punjab and Haryana High Court in *Umardeen vs. state of Haryana and Ors.*<sup>73</sup> *inter alia* observed that the high court should examine the testimonies of witnesses examined by the prosecution. The reliance was also placed on State of *Punjab vs. Kashmir Singh*<sup>74</sup>, *State vs. Durga Prasad and Ors.*<sup>75</sup>.

102. Learned counsel submitted that it was held that the High Court can interfere only in cases where judgement is palpably perverse, and is based on a complete misreading of evidence. Reliance has also been placed upon *State of Chhattisgarh vs. Nankiram Dewangan & Ors.*<sup>76</sup> to buttress the point that the high court should interfere only when there are compelling and substantial reasons. Learned counsel also cited the *State of Rajasthan vs. Ram Niwas*<sup>77</sup>, *State of Rajasthan Vs Babu Meena*<sup>78</sup>, and *Chandigarh Administration vs. Dharam Singh*<sup>79</sup> wherein the order rejecting leave to appeal by the high court was

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<sup>66</sup> CrI. L.P.No.111/2011

<sup>67</sup> CrI. L.P.No.61/2015

<sup>68</sup> CrI.LP 577/2019

<sup>69</sup> 2002 CrI.LJ 3882

<sup>70</sup> CrI.LP 861/2018

<sup>71</sup> CrI.LP 361/2012

<sup>72</sup> 2019 (1) JCC 830

<sup>73</sup> MNU/PH/0122/2019

<sup>74</sup> 2008 SCC Online P&H 1320

<sup>75</sup> Appeal 2450 of 1986

<sup>76</sup> 2008 CrI. LJ 2488

<sup>77</sup> 2002(2) SC 457

<sup>78</sup> CrI. Appeal 570 of 2007

<sup>79</sup> 1985 CrI. LJ 1859



upheld by the Apex court.

103. Learned counsel submitted that thus the principles which can be culled out are that the High Court must be mindful of the fact that in case of acquittal, the presumption of innocence is further fortified and if two views are possible, the High court cannot substitute it with its own view. Learned counsel submitted that the learned trial court has several advantages over the appellate court as it had the opportunity to see the demeanor of the witness.
104. Learned counsel submitted that for grant of leave to appeal, not only arguable points are required but there must be compelling and substantial reasons. Learned counsel submitted that prosecution is also required to show the perversity in the order of the learned trial court. Learned counsel also submitted that principles which are applicable while hearing appeal are also applicable at this stage as observed by the Division Bench of this court in *State vs. Sameer @ Allaudin (supra)* and principles laid down by the Supreme Court in its landmark judgment *Chandrappa & Ors. vs. State of Karnataka (supra)*.
105. Learned counsel submitted that a close scrutiny and in-detail examination of the deposition of the prosecution and defence witnesses are to be done and the court is also required to sift and weigh through the evidence in its entirety in order to arrive at an independent finding and to examine the impugned judgment rendered by the trial court to see that whether there is any perversity.
106. Mr. Vijay Aggarwal, Learned counsel for respondent no.3 has placed reliance upon *Ramesh & Ors. vs. State of Haryana (supra)* wherein it was inter alia held that the scope of interference in appeal against



acquittal is narrower than the scope of appeal against conviction. It was further inter alia held that the judgment of acquittal of the trial court is attached with a definitive value. Such an order also fortifies the presumption of innocence in favour of the accused. Learned counsel submitted that the high court in the appellate jurisdiction is not supposed to substitute its findings in case the findings recorded by the trial court are equally plausible.

107. Learned counsel has further placed reliance upon *State vs. Ram Singh* (supra) wherein the court at the stage of leave to appeal examined the prosecution witnesses and held that the jurisdiction of the high court while considering a petition for leave to appeal is not empowered to exercise appellate review. It was further inter alia held that there has to be substantial and compelling reasons as laid in down in *Chandrappa & Others vs. State of Karnataka* (supra) for granting leave to appeal. Learned counsel has further relied upon the judgment of this court in *State vs. Lalit Ratawal* (supra) wherein while dealing with an appeal to leave the court examined all the prosecution witnesses and inter alia held that the leave to appeal can be granted only if it is shown that the conclusion arrived at by the trial court are perverse or there is misapplication of law or any legal principle. In this case also the reliance was placed upon *Chandrappa & Others vs. State of Karnataka* (supra) and leave to appeal was granted Learned counsel has further relied upon *State vs. Sameer @ Allauddin*<sup>80</sup> wherein while granting leave to appeal reliance was placed reliance upon *Babu vs. State of Kerala* (supra), *Chandrappa & Others* (supra), *Anawar Ali vs.*

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<sup>80</sup> CrI.L.P.55/2021



*State of Himachal Pradesh*<sup>81</sup> and dismissed the leave as there was no infirmity much less any perversity in the conclusions. Learned counsel has relied upon *State of Amjad Khan and Ors.* (supra) wherein while dealing with the leave to appeal, the court after appreciating the evidence inter alia held that the leave to appeal can be granted only where it is shown that the conclusion arrived by the trial court is perverse or there is a misapplication of law or any legal principle or that another view is more conceivable. Reliance has been placed upon *Ghurey Lal vs. State of U.P.* (supra). Learned counsel has also placed reliance upon the judgment of this court in *State vs. Sanjay Kashyap & Omi & Ors.* (Supra) wherein after relying upon *Ghurey Lal vs. State of U.P.* (supra) the court found that there was no illegality or perversity in the judgment.

108. Learned counsel has further relied upon the judgment of the Division bench of this court in *State (Govt. of NCT of Delhi) vs. Maqbool Khan*<sup>82</sup> in which after assessing the entire material on record to satisfy the conscious of the court and after relying upon the catena of judgments dismissed the leave to appeal. Learned counsel submitted that even the SLP filed against this was dismissed by the Apex court vide order dated 02.03.2020 in SLP (Crl) 1958/2020. Learned counsel further relied upon State of *Rajasthan vs. Ram Niwas* (supra), wherein leave to appeal was denied by the High Court. The apex court after taking into account inter alia held that there has to be clear evidence of the guilt of the accused and that in the absence of that if it is not

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<sup>81</sup> (2020) 10 SCC 166

<sup>82</sup> 2019 (1) JCC 830 (Delhi)





possible to record a finding of his guilt, the order of acquittal cannot be reversed. Similarly, in State of *Rajasthan vs. Babu Meena* (supra), the supreme court declined to entertain a SLP against the order denying leave.

109. Learned counsel has also placed reliance upon *Chandrappa & Ors. vs. State of Karnataka*(supra), *CBI vs. Shyam Bihar & Ors.*(supra), *State vs. Sameer Ali & Ors.* (Supra), *State vs Akash* (Supra) and *Arulvelu & Anr. vs. State*<sup>83</sup>. Learned counsel has further placed reliance upon *Darshan Singh vs. State of Punjab*<sup>84</sup> in which the Apex court vide its order dated 04.01.2024 has inter alia held that if the PWs had failed to mention in their statement under Section 161 Cr.P.C. about the involvement of an accused, their subsequent statement before the court during trial regarding involvement of that particular accused cannot be relied upon. Learned counsel submitted that in the present case, many witnesses have made improvement. On the improvement of the statement by the witnesses, learned counsel has also relied upon *Shakun Grover vs. CBI*<sup>85</sup>.

110. Mr. Vijay Aggarwal, learned counsel appearing for respondent no.4 besides adopting the judgments referred by him on behalf of respondent no.3 has also relied upon *Darshan Singh* (supra)

#### **Submissions of Respondent No. 4/ Shahid Usman Balwa**

111. Sh. Vijay Aggarwal, learned counsel on behalf of the respondent 4/Shahid Blawa has submitted that learned Special Judge has correctly appreciated the evidence on the record and passed a reasoned

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<sup>83</sup> (2009) 10 SCC 206

<sup>84</sup> CrI. Appeal No.163/2010

<sup>85</sup> 2014 (7) AD (Delhi) 513



judgment. Learned counsel has invited the attention of the Court to the relevant extract from the judgment to emphasize that the learned Trial Court arrived at the correct finding based on complete appreciation of evidence on the record i.e. paras 344 to 546, paras 915-961, paras 1284-1286, paras 1529-1543 and paras 1634-1643.

112. Learned counsel read out all the relevant paragraphs of the judgment to emphasize his point. Learned counsel submits that the respondent had filed detailed written submissions at the time of final arguments covering all the circumstances raised by the CBI in this court to show that those are arguable points for grant of leave to appeal. Learned counsel also invited the attention of the Court to written submissions of the final arguments submitted by the respondent before the learned Trial Court regarding all the five circumstances raised by the CBI. Learned counsel also extensively relied upon the written submissions filed during the course of the arguments.

113. Learned counsel submits that from the statement under Section 313 CrPC including the submissions under Section 313 (5) CrPC; it is clear that all incriminating evidence and circumstances were not put to the accused persons/respondent and the defense taken by the respondent was not rebutted by the prosecution. Learned counsel submits that the prosecution is under an obligation to negate the defense taken by the accused in their submissions under Section 313 CrPC including their submissions under Section 313(5) Cr, PC. Reliance has been placed *Parminder Kaur v. State of Punjab*<sup>86</sup>, *Jai Prakash Tiwari v. State of*

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<sup>86</sup> (2020) 8 SCC 811



*Madhya Pradesh*<sup>87</sup>, *Reena Hazarika v. State of Assam*<sup>88</sup>.

114. Learned counsel submits that they have already filed the detailed reply dated 24.01.2019 in which it has inter alia been stated that the impugned judgment has been passed after conducting day to day trial and it suffers from no infirmity. It has further been submitted that the main accused persons entered the witness box and the CBI did not put its entire case to them. It has further been submitted that there is enormous delay in recording of the statement under Section 161 CrPC. Learned counsel submits that the CBI has erroneously averred that the learned Trial Court erred in dealing with alleged incriminating evidence independently of one another and not as whole. Learned counsel submits that the alleged acts/omission attributed to the respondent No.1 are anti-thesis of the conspiracy. It has further been submitted that the evidence of the DoT officials runs contrary to the documentary evidence. Learned counsel further submits that the CBI in his opening remarks on leave to appeal has read selective paras from the judgments and failed to bring to the notice of this Court the aspects which dealt with how the CBI conducted the prosecution before the learned Trial Court.

115. Learned counsel has invited the attention to the paras 1680, 1683, 1710, 1739, 1747, 1749, 1812 so as to show the lacuna in the case of the CBI. Learned counsel submits that there is glaring vagueness in the case of the prosecution as revealed during the cross examination of respondent No.1 by the prosecution. It has been submitted that the

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<sup>87</sup> (2022) SCC OnLine SC 966

<sup>88</sup> (2019) 13 SCC 289



alleged transactions cannot be proved merely by production of bank statements and witnesses from bank; rather independent evidence regarding the actual transaction and the purpose behind the same is required to be proved. It has further been submitted that the investigation was conducted in a shoddy manner wherein the CBI violated its own manual. The investigation was conducted in a prejudicial and predetermined manner with total incompetence. It has further been submitted that despite the similar serious allegations being levelled against the Tata Group, there was intentionally no investigation was conducted against the Tata Group. It has further been submitted that the CBI did not put forward the vital aspects demonstrating the predetermined mindset of investigating officer. It has further been submitted that there was no role of Shahid Blawa in the main charge sheet. Learned counsel also argued in detail regarding the meaning of 'perverse'. Learned counsel also while adopting the arguments raised on behalf of respondent No.3, re-emphasized the law on the grant of appeal. It has been submitted that there is presumption of innocence which is further notified and that the judgment may only be interfered with if it is found to be perverse. Moreover, it is submitted that this Court cannot substitute its view with that of the learned Trial Court. Learned counsel submitted that there have to be compelling substantial reasons to interfere in the order of the learned Trial Court.

### **Submissions of Respondent No. 5/ Vinod Goenka**

116. Mr. Mukul Rohtagi, learned senior counsel for respondent No.5/Vinod Goenka has submitted that while granting leave to appeal, the Court is required to examine the case individually against each accused.



117. The Court is required to see whether the case is made out distinctly to grant leave of appeal against each particular accused. The reliance has been placed upon *State (Govt. of NCT of Delhi) v. Mukesh & Ors.*<sup>89</sup>. It has further been submitted that leave can only be granted if the order of the acquittal is perverse and unreasonable. The reliance has been placed upon *Ghurey Lal v. State of Uttar Pradesh* (Supra). Learned senior counsel has further submitted that the leave is not to be granted if the learned Trial Court has taken a view which is plausible and reasoned. The reliance has been placed upon *Babu and Ors. v. State of Uttar Pradesh*<sup>90</sup>. It has further been submitted that if the judgment of the Trial Court is arrived at after proper appreciation of evidence, High Court should not interfere with the same. The reliance has been placed upon *Bannareddy v. State of Karnataka*<sup>91</sup>.
118. Learned senior counsel submitted that the first allegation against the respondent is he had prior relationship/acquaintance with Sh. A. Raja and abated the receipt of illegal gratification by A. Raja to the tune of Rs.200 Crores. Learned senior counsel submitted that this allegation is based on testimony of PW-7. The attention has been invited to the examination-in-chief dated 19.12.2011 and the cross examination dated 21.12.2011 and 04.01.2012. Learned senior counsel submitted that any acquaintance with R-1/A. Raja in 2005 for construction projects of DB Realty is false and tutored as DB Realty was only incorporated in January, 2007. It has further been submitted that no documentary evidence has been produced showing any visit of respondent-5 to the

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<sup>89</sup> 2016 (228) DLT 389

<sup>90</sup> 1983 2 SCC 21

<sup>91</sup> 2018 5 SCC 790



office of respondent-1. It has further been submitted that the evidence of PW 152, the Investigation Officer, confirms that the respondent-5 was wrongly framed. The Court's attention was invited to para 362 and 363 of the Trial Court judgment. In regard to the conspiracy of "Cut of Dates" and implementation of "First Come First Serve Policy," learned counsel submitted that there is no evidence as to involvement of respondent-5 as regards to manner in which LoI was applied for or was processed in DoT or its distribution by DoT or compliance by STPL in DoT. The reference has been made to paragraph 744 to 770 of the Trial Court Judgment.

119. In regard to allegation of ineligibility of STPL and consequential payment of Rs.200 Crores as illegal gratification, learned counsel submitted that the appellant alleged that Clause 8 of UASL Guidelines applies on the date of the application and hence, STPL was ineligible and therefore, the act of holding STPL as eligible was an alleged conspiracy. In regard to this, the reference was made to the testimony of PW-60, A. K. Srivastava, recorded on 22.08.2017.
120. Learned counsel submitted that as per the testimony, this condition was to be seen as it was applicable only after grant of LoI. In regard to the illegal gratification, the learned counsel submitted that Firm Dynamix Realty is a partnership firm consisting of DB Realty Limited, Eversmile Construction Co. Pvt. Ltd and Conwood Construction & Developers Pvt. Ltd. Wherein DB Realty Ltd has 99% share and two other partners had a meager 1% share in the partnership firm. Learned counsel submitted that as per the Memorandum of Articles of DB Realty Ltd., the Respondent was not empowered to take any decisions



above Rs.20 crores in a single transaction or multiple transaction put together. It has been submitted that neither Dynamix Realty nor any of its partners are accused nor any allegation of offence of payment of illegal gratification has been made against them. Learned counsel submits that in absence of this, there can be no vicarious liability invoked against Respondent No.5. It has further been submitted that there is no allegation of “demand” and “to obtain illegal gratification” being made by the prosecution in the entire case. Reference has been made to the testimony of PW-151, Sh. S. K. Sinha, recorded on 07.11.2013. Learned counsel submitted that the learned Trial Court has minutely examined the transaction of alleged illegal gratification of Rs.200 crores and inter alia concluded that there is no material on record to link Sh. A. Raja with abovesaid transfer of Rs.200 Crores to Kalaingar TV (P) Ltd. It is submitted that the learned Trial Court inter alia held that the prosecution case is in this regard without merit. Learned counsel submitted that there is no material on the record against the respondent No.5 and therefore the leave to appeal may be refused against the respondent No.5. The reliance has been placed reliance upon *State of Madras v. C.V. Parekh*<sup>92</sup> and in *Aneeta Hada v. M/s Godfather Travels & Tours*<sup>93</sup>.

121. Mr. Mukul Rohtagi, learned senior counsel for respondent no.5 has also placed reliance upon *State (Govt. of NCT of Delhi) vs. Mukesh & Ors.*<sup>94</sup>. Learned senior counsel has submitted that in *Ghurey Lal vs. State of U.P.* (supra), it was inter alia held that there has to be "very

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<sup>92</sup> (1970) 3 SCC 491

<sup>93</sup> (2008) 13 SCC 703

<sup>94</sup> 2016 (2) JCC 1127



substantial and compelling reasons" to discard the trial court's decision. Learned senior counsel has submitted that such substantial and compelling reasons are only if the conclusion of the trial with regard to the fact is palpably wrong or the learned trial court decision was based on an erroneous view of law. Learned senior counsel has submitted that such reason can only be if the trial court judgment is likely to result in a "grave miscarriage of justice". Learned senior counsel has submitted that it was further held that the high court can interfere if the trial court in dealing with the evidence was patently illegal and impugned judgment was manifestly unjust and unreasonable. Learned senior counsel relied upon *Babu and Others vs. State of Uttar Pradesh* (supra) and submitted that in this case it was inter alia held that the order of the learned trial court should be slow in disturbing the fact by the trial court even if it is possible to reach at a different conclusion on the basis of material on record. Learned senior counsel has further relied upon *Banna Reddy and Others vs. State of Karnataka*<sup>95</sup> and submitted that the high court should not interfere in the order of the learned trial court if the same is passed on the proper appreciation of evidence unless there are strong and compelling reasons. Learned senior counsel relied upon *Dayle De-Souza vs. Government of India through Deputy Chief Labour Commissioner*<sup>96</sup> to emphasise that respondent no.5 in this case cannot be held liable as he was not "in charge of" and "responsible to" the firm for the conduct of its business. Similarly, learned senior counsel has submitted that a partner can also

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<sup>95</sup> (2018) 5 SCC 790

<sup>96</sup> 2021 (20) SCC 135





be held liable as a director if the offence is committed with the consent or connivance or is attributed to any neglect on the part of the partner concerned. Learned senior counsel has relied upon this judgment to emphasize his point that the company has not been made an accused which was imperative and therefore the case of the prosecution suffers from legal infirmity.

122. Learned senior counsel has submitted respondent no.5 was not concerned with the day to day working of the company and therefore he cannot be held criminally liable merely because he was a partner or director. Learned senior counsel has further submitted that vicarious liability must be pleaded and proved. Learned senior counsel has submitted that initiation of prosecution has adverse and harsh consequences for the persons named as accused and the court should play a proactive role in protecting the persons from the harassment. Learned senior counsel has further relied upon *Sharad Kumar Sanghi vs. Sangita Rane*<sup>97</sup>. Learned senior counsel has submitted that proceedings against an employer of a company cannot be instituted without the company being an accused. Learned senior counsel has submitted that in the present case the allegations against R-5 are absolutely vague. It has been submitted that when the company has not been arrayed as an accused, the proceedings cannot continue.

**Submissions of Respondent No. 6/ Swan Telecom Private Limited (Now known as Etisalat DB Telecom Private Limited)**

123. Mr. Anshul Sehgal, learned counsel for respondent No. 6, Swan Telecom Private Limited (Now known as Etisalat DB Telecom Private

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<sup>97</sup> (2015) 12 SCC 781



Limited), submits that Hon'ble High Court of Bombay *vide* Order(s) dated 18.11.2013, 08.04.2014 and 20.02.2015, in C.P. No. 114 of 2012 titled '*Etisalat Mauritius Limited v. Etisalat DB Telecom Private Limited & Ors*', directed the winding up/liquidation of R-6. It has been submitted that the affairs of R-6 are being managed by the Official Liquidators and the present submissions are being filed on behalf of the Official Liquidators of the R-6 and are based only on the records available with the office of the Official Liquidator.

124. Learned counsel submitted that the impugned judgment is well-reasoned and there exists no glaring procedural or substantive defect, error, illegality or omission or any perversity warranting any interference by this court. Learned counsel also argued in detail about the scope of leave to appeal and relied upon *Nikhil Chandra Mondal v. State of West Bengal*<sup>98</sup>, *State of Odisha v. Banabihari Mohapatra & Anr.*<sup>99</sup>, *Muralidhar @ Gidda vs. State of Karnataka*<sup>100</sup>, *Murugesan v. State*<sup>101</sup>, *Rohtash v. State of Haryana*<sup>102</sup>, *Babu v. State of Kerala*<sup>103</sup>, *Chandrappa and Others v. State of Karnataka*, (Supra), *Dhanpal vs State by Public Prosecutor Madras*<sup>104</sup>, *Ghurey Lal v. State of U.P.*, (supra), *State of U.P. v. Banne @ Baijnath and Ors.*<sup>105</sup>.

125. It has been submitted that leave to appeal can be granted only in exceptional cases where there are very substantial and compelling

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<sup>98</sup> (2023) 6 SCC 605 [Para 18-23]

<sup>99</sup> (2021) 15 SCC 268 [Para 32-37],

<sup>100</sup> (2014) 5 SCC 730 [Para 12]

<sup>101</sup> (2012) 10 SCC 383, [Para 34]

<sup>102</sup> (2012) 6 SCC 589, [Para 27]

<sup>103</sup> (2010) 9 SCC 189, [Para 19, 20]

<sup>104</sup> (2009) 10 SCC 401 [Para 41]

<sup>105</sup> (2009) 4 SCC 271 [Para 28]



reasons / circumstances, and the judgment under appeal is found to be perverse. Learned counsel enumerated the role attributed to respondent No. 6 which has not been repeated herein for the sake of brevity. It was submitted that CBI has brought the attention of this court to certain selective lines/paragraph of the Impugned Judgment to mislead the court and has failed to highlight any perversity in the Impugned Judgment. Nor has the CBI been able to make out a *prima facie* case or any arguable points, which warrant interference by this Court.

126. Learned counsel submitted that in regard to the familiarity between R-1, R-2, R-3, R-4 and R-5, the arguments advanced may be considered. However, it has been submitted that such familiarity cannot be attributed to R-6. Learned counsel submitted that the note dated 10.01.2008 which deals with the procedure for allocation of LOI's i.e., Ex PW 52/A was prepared by Sh. RK Gupta (PW-88) and was approved by Mr. AK Srivastava (PW-60) and was later forwarded to Member(T) and R-2. Learned counsel submitted that therefore, the entire scheme was designed by PW-88 in consultation with PW-60.
127. Learned counsel submitted that in the cross examination PW-88 admitted that it was marked to R-2 for information. It has further been submitted that testimony of PW-60 has rightly been rejected by the Ld. Trial Court as the same was found to be contrary to the record and to other witness Mr. SE Rizwi [Under Secretary, DoT] (PW-49). Learned counsel has also invited the attention of the court to the testimony of Mr. Nitin Jain (PW-110), and testimony of Mr. K Sridhar (PW-77).
128. Learned counsel submitted that the Ld. Trial Court has duly considered the testimony of Mr. Madan Chaurasia (PW-81), Mr. Sukhbir Singh



(PW-75), Mr. AS Verma (PW-62), Mr. N.M. Manickam (PW-123) as well as the testimony of Mr. A Raja (R-1 and DW-1) and Mr. RK Chandolia (R-3 and DW- 22). It has been submitted that in para 946 to 961 the Ld. Trial Court rejected the version of the prosecution. It has been submitted that the Ld. Trial Court has rightly held that no case was made out qua R-6. It has further been submitted that in fact with the alleged change in FCFS, R-6 was not at all favoured, rather it lost out on priority in several telecom circles on account of this change. It has been submitted that R-6 had made applications for grant of Unified Access Service License (UASL) on 02.03.2007, however, on account of change in policy on 10.01.2008, several applicants/companies who had applied for UASL much later than R-6, in effect, moved ahead in the queue.

129. Learned counsel further submitted that another allegation against R-6 is that it had prior information of manipulation in the FCFS and therefore, it got their Performance Bank Guarantee (PBG) and Financial Bank Guarantee (FBG) prepared in November 2007. Learned counsel submitted that this issue has been dealt extensively by the court in para 985 to 1011. Learned counsel submitted that it was rightly concluded by the Ld. Trial Court that TTSL (Tata Tele Services Limited) knew about the change in priority as early as 11.10.2017 in respect to which the attention was invited to Para 988-990. In this regard, reference was also made to the testimony of Mr. A.S. Narayana [Dy. General Manager. Loop Mobile India Ltd.] (PW-80) whose testimony also evinced prior knowledge about issuance of LOI and the change in procedure of allocation of spectrum. Similarly, reference was also



made to the testimony of Ms. Preeti Malhotra [Executive Director, Spice Communications](PW-67) and the letter dated 28.11.2007 written to Chairman, Telecom Commission, wherein Spice requested that their seniority be fixed from the date of Application.

130. Learned counsel submitted that the Ld. Trial Court after considering the testimony of Mr. Akhlesh Kumar Saxena [Vice President (Corporate), Spice Communications] (PW-33), Mr. Arun Kumar Dalmia [Advisor to Allianz Infratech (P) Ltd.] (PW-34), Mr. Rahul Vats [ Assistant Vice President, Idea Cellular Limited] (PW-40) inter alia observed that everything happening at DoT was an open secret to everyone and therefore no individual can be specifically blamed for providing prior information. It was submitted that there was nothing in the testimony of Mr. Vivek Priyadarshi [Investigating Officer] (PW-153) and Dy. SP Rajesh Chahal (PW-147), to highlight as to how R-6 and R-8 had specific knowledge of the changed procedure of allocation.

131. In this regard reference was also made to Mr. Nandan Singh Rawat [Publisher, Business Standard] (**DW-13**) and Mr. Anil Kumar [Indian Express] (**DW-14**) on the basis of which, the Ld. Trial Court concluded that the change in procedure of allocation was contemplated much before by the DoT and almost everyone knew about it. Learned counsel submitted that thus there is no illegality or perversity in the order of the Ld. Trial Court.

132. Reliance has been placed upon *Central Bureau of Investigation v.*



***Shyam Bihari And Others*<sup>106</sup> and *The Govt. Of NCT of Delhi v. Sh. Rama Shankar Pandey & Another*<sup>107</sup>.**

133. (213) Mr. Anshul Sehgal learned counsel appearing for respondent No.6 placed reliance on *Murugesan vs. State*<sup>108</sup> wherein it was inter alia held that:

*"34. It will be necessary for us to emphasize that a possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. A view taken by a court lower in the hierarchical structure may be termed as erroneous or wrong by a superior court upon a mere disagreement. But such a conclusion of the higher court would not take the view rendered by the subordinate court outside the arena of a possible view. The correctness or otherwise of any conclusion reached by a court has to be tested on the basis of what the superior judicial authority perceives to be the correct conclusion. A possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact where it is agreed upon or not by the higher court. The fundamental distinction between the two situations have to be kept in mind. So long as the view taken by the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, the view taken by the trial court cannot be interdicted and that of the High Court supplanted over and above the view of the trial court.*

*35. A consideration on the basis on which the learned trial court had founded its order of acquittal in the present case clearly reflects a possible view. There may, however, be disagreement on the correctness of the same. But that is not the test. So long as the view taken is not impossible to be arrived at and reasons therefor, relatable to the evidence and materials on record, are disclosed any further scrutiny in exercise of the power under Section 378 Cr.P.C. was not called for."*

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<sup>106</sup> (2023) 8 SCC 197

<sup>107</sup> 2010 SCC Online Del 4045

<sup>108</sup> (2012) 10 SCC 383



134. Learned counsel has also relied upon *Ghurey Lal* (supra) which is primarily a judgment on the scope of grant/refusal of leave to appeal and the factors which are to be considered in doing so.
135. Learned counsel has relied upon *CBI vs. Shyam Bihari & Ors.*(supra) Learned counsel has also relied upon *Govt. of NCT of Delhi vs. Rama Shankar Pandey*<sup>109</sup> wherein it was inter alia held that with an order of acquittal, the presumption of innocence gets fortified and the high court should not substitute its own view with the view taken by the trial court.

**Submissions of Respondent No. 7/Sanjay Chandra**

136. Ms. Rebecca John, learned senior counsel for respondent No. 7 reiterated the law regarding the scope of jurisdiction to be exercised at the time of grant of leave to appeal. Learned senior counsel submitted that M/s Unitech wireless companies were eligible to apply for a telecom license and no adverse finding with respect to the eligibility has been recorded by the Ld. Trial Court. Learned senior counsel submitted that the testimony of PW 60 and PW 7 has rightly been discarded by the Ld. Trial Court. In regard to the association/familiarity between R-7 and R-1. Learned senior counsel submitted that the only witness of the prosecution in this regard PW 7 has rightly been discarded by the Ld. Trial Court. Learned senior counsel submitted that the testimony of PW 7 was unsupported by any documentary or other corroborative evidence. It has further been submitted that the statement under Section 161 Cr.P.C. of PW 7 was recorded at a much-belated state and he consistently improved his version as is evident from the

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<sup>109</sup> 2010 SCC OnLine Del 4045



confrontations made during the course of cross-examination recorded on 02.01.2012.

137. The attention was also invited to the cross examination of PW 7 recorded on 04.01.2012. It has been submitted that the reading of cross examination would make it clear that there was no occasion for R-7 to meet with R-1. It has further been submitted that all applications with respect to environmental clearances were dealt by two officials of M/s Unitech Ltd. and the application were dealt by a committee called the Environmental Approval Committee and the Minister was not a part of the Committee. Learned senior counsel submitted that even in the statement recorded under Section 313 Cr.P.C. R-7 denied to have met A-1. Learned senior counsel submitted that even R-1 appearing as a defense witness stated that he never had any meeting with R-7. Learned counsel invited the attention of the court to para 355 and 357 wherein it was inter alia held by the Ld. Trial Court that it could not be established that R-7 was in conspiracy with accused persons at all.

138. In regard to the fixation of cutoff date, learned counsel submitted that in this regard the recommendation of TRAI has to be read holistically. It has been submitted that the necessity of a cutoff date was based on the large number of applications already received by 24.09.2007. It has been submitted that the application of Unitech was received on 24.09.2007 and therefore it was in any manner before the cut-off date i.e., 01.10.2007. Learned counsel submitted that in this regard the star witness of the prosecution was PW 60 which has rightly been discarded by the Ld. Trial Court.

139. In regard to the setting up of four counters, learned counsel submitted





that as per the testimony of PW 11 Nripendra Mishra, PW 110 Nitin Jain, PW 60 AK Srivastava, and PW 36 DS Mathur, FCFS was not a fixed/defined policy and it was not followed by the DoT in the past also. Learned counsel submitted that there is no evidence that any policy was adopted in pursuance of any criminal conspiracy. Learned counsel submitted that Unitech's applications were taken up at the third position on counter number 4 and as such they were virtually the last to be handed over the LoIs. Learned counsel has invited the attention of this court to the para 741, 742, 756, 757, 791 and 815 of the impugned judgment wherein the findings were summarized by the Ld. Trial Court. Learned counsel submitted that the policies change with evolving needs and it has to be left, best to the functionary.

140. In respect to the prior knowledge of the accused companies/individuals, learned counsel submitted that it is not disputed that 8 Unitech Wireless companies prepared their Demand Drafts in October 2007, and in lieu thereof, had got prepared fresh Demand Drafts on 24.12.2007. However, this cannot be termed as any act in furtherance of any criminal conspiracy. Learned counsel submitted that the drafts were prepared in accordance with directives of UASL Guidelines of 2005 which suggested that the license fee would be payable immediately upon the issuance of LoIs. Learned counsel submitted that the preparation of the draft was merely an act of preparedness and not prior knowledge amounting to insider knowledge.

141. Learned counsel submitted that the other companies who got the draft prepared at the nick of the time can be taken as the person who had all the information. Reference has been made to the testimony of PW 34



Arun Kumar Dalmia, PW 35 T. Narasimhan, PW 21 Vinod Kumar Buddhi Raja, PW 38 Rupinder Sikka, PW 40 Rahul Vats, PW 39 Surender Lunia, PW 41 Anand Dalal, PW 33 Akhilesh Kumar Saxena, PW 67 Preethi Malhotra, PW 54 Ajay Sharma. Learned counsel submitted that in the statement under Section 313 of Cr.P.C. accused had made and detailed and specific statement.

142. In respect to the non-revision of entry fee, learned counsel submitted that the Ld. Trial Court has rightly relied upon testimony of PW 78 Dr. D. Subba Rao and has correctly recorded in para 1621 that there is not even a scrap of evidence in the detailed statement of the Finance Secretary, that the Finance Ministry was asking for revision of price of initial spectrum/entry fee. Learned counsel submitted that the impugned judgment is meticulously reasoned judgment and warrants no interference and therefore the present leave to appeal is liable to be rejected.

143. Reliance has been placed upon State *of Kerala vs. Chellappan Sanal Kumar*<sup>110</sup>, State *of Rajasthan vs. Babu Meena*<sup>111</sup>, State *of Rajasthan vs. Ram Niwas*<sup>112</sup> and State *of Rajasthan vs. Ganpat Singh*<sup>113</sup>.

144. Ms. Rebecca John, learned senior counsel for respondent no.7 has relied upon *State of Kerala vs. Chellappan Sanal Kumar*<sup>114</sup> wherein the supreme court while dealing with the rejection for leave to appeal by the High Court inter alia held that since the conclusions of the learned sessions judge appeared to be reasonable, there is no reason to

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<sup>110</sup> 1981 Supp SCC 15

<sup>111</sup> 2013 4 SCC 206

<sup>112</sup> 2010 15 SCC 463

<sup>113</sup> 2001 SCC OnLine SC 118

<sup>114</sup> 1981 Supp SCC 15



differ them. Learned senior counsel has further relied upon *State of Rajasthan vs. Babu Meena*<sup>115</sup>. In this case also the leave to appeal was rejected by the High Court. The apex court while dealing with the challenge of the order of the high court inter alia held as under:

*“9. ....It has often been said that oral testimony can be classified into three categories, namely (i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. In case of wholly reliable testimony of a single witness, the conviction can be founded without corroboration. This principle applies with greater vigour in case the nature of offence is such that it is committed in seclusion. In case prosecution is based on wholly unreliable testimony of a single witness, the court has no option than to acquit the accused.*

*10. In the background of the aforesaid legal position, when we consider the case in hand we are of the opinion that the statement of the prosecutrix is not at all reliable or in other words wholly unreliable. No other evidence has been led to support the allegation of rape. Hence, it shall be unsafe to base the conviction on her sole testimony....”*

145. Learned senior counsel has further relied upon *State of Rajasthan vs. Ram Niwas*<sup>116</sup> which was also a judgment on the scope of leave to appeal. Learned senior counsel has also relied upon *State of Rajasthan vs. Ganpat Singh*<sup>117</sup>.

#### **Submissions of Respondent No. 8/ M/s Unitech Wireless**

146. Mr. D. P. Singh, learned counsel for respondent No. 8 submitted that the Ld. Trial Court has taken a reasonable view and there is no illegality or perversity in the same. Learned counsel submitted that an order of acquittal cannot be interfered only if there are two possible

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<sup>115</sup> 2013 SCC OnLine SC 147

<sup>116</sup> (2010) 15 SCC 463

<sup>117</sup> 2001 SCC OnLine SC 118



views. Reliance has been placed upon *Muralidhar @ Gidda vs. State of Karnataka*<sup>118</sup>; *Chandrappa & Ors. vs. State of Karnataka* (Supra); *Ghurey Lal v. State of U.P.* (Supra); *State v. U.P. v. Banne @Bajnath*<sup>119</sup>; *Dhanpal v. State*<sup>120</sup>; *State (Delhi Administration) v. Prithi Singh*<sup>121</sup>; *Hans K Jain v. Renu Gandotra*<sup>122</sup>.

147. Learned counsel submitted that in order to fully understand the case of respondent No. 8 a snapshot of the timeline is to be considered. It was submitted that a policy decision concerning various government departments and ministries has been attempted to be given a criminal color. The timeline was explained by the learned counsel which is as follows:

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<sup>118</sup> (2014) 5 SCC 730 Para. 12

<sup>119</sup> (2009) 4 SCC 271 Para. 28

<sup>120</sup> (2009) 10 SCC 401 Para. 41

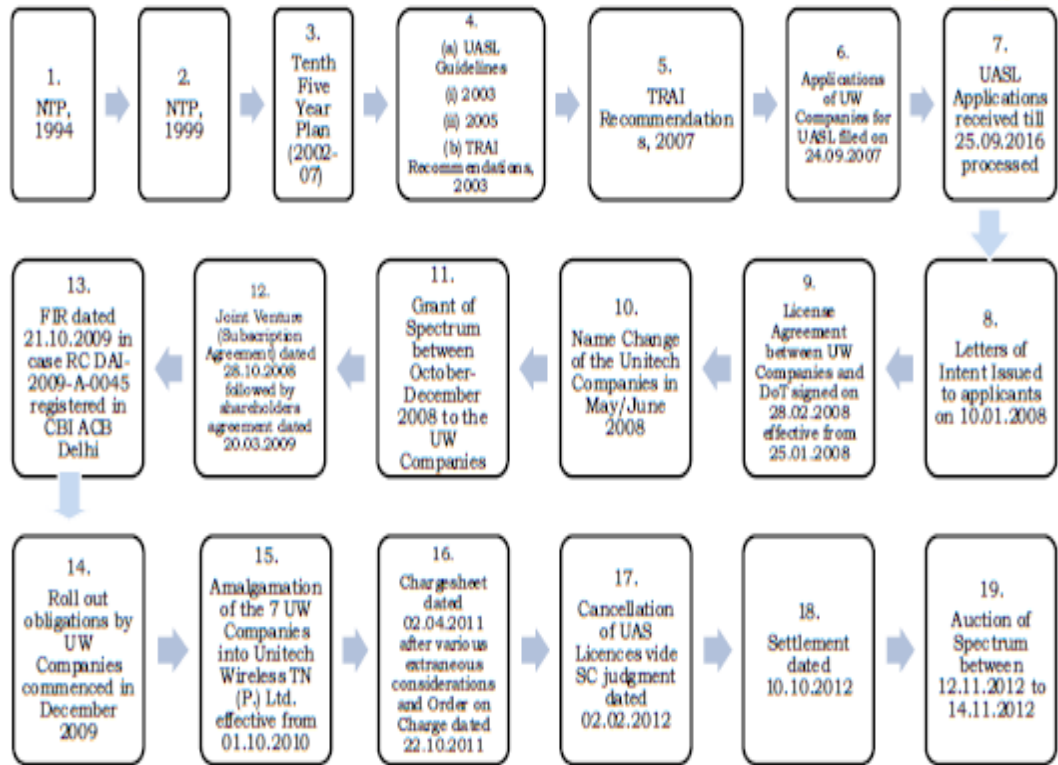
<sup>121</sup> (1991) 45 DLT 172 Para. 5

<sup>122</sup> 2015 SCC OnLine Del 7846 Para. 13



## Enclosure A

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148. Learned counsel submitted that the decision was taken in line with the Directive Principles of State Policy and such decisions should not be interfered into by the court only because the court feels that another policy decision would have been better and more so in the technical case. Reliance has been placed upon *Dhampur Subar (Kashipur) Ltd. v. State of Uttaranchal*<sup>123</sup>; *Federation of Railway Officers Association v. Union of India*<sup>124</sup>.

<sup>123</sup> (2007) 8 SCC 418 Para. 63

<sup>124</sup> (2003) 4 SCC 289 Para. 12



149. Learned counsel submitted that the present case has a chequered history where upon the report of the Central Vigilance Commission dated 12.10.2009, FIR was registered on 21.10.2009. The CBI assumed the CVC report as the gospel truth and accordingly, the case was setup against R-8. Learned counsel submitted that the matter reached Apex Court and during this period there was pressure from the media and the public. The Apex Court on 16.12.2010 in Civil Appeal 10660 of 2010 passed a detailed order for investigation under the aegis of the Court. Learned counsel submitted that CBI facing pressure from all corners, prepared a fabricated case against the Respondents.
150. Learned counsel submitted that on 10.02.2011, the CBI assured the Apex Court that a chargesheet would be filed by March 2011 and under the supervision of the Apex Court, the Ld. Special Judge was appointed to try the present case. It has been submitted that after intimating the Apex Court, on 01.04.2011, the CBI filed two charge sheets against 17 accused persons. Learned counsel submitted that the investigating officers did not possess the requisite knowledge of the telecom policies or of corporate law and they selectively assigned culpability to only 2 licensees, one of which was Respondent No. 8.
151. Learned counsel submitted that the trial continued for 7 years and finally a well-reasoned judgment was delivered. Learned counsel submitted that R-8 is a victim of circumstance and cannot be categorized as an accused. Learned counsel submitted that in terms of the embargo created under Section 7, Companies Act, 1956, when none of its directors or employees are an accused, there cannot be any involvement of R-8 in the alleged conspiracy. Learned counsel



submitted that actions of the Respondent No. 7 cannot be attributed to Respondent No. 8 as he cannot be deemed to be controlling its mind or alter ego. It has further been submitted that Respondent No. 8 was only incorporated on 10.08.2007, by which date the policy decisions had already been taken and all alleged meetings between Respondent Nos. 1 and 7 had taken place.

152. Learned counsel submitted that additionally before the registration of the case shares of Respondent No. 8 had been agreed to be issued to M/s Telenor Asia Pvt. Ltd. after obtaining all necessary approvals, shares were allotted in various tranches with effect from 20.03.2009 against capital infusion in the Respondent 8. Learned counsel submitted that it was only Respondent No. 8 which entered the market and commenced operations in December 2009 and suffered huge losses owing to a lack of a level playing field. Learned counsel submitted that there is no evidence on the record showing the Familiarity of with Respondent No. 1. It has been submitted that in this regard testimony of PW 7 has rightly been rejected.

153. In regard to the fixation of cut-off date, it has been submitted that in this regard the Ld. Trial Court has appreciated in detail the testimony of PW 36, PW 60 as well PW 77. Learned counsel submitted that the testimony of PW 36 belied the theory of conspiracy as he deposed that respondent No.1 had expressed his desire to issue LoIs to all 575 applicants on which PW 36 had suggested that the same cannot be done in light of spectrum availability.

154. Learned counsel submitted that the cut-off date remained to be 01.10.2007, However, a separate and independent decision was taken



to process applications received upto 25.09.2007, which is corroborated by the note of Nitin Jain and AK Srivastava's letter dated 06.10.2010. Learned counsel submitted that even M/s Shyam Telelink Ltd. filed the application after the application filed by respondent No. 8. Learned counsel submitted that it was rightly inter alia concluded by the Ld. Trial Court that cut-off date had no link with the filing of the application by respondent No. 8. The attention was invited to para 430, 445, 446, and 520. Learned counsel submitted that due weightage was given to the testimony of defence witnesses. Reliance was placed upon *Dudh Nath Pandey v. State of U.P.*<sup>125</sup>.

155. In respect to the allegation of tinkering with the policy to favour Respondent No. 8, learned counsel submitted that as per PW 36 FCFS policy was confined to the grant of LOI, and the process related to the allocation of spectrum was initiated by WPC. The attention in this regard was invited to the testimony of PW 57 RJS Kushwaha, PW-87 Dinesh Jha, PW-121 T. K. Krishnan. Learned counsel submitted that there is nothing on record to show that the date of application of UAS license shall determine the seniority of the applicant for the spectrum license. Learned counsel submitted that the prosecution miserably failed to prove that there was FCFS policy, and if it existed, it was being followed.

156. Learned counsel submitted that the case of the CBI is based on oral testimony which was contrary to the official record. Learned counsel submitted that the note regarding the four counters was originated by PW 88 R.K. Gupta and Respondent No. 8 had no role in the same.

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<sup>125</sup> (1981) 2 SCC 166





Learned counsel also submitted that there was no prior knowledge of setting up of four counters. Learned counsel submitted that the change in procedure was in public knowledge and referred to the testimony of PW 42 Anand Dalal, PW 80 AS Narayanan, PW-67 Preeti Malhotra, PW-34 Arun Dalmia, PW-40 Rahul Vats, PW-153 and PW-147 (Investigating Officers). Learned counsel submitted that there is no material on record that Respondent No. 8 had any prior knowledge about the date of issue of LoIs or manipulation of priority for spectrum allocation.

157. Learned counsel submitted that regarding the allegation that Respondent No. 8 kept the demand draft ready in October 2007, the same was a matter of business prudence and readiness and in compliance of UAS License Guidelines dated 14.12.2005. Learned counsel submitted that had respondent No. 8 knew about the inside details, there was no need for him to get the draft prepared in so much advance.

158. In respect of offloading of shares by Unitech Wireless Companies, learned counsel submitted that there was no prohibition on offloading shares or issuance of fresh equity. Learned counsel submitted that in regard to the Ineligibility of respondent No. 8, the companies had passed Board Resolutions dated 12.08.2007 to enter into telecom field. The object clauses were amended on 20.09.2007 which was affected from resolution as per testimony of PW-104 Gaurav Jain. Learned counsel submitted that in Board Meeting dated 01.10.2007, companies proposed to change their name since ROC had issued certificate for registration of resolution to alter object clause subject to company



name being changed. The reference was made to the testimony of PW-133 and 95 who found no illegality by Unitech Wireless Companies, including in issuance of certificates.

159. Learned counsel submitted that the other competitors faced rejection since they passed resolutions only after filing the applications, while a similarly placed competitor was held to be eligible. Learned counsel submitted that there is no criminality and there is no ground for grant of leave to appeal.

160. Mr. D.P. Singh, learned counsel for R-8 has adopted the judgments cited by the other learned colleagues.

#### **Submissions of Respondent No. 9/Gautam Doshi**

161. Mr. Siddharth Aggarwal, learned Senior counsel for respondent No. 9 submitted that the case of the appellant is based on conjecture, and incomplete reading of evidence, and non-application of mind. Learned senior counsel submitted that the first charge leveled against respondent No. 9 in the Chargesheet was that Respondent No. 9 along with Respondent No. 10 and 11, structured/created net worth of M/s Swan Telecom Pvt. Ltd. (herein after referred as 'STPL') out of funds arranged from M/s Reliance Telecom Ltd. (hereinafter referred as 'RTL') or its associates, for applying to the Dept. of Telecommunication (hereinafter referred as 'DOT') for Unified Access Services licenses (hereinafter referred as 'UAS license') in 13 circles, where RTL had no GSM Spectrum, in a manner that its (STPL's) association with RTL may not be detected. It was also alleged that the day-to-day affairs of STPL and Tiger Traders Pvt. Ltd. (hereinafter referred as 'TTPL'), which held majority stake (more than 90%) in



STPL, were managed by Respondent No. 9, 10 and 11 either through themselves or through other officers / consultants related to Reliance ADA Group.

162. Learned senior counsel submitted that the Ld. Trial Judge on the basis of material on record framed a specific issue regarding the ineligibility of STPL and United Group companies and the role of Respondent No. 9, 10 and 11 and other accused persons. Learned senior counsel submitted that in fact even in the charge sheet no role was attributed to Respondent No. 9 in the determination of eligibility of STPL and the grant of license to STPL. Learned senior counsel submitted that the Ld. Trial Court after appreciating the entire material on record and the testimony of PW 2 Sh. A.N. Sethuraman, PW 17 Nilesh Doshi, PW 21 Sh. V K Buddiraja, PW 19 Sateesh Seth, PW 72 Pradeep Shah, Mahesh Gandhi (**PW 51**), DeoDutt Pandit (**PW 96**), Ujwall Metha (**PW 68**), Ashish Karyekar (**PW 100**), Hasit Shukla (**PW 101**), Ashok Wadhwa (**PW 71**), SAK Narayanan (**PW 118**), Jignesh Shah (**PW 138**) inter alia held that STPL was under the ownership and control of DB Group since 03.03.2007 and hence was eligible on the date of filing of UASL Application.

163. The reliance was placed upon Shareholder Agreement dated 01.03.2007 (Ex. PW 1/DA). Learned senior counsel submitted that once it is established on the date of application for UASL, STPL was a company of DB Group all the other aspects of the charges against Respondent No. 9 become irrelevant. However, the Ld. Trial Court for the sake of completeness referred to testimony of PW 19 Sh. Sateesh Seth and PW 101 Sh. Hasit Shukla.



164. Learned counsel submitted that no misrepresentation was made to DoT by anybody including in particular Respondent No. 9. Learned counsel submitted that in the appeal the testimony of PW 19 and PW 101 has not been challenged at all and therefore by implication the appellant has admitted the same. Learned counsel submitted that respondent No. 9 cannot be attributed any role in managing the affairs of STPL and TTPL. Learned counsel submitted that the appellant itself in the Appeal accepted the fact that affairs of STPL and TTPL were carried out by the officials of Reliance ADA Group. Learned counsel submitted that there was no material on record that respondent No. 9 had any role in the incorporation and subsequent corporation of STPL. In this regard, reference was made to the testimony of PW 14 Sh. Paresh Rathod, PW 72 Sh. Pradeep Shah, Nilesh Doshi (**PW 17**), Mr. AN Sethuraman (**PW 2**). In regard to the conspiracy, learned counsel submitted that the Ld. Trial Court has rejected the theory propounded by the prosecution.
165. Learned counsel submitted that it is the case of the prosecution that Sh. Nilesh Doshi and Sh. Sunil Doshi were the directors of STPL and TTPL before the appointment of Sh. Anand Bhatt and Sh. Ashok Wadhwa. Learned counsel also submitted that it also the case of the prosecution itself that STPL and TTPL stood transferred from 2006 to Sh. Nilesh Doshi and Sh. Sunil Doshi. Therefore there cannot be any possibility of respondent NO. 9 to be part of any conspiracy, nor is there any material on record in this regard.
166. Learned counsel submitted that the case of the prosecution is totally without any basis is liable to be rejected.



167. Learned counsel for respondent no.9 has relied upon *CBI vs. Shyam Bihar & Ors.* (supra).

**Submissions of Respondent No. 10/ Surendra Pipara**

168. Mr. Siddharth Aggarwal, learned senior counsel for respondent no.10/Mr. Surender Tripathi submitted that the order of the learned trial court is well reasoned and there is no illegality and perversity in the judgment of the learned trial court. It has been submitted that the CBI has failed to make out any case for a grant of leave to defend.

169. Learned senior counsel submitted that CBI has alleged that R10 entered into a criminal conspiracy with other accused for grant of USAL license to Swan Telecom P. Ltd. (in short ‘STPL’) being Senior Officer of Reliance Anil Dhirubani Ambani Group (‘in short ‘RADAG’). He was involved in controlling and managing the companies. Learned senior counsel submitted that the allegations against the answering respondents are as follows:

- a. Preparation of false minutes of board meetings of STPL and Tiger Trader P. Ltd. (TTPL) showing the appointment of Sh. Ashok Wadhwa (PW 71) as Director and his presence during the meetings.
- b. Presided over board meetings of STPL when the crucial decisions regarding raising its equity, allotment of shares, applications to DoT etc. were taken by STPL;
- c. Chaired the Board Meetings of TTPL when the company subscribed majority equity in STPL and funds for the purpose were arranged;
- d. As Director in STPL and TTPL, he was also representing the interests of Reliance Telecom Ltd. (RTL);
- e. Managing day-to-day affairs of the companies during the relevant period i.e., January, 2007 to March, 2007



170. Learned counsel submitted that the learned trial court after appreciating the evidence of Nilesh Doshi (PW 17), Hasit Shukla (PW 102), Ramesh Shenoy (PW 139), Pradeep Sevanti Lal Shah (PW 72), Ujjwal Metha (PW 68) and Sh. S. A. K. Narayanan (PW 118) *inter alia* held that *STPL*, though initially incorporated by employees of Reliance ADA group, but was transferred to Sh. Sunil Doshi and Sh. Nilesh Doshi, later on to Sh. Ashok Wadhwa and Sh. Anand Bhatt and then to DB group. It has been submitted that the learned trial court rejected the testimony of PW71 Sh. Ashok Wadhwa as been contrary to the record.
171. Learned counsel further submitted that the learned trial court after taking into account the testimony of Sateesh Seth (PW-19), Anand Wadhwa (PW 71), Hasit Shukla (PW-102) and Ramesh Shenoy (PW 139) to the effect that RTL has minority share (less than 10 percent) share in *STPL* and that R-10 was appointed as an Employee Director in *STPL* for and on behalf of RTL. It was also explained by the prosecution witnesses that the decision to invest in *STPL* was taken by the business team. R-10 had no role in taking the crucial decisions regarding raising its equity, allotment of shares, applications to DoT and Managing day to day affairs of Companies during the relevant period.
172. Learned counsel submitted that the learned trial court has duly taken into account the testimony of Nilesh Doshi (PW-17) that *STPL* and other companies were handed over to Anand Bhatt at his request and that he was managing the said companies. Learned counsel submitted that A.N. Sethuraman (PW 2) had deposed that he received the instructions for filing the UASL application from Anand Bhatt.



Similarly, PW-72 Pradeep Sevanti Lal deposed that he was invited in the board of STPL and TTPL by Anand Bhatt.

173. Learned counsel has further placed reliance upon testimonies of Nilesh Doshi (PW 17), Sateesh Seth (PW 19), VK Buddhiraja (PW 21), Mahesh Gandhi (PW 51), Pradeep Shah (PW 72), DeoDutt Pandit (PW 96), Ujwall Metha (PW 68), Ashish Kareykar (PW 100) Hasit Shukla (PW 101), Ashok Wadhwa (PW 71), SAK Narayanan (PW 118) and Jignesh Shah (PW 138) to confirm that the said Companies stood transferred to DB Group in March 2007.
174. Learned counsel submitted that the learned trial court had duly taken into account the Shareholder Agreement dated 03.03.2007 (Ex. PW 1/DA) executed between DB Group, STPL and TTPL wherein the control of STPL was vested in DB Group and the same was confirmed by Hasit Shukla (PW 102) and Anand Subramaniam (PW 1). Learned counsel submitted that there is no evidence to attribute any criminality on the part of R-10.
175. Learned counsel further submitted that Nilesh Doshi (PW 17) deposed that he along with Mr. Sunil Doshi were the only Directors of the companies and were in complete control of the companies and had not been taking instruction from any person. In regard to the taking of commercial decisions, learned counsel submitted that Sateesh Seth (PW 19) had deposed that though respondent no.10 was on the board of RTL, however, the decision to invest/divest was taken by the business team of Reliance Group and that the Board used to only execute or note the decisions which have been taken. In this regard reliance has been placed upon the testimonies of Mr. Hasit Shukla (PW 101) and VK



Budhiraja (PW 21). It has been further submitted that the case of R-10 is different from the case of R-1 to R-3. Learned counsel submitted that there is no material on record to link R-1 to R-3 to R-10. Learned counsel submitted that the present case has been filed mechanically and there is no ground to interfere in the judgment of the learned trial court.

176. Learned counsels for Respondent no.10 has also adopted the judgments cited by the other learned colleagues.

**Submissions of Respondent No. 11/ Hari Nair**

177. Mr. Siddharth Aggarwal, learned senior counsel appearing for R-11/Hari Nair submitted that the impugned judgment of the learned trial court reflects a thorough examination of the entire evidence and has deftly captured the fact that the case of the CBI rested upon circumstantial evidence of a purported criminal conspiracy amongst the accused persons. Learned counsel submitted that the learned trial court after thorough marshaling of evidence and clear application of judicial mind passed the impugned judgment.
178. Learned counsel submitted that the role attributed to R-11 was that as an employee of the Reliance Anil Dhirubhai Ambani Group of Companies [‘RADAG’] he entered into a criminal conspiracy with two other employees i.e. Respondent No. 9 Respondent No. 10 to cheat the Department of Telecommunications, Government of India [“DOT”] into granting telecom licenses/UASL to an ineligible company.
179. Learned counsel submitted that primary allegations against R-11 were
- (a) Structuring/creating the net worth of Respondent No. 6 Swan Capital/Telecom Pvt. Ltd. ["Swan"] in January/February 2007 out of funds raised from Respondent No. 12 Reliance Telecom Ltd. ["RTL"] (and its associates) in a manner that its





"association" or true character as "alter ego" of RTL could not be detected by DOT officials as being in violation of Clause 8 of UASL Guidelines dated 14.12.2005

- (b) Making applications for UASL on behalf of Swan in March 2007 in 13 telecom circles in which RTL did not have GSM spectrum, in violation of Clause 8 of the UASL Guidelines dated 14.12.2005.
- (c) Transfer of Swan to Respondent No. 4 Shahid Balwa and Respondent No. 5 Vined Goenka on grant of spectrum to Reliance Communications Ltd. ["RCL"] under the dual technology policy on 18.10.2007, thereby facilitating and aiding them in cheating the DOT to award UASL to Swan despite its ineligibility.

180. Learned counsel submitted that the learned trial court in respect of the allegations against the R-11 *inter alia* held that Swan's applications for UASL in March 2007 had been made by PW-2 A. N. Sethuraman on the instructions of Anand Bhatt. It was further submitted that Swan was owned by the DB Group, on the date of its applications for UASL in March 2007. In this regard, testimonies of PW-14 Paresh Rathod, PW-17 Nilesh Doshi, PW-19 Sateesh Seth, PW-21 VK Buddhiraja, PW-51 Mahesh Gandhi, PW-109 Tushar Shah, PW-76 Faiyaz Ahmed, PW-96 Deodatta Pandit, PW-100, Ashish Karyekar, PW-101 Hasit Shukla, PW-71 Ashok Wadhwa, PW-139, Ramesh Shenoy, PW-72 Pradeep Shah, PW-68 Ujjwal Mehta, PW-118 SAK Narayanan and PW-137 Jignesh Shah were relied upon. The reliance was also placed upon the Shareholders Agreement dated 01.03.2007 (Ex. PW1/DA).

181. Learned counsel submitted that the Swan was transferred to DB Group on 18.10.2007 upon grant of in-principle approval for dual technology to RCL by the DoT was inconsonance with the record maintained by DoT or with other contemporaneous developments. Learned counsel



submitted that Swan had applied for bank loans through the DB Group as of 13.10.2007 and at that time the matter of granting in-principal approval for dual technology was still under consideration at the DoT. It has been further submitted that there is no evidence that Swan was owned and controlled by RADAG as of the date of making UASL applications. On the contrary, as per the record the Swan was owned and controlled by DB Group on such date.

182. It has further been submitted that the funding of Swan by Reliance was within permissible limits based upon a reasonable interpretation of Clause 8 of the UASL Guidelines. The reliance has been placed upon the testimonies of PW-2/AN Sethuraman, PW-19/Sateesh Seth and PW-101/Hasit Shukla. Learned counsel submitted that the prosecution has also failed to make out any case that Swan was an "associate" of Respondent No. 12 RTL/RCL in terms of Clause 8 of the UASL Guidelines dated 14.12.2005 and no evidence in this regard has been placed.

183. It has been submitted that to the contrary, the testimonies of PW-60 AK Srivastava, PW-153/Vivek Priyadarshi, PW-150/VM Mittal, PW-101/Hasit Shukla, PW-56/Rakesh Mehrotra and PW-70 Henry Richard clearly established that the Clause was vague and capable of multiple interpretations and therefore no criminality could be foisted for violating a rule which had no definite meaning and suffered from the vice of vagueness. Learned counsel submitted that the learned trial court correctly proceeded on the basis that Clause 8 was a mere guideline, for the violation of which no criminal charge/conviction could lie.



184. Learned counsel submitted that the prosecution has failed to make out any case that eligibility under Clause 8 of the UASL Guidelines dated 14.12.2005 had to be determined on the date of making the UASL applications only. Learned counsel submitted that the Swan's applications for UASL were duly scrutinized which defies the theory of any conspiracy. Learned counsel submitted that there is no evidence that Swan had filed for UASL applications in 13 service areas only to secure GSM spectrum for the Reliance Group. In this regard, reference was made to the testimonies of PW-101/Hasit Shukla and PW-139/Ramesh Shenoy, who were the responsible officers of RADAG. Learned counsel submitted that as per prosecution witnesses the applications have been made on behalf of Anil Bhatt and RADAG's interest in Swan was limited to investment for enhancing its passive infrastructure business. Learned counsel submitted that the conclusion arrived at by the learned trial court was in accordance with the evidence and there is no material to interfere with the impugned judgment.

185. Learned counsels for Respondent no.11 has also adopted the judgments cited by the other learned colleagues.

**Submissions of Respondent No. 12/ M/s Reliance Telecom Ltd.**

186. Ms. Manali Singhal, learned counsel for respondent No.12/M/s Reliance Telecom Ltd. has submitted that the gist of the charge levelled against Respondent no. 12 M/s RTL by the prosecution was that M/s Swan Telecom Pvt. Ltd. (STPL) belonged to Reliance ADA group, an existing licensee, on the date of application, that is, on 02.03.2007. RCL, a company of Reliance ADA Group, was operating on CDMA



technology M/s RTL was a subsidiary of Reliance Communications Limited (RCL). It was also the case of the prosecution that STPL filed applications in thirteen service areas where Reliance ADAG/ RCL had no GSM spectrum, so it could avail the facility of GSM spectrum also without any permission from DoT. It is the case of the prosecution that STPL belonged to the Reliance ADA group and, as such, it was in violation of clause 8 of UAS Guidelines.

187. Learned counsel submits that regarding the eligibility of the company, the learned Trial Court in para 1292, 1295, 1347, 1348, 1366,1376,1389,1392 has clearly rejected the case of the prosecution. Learned counsel further submitted that in regard to the fact that whether the STPL was an “associate” of RCL/RTL, learned Trial Court in para 1393, 1416, 1419, 1433, 1434 also inter alia held that the criminal prosecution was totally unfair and unjustified. Learned counsel also advanced arguments on the reasons leading STPL to file the application for UAS license, STPL activated by reliance ADA group to Secure GSM Spectrum, lifting of the corporate veil. Leasing of passive infrastructure by STPL to RCL to repay the money to RCL and invited the attention of the Court to para 1490, 1488,1495 and 1392. Learned counsel also invited the attention of the Court to para 1810, 1811, 1813, 1814, 1815,1817, 1818 and 1819.

188. Learned counsel submits that merely because another view is possible, the story of the prosecution cannot be accepted. The learned counsel has relied upon *Chandrappa vs. State of Karnataka*<sup>126</sup>, *Sujoy*

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<sup>126</sup> (2007) 4 SCC 415



*Mangesh Poyarekar* (Supra), *State vs. Amjad Khan*<sup>127</sup> and *Ramesh & ors vs. State of Haryana*<sup>128</sup>.

**Submissions of Respondents Nos. 13/Asif Balwa, 14/Rajiv B Agarwal and 15/Karim Morani**

189. Sh. Vijay Aggarwal, learned counsel for respondent No.13/Asif Balwa, respondent No.14/Rajiv B. Agarwal, and respondent No.15/Karim Morani submits that the primary allegations against these three persons are money trail showing receipt of a pecuniary benefit by respondent No.1 through Kalaignar TV (P) Ltd. Learned counsel invited the attention to the Court to paras 1634 to 1643 of the impugned judgment. Learned counsel also invited the attention of the Court to written submissions/final arguments submitted by the respondent. Learned counsel also invited the attention to the statement under Section 313 Cr. PC including their submissions under Section 313(5) Cr, PC and submitted that all incriminating circumstances were not put to the accused persons/respondent and the defense taken by the respondent was not rebutted by the prosecution which was obligatory on the part of the prosecution. Reliance has been placed on *Parminder Kaur v. State of Punjab*<sup>129</sup>, *Jai Prakash Tiwari v. State of Madhya Pradesh*<sup>130</sup>, *Reena Hazarika v. State of Assam*<sup>131</sup>.

190. Learned counsel also submitted that the reply already filed dated 28.02.2019 may also be taken into consideration. Learned counsel further submits that the CBI in his opening remarks on leave to appeal

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<sup>127</sup> Cr.L.P. 577 /2019

<sup>128</sup> (2017) 1 SCC 529

<sup>129</sup> (2020) 8 SCC 811

<sup>130</sup> (2022) SCC OnLine SC 966

<sup>131</sup> (2019) 13 SCC 289



has read selective paras from the judgments and failed to bring to the notice of this Court the aspects which dealt with how the CBI conducted the prosecution before the learned Trial Court. Learned counsel has invited the attention to the paras 1680, 1683, 1710, 1739, 1747, 1749, and 1812 to show the lacuna in the case of the CBI.

191. Learned counsel also argued in detail about the concept of perversity. Reliance was placed upon *Arulvela & Anr v. State*<sup>132</sup>, *Kuldeep Singh v. The Commissioner of Police & Ors*<sup>133</sup>, *S.R Tewari v. Union of India & Anr*<sup>134</sup>. In regard to the law relating to lead leave to defend. Learned counsel relied upon *Chandrappa vs State of Karnataka*, (supra), *State vs. Durga Prasad & Ors*<sup>135</sup>, *State v. Sanjay Kashyap @Omi & Ors*<sup>136</sup>, *State of Rajasthan Vs Babu Meena* (supra).

192. Learned counsel has submitted that at this stage, the Court is required to see that not only arguable points have been raised but also there are compelling and substantial reasons warranting the intervention of this Court. Reliance has been placed upon *State vs. Ram Singh*.<sup>137</sup>

193. Learned counsel for Respondents no. 13, 14, and 15 has adopted the judgments cited on behalf of respondents no.3, 4 & 5.

#### **Submissions of Respondent No. 16/Sharad Kumar**

194. Mr. Balaji Subramaniam, learned counsel for respondent No.16/Sharad Kumar argued on the scope of jurisdiction to be exercised its stage of leave to appeal and submitted that “leave to appeal” has to be

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<sup>132</sup> (2009) 10 SCC 206

<sup>133</sup> (1992) 2SCC 10

<sup>134</sup> Civil appeal No. 4715-4716/23

<sup>135</sup> Appeal 2450/1986

<sup>136</sup> Crl. Appeal 861 of 2018

<sup>137</sup> Crl.LP No 111/2011



considered separately with respect to each of the respondents. Learned counsel has submitted that no role was assigned in the Aide Memoire or in the ground of the appeal to R-16. It has been submitted that the role of the respondent was confined to the fact that he was a director of KTV and attended Board Meetings. Besides this, he signed the Share Subscription Agreement and Share Pledge Agreement. Learned counsel has submitted that no criminality can be attributed merely on these facts. Learned counsel has submitted that KTC the alleged beneficiary of the amount, is not an accused and therefore respondent No.16 cannot be vicariously liable. The reference has been made upon *S. K. Alagh vs. State of U.P.*<sup>138</sup>.

195. Learned counsel has further submitted that the case of the defense from the beginning was that the CFPL-KTV transaction was cancelled because of disagreement over valuation and in this regard, the report prepared by M/s Grant Thornton became a crucial document which was not taken into account by the prosecution. Learned counsel submits that the basic element of Section 7 of the Prevention and Corruption Act has been not established. The reliance has been placed upon *N. Vijayakumar v. State of Tamil Nadu*<sup>139</sup>, *Soundarajan v. State*<sup>140</sup>, *Neeraj Dutta v. State*<sup>141</sup>, *Neeraj Dutta v. State*<sup>142</sup>, and *LK Advani v CBI*<sup>143</sup>.

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<sup>138</sup> 2008 5 SCC 662

<sup>139</sup> (2021) 3 SCC 687

<sup>140</sup> 2023 SCC OnLine SC 424

<sup>141</sup> (2023) 4 SCC 731

<sup>142</sup> 2023 SCC OnLine SC 280

<sup>143</sup> 1997 Cri LJ 2559 (Del)



196. Learned counsel has submitted that there is no evidence on the record regarding the participation of respondent No.16 in the conspiracy. It has also been submitted that the element of “knowledge” has also not been established against Sharad Kumar. Learned counsel has submitted that in regard to the allegations of the prosecution regarding the association of Sharad Kumar with A. Raja, PW-116-Rajendran in their evidence dated 03.05.2013 and PW 107 Amirtham, evidence dated 18.03.2023 have deposed that Sharad Kumar is not (and at the point of time was) a member of the DMK.
197. Learned counsel submitted that therefore if the prosecution case is that KTC is controlled by affiliates of DMK, it admits that this excludes Sharad Kumar, since he had nothing to do with DMK and was not controlling KTV in any manner. Learned counsel has submitted that the fact that Sharad Kumar had left Sun TV Network and started KTV has there is no evidence to this effect. The attention has been invited to the testimony of PW-116/Rajendran dated 03.05.2013 and PW 107 Amirtham, dated 18.03.2023.
198. Learned counsel further submitted another allegation that R-1 was pursuing the case of KTV for getting its license from the Ministry of Information and Broadcasting and Sharad Kumar was frequently visiting Sh. Raja in this connection, has also not been proved by the prosecution and there is no evidence on the record. It has further been submitted that the prosecution tried to argue that Sh. Raja used his influence to place KTV on the Tata Sky bouquet of channels. However, as per Ex-PW154/A-1, KTV has been on the bouquet of Tata Sky since August 2007.





199. Learned counsel submits that there is no evidence on record that respondent No.16 knew the ultimate source of the money being received by KTV nor there is any evidence that he had ever met Shahid Balwa, Vinod Goenka, Asif Balwa or Rajiv Aggarwal. Learned counsel submits that respondent No.16 dealt only with CFPL which is also the entertainment industry. Learned counsel submits that prosecution miserably failed to prove any allegations pertaining to the alleged close association between Sharad Kumar and Sh. Raja and even they could not prove that they knew each other. Learned counsel submits that as per the evidence on the record, the role of respondent No.16 in KTV was to look after the technical matters and even did not have the cheque signing authority. In this regard, the reliance has been placed upon the testimony of PW-107 recorded on 15.03.2013. Learned counsel submits that there is no material that respondent No.16 would know the ultimate source of money being received by KTV or in fact, it was bribe.

200. Learned counsel also argued in detail regarding the “Dubious” nature of the transaction and submitted that in this regard the testimony of PW-116 is material on the basis of which, this theory has been rejected. Learned counsel submitted that the prosecution witnesses themselves deposed contrary to the prosecution case and the prosecution did not declare them hostile. Therefore, the defense is entitled to rely on the same. Reliance has been placed upon *Javed Masood v State of*



*Rajasthan*<sup>144</sup>, *Mukhtiar Ahmed Ansari v State*<sup>145</sup> and *Raja Ram v State*<sup>146</sup>.

201. Learned counsel submits that the KTV took all the necessary steps that it was required to take under the SSA. Learned counsel submits that there is an un-assailed testimony regarding the legitimacy of the transaction between Cineyug and KTV. Learned counsel submits that it was initially informed by the KTC that the SSA share subscription was not available as was misplaced and the office was shifted and the photocopy of the same has not been disputed and PW-116 and 107 duly confirmed that it was signed in front of them. Learned counsel submitted that PW-116 specifically stated that the SSA need not be stamped. Learned counsel submits that the transaction fell through as the entire equity of KTV was valued at more than Rs.800 crores.

202. Further reliance has also been placed upon *State v. Nalini & Ors*<sup>147</sup>.

**Submissions of Respondent No. 17/ Kanimozhi Karunanithi**

203. Ms. Rebecca John, learned senior counsel for respondent No. 17 submitted that the Appellate court shall not normally interfere with the findings recorded by the Ld. Trial Court unless it is perverse or illegal on the very face of it. In regard to the double presumption of innocence, learned counsel has relied upon *Chandrappa & Ors. vs. State of Karnataka* (supra) and *Jafarudheen vs. State of Kerala*<sup>148</sup>.

204. Learned senior counsel submitted that CBI has alleged that there was a conspiracy between the accused public servants A. Raja, Siddhartha

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<sup>144</sup> (2010) 3 SCC 538

<sup>145</sup> (2005) 5 SCC 258

<sup>146</sup> (2005) 5 SCC 272

<sup>147</sup> (1999) 5 SCC 253

<sup>148</sup> (2022) 8 SCC 440



Behura, and R.K. Chandolia (A-1 to A-3) and private persons Shahid Balwa and Vinod Goenka (A-4 and A-5) to grant UAS license and 2G spectrum to Swan Telecom Pvt Ltd (A-6), and in lieu thereof, illegal gratification of Rs. 200 crore was paid to the company Kalaignar TV Pvt Ltd (“KTV”) (not accused), in which R-17 was only a minority shareholder.

205. The allegation of the prosecution is that there was a close nexus between A. Raja (R-1) and Ms. Kanimozhi (R-17) as Respondent no. 17 was a regular visitor to the residence of R-1. Learned counsel submitted that Respondent No. 17 was made an accused only in the supplementary charge sheet. It has further been submitted that respondent No. 17 was a minority shareholder with 20% of the shares in KTV, and was the director of KTV only for 14 days during its formation, i.e., from 06.06.2007 to 20.06.2007. Learned senior counsel submitted that in the minutes of the meeting dated 20.06.2007 where in it was recorded that the resignation of Respondent no. 17 was taken on record. It has been submitted that during the 14-day tenure of Respondent no. 17 as a director, she attended only three board meetings in which only formal decisions were taken. Learned counsel submitted that in the third meeting, the resignation of R-17 was accepted.

206. Learned counsel submitted that the period of offense/conspiracy began on 20.09.2007 i.e., after the resignation of Respondent no. 17. Learned senior counsel submitted that the board meeting for the raising of the alleged loan of 200 took place on 13.02.2009 which was after more than one and half years of the resignation of Respondent no. 17. This meeting was attended by Mrs. Dayalu Karunanidhi (PW 152) who was



the majority shareholder and Mr. Sharad Kumar i.e., Respondent no. 16. Learned senior counsel submitted that inflow and outflow of money to KTV as per the case of the prosecution is between 23.12.2008 to 07.08.2009 and 24.12.2010 to 03.02.2011. These transactions were after more than one and half years and three and half years respectively after the resignation of Respondent No. 17 from KTV.

207. Learned counsel submitted that there is no material on record to show that Respondent no. 17 who was only a 20% minority shareholder was a beneficiary from the aforesaid transactions. It has further been submitted that Respondent No. 17 did not have any role in the day-to-day affairs of the company and did not attend any meetings of KTV after her resignation, nor she had any powers or authority in the management/administration of KTV. It has further been submitted that neither the major shareholder nor the KTV company has been made an accused.

208. Learned senior counsel submitted that in paragraph 1688 of the impugned order the Ld. Trial Court has negated the case of the Prosecution. It has been submitted that in appeal there are no averments to demonstrate that how these findings are erroneous. Learned counsel submitted that the evidence of PW 107 P. Amirtham, CFO of KTV recorded on 15.03.2013 has duly been taken on record. Learned counsel submitted that in regard to the familiarity between Respondent No. 17 with Respondent No. 1, the Ld. Trial Court in paragraph 1709 has aptly stated that the circumstances produced by the prosecution do not make them conspirators.



209. Learned senior counsel submitted that there is no direct or circumstantial evidence to trace the transfer of money to R-1. Learned senior counsel submitted that the material on the record showed that Respondent No.17 was not a Director of the company at the time of the alleged conspiracy, nor was she in any way connected to the impugned loan transaction in as much as she had resigned from the board and was not part of any meeting ratifying the loan transaction. Learned senior counsel submitted that respondent No. 17 was in no way in charge of and responsible for the management of KTV.
210. Learned senior counsel submitted that simply factum of a meeting between R-17 and R-1 cannot lead to inference of any criminality.
211. Learned counsel has also relied upon (i) the Form 32 of Kalaingar Tv Private Limited along with a resignation letter of Ms. Kanimozhi Karunanidhi dated 20.06.2007 (Ex PW 152/DB-2); (ii) The minutes of meeting dated 06.06.2007 of Kalaingar Tv Private Limited (Ex. PW 107/DA (D 742)); (iii) The minutes of meeting dated 12.06.2007 of Kalaingar Tv Private Limited (Ex. PW 107/A1 (D 742)); (iv) The minutes of meeting dated 20.06.2007 of Kalaingar Tv Private Limited (Ex. PW 107/A-2 (D 742)); (v) The minutes of meeting dated 13.02.2009 of Kalaingar Tv Private Limited (Ex. PW 107/A-16 (D 742)); (vi) Evidence of PW 107, P. Amirtham, dated 15.03.2013; (vii) Evidence of PW 116, Sh. G. Rajendran dated 03.05.2013
212. Learned senior counsel has placed reliance on the following judgments to buttress her arguments: (i) ***Harshendra Kumar D. v. Rebatilata***



*Koley*<sup>149</sup>; (ii) *M.A.A. Annamalai v. State of Karnataka*<sup>150</sup>; (iii) *Subramanian Swamy v. A. Raja*<sup>151</sup>; (iv) *Sunil Bharti Mittal v. CBI*<sup>152</sup>; (v) *Amratlal Vrajlal Rajguru v Umeshbhai Jashvantlal Maheta*<sup>153</sup>; (vi) *RLF Ltd v State (NCT Delhi)*<sup>154</sup>; (vii) *Sharad Kumar Sanghi vs. Sangita Rana*<sup>155</sup>.

213. Ms.Rebecca John, learned senior counsel for respondent no 17. has relied upon *Harshendra Kumar D. vs. Rebatilata Koley*<sup>156</sup> and has submitted that it was inter alia held that a Director whose resignation has been accepted by the company and duly been notified to the Registrar of Companies cannot be made accountable and fastened with the liability for anything done by the company after the acceptance of his resignation. Learned senior counsel submitted that in the present case also, R-17 had already resigned at the time of the offence. Learned senior counsel has further submitted that in the present case it was also held that criminal prosecution is a serious matter as it affects the liberty of a person and no greater damage can be done to the reputation to a person than dragging him in a criminal case. Learned senior counsel has submitted that R-17 has been proved to be innocent and therefore the present leave to appeal should not be granted.

214. Learned senior counsel has further relied upon *M.A.A. Annamalai vs. State of Karnataka*<sup>157</sup> and submitted that in the present case, there is no

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<sup>149</sup> (2011) 3 SCC 351

<sup>150</sup> (2010) 8 SCC 524

<sup>151</sup> (2012) 9 SCC 257

<sup>152</sup> (2015) 4 SCC 609

<sup>153</sup> Cri. Misc. Application No. 16805/2019

<sup>154</sup> CrI. LP 85/2017

<sup>155</sup> (2015) 12 SCC 781

<sup>156</sup> (2011) 3 SCC 351

<sup>157</sup> (2010) 8 SCC 524



allegation and material to show that respondent no.17 was the in-charge of and was responsible for the conduct of the company's business which had given rise to the offence. Learned counsel has further relied upon *Subramanian Swamy vs. A.Raja*<sup>158</sup> which was a case arising out of the present case wherein it was inter alia held that criminal conspiracy cannot be inferred on the mere fact that there were officials' discussion between the officers of MoF and that of DoT and between two Ministers. Learned senior counsel submitted that merely because R-17 and R-1 used to meet, there cannot be any criminal inference. Learned counsel has further relied upon *Sunil Bharti Mittal vs. CBI*<sup>159</sup> wherein it was held that an individual, who has perpetrated the commission of an offence on behalf of a company, can be made an accused along with the company if there is sufficient evidence of his active role coupled with the criminal intent.

215. Learned senior counsel has further submitted that in this case it was inter alia held that the second situation in which he can be implicated in those cases where the statutory regime itself attracts the Doctrine of Vicarious Liability specifically and corroborating such a provision. Learned senior counsel has submitted that in the present cases both the conditions are not fulfilled. Learned senior counsel has further relied upon the judgment of *Sharad Kumar Sanghi* (supra) wherein it was submitted that since the company has not made him as a party and the allegations against R-17 are vague in nature, the learned trial court has reached to correct conclusion.

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<sup>158</sup> (2012) 9 SCC 257

<sup>159</sup> (2015) 4 SCC 609



216. The parties have also filed detailed written submissions after advancing detailed arguments at the bar. The same have also been considered by this court.

#### **IV. Rejoinder Submissions**

217. Sh. Sanjay Jain Ld. Senior Counsel on behalf of the CBI that the judgment of the Ld. Trial Court is perverse and has been delivered with a conscious and pre-disposed intent - that the case of the prosecution would be disbelieved irrespective of the weight of the evidence that too in a matter where the investigation and prosecution was conducted under the supervision of the Hon'ble Supreme Court which had eventually cancelled all the 122 licenses that were later auctioned by the Government for total revenue of Rs.53,000 Crores.

218. It has been submitted that one of the main reasons for the Ld. Trial Court to disregard the investigation and evidence was that the statements under Section 161 of the Cr.PC were recorded a week prior to filing of the chargesheet. It is submitted that the same did not call for any general skepticism from the Ld. Trial Court as the same was a Supreme Court monitored trial. It has been submitted that the Ld. Trial Court did not consider that a case of criminal conspiracy can be evaluated only through circumstantial evidence and in such circumstances the time gap between recording of statements and filing of chargesheet was immaterial. It is submitted that such approach of the Ld. Trial Court in disregarding the oral and documentary evidence was perverse and gives rise to an arguable case in appeal.

219. Sh. Sanjay Jain Ld. Senior Counsel submitted that the attempt of the prosecution to prove a fact by oral evidence was disregarded by the Ld.





Trial Court on the ground that it was not corroborated by any document in writing and the attempt of the prosecution to prove a fact by documentary evidence stood discarded on the ground that there was no oral evidence to support the document. In support of this submission, reliance has been placed on Paras 355, 1286, 382-383, 386, 395, 418, 420, 923, 958 and 1562 of the judgment of the Ld. Trial Court. It has been submitted that the Ld. Trial Court wrongly relied on the judgment in the case of *Dudhnath Pandey vs. State of U.P.*<sup>160</sup> to give greater weightage to the defence evidence which was not the ratio laid down in the said judgment.

220. It has been submitted by Sh. Sanjay Jain Ld. Senior Counsel that the observations of the Ld. Trial Court in the abovementioned paragraphs of the judgment reveals that the Ld. Trial Court was determined not to accept the case of the prosecution and such an approach of the Ld. Trial Court, in an adversarial legal system, was inherently perverse. It has been submitted that the weightage accorded to the evidence of the witnesses was biased which was evident from the beginning of the judgment even before the Ld. Trial Court marshalled the evidence. It has been submitted that the evidence and statements of DW-1 (A Raja), DW-22 RK Chandolia), PW-2 (AN Sethuraman) and PW-71 (Ashok Wadhwa) were treated by the Ld. Trial Court as the gospel truth whereas the witnesses supporting the case of the prosecution were disbelieved, berated and criticized. Reference is made to statements of PW-7 (Aseervatham Achary), PW-60 (AK Srivastava), PW-11 (Nripendra Mishra) and PW-102 (GE Vahanwathi).

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<sup>160</sup> 1981 CrI.J 618



221. Sh. Sanjay Jain Ld. Senior Counsel has sought leave to refer to the aide-memoire during the opening submissions. Ld. Senior Counsel submitted that the Aide-Memoire was only to assist the Court regarding the statements recorded and summary of the view of the Ld. Trial Court as well as comments of the prosecution but the prosecution has not claimed that out of the entire judgment of the Ld. Trial Court, whatever was not included in the aide-memoire, was not intended to be relied upon or stood excluded. It is submitted that the Aide-Memoire had been placed before the Court to give a snap shot on each of the five points to enable the Court to have a bird's eye view of the arguable points to consider whether a prima facie case had been made out for grant of leave of appeal as held by the Supreme Court in the case of *Sujoy Mangesh Poyarekar* (Supra).

222. The Ld. Sr. Counsel has submitted handouts on each of the points argued in the opening submissions highlighting from the text of the judgment the perversity in the same which runs across the entire judgment establishing that it is a fit case for grant of leave. Ld Sr. Counsel has filed a written synopsis of Rejoinder Submissions with three handouts. Handout-1 contains extracts from the judgment of the Ld. Trial Court to highlight its perversity on five aspects:-

- Association/Familiarity between the accused (Govt. Official) and Telecom License Applicants - M/s Swan Telecom (DB Group) and M/s Unitech Wireless (Unitech Group)
- Fixation of cut-off date by officials to convey undue benefit to M/s Unitech Wireless (Unitech Group).



- Violation of 'First Come First Served Policy' & Distribution of LOIs by setting up four counters.
- Non-Revision of entry Fee
- Money -trail

223. Handout-2 which has been submitted is a chart containing summary of all judgments relied upon by the respondents and by the CBI. Handout-3 pertains to the individual roles of the accused persons and the evidence led by the prosecution to prove the same.

224. Ld. Sr. Counsel for the CBI has also submitted a brief note on the "First Come First Served Policy". In the same reliance is placed upon the deposition of PW-110 Sh. Nitin Jain, Director AS-I on the First Come First Serve Policy for grant of UAS Licenses prevailing prior to 10.01.2008 and Press Release dated 10.01.2008 Ex.PW60/L-30 pertaining to change of First Come First Serve Policy from the date of application to the time of compliance. Reliance is also placed on Ex. PW52/A recorded by PW-88 Sh. R.K. Gupta and deposition of PW-60.

225. It has been submitted that the scheme of distribution of LoIs simultaneously through four counters was not in consonance with the principle of First Come First Serve Policy. The manner of distribution of LoIs resulted in disorderly manner of priority of applicants for signing license agreement and completely changed the priority to benefit STPL which got first priority in Delhi where spectrum for only one licensee was available and Unitech Wireless Group got priority in circles where sufficient spectrum was not available to accommodate the last applicant.



226. It has been submitted that distribution of LOIs through four counters altered the First Come First Serve Policy in the following manner:-

- LOIs were distributed on 10.01.2008 from 3.30 PM onwards which took half an hour and compliance was made by STPL with priority at no.5, at 4.10 PM for Mumbai Circle and 4.11 PM for Delhi Circle. Unitech with original priority no. 12 completed compliances on the same day before M/s TATA whose original priority was at no.2.
- As per deposition of PW-103 Kaushal Nagpal Unitech Limited bank drafts were prepared in October 2007 months prior to distribution of LOIs on 10.01.2008 much before any decision was taken by A-1 on non-revision of entry fee rates i.e. 04.12.2007.

#### **V. Analysis & Findings**

227. The present leave to appeal has been filed seeking grant of leave to challenge the order passed by Ld. Special Judge in FIR No. RC.DAL2009.A.0045. FIR was lodged pursuant to the directions of the Apex in *Centre for Public Interest Litigation v. Union of India*<sup>161</sup>. After the investigation the charge-sheets were filed. The trial was conducted on day-to-day basis and after trial Ld. Special Judge passed the impugned judgment acquitting all the accused persons.

228. Generally, the right to first appeal is a matter of right However in the case of acquittal this right has been curtailed by the legislation and judicial precedents so as to ensure that once an acquittal has been

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<sup>161</sup> (2011) 1 SCC 560



recorded after the trial, such findings should not be disturbed ordinarily.

229. Section 417 of the un-amended Cr.P.C. conferred the power on the State Governments to present an appeal to the High Court from the ordinary or appellate order passed by any court other than High Court.

230. It was considered that provision for appeal against acquittal in appropriate cases may be necessary to avoid a miscarriage of justice. However, as per the 48<sup>th</sup> report of the Law Commission <sup>162</sup>it was fully convinced that generally it is not desirable to encourage such appeals. It is pertinent to mention here that Section 417 Sub Section (3) permitted private complainant in a case instituted on a complaint to appeal against acquittal, only after obtaining special leave from the High Court. The Law Commission considered whether that general and unlimited right conferred on the government to file such appeals deserves to be retained. It was noted that in most common law countries the general rule is not to allow an appeal against acquittal, only a limited right of appeal against acquittal has been given in England in respect of appellate judgment of acquittal. It was brought to the notice of the commission that the right to further appeal in these cases is important for the General Administration and Development of Criminal Law.

231. The Law Commission noted that unlimited and general right given in the un-amended Cr.P.C. i.e., Cr.P.C., 1898 required re-examination. The view was expressed that proper regard should be there to the need for putting reasonable limits on the period for which the anxiety and

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<sup>162</sup> Referred from the 48th Law Commission Report.



tension of a criminal prosecution should be allowed to torment the mind of the accused. The Law Commission was of the view that if a competent court manned by trained judicial officer has held a person to be innocent, the matter should ordinarily end there. It was recommended that appeal against acquittal under Section 417 even on the instance of the Central Government or State Government should be allowed only if the High Court grants special leave.

232. Pursuant to this report, the joint committee gave its report to consolidate and amend the law relating to criminal procedure. The joint committee to which the bill to consolidate and amend the law relating to criminal procedure presented the report of the committee with the bill as amended by the committee. In the report, the following recommendations were made:

*“Clause 378 (original clause 388)*

*The Committee was given to understand that in some cases this executive power to file appeals against an order of acquittal was exercised somewhat arbitrarily. It would therefore be desirable and expedient to provide for a check against arbitrary action in this regard. The Committee has therefore provided that an appeal against an order of acquittal should be entertained by the High Court only if it grants leave to the State Government in this behalf.*

*Sub-clause (4) prescribes a period of limitation of 60 days for an appeal against an order of acquittal at the instance of a complainant. In quite a few cases prosecutions are launched by means of complaints by public servants, such as prosecutions for offences under some special laws such as the law relating to Foreign Exchange, smuggling etc. In such cases, the administrative procedure for taking a decision in the matter takes quite a long time and in some cases such procedure is not completed before the prescribed period of*



*limitation of 60 days. In consequence there might be miscarriage of justice.*

*Most of these special laws require to be enforced strictly with a view to put a stop to various types of anti-social activities and if wrong acquittals are not appealed against, there will be an adverse effect on the enforcement of such laws. The Committee therefore has considered it desirable to extend the period of limitation to 6 months whenever the complainant is a public servant and necessary amendment has been made for the purpose.”*

233. Bare perusal of the recommendations make it clear that legislative intent behind leave to appeal by High Court was to check arbitrary action in this regard by the prosecution in filing appeals. It was also noted that, if wrong acquittals are not appealed against, there will be an adverse impact. It is also pertinent to mention that legislature in its wisdom has not put any condition for the High Court to grant or refuse leave to appeal. Possibly, it was considered that High Court is expected to record objective satisfaction before reaching to any conclusion in this regard.

234. Pursuant to this we stand at the position where we are, that in the case of the acquittal no appeal to the High Court shall be entertained except with the leave of the High Court. The long arguments have been made at the bar on behalf of the respondents regarding the scope of jurisdiction to be exercised at the stage of considering the application for grant of leave to appeal. Most of the judgment which have been cited at bar by the able learned counsels for the respondents are on the point of jurisdiction of the court of the appellate court while considering the judgment of acquittal. No doubt numerous judgments



have also been placed where this court and the Apex Court have made certain observations regarding the points to be considered at the time of entertaining an application for leave to appeal which can be culled out as under:

- a. The order of granting / refusing the leave to appeal should not be a cryptic order.
- b. There must be strong and compelling reasons for grant of leave to appeal.
- c. The High Court must examine whether a prima facie case has been made out or arguable points have been raised.
- d. The High Court must consider relevant material, sworn testimony of prosecution witnesses. High Court must apply its mind and record reasons [may be in brief] in support of this view.
- e. The High Court must examine the material on record to see whether prima facie it requires deeper scrutiny and re-appreciation/review of reconsideration of evidence.

235. However, there are also certain negative covenants which can be culled out are:

- a. The jurisdiction at this stage is not to examine whether the order of acquittal would or would not be set aside.
- b. The High Court would not enter into minute detail of the prosecution evidence.

236. Thus, at the outset this court is absolutely clear in its mind that the grant/refusal of 'leave' as provided under Section 378 Sub Section 3 CrPC, 1973 is not a mechanical exercise or has to be granted at the





mere asking. The High Court must apply its judicial mind before grant/refusal of such leave. The court is fully conscious of the fact that presumption of innocence which exists in favour of the accused at the beginning of the trial strengthens with the order of acquittal in its favour. The court is also fully conscious of the fact that leave cannot be granted merely because the High Court considers that an alternative view could have been taken by it.

237. However, at the same time, the court is firm in its belief that at this stage no adjective such as ‘perverse’, ‘palpable wrong’, ‘illegal’, ‘infirm’ or any of such adjective can be labelled with the order of the impugned judgment. The court is firmly of the view that at this stage the High Court is required to go through the material carefully and on the basis of examination of such material which includes the sworn testimonies, documents and other material on record so as to assess that whether the matter requires deeper scrutiny, re-appreciation, review or reconsideration of evidence.

238. Before proceeding further it is also pertinent to mention here that the present case is a case of a very different nature where the criminal proceeding were initiated on the basis of the direction of the Apex Court. The Apex Court monitored the investigation. It is not an ordinary criminal offence.

239. The present case is a case pertaining to economic offence and it has been held time and again that economic offence constitute a separate



class and required to be handled with a different approach. In ***Y.S. Jagannohan Reddy vs. CBI***<sup>163</sup>, the apex court inter-alia held as under:

*“34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.”*

240. Further in ***Nimmagadda Prasad vs. CBI***<sup>164</sup> it was inter-alia held as under:

*“23. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fiber of the country’s economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In State of Gujarat vs. Mohanlal Jitamalji Porwal and Anr. (1987) 2 SCC 364 this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under:-*

*“5.....The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest....”*

*24. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the*

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<sup>163</sup> (2013) 7 SCC 439

<sup>164</sup> (2013) 7 SCC 466



*words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.*

*25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."*

241. Though this court is not dealing with the bail application, the judgments have only been referred to emphasis the point that the present case stands on a different footing and is therefore required to be handled with little more sensitivity.
242. The Court is fully conscious of the fact that rules of appreciation of evidence and trial remains the same in all cases, be it an economic offence or other offences. However, the courts cannot have a static approach and must have dynamic approach in consonance with the facts alleged in a particular case. The present case is not an ordinary case of murder, dacoity, rape, theft or fraud. It was case where the allegations were extremely serious in nature. Thus the appreciation of the evidence and handling of such case has to be done in a very different manner.
243. Learned counsel for the respondents rendered very valuable assistance to the court and put hard labour in reading out all the relevant paragraphs of the judgment as well the sworn testimonies of the prosecution witnesses. This gave an opportunity to the court to go through the sworn testimony of the witnesses, the statements recorded



under Section 313 Cr.P.C. of the accused persons and the testimony of the defence witnesses in detail along with documents/material on records. This actually helped the court in making deeper and close examination and scrutiny of the entire material on record.

244. Learned senior PP for CBI has also very ably took the court through the various paragraphs of the impugned judgment and the sworn testimonies to emphasize that leave to appeal must be granted for deeper examination, re-appreciation and review of the evidence. However, this Court is exercising its complete restraint in discussing in detail the evidence of the prosecution witnesses and the defence witnesses so as not to cause prejudice to either of the parties. The re-appreciation, reappraisal and review of the evidence is the job to be undertaken at the time of hearing the appeal on merits.

245. This court while exercising its jurisdiction was always clear in mind that its jurisdiction confined to the extent that whether there is material on record, which requires that leave to appeal should be granted. The court had to satisfy itself completely that whether the presumption of innocence which has strengthened in favour of the respondents should be disturbed at all. Ld. Trial Court in its judgment has predominantly disbelieved the prosecution witnesses and in particular PW 60 and PW 7, who were main star witnesses of the prosecution besides same other witnesses and believed the defence witnesses. The point to be considered is that whether such appreciation was in consonance with law and in consonance with the facts of the present case.

246. Chapter XXIX of the Cr.P.C. pertains to the appeal. The relevant provision Section 374 confers jurisdiction to file an appeal against the



order of conviction. Such right of appeal has been taken away where the accused has been pleaded guilty, where the conviction has been recorded on the plea of guilt or and in the petty cases. Section 378 deals with appeal in the case of the acquittal. Section 378 subsection (3) provides that no appeal filed under Section 378 shall be entertained except with the leave of the High Court.

247. Section 386 Cr.P.C. defines the power of the Appellate Court. Section 391 Cr.P.C. empowers the appellate court to take further evidence or direct it to be taken if it thinks additional evidence to be necessary. Thus, at the stage of grant of leave to appeal if the leave is rejected the window is closed and it cannot be heard further. However, if the leave is granted then there are certain provisions in the Cr.P.C. which empowers the High Court including the power to take additional evidence also. In the criminal trial the duty of the court is not confined of merely of taking the evidence and on the basis of that deciding a case. The trial can never be considered as a battle of wits. The courts have always been under a bound duty to impart justice. In every criminal trial there is a quest for ultimate justice.

248. In this regard recording of evidence is a very important function of the trial court. The police conducts the investigation and collects evidence as prescribed under Chapter XII and after investigation it culminates into the filing of report under Section 173 Cr.P.C. The function of the trial Court starts thereafter. After framing of the charge, the duty of the court begins for the recording of the evidence or gathering of such material. Chapter XXIII of the Cr.P.C. deals with the 'Evidence in Inquires and trials'. In this regard, section 165 of the Indian Evidence



Act is also very important which confers the power on judge to put question and order production.

249. The importance of the provision under Section 165 Indian Evidence Act, 1872 has been highlighted by the Apex Court in **Zahira Habibulla H. Sheikh & Anr. vs. State of Gujrat & Ors.**<sup>165</sup> wherein it was inter-alia held as under:

*"43. The courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on presiding officers of court to elicit all necessary materials by playing an active role in the evidence-collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that the ultimate objective i.e. truth is arrived at. This becomes more necessary where the court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.*

*44. The power of the court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The section consists of two parts i.e. : (i) giving a discretion to the court to examine the witness at any stage, and (ii) the mandatory portion which compels the court to examine a witness if his evidence appears to be essential to the just decision of the court. Though the discretion given to the court*

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<sup>165</sup> (2004) 4 SCC 158



*is very wide, the very width requires a corresponding caution. In Mohanlal v. Union of India [1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595] this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the words such as, “any court”, “at any stage”, or “any enquiry or trial or other proceedings”, “any person” and “any such person” clearly spells out that the section has expressed in the widest-possible terms and do not limit the discretion of the court in any way. However, as noted above, the very width requires a corresponding caution that the discretionary powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the section does not allow any discretion but obligates and binds the court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case, “essential” to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.”*

250. In the present case, the learned counsels for the respondents have time and again stated that though the prosecution witnesses did not support the case of the prosecution but the prosecution did not put any question or declared them hostile. It was argued that many of the points remained unexplained. The question before this court is that whether by refusing leave to appeal such ambiguity should be buried without an opportunity to the State for giving an explanation for such. It may not



be taken as giving an opportunity to the CBI to plug its loopholes. The duty of this court is to ensure that Justice is not denied to anyone including the State on mere hyper- technicalities. The society has an expectation from the judicial dispensation system. Such faith or expectation cannot be permitted to be diluted by resorting to technical or unrealistic approach.

251. It is to be born in mind that the state is the custodian of the right of each and every citizen of India. In cases particularly of the economic offences where though on the face of it, the loss is not to a private individual but it trickles down to lakhs and lakhs of innocent people of the country. If there has been an un-merited acquittal the scrutiny by the Appellate Court is the only available method to bring in correction wherever required. The appellate scrutiny cannot begin without the threshold of leave being granted.

252. I consider that rather it is necessary and in the interest of the justice also that in such a matter, the leave to appeal should be granted, if there exists valid reasons.

253. In the criminal trial, the fairness demands that accused as well as the prosecution has to fairly dealt with. This concept has the familiar triangulation, which includes the interests of the accused, the victim and the society. The society/community is represented by the State and Prosecuting Agencies and, therefore the interest of the society cannot be ignored as “*persona non grata*.” It has also been held time and again that a Trial Judge cannot be a mere spectator and a machine for recording the evidence. The Trial Judge has to be an active participant in the trial displaying intelligence, active interest and quest to elicit all





relevant materials necessary for reaching the correct conclusion to find out the truth and administer justice with fairness and impartiality to the parties. The ultimate object to as meet out justice, the trial should be a search for the truth and not bout over the technicalities.

254. In such cases it's not necessary that actually someone has been benefitted or not. The fact that transaction of Rs.200 crores was reversed has to be seen holistically. The case of some of the accused persons cannot be segregated at this stage as the facts are so much interwoven with each other that it will be difficult to separate at this stage. It is also pertinent to mention that evidence oral in nature cannot be discarded out rightly merely because it is not corroborated by any documentary evidence. The evidence has to be weighed and not counted.
255. The court during the hearing has also noticed some contradictions in the judgement itself, which requires deeper examination. The court at this stage is required to have a prima facie helicopter view. There may be a possibility that such contradictions are explained by the defence during the hearing.
256. The court is also of the considered view that in case where leave to appeal is refused, the court is required to give detailed reasons. However, in case the leave is to be granted brief reasons may be recorded to avoid any kind of prejudice. The court is required to reach on an objective satisfaction that there is a prima facie case which requires grant of leave to appeal. This proposition is akin to the situation, where an accused is discharged or the charges are framed.



Reference may be made to *Kanti Bhadra Shah & Anr. vs State Of West Bengal*<sup>166</sup> wherein it was inter-alia held as under:

*“8. We wish to point out that if the trial court decides to frame a charge there is no legal requirement that he should pass an order specifying the reasons as to why he opts to do so. Framing of charge itself is prima facie order that the trial judge has formed the opinion, upon consideration of the police report and other documents and after hearing both sides, that there is ground for presuming that the accused has committed the offence concerned.*

*10. It is pertinent to note that this section required a Magistrate to record his reasons for discharging the accused but there is no such requirement if he forms the opinion that there is ground for presuming that the accused had committed the offence which he is competent to try. In such a situation he is only required to frame a charge in writing against the accused.”*

257. Though this court is avoiding to make any detailed appreciation of evidence in this regard. However, just to give a flavour on some of the aspects in regard to the First Come First Serve policy for grant of UAS license prevailing prior to 10.01.2008. It specifically came in the testimony of PW-110 that initially the FCFS policy was that an applicant who submits his application earlier to another applicant will receive an LoI first after it is approved and the license would be granted based on his priority as per the date of receipt of application. However, in the press release dated 10.01.2008, the condition was changed to the effect that an application which is received first will be processed first and thereafter, if found eligible will be granted LoI and then whosoever complied with the conditions of LoI first will be granted UAS license. Thus, the FCFS policy was changed from the

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<sup>166</sup> (2000) (1) SCC 722



date of application to the date of compliance. It is pertinent to note that allegedly FCFS policy was changed on 10.01.2008 which is after the cutoff date of 01.10.2007. It came in the evidence that the novel method gave way to a possibility where compliance by different companies had differences of minutes and even seconds which completely changed the priority to the benefit of STPL which got first priority in Delhi where spectrum for one license was available and Unitech Wireless Group of Companies also got priority in circles where sufficient spectrum was not available to accommodate the last applicant. This case of prosecution was reproduced by the learned trial court in Para 915 of the impugned judgment. However, the case of the prosecution was rejected by the learned trial court in Para 923 saying that there is absolutely no written record indicating when it was decided as to when and how LOIs were to be distributed.

258. The arguments of the prosecution that LOI were distributed on 10.01.2008 from 3.30 p.m. onwards and this process took half an hour. However, thereafter the compliance was completed by STPL i.e. A-6 whose original priority was at Sl. No.5 for Mumbai circle at 4.10 p.m. and for Delhi circle at 4.11 p.m. It was argued that Unitech i.e. A-8 whose original priority was at Sl. No.12 completed the compliances on the same day before M/s Tata whose original priority was at Sl. No.2 needs deeper examination.

259. It is pertinent to mention here that the learned trial court in the impugned judgment rejected the testimony of PW7 only on the ground that there was no corroborative documentary evidence. Similarly, the evidence as to the lease deed of R-3 to the associated Hotel was



rejected merely because there was no corroborative evidence. It is also pertinent to mention here that in note Ex.PW36/E1 purportedly recorded by PW60 the cut-off date was changed from 10.10.2007 by respondent no.1 to 01.10.2007. However, the learned trial court ignored the same. This is also the consistent argument of the prosecution that the testimony of prosecution witnesses has been disbelieved, whereas the testimony of defence witnesses has been admitted as gospel truth which needs deeper examination. The amendment in the press release by A-1 by his own handwriting on 07.01.2007 also needs deeper examination. In regard to the revision of entry fees, the note recorded by Ms. Manju Wadhwan PW36/B1 on 30.11.2007 has curiously been totally rejected by the R-1 vide his handwritten note dated 04.12.2007. The stand taken by Member Finance and R-1 in their respective notes is absolutely contrary to each other.

260. The Ld. Trial Court in the impugned judgment has rejected the testimony of PW 7 as recorded in para 355, 356 and 357. The perusal of these paragraphs indicates that the approach taken by the Ld. Trial Court regarding the appreciation of this evidence needs deeper scrutiny. Similarly, the association between R-1 and DB Group via Green House Promoters and connection between R-3 and DB Group via Associated Hotel Private Ltd. has been rejected by the Ld. Trial Court in para 371 and 1286. The reason for rejection of such testimonies also gives reason for hearing the appeal on merits.

261. It is also interesting to note that in para 383 of the impugned judgment Ld.Trial Judge noted that R-1 had cited three reasons for his approval of cut off date and advancing the cut off from proposed 10.10.2007 to



01.01.2007. However, in para 395 of the impugned judgment, Ld. Trial Court records that the possibility of PW 60 Sh. A.K. Srivastava himself suggesting the date of 01.10.2007, cannot be ruled out.

262. In this regard reference can also be made to para 420 of the impugned judgment wherein the Ld. Trial Court noted the deposition of R-1 where he stated that after discussion in DoT it was believed that time till 01.10.2007 was fair enough.

263. The case of the CBI is that the Ld. Trial court has rejected the testimony of PW 60 Sh. A.K. Srivastava on mere surmises and conjunctures. In respect of testimony of Sh. Nripendra Misra PW 11 to the effect that revision of entry fees was recommended, Ld. Trial Court recorded that there was not material on record that anyone understood this recommendation in this manner.

264. In regard to the revision of fees it is also pertinent to mention para 1633 of the Ld. Trial Court wherein Ld. Trial court reached on its own conclusion which is as under:

*“1633. It may also be noted that from 2003 to 2007, only 51 licences were issued in 22 service areas across the country. This small number of licences itself is a comment against non- revision of entry fee. It may be noted that there are 22 service areas for telecom services in the country. It may also be noted. that a separate telecom licence is required for each service area. It is also on record that only 51 licences were issued in all the service areas, that is, roughly two licences per service area since the introduction of UAS licence in 2003. If such miniscule number of licences were issued from 2003 to 2007 at an entry fee, which was considered to be too low, the enhanced entry fee would have further reduced the number of licence seekers. This miniscule number of licences itself indicate that, whatever*



*may be the view of a section of people relating to revision of entry fee, even the then existing entry fee discovered in 2001 was a constraining factor for new entrants. In any case, all these factors were duly considered by TRAI in its Recommendations dated 28.08.2007, wherein it did not recommend revision of entry fee. If it recommended revision of entry fee, nobody understood it in that sense. There is no material on record to indicate any insistent assertion or objective analysis by anyone for the need of revision of entry fee. It is all general talk. There is no evidence on record that telecom companies were rolling in or wallowing into wealth warranting revision of entry fee. Even TRAI Recommendations dated 27.10.2003 recommended nominal entry fee only.*

*Thus there is no material on record indicating that TRAI had recommended revision of entry fee for 2G spectrum. There is enough material on record to show that it was the conscious decision of DoT to not to revise the entry fee.*

*Accordingly, I do not find any merit in the submission of prosecution that the revision of entry fee was not resorted to due to conspiratorial reasons to help the two accused companies to obtain spectrum at as low a price as was discovered in 2001. There is no merit in the submission of prosecution that it amounted to abuse of power by Sh. A. Raja.”*

265. In regard to the offloading of shares by STPL and Unitech the arguments advanced by Sh. Sanjay Jain, learned Senior Public Prosecutor was that the expression “offloading” was erroneously used and it was submitted that in fact the scrutiny of transaction indicates that ETISALAT had acquired equity by infusion of 3228 crores in Swan Telecom. Learned senior counsel submitted that it shows that it was not a case of offloading, but an acquisition of a business entity (possessing high valued government issued telecom licenses) at a very



high premium. However, Ld. Trial Court in para 1287, 1289 and 1290 accepted the case of the defence that it was a case of fresh equity which was not prevented by law or guidelines of DoT.

266. In regard to the transaction of 200 crores the attention has specifically been invited to para 1670 of the impugned judgment wherein the criminality regarding the alleged transaction was rejected by the Ld. Trial Court.

267. It has to be noted that Ld. Trial Judge has repeatedly noted that the prosecution should have afforded an opportunity to the witness to explain the statement made by them. This gives rise to the concern that as to why the Ld. Judge presiding over the trial did not exercise his jurisdiction under Section 165 IEA to seek any clarity, if there was any ambiguity or obscurity.

268. Learned senior PP for CBI has invited the attention of the court in particular to the various patent errors in regard to the appreciation of evidence which are not being reproduced herein in order to ensure fairness to the respondents during the hearing.

269. I must hasten to add that this court is expressing these concerns only to take a prima facie view of the matter and nothing in this order to be construed as final opinion.

270. The court on the basis of material on record, and after going through the sworn testimonies, material on record, impugned judgement and the submissions made at bar by both the parties has reached on an objective satisfaction that there is a prima facie case which requires deeper examination and re-appreciation/re-appraisal of entire evidence.



**271. In view of the discussion made herein above, arguable points have been made out by the CBI thereby converting grant of Leave to Appeal.**

**MARCH 22, 2024**  
**AR/rb/Pallavi**  
**harsh**

**DINESH KUMAR SHARMA, J**